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SITTING DAYS—2011

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RADIO BROADCASTS
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FORTY-THIRD PARLIAMENT
FIRST SESSION—SECOND PERIOD

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

Senate Officeholders

President—Senator Hon. John Joseph Hogg

Temporary Chairs of Committees—Senator Hon. Alan Baird Ferguson

Kay Boyce, Patricia Margaret Crossin, Mary Jo Fisher, Michael George Forshaw,
Annette Kay Hurley, Stephen Patrick Hutchins, Helen Evelyn Kroger, Scott Ludlam,
Gavin Mark Marshall, Julian John James McGauran, Claire Mary Moore, Louise Clare Pratt,
Hon. Judith Mary Troeth and Russell Brunell Trood

Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy

Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate—Senator Hon. Joseph William Ludwig
Manager of Government Business in the Senate—Senator Mitchell Peter Fifield
Manager of Opposition Business in the Senate—Senator Judith Anne Adams and David Christopher Bushby

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

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

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—A Thompson
GILLARD MINISTRY

Prime Minister Hon. Julia Gillard MP
Deputy Prime Minister and Treasurer Hon. Wayne Swan MP
Minister for Regional Australia, Regional Development and Local Government Hon. Simon Crean MP
Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate Senator Hon. Chris Evans
Minister for School Education, Early Childhood and Youth Hon. Peter Garrett AM MP
Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate Senator Hon. Stephen Conroy
Minister for Foreign Affairs Hon. Kevin Rudd MP
Minister for Trade Hon. Dr Craig Emerson MP
Minister for Defence and Deputy Leader of the House Hon. Stephen Smith MP
Minister for Immigration and Citizenship Hon. Chris Bowen MP
Minister for Infrastructure and Transport and Leader of the House Hon. Anthony Albanese MP
Minister for Health and Ageing Hon. Nicola Roxon MP
Minister for Families, Housing, Community Services and Indigenous Affairs Hon. Jenny Macklin MP
Minister for Sustainability, Environment, Water, Population and Communities Hon. Tony Burke MP
Minister for Finance and Deregulation Senator Hon. Penny Wong
Minister for Innovation, Industry, Science and Research Senator Hon. Kim Carr
Attorney-General and Vice President of the Executive Council Hon. Robert McClelland MP
Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate Senator Hon. Joe Ludwig
Minister for Resources and Energy and Minister for Tourism Hon. Martin Ferguson AM, MP
Minister for Climate Change and Energy Efficiency Hon. Greg Combet AM, MP

[The above ministers constitute the cabinet]
Minister for the Arts                          Hon. Simon Crean MP
Minister for Social Inclusion                Hon. Tanya Plibersek MP
Minister for Privacy and Freedom of Information Hon. Brendan O’Connor MP
Minister for Sport                           Senator Hon. Mark Arbib
Special Minister of State for the Public Service and Integrity Hon. Gary Gray AO, MP
Assistant Treasurer and Minister for Financial Services and Superannuation Hon. Bill Shorten MP
Minister for Employment Participation and Childcare Hon. Kate Ellis MP
Minister for Indigenous Employment and Economic Development Senator Hon. Mark Arbib
Minister for Veterans’ Affairs and Minister for Defence Science and Personnel Hon. Warren Snowdon MP
Minister for Defence Materiel                 Hon. Jason Clare MP
Minister for Indigenous Health                Hon. Warren Snowdon MP
Minister for Mental Health and Ageing         Hon. Mark Butler MP
Minister for the Status of Women              Hon. Kate Ellis MP
Minister for Social Housing and Homelessness Senator Hon. Mark Arbib
Special Minister of State                     Hon. Gary Gray AO, MP
Minister for Small Business                   Senator Hon. Nick Sherry
Minister for Home Affairs and Minister for Justice Hon. Brendan O’Connor MP
Minister for Human Services                   Hon. Tanya Plibersek MP
Cabinet Secretary                            Hon. Mark Dreyfus QC, MP
Parliamentary Secretary to the Prime Minister Senator Hon. Kate Lundy
Parliamentary Secretary to the Treasurer      Hon. David Bradbury MP
Parliamentary Secretary for School Education and Workplace Relations Senator Hon. Jacinta Collins
Minister Assisting the Prime Minister on Digital Productivity Senator Hon. Stephen Conroy
Parliamentary Secretary for Trade             Hon. Justine Elliot MP
Parliamentary Secretary for Pacific Island Affairs Hon. Richard Marles MP
Parliamentary Secretary for Defence           Senator Hon. David Feeney
Parliamentary Secretary for Immigration and Citizenship Senator Hon. Kate Lundy
Parliamentary Secretary for Infrastructure and Transport and Parliamentary Secretary for Health and Ageing Hon. Catherine King MP
Parliamentary Secretary for Disabilities and Carers Senator Hon. Jan McLucas
Parliamentary Secretary for Community Services Hon. Julie Collins MP
Parliamentary Secretary for Sustainability and Urban Water Senator Hon. Don Farrell
Minister Assisting on Deregulation and Public Sector Superannuation Senator Hon. Nick Sherry
Minister Assisting the Attorney-General on Queensland Floods Recovery Senator Hon. Joe Ludwig
Parliamentary Secretary for Agriculture, Fisheries and Forestry Hon. Dr Mike Kelly AM, MP
Minister Assisting the Minister for Tourism Senator Hon. Nick Sherry
Parliamentary Secretary for Climate Change and Energy Efficiency Hon. Mark Dreyfus QC, MP
SHADOW MINISTRY

Leader of the Opposition
Hon. Tony Abbott MP

Deputy Leader of the Opposition and Shadow Minister for
Foreign Affairs and Shadow Minister for Trade
Hon. Julie Bishop MP

Leader of the Nationals and Shadow Minister for
Infrastructure and Transport
Hon. Warren Truss MP

Leader of the Opposition in the Senate and Shadow Minister
for Employment and Workplace Relations
Senator Hon. Eric Abetz

Deputy Leader of the Opposition in the Senate and Shadow
Attorney-General and Shadow Minister for the Arts
Senator Hon. George Brandis SC

Shadow Treasurer
Hon. Joe Hockey MP

Shadow Minister for Education, Apprenticeships and Training
and Manager of Opposition Business in the House
Hon. Christopher Pyne MP

Shadow Minister for Indigenous Affairs and Deputy Leader of
the Nationals
Senator Hon. Nigel Scullion

Shadow Minister for Regional Development, Local
Government and Water and Leader of the Nationals in the
Senate
Senator Barnaby Joyce

Shadow Minister for Finance, Deregulation and Debt
Reduction and Chairman, Coalition Policy Development
Committee
Hon. Andrew Robb AO, MP

Shadow Minister for Energy and Resources
Hon. Ian Macfarlane MP

Shadow Minister for Defence
Senator Hon. David Johnston

Shadow Minister for Communications and Broadband
Hon. Malcolm Turnbull MP

Shadow Minister for Health and Ageing
Hon. Peter Dutton MP

Shadow Minister for Families, Housing and Human Services
Hon. Kevin Andrews MP

Shadow Minister for Climate Action, Environment and
Heritage
Hon. Greg Hunt MP

Shadow Minister for Productivity and Population and Shadow
Minister for Immigration and Citizenship
Mr Scott Morrison MP

Shadow Minister for Innovation, Industry and Science
Mrs Sophie Mirabella MP

Shadow Minister for Agriculture and Food Security
Hon. John Cobb MP

Shadow Minister for Small Business, Competition Policy and
Consumer Affairs
Hon. Bruce Billson MP

[The above constitute the shadow cabinet]
SHADOW MINISTRY—continued

Shadow Minister for Employment Participation
Hon. Sussan Ley MP
Shadow Minister for Justice, Customs and Border Protection
Mr Michael Keenan MP
Shadow Assistant Treasurer and Shadow Minister for Financial Services and Superannuation
Senator Mathias Cormann
Shadow Minister for Childcare and Early Childhood Learning
Hon. Sussan Ley MP
Shadow Minister for Universities and Research
Senator Hon. Brett Mason
Shadow Minister for Youth and Sport and Deputy Manager of Opposition Business in the House
Mr Luke Hartsuyker MP
Shadow Minister for Indigenous Development and Employment
Senator Marise Payne
Shadow Minister for Regional Development
Hon. Bob Baldwin MP
Shadow Special Minister of State
Hon. Bronwyn Bishop MP
Shadow Minister for COAG
Senator Marise Payne
Shadow Minister for Tourism
Hon. Bob Baldwin MP
Shadow Minister for Defence Science, Technology and Personnel
Mr Stuart Robert MP
Shadow Minister for Veterans’ Affairs and Shadow Minister Assisting the Leader of the Opposition on the Centenary of ANZAC
Senator Hon. Michael Ronaldson
Shadow Minister for Regional Communications
Mr Luke Hartsuyker MP
Shadow Minister for Ageing and Shadow Minister for Mental Health
Senator Concetta Fierravanti-Wells
Shadow Minister for Seniors
Hon. Bronwyn Bishop MP
Shadow Minister for Disabilities, Carers and the Voluntary Sector and Manager of Opposition Business in the Senate
Senator Mitch Fifield
Shadow Minister for Housing
Senator Marise Payne
Chairman, Scrutiny of Government Waste Committee
Mr Jamie Briggs MP
Shadow Cabinet Secretary
Hon. Philip Ruddock MP
Shadow Parliamentary Secretary Assisting the Leader of the Opposition
Senator Cory Bernardi
Shadow Parliamentary Secretary for International Development Assistance
Hon. Teresa Gambaro MP
Shadow Parliamentary Secretary for Roads and Regional Transport
Mr Darren Chester MP
Shadow Parliamentary Secretary to the Shadow Attorney-General
Senator Gary Humphries
Shadow Parliamentary Secretary for Tax Reform and Deputy Chairman, Coalition Policy Development Committee
Hon. Tony Smith MP
Shadow Parliamentary Secretary for Regional Education
Senator Fiona Nash
Shadow Parliamentary Secretary for Northern and Remote Australia
Senator Hon. Ian Macdonald
Shadow Parliamentary Secretary for Local Government
Mr Don Randall MP
Shadow Parliamentary Secretary for the Murray-Darling Basin
Senator Simon Birmingham
Shadow Parliamentary Secretary for Defence Materiel
Senator Gary Humphries
Shadow Parliamentary Secretary for the Defence Force and Defence Support
Senator Hon. Ian Macdonald
**SHADOW MINISTRY—continued**

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<tr>
<td>Shadow Parliamentary Secretary for Primary Healthcare</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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<tr>
<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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<tr>
<td>Shadow Parliamentary Secretary for Citizenship and Settlement</td>
<td>Hon. Teresa Gambaro MP</td>
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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers and made an acknowledgement of country.

COMMITTEES

Membership

The PRESIDENT—Order! I have received letters from party leaders requesting changes in the membership of various committees.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.31 am)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Finance and Public Administration References Committee—

Appointed—

Substitute member: Senator Stephens to replace Senator Polley from 3 May to 6 May 2011

Participating member: Senator Polley

National Broadband Network—Joint Standing Committee—

Appointed—

Senator Stephens


Rural Affairs and Transport References Committee—

Appointed—

Substitute member: Senator Siewert to replace Senator Milne for the committee’s inquiry into operational issues in export grain networks

Participating member: Senator Milne.

Question agreed to.

Thursday, 24 March 2011

WILD RIVERS (ENVIRONMENTAL MANAGEMENT) BILL 2010

Second Reading

Debate resumed from 10 February, on motion by Senator Scullion:

That this bill be now read a second time.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—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 McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (9.32 am)—I am pleased, as a North Queenslander, to be part of this debate on the Wild Rivers (Environmental Management) Bill 2011. At the outset, it is important to note that our government is committed to delivering economic development and jobs for Indigenous people and to honouring our environmental and heritage responsibilities in that respect. We are talking about Cape York Peninsula and the declaration of wild rivers in that area by the Queensland government. This private senator’s bill attempts to undermine the state legislation that has been put in place. I remind the Senate that the Queensland Wild Rivers Act 2005 was carried in the Queensland parliament with cross-party support. As I have stated in this chamber before, I am of the view that this private senator’s bill is a political stunt and has nothing at all to do with economic development and the achievement of the aspirations of the people of Cape York. Yet again we have the Liberal and National parties playing politics with the future of the people of Cape York.

Our government is undertaking a range of measures to support Indigenous economic development and to create jobs through the sustainable management of natural resources,
such as the Working on Country program, and we are working with Indigenous people to close the gap in Indigenous disadvantage. We are out there talking the talk and walking the walk. We are out there trying to turn around the lives of people in Cape York, and those on the other side are once again playing politics with the aspirations of the people they purport to represent.

We know there is still more that we need to do, at both the federal and state level, but, with respect, the private senator’s bill currently before the Senate poses more questions and complexity than solutions for Indigenous people in either the Cape York region or Queensland as a whole. But it is form for the people on that side to play politics rather than to actually work with people to achieve an economic outcome. The government does not support this bill and has been strongly advocating that, because there are a range of technical problems, the bill would benefit from further consideration. That is why we support a reference to the Senate Legal and Constitutional Affairs Legislation Committee and consider today’s debate premature.

The opposition claim that this bill:

… will enable the Indigenous people of Cape York, the Queensland gulf region and other regions of Queensland, to use or develop their land as any other land holder may.

The government believe that this bill will not fulfil that claim and in fact may have a range of negative consequences for Indigenous people. With respect, the government will not be supporting such simplistic attempts to override the Queensland Wild Rivers Act 2005. Instead, we are committed to pursuing considered and inclusive solutions to properly address complex issues.

In his second reading speech, Senator Scullion stated:

We as senators should again support this bill … However, this bill is different to the bill previously passed by the Senate in several important respects. There are matters that should be given serious consideration before this bill goes to a vote.

In terms of substantive effect, the key changes are that the 2011 bill—that is, the new bill before the Senate—extends its coverage from native title land to various kinds of Aboriginal land. Another difference is that it prescribes a method by which the agreement of native title holders for a wild river declaration can be obtained and it requires the Commonwealth to provide employment to people assisting in the management of a wild rivers area who lose their jobs as a result of the legislation. It is substantially different to the bill that was passed in this Senate last year and in that respect warrants a full inquiry.

These are not minor changes, yet it is clear that Senator Scullion was relying on senators to take him at his word and rush the bill through thinking that it was unchanged. In its current form the bill raises a number of issues about its potential scope and application. It is not clear whether agreement is required of all persons defined as an owner of the land concerned or how disagreements between different groups of owners are to be resolved. It is clear that this bill requires careful scrutiny and it is important that the Senate fulfil its obligations as a house of review and agree to refer the legislation to the inquiry, as has been moved.

The government respects the views of Aboriginal leaders in the Cape York area. In

CHAMBER
his second reading speech Senator Scullion stated that this bill:

... will restore the economic potential of land subject to declarations and assessment under the Queensland wild rivers legislation to Aboriginal and Torres Strait Islander people.

As senators should be aware, the House of Representatives Standing Committee on Economics is currently conducting an inquiry into Indigenous economic development in Queensland and a review of the Wild Rivers (Environmental Management) Bill 2010.

A number of stakeholders, including traditional owners, have been actively engaged in that review. It is important that the views of Indigenous leaders and stakeholders are heard and that this bill is not rushed through while the House inquiry is underway because this would be dismissive of the genuine engagement that many Indigenous people have made with that process. As part of that inquiry the committee has received a submission from the Wild Rivers Interdepartmental Committee representing some 12 different government agencies. The submission contains a detailed analysis of the opportunities for and challenges to Indigenous economic development in Far North Queensland and, as the submission notes, there is a tremendous amount of government activity occurring in Far North Queensland. Indeed, the government is the largest employer in the region.

The submission also canvasses the wide range of private sector industries such as mining, agriculture and tourism and their potential to improve Indigenous economic development. These are the areas that should be investigated and debated if we really are serious about improving life for people on Cape York Peninsula and in the gulf. Overriding the Wild Rivers Act will not achieve lasting outcomes for Indigenous people. It will deliver more complexity and less security into the future. These are the areas that should be investigated and debated. Overriding the act will just not provide the solution.

The bill is not necessary to protect native title interests in the areas affected by wild river declarations because in our view the Queensland Wild Rivers Act 2005 does not affect native title rights and interests. The bill that passed through the Queensland parliament—and I again remind those sitting opposite that it passed with coalition support—explicitly says that native title interests are not affected. That is explicit in the bill and the legal advice to that effect supports that position.

Finally, if the opposition are serious about Indigenous economic development, surely it must be considered extraordinary that Senator Scullion has attempted to gloss over that this bill effectively acknowledges the potentially negative employment outcomes of the bill. It is in the bill. The bill recognises that there will be negative economic outcomes. I find it extraordinary that a senator from that side would acknowledge that a piece of legislation he is proposing will have negative economic outcomes for people of Cape York Peninsula and the gulf. That is why our government considers that the bill needs to be properly scrutinised. In that respect, I move by way of an amendment:

At the end of the motion, add: “the bill be referred to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 10 May 2011”.

Senator SIEWERT (Western Australia) (9.42 am)—I want to start addressing the Wild Rivers (Environmental Management) Bill 2011 by stating the obvious—that is, the Greens care about and are deeply committed to the rights of Aboriginal and Torres Strait Islander peoples. We are a party that remains committed to the wider principle of self-determination, something other parties used
to believe in before—in particular, the Labor Party—but seem to have now gone down the line of the new approach, which is a form of paternalism. The Greens care about and are deeply committed to protecting and conserving Australia’s biodiversity and natural heritage. For anyone who has paid attention to our efforts over the last few years and is aware of the significant work we have done both on Aboriginal and Torres Strait Islander peoples’ rights and on environmental conservation, this should be non-controversial and self-evident. However, some argue that you cannot have both environmental protection and conservation and economic development for Aboriginal communities. The Greens do not believe that this is the case. In fact I believe there is strong and compelling evidence that the two can go hand in hand.

It is fair to say there has been a concerted effort to try to reframe this debate, which is about how best to support Aboriginal communities and native title holders to exercise their underlying rights as the custodians of their lands and about how they can use their interests in the lands and see country as a basis for sustainable economic and community development, as a political wedge. They are trying to frame the debate such that the only choice is between mega-industrial development on the one hand, which we believe can ultimately end up in the interests of outside players and vested interests from the big end of town—there is plenty of evidence of that—or locking up land and ignoring people. We believe that is not true and there is plenty of evidence to show that conservation and development activities can in fact go hand in hand.

At the same time, there is also plenty of evidence of where an all-out approach to industrial development has totally failed to realise the hopes of Aboriginal landowners or deliver lasting benefits to their communities. I point to my home state of Western Australia and the Pilbara, where quite clearly the benefits developed from mining have not come to the Aboriginal people living in that area. There are also plenty of opportunities for sustainable development activities on Aboriginal lands which will include but are not limited to tourism and ranger programs. There is a lot of other potential for Aboriginal land.

In fact, the coexistence and interaction of development and conservation are explicitly recognised in the Declaration of the Rights of Indigenous Peoples. The declaration recognises and acknowledges both a right to conservation and environmental protection for Indigenous lands, in article 29, and a right to determine strategies and priorities for the development of Indigenous lands and resources, in article 32. These rights are not contradictory—they coexist and interact within the framework of both Indigenous rights and decision making and Australian law—as clearly articulated in article 46, which states that these rights:

… shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations … Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirement of a democratic society.

The coexistence and interaction of human rights should not be news to anyone in this place. I will return to the declaration later.

In relation to how we strike the right balance to deliver the best possible outcomes for both community development and conservation, from my point of view the ideal way forward is one where Aboriginal communities are central players and the key decision makers in decisions about both conservation and development—where they are resourced and supported to make informed
decisions about which areas of their land they want to protect and where they believe some sorts of development activities might be appropriate and beneficial.

How you strike the right balance between development and conservation is not a simple issue, and efforts to reduce this complexity into black and white terms can be misleading and counterproductive, and ultimately lead to poorer outcomes for both Aboriginal communities and natural heritage outcomes. The place to begin is not in simply overturning state rights and state conservation laws to allow unfettered access for the destructive exploitation of resources but in governments establishing true relationships with Aboriginal people, using public investment to seed new enterprises and industries that build on and respect Aboriginal land interests, providing incentives to private enterprises to partner with and deliver opportunities to those communities, recognising and valuing the existing customary economy, and finding innovative ways of making Indigenous knowledge, skills and culture and caring for country deliver economic benefits.

Irrespective of the wild rivers laws, Aboriginal communities seeking to undertake development on their lands face a whole lot of other barriers and challenges, including addressing the limitations and complexities of the Native Title Act and needing to comply with the EPBC Act and a significant list of state based development and conservation legislation. To this end, the Greens believe there needs to be much more funding to provide support and assistance to Aboriginal and Torres Strait Islander communities to help them deal with the procedural requirements for dealing with economic development proposals, conservation and heritage proposals and joint management agreements. There are of course state and federal limitations and guidelines that apply to all development activities in Australia, irrespective of whether the land is Aboriginal land, freehold or crown land.

It has long been recognised that state and federal laws concerning conservation and development need to respect and include the rights, interests and cultural heritage of Aboriginal and Torres Strait Islander peoples. While there has been some progress on these issues over the years, I am the first to admit we still have a way to go on getting this right. Nevertheless there is a clear differentiation of relationship between Indigenous rights in decision making across environmental and development regulation, and in my mind it makes perfect sense to recognise a continuum where the rights of traditional owners are strongest in relation to those activities which have the greatest impact on their pre-existing and underlying rights to their land.

Unfortunately, this bill seeks to turn this concept on its head. The place where these rights should have the strongest recognition and expression in law is where Aboriginal land and resources are threatened with destruction or appropriation. In native title law, the rights of traditional owners are expressed as rights to negotiate in relation to future acts where there is a change in tenure or land use that affects underlying native title rights, and the diminution of those rights is meant to be compensated in law.

If an act by a state government—for instance, in establishing or declaring a protected area—impacts on those native title rights then there is a right to negotiate and a right to compensation. There should be a clear obligation both to strongly take into account cultural heritage, values and Indigenous aspirations in the identification and declaration of those areas, and to support and resource Indigenous management or co-management of those areas. We believe this bill turns this approach on its head by giving
individual ‘owners’ who are not necessarily traditional owners an absolute right of veto over conservation declarations which do not—as specified clearly in the provisions of the Queensland Wild Rivers Act—impact upon, effect or diminish those underlying native title rights but at the same time give them no rights of consent or veto, or to negotiate on destructive development activities which impact directly upon their native title rights and interests, and cultural and natural heritage values. We believe this is not the right approach.

Many arguments have been flung around during this debate. I do not have time to go into them, but let me say they are not true. We do not unthinkingly support the Queensland government or other organisations on this. We do not believe the Queensland government handled consultation on this in an exemplary manner.

Senator Ian Macdonald—They are only doing it to get your preferences.

Senator SIEWERT—If Senator Macdonald would let me speak uninterrupted that would be appreciated. At the same time we also do not offer unthinking support to anyone claiming to speak on behalf of Aboriginal rights or the interests of all Aboriginal people, but we do not believe this is the right way to go when you look at the details of the bill. This bill is different from the first one that went through this place not so long ago.

This week we have been hearing calls for a new intervention in Alice Springs. We have deep concerns that this sends a particular message about the way that certain members of the coalition and, unfortunately, the government still want to take top-down approaches to the way we deal with Aboriginal issues—that is, not including them, taking a new paternalistic approach, not adequately consulting and believing that, for example, just sending in more police will fix a particular problem. In other words, I am not convinced that the coalition has changed its approach to the way it addresses Aboriginal issues. I am concerned that the discussion implies that this is about free, prior and informed consent; it does not in fact do justice to free, prior and informed consent and is giving it to a certain group of people over limited decision making.

If you look at the Declaration of the Rights of Indigenous Peoples, you see that it very clearly intends to describe and invoke universal rights that necessarily apply to all Indigenous peoples, not a particular group of Indigenous people, which is what, unfortunately, this bill does. It gives a particular group of Indigenous people some right of veto over a particular declaration, but not over all developments of their land. Our reading of it is that it also means it gives a group of people the right of veto over a declaration in a particular area. If there is more development they cannot exercise that right. It also then overrides the rights of other people, for example, further down the catchment area, who have their traditional lands. Once the group has made a decision, the next group cannot make a decision. In other words, that group’s rights have been overtaken. That is our reading of the bill. There are very concerning aspects in this bill in that it does not coincide with the requirements under the Declaration of the Rights of Indigenous Peoples, to which I am very pleased to say Australia is a signatory.

These are the issues we believe need to be looked at because we believe there are significant problems in this bill, including that it fails to differentiate between the rights of different groups of traditional owners in relation to decision making concerning a river basin or floodplain and, as I said, that it impacts on other groups. We believe this bill has very major problems. We also believe that it needs to be sent to a committee so we
will be supporting the second reading amendment. We believe these issues need to be looked at. They are new issues that have come up since the bill last went through this place. (Time expired)

Senator IAN MACDONALD (Queensland) (9.54 am)—Before my brief contribution to the Wild Rivers (Environmental Management) Bill 2010, I seek leave to incorporate a very learned, well researched and well argued speech by Senator Boswell, on the grounds that he is ill. The speech has been distributed.

Leave granted.

Senator BOSWELL (Queensland) (9.55 am)—The incorporated speech read as follows:

The Senate is debating the Wild Rivers (Environmental Management) Bill 2011 introduced by my colleague Senator Scullion.

The essence of this bill is that it restores consent to Indigenous people about what happens on their land and to their people. This consent or agreement was taken away from them by the Qld wild river declarations.

In the Qld act, there is no requirement for notification and agreement with native title holders, claimants and bodies corporate. There is no compensation for impact on native title rights and interests.

The majority of the Indigenous people on Cape York do not want the wild rivers regime foisted on them by the Qld government. They feel that their future is forfeit to the demands of green groups, particularly the Wilderness Society.

If the Prime Minister was serious about empowering Indigenous Australians she would support the coalition’s legislation—legislation that would provide Cape York Indigenous communities with the right to an economic future on their own land.

Native title means nothing to Labor now the Greens hold crucial preferences. There is no such thing as a future act in the Qld wild rivers land lock up.

If you lock up their land, you lock up their future. And when some leaders, of undoubted integrity like Noel Pearson, speak up, he is subject to attack and contempt.

When Qld turned its back on native title in wild rivers, they also turned back the clock to before Premier Joh Bjelke-Petersen gave Indigenous communities land in deeds of grant in trust, or DOGITs as they were called. I well remember them being put in place. Land was given to Aborigines so they could manage it themselves and do what they wanted with it. With wild rivers, that self determination on DOGIT land has been forfeited.

The state government has locked up this land, not with a key, but with a web of sticky regulation. Some people think that voting green and being part of groups like the Wilderness Society is a mainstream activity. I would say to those people, go up to Cape York and see how the Indigenous people live and how they want to live—as well as how they look after their own land.

And tell them straight that you are against them, that you are against Indigenous jobs, business and a future.

The Wilderness Society is only interested in Indigenous people if they are as frozen in time as wild rivers themselves.

The Bligh government initially talked about how the impact would be only along a handful of pristine rivers. It turns out that they actually meant that entire river catchments and basins would be caught in the net, such that 80% of Cape York would be subject to yet another layer of regulation, effectively frustrating future opportunities for Indigenous people.

The Qld Labor government has been scandalous in its approach to consultation and scientific research to support wild rivers declarations. Neither has been done anywhere near properly.

More offensive is their glass beads approach to winning over the limited Indigenous support that they have. The scarcity of jobs is so acute on the cape that the offer of a few ranger positions was all that was necessary to win some limited support. But that offers very little to very few.
Evidence was provided to the Senate committee that the Qld wild rivers declarations are inconsistent with or invalid under the Commonwealth Native Title Act. That means the Commonwealth should act.

Noel Pearson said that the coalition’s bill ‘enhances the land rights of the native title holders of Cape York peninsula and will enable them to negotiate with the Qld government so that they provide free and informed consent to any arrangements to protect the rivers of Cape York peninsula, and it is consistent with the Keating Labor government’s commitment to the Mabo decision. Secondly, this bill is consistent with the Commonwealth government’s commitments as a signatory to the international Declaration on the Rights of Indigenous Peoples. Thirdly, the Queensland Wild Rivers Act has derailed our Indigenous reform agenda in Cape York peninsula, and this bill will put our work back on track.’

I urge the Senate to see that the development agenda that the Indigenous people have for Cape York by definition means that they have got to have economic development. As Pearson noted, ‘The exercise of traditional rights and traditional activities is important but that will never lift our people out of poverty and misery. We have to be able to undertake land use that generates economic return for the people who live there. We are not going to be serious about closing the gap as to Indigenous disadvantage if we have this view that all that Aboriginal people should be happy with and all that they should be entitled to is to stand on one leg in the sunset picking berries. Fundamentally this is a racist expectation on the part of governments and other stakeholders to expect Aboriginal people to live in some frozen past.’

Earlier this February, the Prime Minister commented on ‘closing the gap’. She called on Indigenous people to ‘take a job when you find one; to create a safe environment; to send your kids to school, pay your rent, save up for a home; to respect good social norms and to respect the law; and to reach out to other Australians’. But in Cape York, the state Labor government is shutting down avenues for jobs and reaching out to the Greens via the wild rivers regime.

This is the very opposite of what should be occurring if we as a nation are serious about closing the gap between Indigenous and non-Indigenous Australians.

It is feared by many in the cape that wild rivers is the stalking horse for World Heritage listing. The Commonwealth has been forced to clarify that they will not proceed with a World Heritage listing without Indigenous consent. If it is good enough for the federal government to insist on consent why not the state government as well when it comes to wild rivers?

The federal minister was asked by the Nationals’ leader Warren Truss whether the government would proceed with tentative listing of Cape York on the World Heritage register without local Indigenous support.

The minister gave a clear answer, saying ‘any negotiations going forward on tentative listing are dependent upon full consent and participation of Indigenous people on Cape York’.

Why is the state government not following this path also?

The answer is because Labor wins seats and elections on green preferences and so rewards them, in the process tearing up Indigenous property rights.

Ninety-nine point nine per cent of the freehold land that is affected by wild rivers is Aboriginal land. Millions of hectares were granted by the Bjelke-Petersen government so that they could use the land as they determined. Large tracts have exclusive native title right, unextinguished. As Pearson noted: ‘In those areas the Wik people have a right of property. It is not just the right to hunt or gather; it is the right to construct a farm, construct a house, live a modern life … A full, exclusive possession native title is a title that affords every act of ownership that can enter into the human imagination.’

Pearson said that ‘what the Bligh and Beattie governments have done here has taken the state of Qld as far as land rights is concerned back to a pre-1984 position, because they have arbitrarily taken jurisdiction over Aboriginal land without obtaining the consent of the landowners.’

‘The Queensland Wild Rivers Act has derailed our Indigenous reform agenda in Cape York pen-
insula, and this bill will put our work back on track’.

Federal Labor is not lifting a finger to stop Queensland Labor derailing Indigenous development. There is a new form of property title in Queensland and it’s green. Whether it’s closing down fishing or locking up wild rivers, you can call it far north greenland.

In this exciting green armband view of the future, Noel Pearson is only allowed to be black if he goes fishing. How many times does he have to be dispossessed?

I was there when Joh gave all that land over in the early 80’s. And now I see Labor taking it back for the Greens.

The bill before us rose directly from the time spent by the opposition leader in Indigenous communities. Did the wild rivers declarations come about as a result of Qld’s leaders sitting down with Indigenous communities? Definitely not.

Australia cannot afford to alienate leaders of Noel Pearson’s calibre. He came in from the cold ‘rights only’ dialogue to seek economic and education empowerment as a way forward. Mr Pearson’s reaction to the punitive wild rivers legislation has been a ratcheting up of expressions of frustration. He describes this as the torment of powerlessness. It will be the political classes’ fault if Pearson and his followers become more radical. The Left’s sell-out of Indigenous interests to capture the green lobby is wrong on so many levels and exposes the falseness of their years of claiming to be the champions of Indigenous Australians. It was all political expediency in the end. Indigenous interests have been ditched uncannily in favour of the more powerful green movement. No wonder there is torment amongst Indigenous leaders and a push to radicalism. Noel Pearson addressed my grandson’s school last year. I attended and was impressed with how the boys were inspired and enlightened. We cannot afford to lose to radicalism such powerful ambassadors for improving Indigenous lives. I would also like to reassure Noel that his efforts did cut through—to the young lads who will be future leaders and professionals and to politicians like me from the Right. The opposition leader is listening and acting.

The Cape York Land Council is now taking the Bligh government to court over the wild rivers declarations of the Lockhart, Stewart and Archer rivers, alleging breaches of the native title and racial discrimination acts and that the legislative process was incorrectly followed. A great crime is being done to people who are too familiar with great crimes to survive without perhaps turning radical. We have been warned.

Balkanu, the Indigenous group from Cape York, explain their plight in their submission to the current inquiry: “The Wild Rivers Act and wild river declarations have gone well beyond the intention of the election commitment to prohibit and over regulate a wide range of lower level activities such as aquaculture, small scale commercial horticulture and small scale ecotourism ventures and Indigenous housing.”

“The declarations of the Stewart, Archer and Lockhart basins in April 2009 involved the declaration of thirteen separate wild rivers rather than three. The 2004 election commitment did not refer to basins. The Wild Rivers Act does not refer to “basins”. The Premier, ministers and conservation groups have on many occasions stated that the election commitment was for 19 rivers—not basins.”

Balkanu points out that the Wild Rivers Act and declarations are inconsistent with several provisions of the UN Declaration on the Rights of Indigenous Peoples such as article 19 which states that “states shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

Article 23 states that “indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development.”

The other house’s inquiry into issues affecting Indigenous economic development in Queensland held a public hearing in November 2010 in Cairns. Gerhardt Pearson, the head of the Balkanu Cape York development told the committee that: “There are more than 13 pieces of state and Commonwealth legislation that an Aboriginal entrepreneur, no matter how humble his or her
aspirations, needs to navigate before any development can proceed.”

We have heard that there is not so much opposition to wild rivers from the gulf area. Mr Pearson pointed out that the declarations of wild rivers in the gulf has an impact vastly different from those on Cape York. Less than two per cent of the area covered under wild rivers declarations in the Gulf of Carpentaria is Aboriginal land whereas more than 90 per cent of the land in the Lockhart Basin and Stewart Basin wild rivers declarations is Aboriginal land and large areas of the Archer River Basin are Aboriginal land. Further declarations will result in much greater areas of Aboriginal land being included in declarations. There is no land where native title has been determined included in the declarations in the gulf. No Indigenous communities were included in the gulf declarations whereas Lockhart River’s and smaller communities such as Port Stewart’s were included in cape declarations. There is no threat of World Heritage being laid over the top of wild rivers declarations in the gulf, whereas there is that possibility on the cape.”

Balkanu representatives also allege that senior officers of the department of natural resources and Minister Stephen Robertson misled the earlier Senate inquiry in relation to development approvals. An analysis of the applications by Balkanu Cape York Development Corporation has shown that of the 113 alleged development applications approved, 79 were for exploration permits, of the remaining “development approvals”:

• 17 were issued to government entities for activities such as fencing and gravel extraction

• 8 riverine protection permits and one environmentally relevant activity permit appear to relate to the Century Mine project, which is an existing development

• three riverine protection permits are for Stanbroke pastoral company, possibly for a fence

• two vegetation clearing applications (Strathmore and Barr Creek holding) are presumably for clearing for a fence or similar within an HPA

• one approval was for Adels Grove camping park which is an existing development; and

• three approvals may relate to mining leases, one of which had not been issued.

Nine of the so-called “development approvals” were actually riverine protection permits issued to the Department of Environment and Resource Management to construct one fence. As Noel Pearson stated, “If this is indeed the case, it is a casebook example of the ridiculous level of red tape and burdensome over-regulation that confronts even the most minor project in a wild river area … also claims that no development application had been turned down were misleading, as the Premier knows that applications that would be refused in a wild river area are in fact “taken not to have been made” under the legislation … they are deemed not to exist and therefore cannot be refused.”

I said at the beginning that the coalition’s bill is all about consent. This is what Indigenous people want in Cape York. As Gerhardt Pearson told the current inquiry: “A consent mechanism is essential to protect Indigenous people from circumstances such as the wild rivers legislation, where a powerful, narrowly focused interest group, the Wilderness Society, is able to use its political might to override the rights of poorly resourced and disadvantaged Indigenous people. The Abbott bill seeks only to give the legitimate right of consent back to Indigenous communities. That right is at the heart of the United Nations Declaration on the Rights of Indigenous Peoples. Might I remind Labor members of this committee that the federal Labor government gave its support to that declaration on 3 April 2009 in a historic move that had been decades in the making … it is a bitter irony that on that very same day Anna Bligh declared the Archer, the Stewart and the Lockhart rivers as wild without the consent or support of Indigenous cape communities—no equality, no partnership, no good faith and no mutual benefit. Cape York Aboriginal leadership has presented a conservation and land management solution to the state government, to Ms Macklin, to former Environment Minister Peter Garrett and, most recently, to Indigenous Employment and Economic Development Minister Mark Arbib. Our solution ticks all the boxes in terms of the state’s environ-
mental aspirations—no new dams, no in-stream mining, no excessive water pumping—and ticks all of the boxes on restoring our rights, through an Indigenous land use agreement, to achieve conservation by a respectful consent. After a year of approaches to all of these politicians, we are still waiting for action. You have to ask yourself why.”

Should the Senate stand by and be silent while this happens? No, we shouldn’t just watch. We should pass the legislation before us that saves the hopes and visions of a future for Indigenous Cape York Queenslanders.

Senator IAN MACDONALD (Queensland) (9.55 am) — I also seek leave to incorporate an article by Mr Noel Pearson in the Australian of 19 March 2011, which I have referred to the other parties.

The ACTING DEPUTY PRESIDENT (Senator Hutchins) — I understand that you want to table that.

Senator IAN MACDONALD—No, I want to incorporate it please.

Leave granted.

The document read as follows—

The Australian
Backroom deals bless their wildest dreams
Noel Pearson
From: The Australian
March 19, 2011 12:00AM
THE Labor chairman brazenly winks at environmentalists turning up at a federal parliamentary committee hearing in Brisbane.

Queensland bureaucrats, and the Wilderness Society work like a tag team, dumping forests of submissions before a second federal inquiry into Tony Abbott’s wild rivers bill by the House of Representatives economics committee, announced late last year as a stalling tactic by the government.

Strange decisions are taken about which submissions are accepted and allowed to be posted on the committee’s website, and which are not. Private hearings are held in remote locations, taking evidence only from witnesses sympathetic to the Queensland laws, without other traditional owners present.

From their opening submissions in Canberra, it becomes clear that the commonwealth bureaucrats are with the environmentalists and against Aboriginal landowners. They make outrageous assertions about how properly the Queensland government conducted itself in relation to its wild rivers scheme, knowledge that the commonwealth is simply not in a position to have.

I ask one senior bureaucrat: “Why is the commonwealth making assertions about facts that only the Queensland government can attest to?”

He blithely answers that if I disagree with anything, then we have every opportunity to point it out. I respond that while we understand it is up to us to refute misinformation that might be peddled by our opponents before the inquiry, surely when public servants make submissions, these should be relied on as impartial and factual.

I ask whether he understands the difference between staffers who work for politicians and the duties of members of the Australian Public Service. Despite these being pointed out, the commonwealth still has not corrected its misleading evidence. Needless to say, this inquiry is a pig circus.

Last week, at the other end of the continent, people such as former ABC Gardening Australia presenter Peter Cundall were getting a taste of the same shaft that TWS has stuck into hapless natives in Cape York Peninsula.

Sue Neales was left nauseous, writing in Hobart’s The Mercury last weekend: “But what was so sickening and saddening to observe this week was the slick and calculated feel of almost every public utterance, media release and altered nuance issued in relation to the [Bill] Kelty forest peace talks, forest protection plans and the Tamar Valley pulp mill.

“It was impossible not to watch all the dominoes magically line up within three days of each other, the linkages being made between the issues and positions critically shifted at the last minute, and
not feel a sense of done deals sealed behind closed doors.”

Yes, Aboriginal landowners in Cape York know too well about done deals sealed behind closed doors. Neales writes: “The effect, yet again, was to make the majority of Tasmanians feel that they had been excluded from a cunningly manipulated decision-making process.”

Neales is scathing about the roles played by TWS national campaign director Lyndon Schneider and Environment Tasmania’s Phill Pullinger “That was exactly the trade-off or in-bed-with-the-devil deal that so many Tasmanians, especially those agitating against the loathed pulp mill, had feared was in train.”

When supporters on the ground see they’re being sold out, Neales writes of the dissembling from the leaders: “The back-pedalling that followed from the environmental groups this week, as their phone lines clogged with diatribes from enraged members, was both masterful and, it must be said, hardly honest.

“On Wednesday, a press release signed by the three environmental groups involved in the Kelty statement of principles negotiations came out with a statement that suddenly seemed to withdraw their backing of the previous week for the proposed Tamar Valley pulp mill.

“They called for federal Environment Minister Tony Burke to reject its approval, claiming it was now ‘totally unacceptable’.”

Neales points out that Gunns made its plantation-timber-only concession last year: “So for the Wilderness Society et al to claim in a press release on Wednesday that they were ‘rejecting’ the ‘current’ pulp mill proposal because it used native timber was disingenuous in the extreme, deceitful at best.”

Welcome to our world.

This is what happens when some green leaders adopt a by-whatever-means-necessary approach to protecting the environment. They end up treating communities with contempt and using genuine local and regional environmental patriots as fodder in their big-picture campaigns.

Schneiders is the embodiment of this new phase in environmental activism: the environmentalist as apparatchik rather than the old model of environmentalist as campaigner.

The influence and power of these green apparatchiks is impressive, and has delivered large wins. In Queensland, state Labor’s beholden to groups such as TWS for delivering green preferences. In return, they have all but outsourced their environmental portfolios to these groups.

But these green apparatchiks are trashing community relationships in the countryside. They ride roughshod over rural people, landowners who were pioneers in the Landcare movement, Aboriginal communities that share conservation goals, and industries that are genuine about sustainability. Indeed, in a moment of hubris Schneiders once revealed to academic researchers he considered public consultation “a long suicide note”.

Green apparatchiks sit down with Labor hardheads in state secretariats and play a giant game of chess, trading pawns across a chessboard the size of Queensland. Public consultation is a sham while deals are cut by the big boys.

This chessboard trade-off was evident when the water management deals cut between Queensland Labor under Peter Beattie and TWS came to grief with the Traveston Dam.

When the Greens and TWS went soft against the dam before the state election in March 2009, it was apparent that this did not just involve Labor preferences to Greens candidate Ronan Lee in the seat of Indooroopilly.

It pointed to the earlier below-the-radar deal to trade support for a dam in the southeast in return for wild rivers up north and out west. But then Peter Garrett, as environment minister, torpedoed Traveston. I wonder how many people in the Bligh government ponder the double game played by TWS: running dead in Brisbane but going by the back door to Canberra.

In any case, the Queenslanders lost $500 million on Traveston, proving how dangerous it is for governments to play environmental games with taxpayers money.

The Queensland Wild Rivers is truly draconian. It provides no appeal rights and no parliamentary review.
The minister has virtually unfettered powers, providing fertile opportunity for organisations such as TWS to become silent partners in government. Processes that conservation groups normally hold sacred—appeal rights, natural justice and procedural fairness—have been denied to Indigenous people in respect of wild rivers legislation.

Protection must be afforded Indigenous people from powerful single-issue interest groups intent on removing their rights.

The UN Declaration on the Rights of Indigenous People is intended to lay the foundations for these protections. The right of free, prior and informed consent to policies and regulatory actions is at the heart of this protection.

State Labor has turned a blind eye to that principle, endorsed by its federal counterparts, and has focused instead on repaying political debts. Federal Labor’s principles in this area are to be tested.

Noel Pearson is director of the Cape York Institute for Policy and Leadership.

Senator IAN MACDONALD—I thank the Senate for both of those incorporations. I urge senators and those interested in this debate on the Wild Rivers (Environmental Management) Bill 2011 to have a serious look at Senator Boswell’s speech. As I say, it is a very well researched and detailed speech. It anticipated what I say are the quite shallow arguments by both Senator McLucas and Senator Siewert and really put the lie to those pious comments of the former two speakers.

Make no mistake about this: the opposition of the Labor Party and the Greens to this is purely political and, as almost everybody now knows, certainly Noel Pearson and most of the Indigenous people in Cape York, this is all about keeping Labor governments in power both in Queensland and federally by Greens’ support. The Greens, egged on by the Wilderness Society, simply say to Labor: ‘If you don’t do what we say in relation to wild rivers we will withdraw our support,’ whereupon both federally and in Queensland the Labor Party governments would fall.

Whilst I have been saying this for a long time, it is instructive to read Noel Pearson’s article, which I have also incorporated, where he clearly highlights that fact. As Noel Pearson said in his article:

Queensland bureaucrats and the Wilderness Society work like a tag team, dumping forests of submissions before a second federal inquiry into Tony Abbott’s wild rivers bill by the House of Representatives economics committee, announced late last year as a stalling tactic by the government.

I acknowledge that not everyone agrees with Noel Pearson all of the time, but in this instance I think all of the Indigenous leaders in Cape York want to be able to develop their land. There was a proposal by Cape Alumina, which of course is anathema to the Greens and to the Wilderness Society, for a new mine in the cape that would have provided real jobs, not these make-work jobs, for Indigenous people. This was destroyed by this wild rivers legislation and the way the Queensland government is administering it.

I want to make it clear to those who might be following this debate that, unfortunately, because of time limits—we do want to try to get this legislation voted on today so that we can determine the will of the Senate—my time has been limited to a mere six minutes, which is not going to give me much time to refute the arguments of the previous two speakers or to promote my own. Suffice it to say, and I repeat, that the article of Noel Pearson and Senator Boswell’s speech actually anticipated the stupidity of the Labor Party and the Greens and have answered many of those questions.

I point out that one of the things that is often said to me is that ‘wild rivers is good because it has all these wild rivers rangers, and that provides real jobs for Indigenous
people’. The ranger program is a good one. It was started by the Howard government in the fisheries area to look after coastal and Ghost Net programs. It is a good program but it does not need to be related to wild rivers. It can go ahead whether there is a Queensland wild rivers program or not. So that is just absolutely ridiculous. It is a furphy. It is a disingenuous argument by Senator McLucas and Senator Siewert, who promote that.

Tony Abbott has brought this bill forward, as everyone knows—well, perhaps a lot of people do not know, because when Tony Abbott goes to Cape York he does not take a team of television reporters and newspaper journalists with him; he actually goes up there and works in the communities, and he has been doing that for a number of years—because he understands empathy. He understands the wishes and desires of Indigenous people to look after their own land.

**Senator Conroy**—He took three journos and they all got lost!

_Senator Crossin interjecting—_

**Senator IAN MACDONALD**—Senator Conroy and his colleagues over there obviously do not believe Indigenous people are capable of looking after their own land. They have to have the big heavy hand of the government and the Greens and the Wilderness Society to tell Indigenous people what is good for them. Indigenous people reject that. They are offended by it, as most fair-minded Australians would be. It is about time the Labor Party and the Greens realised that Indigenous people are capable of looking after their own land. Good heavens, they have done it for hundreds of thousands of years! Why do you need the Queensland government and the Greens and the Wilderness Society to come in over the top and tell Indigenous people what is good for them? I urge the Senate to adopt this bill.

**Senator FURNER (Queensland)** (10.01 am)—As a Queensland senator I rise today to defend the Queensland government’s Wild Rivers Act 2005, which was implemented to preserve the natural values of rivers that have been significantly affected by development—that is, rivers that have all or almost all of their natural values intact—and in doing so oppose this private member’s bill of Senator Scullion, the Wild Rivers (Environmental Management) Bill 2011. As someone who has personally witnessed the wonder and beauty of the Wenlock River, one of the declared wild rivers, I am bewildered as to why anyone would not want to protect these natural waterways.

I am disappointed in Senator Scullion’s bill to overturn the Queensland legislation. It is a backward step in protecting and preserving our environment for our future generations and it is typical of a backward party. Unlike the coalition, the Australian Labor Party is a party of reform and wholeheartedly supports Indigenous Australian rights and fosters and encourages Indigenous economic development. This is evident in our implementation of the Native Title Act 1993. Those opposite refused to support that bill, and many of them are still members of the Senate today. Senator Minchin described the native title bill in 1993 as:

… a bad law; it is a racist law; it is centralist; it is highly divisive; and it is complex.

And let us not forget what else the opposition refused to do in their 12-year reign. When the Labor Party came to office we set out to say sorry to our Indigenous Australians. On 13 February 2008 Kevin Rudd, as Prime Minister, delivered the apology. For many years no-one spoke about the ill-treatment of our Indigenous Australians; it was pushed under the rug. After years of silence it was time to end this denial and to acknowledge the treatment received by our Indigenous Australians.
A fortnight ago the House of Representative Standing Committee on Economics went to Brisbane for a public hearing for their inquiry into Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010. Nigel Parratt, from the Queensland Conservation Council, represented 70 organisations, and its members are fully supportive of protecting our pristine rivers. He said Queensland had the last remaining free-flowing rivers in the world which were of ecological value and that they deserved protection, like other areas in Australia such as the Tasmanian forests and the Great Barrier Reef.

He is exactly right. These areas, which are protected by the Wild Rivers Act 2005, are home to rare and endangered species. On two occasions I have had the privilege to visit the Steve Irwin Wildlife Reserve on the banks of the Wenlock River and have experienced firsthand the beauty and wonder of this preserved area. On my first visit, the Australia Zoo ranger Barry Lyon showed me three of the eight perennial springs on the reserve which are located on a bauxite plateau. These springs are of great ecological value and they act as a refuge and water source for wildlife through the dry season. Bauxite does not absorb water but instead acts as a giant sponge and releases the water during the dry.

Research conducted in the area found an abundance of wildlife which relied on the existence of these beautiful springs. In 2008 a survey found 151 different vertebrate species, including 75 birds, 26 reptiles, 16 native amphibians, eight native mammals and 16 freshwater fish. This wildlife is of great ecological value, with many of these species taking refuge on the reserve due to declining populations and loss of habitat from strip mining across the Weipa plateau. According to the rainforest botanist David Fell, the bauxite plateaus provide a safe haven for flora which is of conservation significance, as some species have been recorded as found only in Eastern Cape York and the wet tropics of New Guinea. This area, too, was under threat from strip mining but, thanks to the Queensland government’s declaration of the Wenlock basin as a wild river under state legislation, the perennial springs on the Steve Irwin Wildlife Reserve are now protected by a 500-metre buffer zone, and there is now a one-kilometre exclusion zone around the Wenlock River.

One of the biggest concerns of this issue is the misinformation travelling around the communities—and we have heard a bit of misinformation being delivered and advocated by those opposite this morning. The Director of the Cape York Institute, Noel Pearson, believes that the wild rivers legislation will impede Indigenous economic development and has referred to the law as colonialism. This is simply not true. The Queensland government’s Department of Environment and Resource Management states:

A wild river declaration means extra protection for the river system, but in practice that means no change for most people who live or work around the river system, or who use the river. It continues to allow grazing and fishing. In fact when I was up there I caught a barramundi for the first time in my life. That is an example of what you can do in these areas. However, you have the likes of Noel Pearson and others claiming that you cannot fish in these areas. That is just not true. The legislation allows tourism and camping. I actually saw pig hunters in the region when I was up there. You could hear the guns firing of an evening. So it is just another fallacy being peddled that you cannot do these activities in the areas which they claim are locked up. The department states also:
Indigenous cultural activities, ceremonies and harvesting of bush food and medicines is permitted, and the enjoyment of native title unaffected. Outstation development can continue. Recreational boat users can continue to use the rivers and creeks. Mining, grazing and irrigation continues today throughout declared wild river areas. New developments that do not impact the health of the river can still occur.

That is the framework. Those are the boundaries on what you can do on these wild rivers, as opposed to what is being suggested by others. As you can see, the legislation does not prevent Indigenous people using their land. In fact, it states that cultural activities are permitted. Mr Pearson also believes that the legislation prevents Indigenous people developing the land and therefore eliminates any avenue for escaping the poverty cycle. This, too, is incorrect. Mr Pearson’s view is not shared by all Indigenous Australians in Cape York. Northern Kaanju traditional owner David Claudie came to Canberra last year, along with a number of other traditional owners, to voice his opinion on this very subject of the importance of wild rivers. In the Age of 30 September 2010 he said:

Noel Pearson doesn’t speak for us. He’s not our leader.

In fairness, that is a statement that I have heard from a number of traditional owners up in the cape.

Australia Zoo’s submission to the committee discusses the budding ecotourism industry in the cape with Cook Shire tourism officer David Barker, claiming 60,000 to 80,000 visitors each year. It states:

The region tends to attract more adventurous-type visitors who enjoy camping, photography, natural history (even in a general sense), fishing and learning about the area’s Indigenous culture, and its Indigenous and non Indigenous history. Along with ecotourism comes employment. Australia Zoo indicates that Indigenous Australians:

… have become successfully engaged in cultural and wildlife guiding, fishing charter operations and developing camp grounds.

As you can see, we have more to lose in this situation than to gain. If the Queensland government’s wild rivers legislation is overturned we could see mining companies stripping the land to obtain bauxite and lose all the natural flora and fauna which has been there for millions of years. We could see water being extracted from our pristine rivers, affecting the flow, and we would see a change in water quality. We would lose the natural environment that tourists visit Cape York to see. In the long run, wouldn’t it be better to protect these rivers now rather than try to fix them up later? I reiterate that I have been up there on two occasions. I know some of the senators opposite have made visits to the cape, and we heard from Senator Macdonald earlier about Mr Tony Abbott going to the cape, but I would suggest that I am the only senator in this chamber who has had the opportunity and been willing to actually go on a wild river to see the effects this legislation would have in overturning the Queensland legislation.

It is fine to fly around in a light aircraft, land on air strips and talk to people on the ground. But actually going and talking to traditional owners and seeing what the effects would be on the beauty of these particular areas is certainly something different. That is something that disappoints me—that those who travelled up to the cape never took the opportunity to do it. They went and spoke to a wide range of people who certainly had different points of view, but unless you experience the nature and what the effects of particular mining would be, like what Cape Alumina would have done to the Wenlock River, you will not have an appre-
ciation or understanding of the effects of this bill if it overturned the Queensland legislation for wild rivers. I urge everyone in this chamber to protect our natural environment and leave these pristine areas for our future generations to enjoy. This is why we in government emphatically oppose this bill. *(Time expired)*

**Senator CROSSIN** (Northern Territory) (10.11 am)—The government, as people will know, will not be supporting the opposition’s attempts to override the Queensland government’s Wild Rivers Act. We respect the views of Aboriginal leaders in the Cape York area. Our view is that engaging directly with the Queensland government and Aboriginal leaders on these issues is the best policy response. We have been talking to both Indigenous stakeholders and the Queensland government to work towards a solution on these issues. An effective and lasting resolution of the wild rivers issue will ultimately be reached, of course, between the Queensland government and the Indigenous people of Cape York. In that sense, we will not seek to overturn the Queensland government’s legislation.

This piece of legislation, the Wild Rivers *(Environmental Management)* Bill 2011, has already been before my committee, the Senate Legal and Constitutional Affairs Legislation Committee, so I am pretty familiar with the players in this legislation and the issues, as well as the political attempt by those opposite to overturn what has been a process between people in Cape York and the Queensland government.

We are committed to delivering economic development and jobs for Indigenous people but not in this way, not in undermining the role of the people in Cape York and the role of the Queensland government. We will honour our environmental and heritage responsibilities. We are undertaking a range of measures to support Indigenous economic development, creating jobs through the sustainable management of natural resources, such as through the Working on Country program, and working with Indigenous peoples to close the gap in Indigenous disadvantage. I take this opportunity to remind people in this chamber that today is in fact that day—National Close the Gap Day. It is interesting that we are talking about legislation that overturns the rights of Indigenous people in the Cape York area, rights that have been negotiated with the Queensland government through this legislation.

There is still more to be done, of course, at both the federal and state level. With respect, the private member’s bill currently before the Senate poses more questions and complexity than solutions for Indigenous people in either Cape York or Queensland. We do not support this bill and we have been strongly advocating that because there are a range of technical problems. This bill would benefit from further consideration. I notice that it is due to come back to my legal and constitutional committee and I will have a bit more to say about that in a minute.

We do support a reference to the Legal and Constitutional Affairs Legislation Committee, and today’s debate is in fact premature. The opposition claims that this bill will enable the Indigenous people of Cape York, in Queensland’s gulf region, and other regions of Queensland to use or develop their land as any other stakeholder may. We believe that this bill will not fulfil that claim and that it in fact may have a range of negative consequences for Indigenous people. With respect, the government will not be supporting such simplistic attempts to override the Queensland Wild Rivers Act 2005. Instead, we are committed to pursuing considered and inclusive solutions to properly address complex problems.
I will now make a few comments about the bill. In his second reading speech, Senator Scullion stated that this bill, the Wild Rivers (Environmental Management) Bill 2011, is the reintroduction of a bill of the same name that was passed by the Senate on 22 June 2010 and went on to say that ‘we as senators should again support this bill’. This bill is fundamentally different to the bill that was previously passed by the Senate in several important ways and in a range of different aspects. There are matters that should be given serious consideration before this bill goes to a vote. In terms of substantive effect, the changes that are in this new bill before the Senate actually extend its coverage from native title land to various kinds of Aboriginal land; prescribe a method by which the agreement of native title holders—for a wild rivers declaration—can be obtained; and require the Commonwealth to provide employment to people assisting in the management of a wild rivers area who lose their jobs as a result of the legislation.

I also note that Senator Ludwig has, in fact, referred this bill to the Senate Legal and Constitutional Affairs Committee for inquiry and that there is a proposed amendment from Senator Scullion that we only look at aspects of this bill that we have not inquired into before. From my comparison of the two bills, that means we will be looking at this bill before us in its entirety because there are some very fundamental differences between the two pieces of legislation. The three areas that I outlined are not minor changes at all. I think it is clear that Senator Scullion is relying on senators to take him at his word and rush the bill through, thinking that it is unchanged. But in its current form, the bill raises a number of issues about its potential scope and application. It is not clear whether agreement is required of all persons defined as the ‘owner’ of the land concerned or how disagreements between different groups of owners are to be resolved. It is clear that this bill does require careful scrutiny and it is important that the Senate fulfil its obligations, as we always do, and look particularly at this piece of legislation.

As I said, it has been impressed upon people that this is, in fact, a reintroduction of the bill of the same name. My reading of it is that there is actually a whole range of differences between this bill and the bill of 2010. In fact, nearly every clause is different. So my understanding is that, while you might seek to limit our inquiry to just those matters we have not inquired into before, as every single clause is nearly different then we will be inquiring into the bill in its totality. Only the commencement clause in this bill is the same. It is important to note that if we had the time perhaps we could go through the 2011 bill and the changes clause by clause. Time will not permit us to do that now, but we will be scrutinising every word, every clause and every difference between this bill and the last bill just to make sure that we are inquiring into everything that is different from what was there last time. My reading of it is we will not be looking at the commencement clause but we will be looking at everything else. This will make it clear that Senator Scullion’s claim that this is the same bill is false and suggest, as I said, that the opposition were relying on senators, including the people in this chamber, to take them at their word in order to rush this bill through. Yet again we see that the opposition cannot be taken on their word. It cannot be taken at face value. In fact, they are not genuine about helping Indigenous people at all.

The wording of the long title of the new Wild Rivers (Environmental Management) Bill 2011 has changed from the previous version, to begin with. The new bill is described as an act to protect the interests of Aboriginal ‘people’, in place of ‘traditional owners’ in
the old bill. The term ‘Aboriginal people’ is not defined in the bill. For starters, there are already three differences and I have not even got past clause 2. As another example, I turn to clause 3, Definitions. Three new terms are defined in clause 3 which were not included in the previous bill. Some of these are either unclearly defined or have a definition whose implications are unclear. The first new term is the concept of ‘Aboriginal land’. The previous bill only referred to native title land. Aboriginal land includes land in which native title exists as well as land subject to certain other interests. This other land includes land granted to, leased to, granted or leased for the benefit of, or held on trust for, an Aboriginal person—or Torres Strait Islander in some circumstances—or Aboriginal corporation. It also includes land reserved for a community purpose that is, or includes, Aboriginal purposes. The implications of this definition are unclear due to the way the term is used in other parts of the bill. The second new term is the concept of ‘owner’ of land, which is closely linked to the first new concept of ‘Aboriginal land’. The concept of ‘owner’ replaces the previously undefined term of ‘traditional Aboriginal owners’. The term ‘owner’ refers to native title holders as well as persons with an interest in Aboriginal land, such that each category corresponds to each of the categories in the definition of ‘Aboriginal land’. Some areas of land fall in more than one category of ‘Aboriginal land’ and therefore will have multiple categories of ‘owner’ for that part of land.

What I want to highlight in my very brief analysis of the differences between the two bills is that this bill before us is, in fact, a very different piece of legislation, a vastly different piece of legislation, from what we saw in 2010. I am very pleased it is coming to my legal and constitutional committee, where we will sort this out. (Time expired)
they feel patronised when they hear that sort of input.

As for the number of people in Cape York who are against this, I have acknowledged David Claudie and a couple of others who have signified their opposition to this for a variety of reasons. I acknowledge and respect that. But Cape York people are represented by the Cape York Land Council and they had a unanimous vote that said, in effect, you should support this legislation. As for the laughable comments from Senator Furner that you really should go there, get on the ground and sit in the river, I am glad we did not take his advice. It is a very bad time of year to visit because there is lightning.

Senator Crossin now says that the Labor Party are going to honour their environmental and heritage obligations. That is terrific; that is fantastic to hear. Somehow apparently this legislation is going to overturn the rights of people in Cape York. I can tell you I had some difficulty putting that together, given that all it does is demand the right to and the dignity of consent. She went on to say that this is all very confusing and hard. We have got all sorts of different types of land. She went through the eight different types of land and it is almost like she was aghast at actually providing more consent to not only native title holders but the whole lot of Aboriginal people. That is exactly the intent. We should not embargo the provision of the right in this regard to one particular group. We should include all Aboriginal people, not just native title holders. I again indicate to the good senator, who will be pontificating on this in her position as chair of the legal and constitutional committee, that we also support this bill going back to the committee. I know it will be dealt with there and I am looking forward to their deliberations.

I do not think that the Wild Rivers Act 2005 was provided with any mischief. I do not think that the Queensland government said, ‘How can we take rights off people?’ That was not the case at all. In fact, this particular piece of legislation, as sometimes happens in this place, was not actually provided by the Queensland government; it was actually a function of the Wilderness Society. The Wilderness Society have obviously decided that they need this piece of legislation to either sell a brand or do whatever it is. They are pretty keen on this legislation. If you want any detail on this legislation, do not go to the Queensland government because I do not think they will be able to give you direct answers about what the motive was. The Wilderness Society will have every rag and detail of this and I will speak about their full involvement in a moment.

The Queensland legislation seemed pretty harmless on the face of it. It was passed in 2005 and was not completely opposed by those in the opposition. But according to many Aboriginal landowners in the area—they are the people on the ground being impacted and they should know—the wild rivers restrictions provide a huge impediment to sustainable development. Noel Pearson, who has been mentioned a couple of times before both favourably and otherwise, is somebody who I have a great deal of respect for. I respect his intellect and his thoughts on this process. He says that the bill before us today: … enhances the land rights of the native title-holders of Cape York Peninsula and enables them to negotiate with the Queensland Government so that they provide free and informed consent to arrangements to protect the rivers of Cape York Peninsula …

I will just go back to some comments from Senator Siewert. I have left the best till last because, as I invariably do, I agree with you, Senator. I do not think that there should be any difference between the capacity to provide environmental protection and consent. I think they can coexist and that is why I call
on you now to have another think about your position. I thought your contribution was excellent but it left me a bit disappointed at the end that you are not going to support the legislation. Consent is a provision that I am giving to these people. All you have to do is provide them with the option to consent. I think that can sit alongside the environmental protections that we have in the cape and it will re-empower the Cape York Land Council and all the people in the cape to go back to the negotiating table with the Queensland government to continue the good work that they were all doing to provide protection to those rivers.

The processes of the Queensland government are very interesting. They are saying, ‘We do not really want any consent,’ and I guess we understand why that is the case now. But on 6 August 2008 we completed 10 years of negotiations between the Lama Lama people—the mob around the Kulla National Park—and the Queensland state government. What we had at the end of the 10 years was an Indigenous land use agreement that was in effect created for Kulla National Park. That is 160,000 hectares of national park in the magnificent McIlwraith Range—a fantastic area with a great level of protection and access. It was done with the consent of the traditional owners of that land.

Interestingly, a similar area of land directly adjacent to the first—the other half, if you like, of the land that was available—was granted as Aboriginal land under the Queensland Land Act 1991 for Indigenous economic development. That is what it was specifically set aside for. We had just done an ILUA on the land. We had the remaining land set aside for economic development. Suddenly, with the ink hardly dry on the ILUA, they said, ‘By the way, on the remaining land we’re just going to give you a couple of wild rivers declarations, and we’re not even going to talk to you about it—you’re going to be told what’s happening to your land in this regard with this piece of legislation instead of us having to talk and maybe be a bit frustrated for 10 years because you have the right of consent under the other law.’ That was absolutely disgraceful.

I have visited Aurukun and spoken to many of the people in that area about the Aurukun wetlands. The Archer River Basin wild river declaration was gazetted on 3 April 2009. Traditional owners were absolutely astounded to find out after going through some consultation—which was rare on the wild rivers stuff, but actually happened in this case—that the Queensland government declared all of the Aurukun wetlands as part of it. That was not included in the process of consultation. It is a mystery as to why that happened. But the freedom of information material later revealed that the wetlands that were not consulted on or talked about were included on the basis of a submission from our old mates the Wilderness Society. In the same way as the Greens are shackle to this government, with this government being dragged around by the Greens, the Queensland government are in complete thrall in this matter to the Wilderness Society. Outside of the process, with no respect given to Indigenous people, it is: ‘Oh, by the way: can you just stick this in there? I know we haven’t told the owners about it, but we think it’d be a nice colour to have on the map.’ It is an absolute outrage. Support for this legislation today will right that wrong.

Imagine a non-Indigenous land owner in a similar circumstance, and the government says, ‘We’re consulting with you, because we’re going to build something horrible on your land,’ whatever that may be. And then when it is over, when they arrive to do something it is completely different from what was talked about. The world would be outraged. We should not be less outraged today.
about what has happened to the people of Aurukun under this legislation.

We have spoken today about the United Nations declaration on the rights of Indigenous people. It outlines the right of free, prior and informed consent to policies affecting them. That was mentioned earlier today. It is at the heart of this protection. It was endorsed by the federal government—by this government—on 3 April 2009. Ironically, that was the very same day that the Queensland Premier announced the declaration of the Cape York wild rivers and in so doing contravened those very same principles that her federal counterpart endorsed. So here is an opportunity today to right another wrong and for those on the other side to support this legislation and fix that. Who knows? Anna Bligh might have had another bad hair day. But this is an opportunity to put a wrong right. Do not let this opportunity go.

It would have been a little fairer if the Queensland government had before the election talked about the declarations of the Archer, the Lockhart and the Stewart and told Indigenous voters that that is what they were going to do. But they did not. They were silent. Immediately after the election, declarations rolled out. So they must have known that they would have been greeted glumly.

Let us be very clear about the position of the Queensland government, the Australian Greens—I hope that you change your mind, Senator Siewert—and the Wilderness Society particularly. They all have comments on the record which substantiate what I am about to say. Their position is that somehow, as a part of Aboriginal land conservation, we should not only conserve the land but them, too. Their position is that Aboriginal people should be frozen in time, perhaps standing on one leg, so that when the tourists come and see the wonderful biodiversity the Aboriginal people are part of it. They want to make sure that Aboriginal people do not have the same opportunities as others. The Wilderness Society would say, ‘We have saved this area.’ I am not sure what from, but they say that they have saved this area.

I remind all those in this place that the land is in a pristine condition. And it will remain in that pristine condition, not because of the Wilderness Society or the Labor Party or the Queensland government but because of the fantastic work of Aboriginals in that area since colonisation. They were the ones who kept this land pristine. It is a slap in the face for those people from Cape York to say, ‘Oh, they’re all going to go and build some massive dams,’ or one of these other weird fantasies that have been thrown up.

It is very unfortunate that Anna Bligh has not taken the opportunity to amend her own legislation to protect the rights of her own constituency. I am not sure when they put the legislation through if they countenanced what was going to happen because of it. She has had that opportunity, though. We have called on her to change that legislation. She has not. That disappoints me. But there is still an opportunity. By supporting this legislation in this place, you will be restoring the right that so many of us take for granted: simply, the right to consent to changes being made on your land; to consent to changes about the use of your land.

I believe the Prime Minister when she says that she is very serious about empowering Aboriginal Australians. In the paper today, I note that it says that she is going to Alice Springs. I hope that she takes the opportunity to go with my leader to send a signal to Australia that this is important enough for bipartisanship. I would also like the Prime Minister to understand that supporting this legislation is absolutely essential to ensure that we are sending a signal to all Aus-
tralians that we are fair dinkum about giving Aboriginal people the same access and eq-
uity that non-Aboriginal people enjoy. Throw away the shackles of the green movement ;
throw away the shackles of the Wilderness Society and stand up for Australians, and
particularly stand up for our First Austra-
lians.

As an amendment to the government’s second reading amendment, I move:

After “10 May 2011”, add “and that in con-
ducting its inquiry, the committee should only
inquire into those provisions of the bill which
have not been previously examined by the Legal
and Constitutional Affairs Legislation Committee
in its inquiry and report into the Wild Rivers (En-
vironmental Management) Bill 2010 [No.2]”.

The ACTING DEPUTY PRESIDENT
(Senator Boyce)—The question is that Sena-	or Scullion’s amendment on sheet 9066,
amending the government amendment, be
agreed to.

Question agreed to.

The ACTING DEPUTY PRESIDENT—
The question is that the government amend-
ment, as amended, be agreed to.

Question agreed to.

The ACTING DEPUTY PRESIDENT—
The question now is that the motion for the
second reading of the bill, as amended, be
agreed to.

Question agreed to.

Bill read a second time.

BUSINESS
Rearrangement

Senator FARRELL (South Australia—
Parliamentary Secretary for Sustainability
and Urban Water) (10.38 am)—I move:

That intervening business be postponed till af-
fter consideration of general business order of the
day no. 46 (Defence Force Retirement and Death
Benefits Amendment (Fair Indexation) Bill 2010).

Question agreed to.

DEFENCE FORCE RETIREMENT AND
DEATH BENEFITS AMENDMENT
(FAIR INDEXATION) BILL 2010
Second Reading

Debate resumed from 18 November, on
motion by Senator Ronaldson:

That this bill be now read a second time.

Senator WONG (South Australia—
Minister for Finance and Deregulation)
(10.39 am)—I rise—

The ACTING DEPUTY PRESIDENT
(Senator Boyce)—Senator Parry on a point
of order?

Senator Parry—I am sorry to interrupt
the speaker. We did have an agreed speakers
list, and that has not been announced to the
chamber.

The ACTING DEPUTY PRESIDENT—
Thank you for pointing that out, Senator
Parry. There have been informal arrange-
ments made for speakers, I understand, and I
ask the clerks to set the clocks according to
those arrangements.

Senator WONG—I rise to speak on the
Defence Force Retirement and Death Bene-
fits Amendment (Fair Indexation) Bill 2010
put forward by Senator Ronaldson on behalf
of the coalition. I want to make a few points
about this legislation and about the fiscal
circumstances. There are certainly many
programs, many amendments, many requests
for further government expenditure, which
are worthy. In government, generally the
choices are not between a worthy cause or a
worthy program and a program which is not
worth; generally the choices are to prioritise
between many different programs, all of
which have their own merit. This is a bill
which has responded to the calls from some
members of the Australian community, some
superannuants, about the amount they are
receiving in their retirement. I have no doubt
their views have a sound basis. I have no

CHAMBER
doubt their views are very strongly held. But the key issue in government is to seek to make decisions between different programs, to seek to make decisions to prioritise expenditure and to always recognise that there is a finite amount of government expenditure, which needs to be well managed to meet a whole range of meritorious programs.

It is reasonable for people in retirement who have served in our armed forces to expect a reasonable level of support. It is also reasonable for the Australian community to expect continued funding for health, for Medicare, for our school systems, for infrastructure, for our age pension system—and so the list goes on.

But this debate is not about the merits or otherwise of what Senator Ronaldson is putting up. This fundamentally is a debate about fiscal responsibility.

Senator Ronaldson—Oh rubbish; what a silly comment!

Senator WONG—I can understand why Senator Ronaldson wants to interject, because he does not want people to be reminded that, in 11 years in government, they never put this up. When you had to pay for it, you never put it up. The hypocrisy of the opposition! Over a decade in government they never chose to make these changes when they had to find the money for it all, and now, in opposition, they want to use private senators’ time to impose a cost on the federal budget that they cannot fund. So let us be clear: to anybody who has a concern about this debate, I accept your right to advocate for an increase—but let us remember, this opposition, when in government, when they had to find the money, never found the money. And now they are trying to use their position in opposition, where they don’t have to find the money, to come into this chamber and seek to impose a $1.7 billion fiscal cost on the federal budget.

Senator Johnston—Oh rubbish!

Senator WONG—I will take that interjection from Senator Johnston. He said, ‘Oh rubbish!’ These are not figures we have made up; these are figures of the Australian Government Actuary. So you can quibble with Finance’s figures, you can quibble with the Australian Government Actuary, but the reality is you are exposed in this debate. I note the shadow minister, Mr Robert, has just walked in to see. He claimed in the Financial Review, ‘This is not the way you do costings; you look at future debt.’ Well, through you, Madam Acting Deputy President: Senator Ronaldson, maybe you could explain to your shadow minister that this is the form of budget costing that Mr Costello introduced. The reality here is that we have an opposition happy to play politics, happy to push for something that they never funded in government, that they have not funded properly this time. The opposition want to impose a $1.7 billion fiscal cost over four years on the federal budget. It is extraordinary.

But the big question is this: where is Mr Robb, who says, ‘I’m the great keeper of the accounts; I’m so good at doing our costings.’ Where is Mr Robb? Mr Robb is the shadow finance minister who presided over a $10.6 billion black hole in your election costings.

Senator Johnston—Rubbish. You left us with $96 billion. You never got your figures right.

Senator WONG—You can say ‘rubbish’, Senator Johnston. I will take that interjection again, because I will say to the Australian people that if anybody is interested in this debate we have the Department of the Treasury, the Department of Finance and Deregulation—
Senator Ronaldson—Madam Acting Deputy President, I rise on a point of order concerning relevance. Perhaps in the remaining four minutes and 34 seconds the minister could refer to the bill once. It would be a useful contribution.

The ACTING DEPUTY PRESIDENT—That is not a point of order. Senator Wong has the call.

Senator WONG—They are very sensitive about this, aren’t they? What they do not like is this: they have a $10.6 billion black hole from the election, where they did not cost their election policies properly. They claim that is not true, but who do you believe: the Australian Treasury, the Department of Finance and Deregulation or Mr Robb and Mr Hockey? I leave people to make their own judgment on that.

Secondly, on this issue, as I was saying: where is Mr Robb, the great shadow finance minister who has been lecturing the government about fiscal responsibility and who likes to talk about structural deficits? Well, you are adding to it now. You want to talk about a structural deficit: $1.7 billion over four years, and increasing the Commonwealth’s unfunded liability by $6.2 billion. The question is: why is Mr Robb letting this happen? Where is Mr Robb when it comes to senators in this place using private senators’ time to impose unfunded costs on the federal budget? This is a gross act of fiscal irresponsibility. That is in addition of course to the position the government has previously put and holds on this bill in relation to where these sorts of money bills should originate. These sorts of money bills should originate. These are matters for the House of Representatives and for the executive government, as you would have asserted and complied with when you were in government. I say this to my counterpart, Mr Robb: you set yourself up as the guardian of fiscal responsibility. Mr Robb loves to beat his chest and he loves to pontificate about responsible spending. As he said recently: ‘Spending, spending, spending—more commitments, bigger structural deficits off into the future using all the mining industry’s money. What a disgrace.’ Well, he is right. And he could be describing his own party’s position, because that is the approach that you are taking today in this chamber.

The Australian Government Actuary has made clear the impacts of this decision. We know that this bill will increase expenditure over time; it rises significantly over time. Annual expenditure growth as a result of the changes you are proposing might be less than only $100 million, for example, in 2014-15, but in 2029-30 it grows to over half a billion dollars. You cannot fund that, you know you cannot and you have no intention of ever doing so. The evidence for that is what you did in government, when you never put this forward because you knew you would never fund it. You cannot fund it now, you will not fund it now, you did not fund it in government and all you are doing is seeking to play a bit of politics with this issue.

This is an important piece of legislation, because if this bill gets up, if senators on that side vote for it, it will confirm that the Liberal and National parties are completely fiscally reckless. It will show that despite the talk of fiscal responsibility they never back it up. And it will show that Mr Robb has no influence in the opposition party room. If he had some spine as shadow finance minister he would not allow this to come forward, because it is not the act of a fiscally responsible party and certainly not the act of a fiscally responsible party of government. It is extraordinary that for all the criticisms the opposition has made of the Australian Greens on this issue—and we do not agree with the revenue proposition they have put forward—when the Greens have actually taken a more fiscally responsible position.

CHAMBER
How embarrassing for the coalition. The Liberal Party is supposedly the party of fiscal responsibility, but the Australian Greens have been more fiscally responsible than the opposition. I have one question: where is Mr Robb when his party comes into this chamber and seeks to put a $1.7 billion fiscal impost over four years on the fiscal balance?

Senator JOHNSTON (Western Australia) (10.49 am)—Getting a lecture on honesty, morality and fiscal prudence from this crowd is like getting a lecture on those subjects from an embezzler who has been caught with his fingers jammed in the till. This is absolutely outrageous. These people have wasted billions of dollars and this minister has the temerity to come in here and pretend she is an economic conservative. We have heard it all before. What did they tell the veteran community before the 2007 election? They said: ‘We will change your indexation. We will fix it up for you.’

The opposition in this place wants the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010 passed today. In their 2007 policy document Labor said:

There is perhaps no greater duty that we as a nation and as a parliament have than to honour, remember and express our gratitude to those Australians who have served in the defence of our nation.

They went on to say in the policy document: A Rudd Labor government will provide a fresh approach to veterans’ affairs and a fresh leadership team which is dedicated to working in partnership with the ex-service community on the issues that concern them. Labor will work hard to achieve six goals for veterans …

No. 1 was:

Restore the value of compensation and prevent further erosion due to unfair indexation …

No. 5 was:
A key concern with the veteran community is the impact of rising costs of living and the erosion of their entitlements over time due to unfair indexation arrangements under the Howard government.

No. 5 went on to state that Labor would change indexation:

… to help combat this, Labor is committed to indexing all disability pensions and the domestic component of the war widows pension to movements in the Consumer Price Index or the Male Total Average Weekly Earnings (MTAWE), whichever is the greater.

Further to this, in two press releases on 6 and 7 May 2007, the then Rudd opposition left no doubt as to their intention and promises. Alan Griffin, the then shadow minister, said: A Rudd Labor Government will restore the value of the Special Rate Disability Pension … Intermediate Rate and the Extreme Disability Adjustment Pensions by indexing the whole of these pensions to movements in Male Total Average Weekly Earnings … or the Consumer Price Index … whichever is the greater.

In a separate press release he went on to say: A Federal Labor government will restore the value of the Special Rate Disability Pension … Intermediate Rate and the Extreme Disability Adjustment Pensions by indexing the whole of these pensions to movements in … (MTAWE) or the Consumer Price Index … whichever is the greater.

These promises to the veteran community were exactly like ‘there will be no carbon tax’. This is the currency of this government. I note that the minister is not here to listen to this. The government says and does promise to people who are vulnerable in our community that they will be looked after if it gets their vote. And what does it do? As soon as that vote goes through the ballot box, it rips that vote off.

Nick Champion, the Labor member for Wakefield, identified this in his letter to Lindsay Tanner:
Understandably, there is a huge disappointment in both the findings and the government response announced on the same day. That is referring to the Matthews review.

It had been widely expected that the recommendations would have supported a change to the method of indexation of these pensions to that of which is high, MTAWE or CPI, consistent with the pension, following the earlier Senate and other inquiries. Significantly, many people genuinely believe that prior to the 2007 election the ALP had committed to determining a fairer method of indexation, and a review would provide the direction. So the immediate acceptance of the recommendation of no change in government response is being seen as a reversal of the pre-election position espoused by the ALP in the campaign material.

Oh dear: its own, telling it that it cannot break its promise. But the currency of this government is to say anything in the teeth of a campaign—‘There will be no carbon tax under the government I lead’—and as soon as the ballot papers are in: ‘Look, everybody knew that when I said that I didn’t mean that.’ You have got to be kidding me.

These veterans have seen hundreds of dollars paid out in $900 cheques across the community—pink batts, school halls. And what have they got out of it? Not a cracker. They were lied to. The member for Eden-Monaro, Dr Kelly, the then member for Fraser, Mr McMullan, Senator Lundy of this place and Annette Ellis, the then member for Canberra, all wrote in similar terms to Lindsay Tanner, saying, ‘But we promised!’

This minister wants to try to tell us all that this is a matter that the Senate cannot pursue because of constitutional difficulties. The two houses have had differing interpretations of section 53 of the Australian Constitution, but the Senate’s position, as documented in Odgers’ Australian Senate Practice 12th edition, page 277, in the context of a discussion of the usefulness of such terms as ‘supply’ and ‘money bills’, is as follows:

Appropriation bills and tax bills are the only useful categories of bills because they are the only categories which are given special treatment by the Constitution. All other bills are treated alike and the Houses have equal powers in relation to them. The two useful categories of bills are distinguished by their defining characteristics. Money bills, which should properly be called appropriation bills, are those bills which contain clauses which state that money, of specified or indefinite amount, is appropriated for the purposes of the bills. A bill which does not have such a clause is not an appropriation bill. A tax bill is a bill which contains a clause which provides that tax is imposed upon a specified subject, either by setting a new tax or raising the level of an existing tax. A bill which does not contain such a clause is not a tax bill.

The fact is that this private senator’s bill is not an appropriations bill and should go forward.

It is very, very simple to find $175 million through the forward estimates of the last budget. A saving of that amount can be achieved by reducing the growth of the Australian Public Service full-time equivalents in the Department of Defence by 33 per cent. What I mean by that is that this will see the number of staff in the Department of Defence, including the DMO, grow in size by 8.3 per cent instead of 12.6 per cent. There is the saving. What I have just demonstrated is exactly how mealy mouthed, penny pinching and utterly deceptive this government is with veterans. What do people who have put their life on the line for their country get out of this government? They get hollow, empty promises.

We will be moving such an amendment. I trust that the Greens will support this bill, because it is a very good bill. We want it passed today to get some justice for veterans. We never promised them something and then broke that promise. These guys promised the
sun and the moon and callously ripped the rug out from under these veterans, gave them two fingers and said, ‘Thanks for your vote.’

The ACTING DEPUTY PRESIDENT (Senator Boyce)—Are you intending to move the amendment now?

Senator JOHNSTON—Yes. I move the amendment on sheet 7058:

At the end of the motion, add “and the Senate calls on the Government to reassess the growth in the civilian bureaucracy within the Department of Defence (including the Defence Materiel Organisation) over the forward estimates, to achieve the necessary financial offsets to fund the measures in this bill”.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (10.59 am)—I rise to speak on the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010, which Senator Ronaldson, the shadow minister for veterans’ affairs, introduced in the Senate as a private senator’s bill last November. I suppose I have to give Senator Ronaldson credit for cheek in bringing this bill before the Senate. The proposition that Senator Ronaldson is putting to the Senate is essentially this: that this government is at fault for failing to enact a policy which his own party failed to enact for 11 years in office, and which Senator Ronaldson opposed as recently as the 2007 election. Senator Ronaldson did not say a single word in the Senate about this issue when he was in government, when he was in a position to do something about it—not a single word.

Just in case senators opposite have forgotten what the lobbyists on this issue thought of the Howard government’s performance, let me quote a letter sent by Mr John Hevey, of a group called the Aussie Digger Forum, to the then Minister for Veterans’ Affairs, Mr Bruce Billson MP, just before the 2007 election:

Bruce, it is long past the pale, that you avoid the true issues in this manner. It is long past the pale that the Coalition Government refuse to acknowledge the injustices that have been perpetrated by the Coalition on the issue of Military Superannuation over the past eleven years, it is long past the pale that the Veteran Community and in particular Military Superannuates have been flagging with the Coalition this very issue for the past eleven years, and now on the eve of a federal election you tell us through a “spokesperson” that the report into this matter will not now be forthcoming until 2008 - the same report that has been in your possession since July.

So there we have the great record of the Howard government on this issue. Of course, Mr Billson may well have had good reasons to refuse to give the veterans lobby what it wanted. No doubt Senator Minchin, then finance minister, told Mr Billson that he could not have the money because it would be fiscally irresponsible to accede to these demands. Whatever, the issue here is not whether Mr Billson was right or wrong. The issue here is the hypocrisy of Senator Ronaldson and the opposition more generally, for demanding in such strident tones that we do something that they themselves refused to do for 11 years while in office.

At the time of the 2007 election, the veterans lobby group asked both parties to commit to changing the policy. Neither side was willing to change its policy. Let me remind the Senate again that Senator Ronaldson was a member of the Howard government. Again, I do not recall Senator Ronaldson breaking ranks with his party on this question. He went to the 2007 election on a policy which was the opposite of the one he is now espousing.

Senator Ronaldson’s bill would single out a subcategory of Commonwealth pension recipients for preferential treatment. To try to minimise the cost of this, the opposition has limited the scope of its amendment to retirees over 55. This has the divisive effect of
leaving the more than 15,000 ADF retirees currently aged under 55 on the current scheme. Senator Ronaldson is thus in the strange position of arguing that the current arrangements are terribly unjust to ADF retirees but then proposing to leave the current arrangements in place for a large number of retirees.

This is not simply a divisive proposal; it is also a financially irresponsible one. In his second reading speech in November, Senator Ronaldson costed his proposals at $98 million over the forward estimates. In fact, as the Australian Government Actuary has advised, the real cost by 2014-15 would be $175 million. By 2019-20, the cost would be $205 million per annum. The Minister for Finance and Deregulation, who always tries to be helpful, has written to Senator Ronaldson and the Leader of the Opposition outlining the full costs of the schemes, but that does not seem to have made any difference to Senator Ronaldson.

This is typical of the attitude which the opposition have taken to public spending. They denounce the government for 'reckless spending', while at the same time promoting their own poorly costed, poorly designed schemes for more and more public spending in their endless search for cheap popularity with various lobby groups who would like, naturally enough, more money spent on their particular cause. The opposition do not care about the budget bottom line. All they care about is transitory electoral advantage with sections of the community who would like more public spending.

The opposition have demonstrated their fiscal recklessness by twice blocking a $5 billion savings measure put forward by this government. This includes means-testing of the private health insurance rebate, which would cost the budget some $2.1 billion over the next four years, and the closure of the Chronic Disease Dental Scheme, an Abbott-designed scheme that has had significant cost blow-outs and which will cost the budget $3.1 billion over the next four years. That is an additional $5 billion in spending over the next four years as a result of the opposition's recklessness. They are also in the process of trying to block a further $2 billion in savings to the budget over four years by voting against reforms to the Pharmaceutical Benefits Scheme. The opposition have demonstrated time and time again that they are not committed to bringing the budget back to surplus.

This bill is, frankly, nothing but a stunt. Senator Ronaldson knows that there is no chance that this bill will become law. In fact, I suspect he is probably relieved to reach that conclusion, because of course the opposition have absolutely no idea where they would find the money to pay for this measure if it were somehow to pass. This is bad policy and financially irresponsible. To give the other side some credit, they know it. They are advancing this proposition in the complete knowledge that it has not a leg to stand on. The record of their 11 years in office is proof of that.

This bill is also quite possibly unconstitutional. Advice from the Attorney-General, which has previously been tabled in the Senate, makes it clear:

A proposed law that would appropriate revenue or moneys cannot originate as a private member's bill. A bill for such a law cannot, in any event, originate in the Senate.

This shows that the opposition are not serious about this bill. It is nothing more than a populist stunt that aims to create the illusion of action, perhaps also the illusion of deep thought. But, of course, it is an illusion, because this is an issue which the coalition did absolutely nothing about during their 11 years in government. The opposition do not
care whether this is good policy or bad, whether it is financially responsible or irresponsible or even whether it is constitutional or unconstitutional. All they care about is a headline in the *Australian* and a cheer from the gallery. But I am confident that the ex-service community, the defence community and indeed the wider Australian people will see this bill for the exercise in cheap, opportunist politics that it is. Unfortunately it is a stunt that is consistent with the tawdry methodology of those opposite.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (11.07 am)—At the outset I should say that this bill from the opposition, the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010, is consistent with the Australian Greens policy at the last election. Therefore we take seriously the role we have in considering this legislation and its potential passage through the Senate and the parliament. It does raise the questions of financing that have been put before the Senate by Minister Evans and by Senator Feeney. That has put onto the opposition an onus—which the Greens have maintained is necessary with legislation that costs taxpayers—to find a means of funding such a bill. That said, the opposition has today come forward with a potential funding mechanism. The opposition’s document begins:

The purpose of this document is to outline a savings offset of $175 million squared to fund the coalition’s military indexation election commitment. This will be achieved by reducing the growth of APS fulltime equivalents in the Department of Defence including DMO by 33 per cent. This will still see the number of staff in the Department of Defence including DMO grow in size by 8.3 per cent by financial year 2013-14 compared to a budgeted 12.6 per cent.

Then the figures are as outlined by Senator Ronaldson.

A serious proposition has come before the Senate. In these circumstances what do we do about it? I foreshadow the amendment I have circulated that the Greens believe that the better option is for the funding to come through a reconfiguration of the mining resource rent tax. The amendment reads:

At the end of the motion, add “but:

(a) the Senate is of the opinion that these reforms should be funded through a reconfigured mining resource rent tax, as recommended by the Treasury, that would generate sufficient additional revenue to cover the costs; and

(b) a message be sent to the House of Representatives informing it of this resolution and requesting its concurrence in the resolution”.

The Treasury figures that we are most recently acquainted with do indicate that, if a proper superprofits tax were placed on the burgeoning iron ore and coal sectors of the mining industry in Australia, an extra $100 billion would come into the public purse over the next 10 years. That is an average of $10 billion per annum. We believe that is a fair tax. It is still going to leave the industry very profitable but it is going to make sure that money from the once-only exploitation of the nation’s resources is available to fund the liabilities that government has for the future—whether they be in education, housing, transport or defence. We do not dismiss lightly the need for that tax to be levied and I note that the opposition does not want to raise one cent of tax. It would forgo $145 billion over the next 10 years, $14.5 billion per annum.

**Senator Back interjecting**—

**Senator BOB BROWN**—I notice interjections. It is recommended by Treasury, rejected by the opposition, but supported by the Greens. As far as the responsibility of it goes, that speaks for itself. So I foreshadow that amendment and we will be supporting that as the primary option.
I come back again to the challenge to the opposition and to all of us—if we have private senators’ legislation—to flag a reasonable means of funding the costs incurred. On the face of it the opposition has done that. It has now before the Senate—and therefore before the parliament—an alternative means of covering the cost of the new indexation which has been Greens policy, as well as the policy of the opposition since it left government, for military pensions.

What reasonably should be done here—because it is a large sum of money and it is also a large appropriation—is for that spending option by the opposition to be tested by a Senate committee. I am in support of a Senate committee looking at that. If the matter goes to a committee, this would involve the Greens supporting the second reading of the legislation. If it goes to committee we will do that. But I need to make it clear that our support for the further passage of the legislation will depend upon but not be confined to the recommendations of the committee. It is a big issue. There is a lot of money at stake here. We need to assess it in a sober and qualified fashion and that is something that a Senate committee should do.

I note also the proposal by Senator Xenophon, flagged in his circulated amendment, for the matter to go to a Senate committee. I foreshadow that his proposal be amended as on my circulated amendment on sheet 7059:

After “sheet 7027”, insert “and proposed mechanisms for funding the bill”.

Clearly, this is to keep up with the pace of the innovation that is going on in the Senate, so that the committee would look at the funding mechanism put forward by the opposition as well as by the Greens, although I suppose it is unlikely that both would pass in the vote coming down the line.

In the short time left to me I will go to the constitutional issues, because they have been flagged briefly by previous speakers. We are in new territory. We now have a functioning private members’ time, which I think is a fantastic and long-overdue innovation in this parliament. We are following other parliaments which went this way long ago. What it means, effectively, is that the nous, the innovation and the representation of the community is extended beyond the government ranks to include everybody in the parliament. You get a better result for the people of Australia coming out of that. But with that, of course, comes the responsibility—we cannot take over Treasury benches and have no intention of doing that—to be looking at how government can be helped to adjust to private members’ legislation coming through the parliament. Some of that legislation will be ethical or legal—maybe even international treaty mechanisms, to name a few—and may not have a significant cost; others will have significant cost. I, on behalf of the Greens, and other parties are looking at how we can establish some set of baseline rules to guide the parliament in the absence of standing orders or, indeed, constitutional direction on this matter. It is a big responsibility on our shoulders. This legislation is pre-empting that agreement as to how such legislation should be promulgated in the interests of the Australian people. I assure you, Madam Acting Deputy President, it is something the Australian Greens are putting a lot of mind to and hope to come up with good dividends for the parliament and the people in the coming months.

Senator Xenophon (South Australia) (11.17 am)—My contribution will be brief. I am very grateful to Senator Parry for giving his time to me. I will not need all the time allocated to Senator Parry because I intend to make a more comprehensive contribution to the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010 once this matter goes to a committee, if
that is the will of the Senate. I seek leave to
move a second reading amendment to add
‘and the bill, together with the amendments
circulated by’—

The ACTING DEPUTY PRESIDENT
(Senator Boyce)—Senator Xenophon, we
have an amendment before the chamber al-
ready. You can foreshadow your amendment
and speak to it, but not move it formally.

Senator XENOPHON—I take it that I
move it at the end of the secondary stage? I
apologise, Madam Acting Deputy President,
I am still learning. I should know these
things, but I am still learning.

The ACTING DEPUTY PRESIDENT—
We all are!

Senator XENOPHON—I foreshadow an
amendment to add ‘and the bill, together
with the amendments circulated by Senator
Ronaldson on sheet 7027, be referred to the
Finance and Public Administration Legisla-
tion Committee for inquiry and report by 10
May 2011’. This is something that I have
foreshadowed with my colleagues in the op-
position. I understand that they will be op-
posing it, and I respect their right to do so,
but I think that, for such an important piece
of legislation which has significant fiscal
impacts, the responsible thing to do is to re-
fer this bill to the Finance and Public Ad-
ministration Committee for appropriate in-
quiry, so that all aspects of the bill, including
the fiscal impacts, can be explored—but I
can say that I am very sympathetic to the
matters raised in the bill. I want to see a
practical, sensible way forward for the mat-
ters raised in this bill to be dealt with, but I
think the best way to do that is to have this
matter go before a committee—that is what
we do in the Senate. I think that the question
of scrutiny—a teasing out of the provisions
of the bill and any unintended conse-
quences—ought to go to a committee. There-
fore, I will move this at the end of the second
reading stage, and I urge my colleagues in
the government and on the cross benches to
support such a measure. In the absence of
such a measure I cannot in good conscience
support this bill without that process being
dealt with. It is a process that can be dealt
with quite expeditiously in the next six
weeks. I would have preferred this to
have been done some weeks ago. Notwith-
standing that, now is the time to deal with
this bill with the respect and the process it
deserves.

Senator FIELDING (Victoria—Leader
of the Family First Party) (11.19 am)—It is
with pleasure that I rise to speak in this de-
bate. It is with great honour that I stand here
to support the Defence Force Retirement and
Death Benefits Amendment (Fair Indexation)
Bill 2010. The issue of fair indexation for
military superannuation is something that
Family First has been campaigning on for
some time now. In November 2009 I rose
here to speak on the issue, and later also
raised this issue with the former Minister for
Veterans’ Affairs, Mr Griffin. Last year, I
began a petition calling on the government to
fix the unfair indexation of military superan-
nuation on my web site. In just a matter of
days it attracted thousands of signatures,
highlighting how many people feel strongly
about this matter. It is an issue I have fol-
lowed closely, because it is something that I
care about deeply.

Last year, I travelled to Afghanistan to see
our diggers in action first hand, and wit-
nessed the tough conditions they are forced
to endure on a daily basis. Service in the
Australian defence forces is no ordinary job.
It is unique service which deserves special
recognition. It is unique because when you
sign up to the Australian defence forces you
give the state, or the nation, the authority to
send you overseas in a role where your life is
at risk 24/7. We send our soldiers into dan-
gerous areas that will put them in harm’s
way. We ask our soldiers to follow through with their orders, even when they know that this may mean they might never see their family or friends again. It is an incredible situation to put oneself in, and it takes incredible people to do this. Given these circumstances and the uniqueness of their role, we as a society have an obligation to give them our full support and respect.

Unfortunately, when it comes to retirement and death benefits, both the former Liberal government and the current Labor government have not, I believe, honoured this obligation in the way we should. The current indexation arrangements for their retirement and death benefits are inadequate and put our military pensioners further behind community income standards. This bill seeks to rectify this inequality through a fairer indexation regime. At the moment, the Defence Force and superannuation pensions are only indexed to CPI, which is not always the best index. Even the Australian Bureau of Statistics has said:

The CPI is not a purchasing power or cost-of living measure.

CPI is just a measure of changes in the price of a basket of goods and services and should not be used as the only measure to index military pensions of our former servicemen and servicewomen. This is an outdated way to index pension payments because at the moment the true value of those military pensions is falling compared to the rising incomes of the general population. Even the government has admitted that CPI is not an appropriate measure for indexing the pension and has reformed other government pensions which were previously indexed to the CPI. These include the age pension, the wife pension, the disability support pension, the widows pension, the parenting payment, the carer payment, the services pension, the partner service pension, the income support pension and the war widows pension.

In the 2008 budget the government recognised that many seniors were concerned that their cost of living may rise faster than the consumer price index and to address this concern the government announced:

... the Government will guarantee that the Age Pension will increase in line with the higher of the consumer price index, increases in male total average weekly earnings or the living cost index for age pensioner households. These arrangements will ensure that the Age Pension keeps pace with increases in prices and improvements in community living standards.

So clearly the government has recognised this issue about indexation. I believe that our veterans should have their superannuation treated in a similar way. The military pension payments must be linked to the average wage, similarly to the way it is done for others, so that they do not slip below a certain percentage of any increase in the average wage.

This method of indexation makes a lot more sense and it is ridiculous that the government has not been prepared to budge on this issue. The current indexation arrangements have meant that military superannuation pensions are 35 per cent lower than they would have been if they had been linked to wage based indexation, such as the male total average weekly earnings, 20 years ago. This gap of 35 per cent works out to be an enormous amount of money and it would make a real difference to veterans. By not changing it, we not only seriously erode the standard of living for people relying on the payments but also send a terrible message that this is the way the government treats people who have given their all for Australia. This bill is about giving a fair go to those Australians who have put their lives on the line.

Now here is a key question: why should politicians have their superannuation payments indexed more generously than our
veterans? I will say that again. Why should politicians have their superannuation payments indexed more generously than our veterans? Why should Federal Court judges have their pension payments indexed to increases in judicial salaries but military personnel have their payments linked only to CPI? Why should veterans be worse off compared to others? How does this possibly make sense? Clearly the sensible thing is for military superannuation pensions to keep pace with community income standards.

I understand from talking to others in the Senate that clearly the numbers are not going to be there to support this bill and I do not want to see this bill go down. There is a proposal for this bill to be sent to a committee, which may gain further support. I will reluctantly support an inquiry into this bill, hoping that we can then get the numbers to support this bill once the inquiry has finished and the committee has reported back to the Senate.

Senator HUMPHRIES (Australian Capital Territory) (11.26 am)—I rise to speak in support of the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010 and to welcome very warmly the fact that this bill has come before the parliament. An opportunity is created by it being before the parliament to remedy an omission in the support that we as Australians give to those people who have served us, in war and in peace, in uniform. The question of fairness for those who have served Australia in a variety of ways has been an issue before this parliament for a number of years. As a member of this place, I have been disturbed by the fact that we use different tests and different criteria for deciding what level of financial support people deserve, having spent a number of years in service to this community.

I note that we generally honour Australians who are in need of financial support in their retirement with an age pension and that this pension is indexed according to a number of tests. The intention is that the pension improves each year, or each time it is indexed, according to a measure which increases the pension by at least the amount by which the consumer price index has increased. I note that will use a different test with respect to those people who have served the Australian community in a more direct way, in a sense, through service to the Australian government, either as public servants or as people who serve in uniform. It is difficult to discern a logical basis for that distinction. It is difficult to explain to people who have taken particular steps to serve the Australian community in certain ways, often for long periods of time, why the effective rate at which their financial support increases is lower than it is for people who have not served the community in that same way.

This bill before the Senate today takes an important step towards addressing that general level of inequity. It addresses those people who belong to the DFRDB Scheme and provides for an improved level of indexation, reflecting not only increases in the consumer price index but also increases in the pensioner and beneficiary living cost index and the male total average weekly earnings. It increases their pensions by whichever is the highest of those three on a biannual basis. It is an extremely important development, one that honours properly those people who have served Australia in that particular way of donning a uniform, but it also acknowledges that there is a task ahead of us as a nation to redress a number of problems with respect to the justice we provide to those people, to whom we owe a special obligation.

There are many signposts which have pointed us in this direction, many things which have suggested very strongly that ac-
tion of this kind needs to be taken. I do not wish to exclude anything of significance in this debate but to mention particularly the work of several Senate select committees on superannuation, chaired by our now retired friend from Tasmania Senator John Watson, who worked on this for a very long period of time as a senator in this place, and at least partially with this bill the work that he was doing has been addressed.

I do not propose to speak much longer except to make the point that it is extremely important that this parliament understand how dependent Australians are in retirement when they are recipients of government benefits and that constitutes the entirety or a very substantial part of their income in retirement. It is extremely important for us to make sure that we do not let them down and see a decline in their standard of living when they are entitled to expect much more. This bill goes an important way towards dealing with that, I commend it to the Senate.

Senator HURLEY (South Australia) (11.31 am)—I, in common with many Australians, have family and friends who have given military service to this country and know the sacrifices that not only those individual personnel make but their families make. Military life can be quite difficult on families as military personnel get moved around the country and overseas, and their partners and children have to keep up with that. It often means that military personnel do not buy a house or settle down in one particular area until they retire. That has financial implications. So I have great sympathy with the notion that military personnel should be more than adequately compensated for the service that they give to their branch of the armed forces and to the country generally.

I understand that this is a very contentious issue, and I understand the attitude of the Labor Party when talking to military personnel in making an undertaking to examine this very carefully and look at any ways that their superannuation could be supported. There is no doubt in my mind that on this kind of pension, where you only get the CPI increase, over a relatively long period of time the value of that pension could get eroded to some extent. So it is an issue that deserves serious consideration and to be looked at carefully.

The Matthews report did indeed do that. It looked very seriously at it. It was a substantial review into the indexation of all Commonwealth pensions. Trevor Matthews, the author of the review, said that:

Superannuation pensions are a retirement income related to prior employment. These pensions are not based on need, just as the salaries on which they are based are not linked to need. Those receiving superannuation pensions who are over pensionable age are able to supplement their retirement income with the age or service pension, if they meet the relevant qualifying and eligibility tests.

The opposition argues that the CPI indexation is not sufficient. However, this does not support Mr Matthews’s findings, and the advice to the government from Mercer Australia and the Australian Government Actuary is that it is irresponsible to propose Senator Johnston’s amendment on a fiscal level. That is what I want to explore a bit. There is willingness on both sides to address this issue, but the fact of the matter is that we have to operate within our budget and within the bounds of fiscal responsibility. In this and the previous parliament we have seen the opposition propose to make drastic cuts and deferrals on a range of programs while having this bill, the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010, and another sitting in parliament proposing additional spending. The thing is, as we on this side of the parlia-
ment keep pointing out, you cannot have it both ways. You cannot constantly knock back bills proposing spending cuts or program cuts by this government and then put up additional spending measures. It is completely nonsensical.

This was not the only bill introduced. Senator Nash also proposed the Social Security Amendment (Income Support for Regional Students) Bill 2010, which contained another $317 million over four years. There have been a couple of propositions by the opposition on how these bills of theirs might be funded, but it has been comprehensively shown by government ministers and independent advice, such as from the Australian Government Actuary, that these are entirely incompetent propositions from the opposition and that the proposals that they have put forward for funding their measures or for substituting for cuts have been wrong either in actual numbers or in policy.

One of the measures proposed was the deferral of water buybacks for the Murray-Darling River system. I have not heard South Australian opposition members stand up and oppose this, but I presume they did; I hope they did in their party room. That deferral of buybacks from the Murray-Darling River system would have postponed once again an urgent issue. This is the kind of proposal we have seen from the opposition to fund their program. It is hardly surprising given that the Liberal-National opposition went to the election last time with a budget black hole of $10.6 billion. Labor, fortunately, was able to form government, because it seems that the Labor Party is the only one committed to responsible economic management.

I know that the Liberal-National Party continue to see themselves as responsible economic managers living off a surplus generated by the Howard-Costello government but, in the absence of former Prime Minister John Howard and former Treasurer Peter Costello, they have shown themselves as being a very irresponsible economic party. It is interesting to see what happened. Either they had a very good leadership and a very poor remainder or being in opposition has such a poor effect on their collective economic judgment that we have seen the sorts of propositions put forward by the opposition.

The opposition’s proposal to reduce growth in civilian numbers in the Department of Defence, including the DMO, over the forward estimates is such a vague, fuzzy and uncosted proposal that even the people who are proposing this change would see it as almost unachievable. The fact of the matter is that the Department of Defence is increasingly reliant on civilians to perform a variety of support functions, but those support functions are not non-essential functions; they are key functions very critical to the operation of the Department of Defence.

There is no shortage of sympathy on this side of the house for what superannuants are saying. The government has certainly looked seriously at it and is proposing ways to address efficiencies in the management of the superannuation system and in the way that there are returns to current superannuation so that there is a reasonable level of superannuation for these military personnel. The establishment of the independent review of pension indexation arrangements and the report that looked into the issues of changing the current consumer price index methodology led to recommendations that pensions from the Australian government civilian and military superannuation schemes should be continued to be indexed against the effects of inflationary price increases, which is very important, but that the same measure of indexation should continue. So again I emphasise that government members are sympathetic, but we must do everything within the
context of budget restrictions. It would be no

good for superannuants to have a budget that
collapses and an economy that is failing.

Senator RONALDSON (Victoria) (11.41
am)—I am pleased to rise to speak to the
Defence Force Retirement and Death Bene-
fits Amendment (Fair Indexation) Bill 2010.

I will keep my comments very short today
because I do want to see the second reading
amendment dealt with. I would say two
things. The first thing is: how can this cham-
ber not finalise this matter today and give
some certainty to those 30,000 people who
are being screwed by a system that makes
them a different person from an age pen-
sioner and that makes them a different per-
son from a service pensioner? How can that
be fair? Having had one false start in relation
to this bill, how can we walk out of here to-
day and not have this matter finalised? This
is about fairness. It is about equity.

I am afraid the Minister for Finance and
Deregulation, Minister Wong, did not say
one single thing about this bill today. She did
don’t talk about the implications of this bill.
The Parliamentary Secretary for Defence,
Senator Feeney, will stand condemned by his
own constituency for spitting in the eye of
these superannuants. He has today spat in the
eye of his own constituency. I will excuse
Senator Wong to a certain extent; she is fi-
nance minister. Senator Feeney came in here
today and spat in the eye of his constituency.
When we walk out of here today, as we will,
not having finalised this matter, it will be a
great shame for this chamber. We know that
the Australian Greens support this indexation
bill, we know that Senator Fielding supports
this indexation bill and I suspect that Senator
Xenophon is more inclined to support the
equity in this bill, yet we are walking out of
here today without a decision.

The decision is an easy one. Let us give
these people the same rights that age pen-
sioners have. Let us give these people the
same rights that service pensioners have. It is
not rocket science; it is simple. There will be
a lot of people listening today who will say,
‘Why is this not being dealt with?’ We have
provided offsets. The coalition provided off-
sets before the last election. That has been
reinforced today. I will talk about this be-
cause I know what the numbers are and I
know that we will not get this dealt with to-
day. It is a disgrace.

Minister Wong quotes the Government
Actuary. Minister Wong, it might be a sur-
prise to you that I actually had this informa-
tion before you sent it to me and I also had
some information sent to Minister Snowdon
where the same thing was identified. The
Actuary made it quite clear, and I will quote
these figures, Senator Wong, because you
refused to do so in your answer the other day
and indeed in your letter to me. I will read it
and I hope that Senator Brown, Senator
Xenophon and Senator Fielding are listening
to this and look at what the Actuary said. The
Actuary said: ‘Fiscal balance figures are
used for accrual accounting purposes. They
are also mandatory for cabinet submissions.
However, great care should be exercised
when using fiscal balance figures for deci-
sion-making purposes, particularly in the
area of unfunded superannuation arrange-
ments. It is important to note there is no di-
rect relationship between the fiscal balance
results and the total cost of the benefit im-
provement other than in the first year of the
projection.’ So the $1.7 billion figure has
been blown out of the water.

If I go over the page, Mr Burt, the Actu-
ary, said—

Senator Wong—Why don’t you talk to
Peter Costello and see what he thinks about
it? You introduced this.

Senator RONALDSON—I can see that
Senator Wong knows that she has been
caught out in relation to this $1.7 billion figure. I will repeat another comment from the Actuary: ‘The expenditure is shown in nominal dollars and it has not been discounted to give a present value.’ Minister Wong, why did you not actually refer to and expand on what the Actuary told you in the document that I received? If you look at the information given by Defence to Minister Snowdon, you will see that the figures being quoted, Defence’s own figures, are indeed different to yours.

I plead with the chamber to get these matters dealt with today to give these people some fairness and to give them the same opportunities that age pensioners have and service pensioners have in relation to indexation. I congratulate the shadow minister for defence science, technology and personnel, Stuart Robert, for the enormous amount of work that he has put into this. He is owed a great debt of gratitude. It is now up to the chamber to legislate this private senator’s bill and to give these people the opportunity and the indexation they deserve.

The ACTING DEPUTY PRESIDENT (Senator Moore)—The question before the chamber is that the amendment moved by Senator Johnston be agreed to.

Question agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.47 am)—I move:

At the end of the motion, add “but:

(a) the Senate is of the opinion that these reforms should be funded through a reconfigured mining resource rent tax, as recommended by the Treasury, that would generate sufficient additional revenue to cover the costs; and

(b) a message be sent to the House of Representatives informing it of this resolution and requesting its concurrence in the resolution”.

Question put.

The Senate divided.  [11.52 am]

(The President—Senator the Hon. JJ Hogg)

Ayes……………  5
Noes……………  49
Majority………  44

AYES

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

NOES

Adams, J.       Arbib, M.V.
Back, C.J.       Bernardi, C.
Bilyk, C.L.      Birmingham, S.
Bishop, T.M.     Boyce, S.
Brandis, G.H.    Bushby, D.C.
Carr, K.J.       Cash, M.C.
Colbeck, R.      Collins, J.
Crossin, P.M.    Eggleston, A.
Farrell, D.E.    Feeney, D.
Ferguson, A.B.   Fielding, S.
Fifield, M.P.    Fisher, M.J.
Forsyth, M.G.    Fysh, D.
Hogg, J.J.       Humphries, G.
Hurley, A.       Johnston, D.
Kroger, H.       Ludwig, J.W.
Lundy, K.A.      Macdonald, I.
Marshall, G.     McEwen, A.
McLucas, J.E.    Minchin, N.H.
Moore, C.        Nash, F.
O’Brien, K.W.K.  Parry, S. *
Pratt, L.C.      Ronaldson, M.
Ryan, S.M.       Scullion, N.G.
Stephens, U.     Sterle, G.
Wong, P.         Worley, D.
Xenophon, N.     

* denotes teller

Question negatived.

Senator XENOPHON (South Australia) (11.56 am)—I move the amendment standing in my name on sheet 7030 revised:

At the end of the motion, add “and the bill, together with the amendments circulated by Senator Ronaldson on sheet 7027, be referred to the Finance and Public Administration Legislation
Committee for inquiry and report by 10 May 2011”.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (11.56 am)—I move the amendment, as circulated on sheet 7059, to Senator Xenophon’s amendment:

After “sheet 7027”, insert “and proposed mechanisms for funding the bill”.

**The PRESIDENT**—The question is that Senator Brown’s amendment be agreed to.

Question agreed to.

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

The Senate divided. [12.02 pm]
(The President—Senator the Hon. J.J. Hogg)

Ayes…………. 33
Noes…………. 31
Majority…….. 2

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

**NOES**
Abetz, E. Adams, J.
Back, C.J. Bernardi, C.
Birmingham, S. Boyce, S.
Brandis, G.H. Bushby, D.C.
Cash, M.C. Colbeck, R.
Coonan, H.L. Eggleston, A.
Ferguson, A.B. Fifield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J.J. Nash, F.
Parry, S. * Ronaldson, M.
Ryan, S.M. Scullion, N.G.
Troeth, J.M. Trood, R.B.
Williams, J.R.

* denotes teller

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

**BUSINESS**

**Rearrangement**

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (12.05 pm)—by leave—I move:

That, on Thursday, 24 March 2011:
(a) the hours of meeting shall be 9.30 am to 6.30 pm, and 7.30 pm to adjournment;
(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
(c) immediately after motions to take note of answers, the routine of business for the remainder of the day shall be as follows:
   (i) tabling and consideration of a report of the Selection of Bills Committee,
   (ii) tabling of Clerk’s documents,
   (iii) committee memberships,
   (iv) government business order of the day no. 3 (National Broadband Network Companies Bill 2010 and Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2011),
   (v) government business order of the day no. 7 (Appropriation Bill (No. 3) 2010-2011 and Appropriation Bill (No. 4) 2010-2011), and
(vi) government business order of the day no. 8 (Issues from the Advances under the annual Appropriations Acts);
(d) divisions may take place after 4.30 pm;
(e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed in paragraph (c); and
(f) if the Senate is sitting at 10 pm, the sitting of the Senate be suspended till 9 am on Friday, 25 March 2011.

I wish to take the Senate through the motion so that there is clarity. What the motion seeks to do is amend the hours for today so that we sit from 9:30 to 6:30 pm, then have an hour for dinner and then resume at 7.30 pm and continue until adjournment. We will continue to consider general business and committee reports. In addition to that, immediately after the motions to take note of answers today—so there will be question time and then the motions to take note of answers—the routine of business for the remainder of the day will be as laid out in the motion. It will include the tabling and consideration of reports—in other words, the bibs and bobs that the Senate would normally undertake and the tabling of the Clerk’s documents, as I understand that it is important to do that.

Then there will be government business order of the day No. 3, the National Broadband Network Companies Bill 2010 and the Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2011. Then we will move to government business order of the day No. 7, Appropriation Bill (No. 3) 2010-2011 and Appropriation Bill (No. 4) 2010-2011. Then we will move to government business order of the day No. 8, issues from the advances under the annual appropriations acts. That will be collectively called ‘the appropriations bills’. Divisions may take place after 4.30 pm. In addition to that, the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed in paragraph (c) of the revised motion that I have just moved.

In addition to that, if the Senate is still sitting at 10 pm this evening, the sitting of the Senate will be suspended until 9 am on Friday. I have also been asked to include that if it were to continue substantively into the remainder of Friday then, by agreement, we would suspend for one hour for lunch and one hour for a dinner break. We would then suspend at 10 pm on the Friday and resume on the following day, which would be the Saturday, at 9 am, and continue on that same program until those bills are completed—if that is clear.

I will provide some explanation for this unusual circumstance. The revised hours are because, if the NBN bills are not passed today, it is a minimum of seven weeks before they can be passed, which would—

*Opposition senators interjecting—*

**The ACTING DEPUTY PRESIDENT (Senator Moore)**—Order! Senators on my left, we need to get the motion heard and then you can go into debate.

**Senator Ludwig**—Telstra have indicated that they cannot proceed with the preparation of the EGM to ratify the NBN Co.-Telstra deal until this legislation is finalised. The government views these bills as urgent and they need to be completed. This week the time frame for completion of the deal is affected by a number of interrelated factors. Telstra and NBN Co. do need to finalise definitive agreements and the ACCC will need to consider Telstra’s structural separation undertakings. By way of explanation—

*Opposition senators interjecting—*

**The ACTING DEPUTY PRESIDENT**—Order! Senators on my left: we have already had a notice from the chair that we need to
hear this. I am asking you to desist from yelling across the chamber.

Senator LUDWIG—In addition, the ACCC have an eight-week minimum period to examine the agreement. This includes a period of public consultation. Both the government and Telstra have indicated that the definitive agreement, once settled, will be reviewed by respective independent experts before being put to final shareholder approval. The Corporations Law requires notification of all shareholders. The preparation of documents and minimum legal requirements require eight weeks to proceed. This period cannot, of course, begin until the ACCC has endorsed the proposed agreement. Telstra have recently postponed the EGM from 1 July, the date they originally announced for shareholders to consider the agreement. This continued uncertainty is causing concerns for Telstra’s one-million-plus shareholders. This is about ensuring we provide shareholder clarity around the future of this company. In the longer term—

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Ludwig, I am going to try again. I cannot hear the minister putting the motion, so could senators on both sides desist from yelling across the chamber.

Senator LUDWIG—In the longer term the deal will fundamentally transform the competitive dynamics of the Australian telecommunications sector. The full structural separation will be achieved when Telstra migrates its customers to the wholesale-only NBN and decommissions its copper network.

This does provide us with an opportunity to ensure that we can pass this legislation, put this agreement and ensure that we have all the preparatory work done so that it can proceed. That is the reason for asking the Senate today to deal with this before we go home. I do understand that senators will have made arrangements. I do appreciate the ability of the Senate to deal with this expeditiously. The legislation and the motion will permit us to focus on finalising the second reading amendment and the committee stage as soon as possible so that it can be forwarded to the House of Representatives.

I will not delay the Senate any longer. The longer I talk the less opportunity will be provided for those opposite and on this side to debate the substantive matters that are associated with the bill.

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (12.12 pm)—This motion is yet another demonstration of this government’s absolute incompetence. The government’s administrative incompetence and their policy incompetence are very well known. I think what is less appreciated is this government’s legislative incompetence, their inability to manage the parliamentary program in both the House and the Senate. This failure to manage the legislative program is all the more amazing when you consider just how thin this government’s legislative program is.

You would remember, Madam Acting Deputy President, how this current government fought and scratched, how they huffed and puffed, how they pulled every trick in the book to try and form government after the last election. And you would assume that, when a party fought so desperately to form government, fought so hard, that they would have a significant legislative agenda, that they would have a program for the nation, that they would have significant reforms which they wanted to implement through the parliament of Australia. That is what you would think. But if you look through the legislative program of this year and last year you would be surprised. At the end of last year the great legislative item which this parliament passed, at the behest of this govern-
ment, was the national weights and measures
act. When you look through the agenda at the
end of last year for the most significant piece
of legislation that government had fought for
and come into office to pass, it was the na-
tional weights and measures act. As you look
down the list of bills this year, you would be
hard pressed to find the answer as to why
they fought so hard to get back into office.
The answer, we know, cannot be the carbon
tax, because this government did not go to
the polls with a carbon tax.

Senator Abetz—They campaigned
against it!

Senator Fifield—As Senator Abetz
said, they actually campaigned against it. So
we know the carbon tax was not the reason
that the government fought so hard to form
office and was not a piece of legislation that
they desired to put through this place. But I
think the answer you find when you look
down the legislative program as to why the
government fought so hard to get here—and
the answer that those opposite would usually
give, and Senator Conroy would give—
would be the NBN legislation. That is per-
haps the most significant reason for being for
this government.

So the opposition were pretty surprised on
Monday. We were here and we were ready to
going on the NBN legislation. Senator Birming-
ham was champing at the bit to get into this
legislation. He had been up all night prepar-
ing and had had little sleep. He was dream-
ing of the opportunity to get stuck into this
piece of legislation. And guess what: there
we had the iconic, emblematic piece of legis-
lation for the Australian Labor Party, the
NBN legislation, and they were not ready.
The only thing you could point to as a reason
for being for this government and they were
not ready. That was on Monday.

That brings me to Tuesday, when, again,
the opposition was ready to go. Senator
Macdonald was primed and excited and
champing at the bit. You could see Senator
Macdonald bursting to get out of his seat to
get stuck into the NBN debate. Senator Mac-
donald was ready but you will be amazed to
know that again the government was not
ready. No, they had amendments that they
had to take to caucus.

So, we come to Wednesday. When
Wednesday came around, Senator Fisher was
beside herself with excitement ready to get
into this debate—she still is—and guess
what: Senator Conroy advised the opposition
that he was not ready. And then around mid-
day yesterday we found that five pages of
amendments to this legislation had been
lobbed into the parliament. Then, around 3
pm on Wednesday, 20 pages of amendments
were lobbed into the parliament—making 25
pages of fresh amendments—and all of a
sudden the bill becomes urgent. All of a sud-
den it has to pass through parliament straight
away, at the earliest opportunity. It becomes,
theoretically, what it always was: the most
crucial piece of legislation in the govern-
ment’s agenda. These 25 pages of amend-
ments fundamentally change this legislation.
The amendments are causing great concern
to Telstra and to Optus. They fundamentally
change the role of the ACCC. They are huge
and material changes and they deserve ap-
propriate scrutiny. They deserve to be stud-
ied carefully. This parliament and this Senate
should do its job to scrutinise those 25 pages
of amendments that were lobbed into the
parliament only yesterday. The opposition is
determined to perform that critical function.

The opposition has been ready, willing
and able from Monday to deal with this legis-
lation, and we still are. But we are in this
situation today for two reasons. The first is
that the government has proven time and
again that they cannot manage their legisla-
tive agenda. The second reason that we are in
this situation, and it is a reason that com-
pounds the first, is that this government did not allocate enough sitting days. Even with the thin legislative agenda that they have, they cannot manage that within the sitting days that we have. We said at the outset of the parliament that the government should have scheduled more sitting days. Already we are finding ourselves in the situation where the government’s legislative agenda is out of control.

We know that the cry from those opposite, as it always is, will be that somehow this situation that we find ourselves in is the opposition’s fault—that the opposition has been delaying; that the opposition has been obstructing; and that the opposition is not undertaking scrutiny. That is always the cry from the other side to cover their incompetence and maladministration. But it is not true. We are a constructive and positive opposition. We liaise carefully and closely with all parties in the chamber to make sure that this Senate runs efficiently and well. That is what we do on this side of the chamber. But despite all the goodwill on this side and despite the constant communication, still this government cannot manage their legislative agenda. We will not cop for one second any suggestion that the situation we are in today is the fault of anyone other than those on the other side.

I do have a slight degree of sympathy for Senator Ludwig, because I think it is Senator Conroy who has put Senator Ludwig in this position—Senator Conroy’s absolute incompetence. NBN is shaping up as the biggest debacle of this parliament, and that is a big call. There were plenty in the last parliament—pink batts and school halls—but I think this parliament’s signature debacle will be the NBN. If Senator Conroy cannot manage this legislation, how on earth is he going to manage the policy and legislation if it actually gets passed?

We are not going to cop the blame for this situation. It stands fair and square with the government. We will be opposing this motion. There is no need at all for the parliament to be in this situation. But if, as looks likely, this motion does succeed with the support of others in the parliament, we are ready, willing and able to be here for as long as it takes to provide adequate scrutiny. We should not be in the situation of having this important legislation crammed into the last day. It should have been dealt with earlier. It is the government’s fault but we stand here ready, willing and able to apply the scrutiny. Senator Birmingham will be leading in that. We will be opposing this motion.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (12.21 pm)—Those opposite once again demonstrate their credentials that they are about demolishing the NBN. They have set themselves the task to demolish the NBN. They stand here and shed crocodile tear after crocodile tear. They will complain. But they have, for a year and a half, consistently filibustered these debates at every single stage.

Senator Back—You are doing it well. You do not need our help.

Senator CONROY—I will take that interjection from over there. Why don’t you spend some time in Geraldton with those people who now have a genuine broadband service because of the development of the National Broadband Network? People are now, for the same price, getting ten times faster speeds and double the downloads. To those Western Australian senators I say: go to Geraldton. To those Tasmanian Senators opposite I say: go and talk to the people using the NBN in Tasmania. They will tell you that they are getting a fantastic service. The school in Tasmania that used to pay $60,000
for the same connection it gets today now pays $1,400. That is $58,000 that it can spend on educating kids because that money now is not going to Telstra. The educational experience of those kids has been enhanced enormously. But the Luddites over there—the self-confessed ‘I’m no Bill Gates’—demonstrate every day that they are about nothing more—

Senator Ian Macdonald—Madam Acting Deputy President, I rise on a point of order. Would you please draw the speaker’s attention to the motion before the chamber, which is about sitting hours? This minister is debating the legislation that we are extending the sitting hours for. He is filibustering to stop us getting on to that legislation. So would you draw his attention to the motion rather than debating the issue that is going to be debated later.

The ACTING DEPUTY PRESIDENT (Senator Moore)—Thank you for your assistance, Senator Macdonald. In Senator Fifield’s contributions he ranged quite widely, so I am giving Senator Conroy equal access. But I will draw his attention to the question. We are looking at the question of hours. Senator Conroy, your attention is so drawn.

Senator CONROY—Thank you, Madam Acting Deputy President. I accept your ruling. Senator Fifield made a broad range of points right across the portfolio, but the one thing that the other side do not want to do is use the extension of hours in this chamber to actually talk about how people are being affected and how people are going to have their broadband experiences improved—cheaper prices and faster speeds. They do not want an extension of hours, because they know they cannot justify denying Tasmanians. They know they cannot justify denying Western Australians, and they know—

Opposition senators interjecting—

Senator CONROY—They can interject all they want. They want to hide from the fact that Mr Abbott gave them one mission only: demolish the NBN. They want to make sure that those customers in Tasmania have their prices soar and their speeds reduced. The hours needed to finish this debate are critical. Fundamentally, as my colleague Senator Ludwig has indicated, Telstra shareholders want an end to the farce of this parliament. They want an end to your filibustering, they want an end to the uncertainty you have been hanging over their heads for 12 months. You have filibustered your way through the parliament. You have not even allowed bills to be debated. This extension of hours is vital to end the uncertainty that you have been creating for Telstra shareholders. Your conduct in this chamber is disgraceful, absolutely disgraceful. You have sought to increase, at every stage, the uncertainty for Telstra shareholders. The board of Telstra wants to bring on the extraordinary general meeting to vote on the deal, and you are stopping it. Those opposite, by opposing this extension of hours, are continuing to hang this uncertainty over Telstra shareholders’ heads, and they should be ashamed of themselves.

Senator ABETZ (Tasmania) (12.26 pm)—If ever the Australian people wanted a display of a government in disarray, they have seen it early this afternoon in a motion moved by the Manager of Government Business in the Senate. This is a government that has set a very, very short timetable for parliamentary sittings. This is a government that had the National Broadband Network legislation on the red—which is, for want of a better term, the Senate agenda—on Monday. We were ready to debate it on Monday, with Senator Birmingham making a very, very good contribution at 10 am on Monday morning. Why was the bill not progressed?
Senator Conroy comes into this place and asserts that the bill was not progressed because of opposition filibustering. That is false, untrue and incorrect. It was the Labor government that pulled this legislation off the agenda. They refused to continue the debate. We now know why. It was because they were in disarray. They had to get these 25 pages of amendments, which were dumped on the table at 3 o’clock yesterday afternoon. The Greens and others who always say that this Senate is the place that ought to analyse matters very carefully—that we have to exercise due diligence—are now prepared for these 25 pages of amendments to be rushed through this place without proper analysis and examination.

Some of the matters in these amendments are of considerable note. Indeed, it was once again interesting to hear from the minister responsible for this debacle, Senator Conroy, what a Telstra board wanted and what other people wanted. Telstra and Optus are both on the record as having indicated a deep concern with division 16 amendments, which essentially opened the way for the NBN to almost entirely cut out the ACCC from supervising some of its most important operating decisions. Telstra and Optus are expressing concern. So why does the government want to rush this through? It is so that the community and the companies will not have the capacity to inform the Australian people—especially the crossbenchers—of their concerns about these amendments. They want it rushed through so that there cannot be a genuine and proper community debate.

We in this opposition are concerned that the NBN, like pink batts, like border protection, like everything this government touches, has turned from gold to dust. That is what happens with this government. No matter what it touches, it ends up as a debacle. Here it had legislation pulled that was allegedly so important, and now there are 20-plus pages of amendments that we are supposed to deal with in less than 24 hours. I wonder if the delay in the government putting these amendments on the table is because it needed the permission of the Australian Greens to be able to progress and proceed with these amendments. I do not know what the reason is, but it is a disgrace, and it shows a government that, might I add, cannot even keep the numbers that it is required to in this chamber. The government has one Labor senator in this place as we speak. That is how importantly it treats the Senate. That is the sort of disrespect with which it treats the Senate. And yet it says we have to somehow take our responsibilities seriously. If the government took its responsibilities seriously, it might actually have two senators in their places as it is required to—and it is good to see a Labor senator finally strolling in to achieve that outcome.

The amendments are of fundamental importance to the NBN. We as an opposition are entitled to examine them very carefully and very closely. Another of the matters that the amendments will deal with is that the ACCC will lose any power over bundling of services by the NBN. The ACCC will lose any power over cross-subsidisation of services by the NBN. These are amendments of great and considerable moment, and this is a Labor Party and Greens alliance that now says, ‘Forget about the scrutiny; we just want to ram it through.’

We have seen a government in disarray over the last few years. Just when you think it might get better, it just gets worse. It unravels even further. The minister says that the NBN is providing double the download and faster speeds. It is a pity the minister cannot do that for himself in his own portfolio and come with these amendments in a timely period to this parliament so that we can actually examine them. Basically, I think he wants the broadband speed of just a dump
and run and not to be concerned with the consequences. Well, we will not cop it on behalf of the Australian people. The Australian people are now finding out every single day about this broadband debacle. Whilst it sounded good in theory during the last election campaign, as they are analysing it day by day they realise the huge faults with it. Indeed, these 20-plus pages of amendments considerably negate that which was in the original legislation. That is the concerning aspect of this. The government announces legislation with a whole host of fanfare and says, ‘This is good legislation that ought to be passed.’ It then takes it off the Notice Paper, has to give us 25 pages of amendments and then says it has to be rushed through.

This is a government that went to the Australian people saying ‘no carbon tax’. We are now going to be subjected to a carbon tax if it has its way. This is the same government that told us, ‘If there is a carbon tax, there will be huge tax deductions for average Australians,’ and it ran that line for a week. Today, courtesy of the newspapers, we now know that it will not be doing that either. That is why we as an opposition know that this government has form on misleading the Australian people day after day, week after week, month after month. The longer this government goes for, the more the Australian people are asking about its integrity.

This is just another example of why those questions are right and proper and should be asked. So we as an opposition will be opposing this legislation, and I can indicate to the government: if they want legislation by exhaustion, be our guest, because we will join them hour after hour, day after day if need be, because this is a matter of great moment. This should have gone to a Senate committee for the consideration of these 25 pages of amendments. If the government and the Greens conspire to ensure that that does not occur, we will undertake a very close examination—a very, very detailed examination—to ensure that the necessary matters are fully ventilated. But the proper way to do this would be to refer these pages and pages of amendments to the Senate committee for due consideration and report back to the Senate before we deal with the legislation. The opposition will be opposing the motion.

Senator LUDLAM (Western Australia) (12.36 pm)—I will speak very briefly on this motion because I think Senator Ludwig outlined the case for urgency, at least. Here we are at the end of March. For some reason which I still do not completely understand, the government scheduled a five-week recess in April, so the next time we convene will be for the budget in May.

Senator Humphries—Seven weeks.

Senator LUDLAM—No, the recess is five weeks. People talking of seven weeks are including this week and budget week. But we do—numbers aside—agree with the government that there are a whole heap of processes that are held back behind the passage of this legislation, which, let us recall, is the enabling legislation around the NBN. This infrastructure project is being built in the absence of the kinds of provisions that these bills seek to introduce—and that means a company working in a legislative vacuum, trying to put together an arrangement with Telstra for taking on their assets and their traffic.

The only thing I suppose that I should agree with Senator Abetz on in his comments a few moments ago is that these amendments are of substance. I am not going to stand here this morning and say that they are inconsequential and we should just wave them through. Senator Abetz and Senator Fifield before him spoke about how they would be here to provide scrutiny and analysis of these amendments. We will be here as well. I am not proposing legislation by exhaustion or by
attrition; I think that is an extraordinarily poor way to pass bills. But we will be here for as long as this debate takes because I do agree that these amendments have substance.

I will put on the record at this stage, without going into too much detail because I gather we are going to have plenty of time to go into the detail, that some of the amendments have been put forward as a result of negotiations with a large number of participants in the industry and are things that the Senate committee called for and that the Australian Greens have been calling for. Let us remember that this has not just happened overnight. There was an exposure draft of this bill in the public domain for a long period of time. A number of very important issues were resolved out of that process of delivering an exposure draft and now we have the legislation that is before us. Serious concerns were raised about the bill inside and outside of the committee process and now we have a package of amendments that attempts to address many of those concerns.

I will acknowledge that new concerns have been raised as a result of the package of amendments we have in front of us now, but it looks as though we are going to have plenty of time to debate those in detail. So we will be supporting this hours motion and I look forward to not being here on the weekend.

Senator IAN MACDONALD (Queensland) (12.38 pm)—When will the Greens and the Independents realise that they are yet again being duded by this government and by the incompetence of the minister in charge of communications? Can I take the Senate back to the last sitting days of last year. After doing nothing for most of the year because of the very light legislative program, suddenly in the last three or four days of the sitting, when everyone was looking forward to getting home for Christmas—plans had been made—we had this parliament sitting day and night to deal with that package of NBN legislation, not the one before us now but a different set of very important bills that were being amended as we were speaking in the chamber.

Yet here we are in exactly the same position now. We came into this chamber on Monday to debate the bill and to deal with it through the committee stage. We were here ready to go and then Senator Ludlam got up in his speech on the second reading and let the cat out of the bag that the bill we were then all debating, the one we had in front of us, the written legislation we had on our desks as we debated, was not going to be the bill that we were dealing with, that there were going to be pages and pages and volumes and volumes of amendments. So what we were debating on Monday was just not the bill that the government was eventually going to ask us to debate. And here we are on the last day of sitting before a five-week break—

Senator Humphries—Six weeks.

Senator IAN MACDONALD—I will take your word, Senator Humphries. Here we are with the longest break in this period of the year that there has ever been with any government. We have a six-week break and we are now in the last couple of hours of this time before the break dealing with 25 pages of most complex amendments to a most complex piece of the discussion.

This did go to a committee. Senator Birmingham, Senator Fisher and I were on that committee, as was Senator Ludlam. The majority report came out and of course the majority of the committee is government-Green alliance, so they recommended you go ahead, with some amendments. The coalition senators had a different view. The hearing of this legislation typically showed that Senator Conroy’s legislation was full of holes; it did
not hold water. The deals that had been made with Telstra and others were not accounted for in this legislation. So we had to have a whole new set of amendments. I have not seen the amendments. They only came out yesterday afternoon. I have been doing other things. I have not had a chance to look at them. I assume the other parties have, the stakeholders, but I certainly have not had an opportunity to deal with them. I hear around the traps that a couple of the so-called stakeholders are not very happy about the ability of NBN to enter into the retail market. Who knows? Already Telstra have said that their extraordinary general meeting that was going to be held by 1 July has now been postponed to September. From what I hear around the traps, it may not even be approved then. It simply demonstrates the fact that this whole NBN fiasco is just that, a fiasco. It is in shambles and as each day goes by people are more and more understanding that this is legislation that is completely wrong, is not well thought through and does not achieve the results that anyone thought, and yet we are going to have to try and debate it in the next couple of days.

I am surprised that the Greens are going along with this. I happen to know that, at the end of last year just before the Victorian elections, Senator Brown did not want to hang around the chamber because he wanted to get around and bask in the glory of the Greens victory in the Victorian election. Remember that?

Senator Birmingham—That did not work out so well.

Senator IAN MACDONALD—He had to stay here, but he made sure that he was able to get there.

Senator Birmingham—He may have been thankful.

Senator IAN MACDONALD—As Senator Birmingham says, he may have been thankful, because all of the bluff and bluster by Senator Brown on how well the Greens were going to do in the Victorian elections turned into nothing. The Greens actually went backwards in the Victorian election and I suggest that is probably what will happen on Saturday in New South Wales as well. But I know Senator Brown will be very keen to get there in the possibility of the Greens taking a couple of seats off Labor in Sydney. If they do, Senator Brown will not want to be stuck in this chamber here in Canberra away from the TV cameras when he could be down there.

All the pious arrangements the Greens made with Ms Gillard to guarantee her power—about openness, accountability, making parliament work and having the right sorts of times for debate—all of that piety from the Greens has really turned into abject and absolute hypocrisy. Here we are again: on a day when we not even supposed to be dealing with government business we have a couple of hours left to deal with some of the most important legislation that the Australian taxpayers will have to pay for in many a day. We are dealing with $55 billion of taxpayers' money and, yet again, as we did at the end of last year, we are going to rush through these 25 pages of complex amendments in a few hours. Certainly we are going to sit tomorrow. As far as I am concerned, we will be here Saturday and Sunday too, because the people of Australia deserve to have someone to look after their interests and the $55 billion of taxpayers' money that the Greens and the Labor Party are going to spend.

I do not want to be all criticism of the Greens because Senator Ludlam has some expertise on this. He makes no bones of the fact that the Greens, as the ultra-Socialist party, want the NBN to be government controlled and owned, and to stay that way permanently. I suspect, if Senator Ludlam had his way, that every business in Australia
would be owned by the government as well—that is the ultimate socialist platform. Certainly, as far as the NBN goes, Senator Ludlam makes no secret of that, but he has pointed out some of the stupidities. He has joined with us in exposing the fact that there will be no competition in this wholesale delivery of services. People are starting to wake up to that. The last time we did not have competition, back in the old Telecom and PMG days, we had an awful telephone system because there was no incentive to take the latest technology.

Senator Hanson-Young interjecting—

Senator IAN MACDONALD—Senator Hanson-Young, you may not have been alive when Telecom ran the telephone system, but I can guarantee you the system is light years in advance now of what it was then. Why? Because Telstra, Optus, Vodafone and all of the other telcos have been competing—they have been getting the latest technology and keeping prices down. But here we are going to have a government monopoly, and what incentive will it have to move forward later?

I see that Senator Ludwig is getting anxious about my speaking on the motion to extend the sitting hours that is before the chamber. He was not quite so concerned about Senator Conroy getting up and giving a 10-minute speech about the NBN bills. I do not want to do that. I just want to point out how inappropriate it is that even I have not yet had an opportunity to look at this very serious legislation. I claim no expertise on the NBN, but I have tried to very follow it through in its various forms over the last three or four years. I have not even seen the amendments—yet I am supposed to vote on this sometime in the next day or so?

Telstra is not going to make its final decision until September. Why do we have to deal with this today? Why not leave it until the June sitting? We still have five, six or seven months before Telstra is going to make any decision, and from what you hear around the traps Telstra is getting a bit uneasy about it all. So what is the hurry? Why deal with this now? Why not leave it until the June session and give us an opportunity to seriously look at the amendments? Give the stakeholders more of an opportunity to find the flaws because I guarantee that they will find flaws, as they have done with every piece of legislation that Senator Conroy has introduced. Senator Ludlam just said that he is not convinced that all 25 pages of amendments—which I was led to believe that he and the government put together—are true. I appeal to Senator Xenophon and Senator Fielding: what is the rush about this? Why are we doing now what we did at the end of the session last year? Remember last year? We rushed the NBN bills through. We sat all hours of the day and night. We are doing the exact same thing now. When are you ever going to learn that this mob in the Labor Party just take you for fools. They just dud you all the time. They pull the wool over your eyes and we get very poor legislation. The Manager of Opposition Business in the Senate has indicated our position on this motion and I support that position.

Senator BIRMINGHAM (South Australia) (12.50 pm)—This is an outrageous attempt by the government that shows their utter incompetence in managing the legislative agenda and in the management of this issue. The two bills that are the crux of the reason the government is seeking extended hours were first introduced into the House of Representatives on 25 November last year. Senator Conroy put these bills into the public arena on 25 November and they were then introduced into the lower house. There have been changes to one of them since then, but they passed the House on 1 March this year. The government have had ample opportunity to get their house in order and have failed
miserably to do so. We have seen just in the last 24 hours the government attempt significant rewriting of their own legislation. These delays to the debate, as Senator Fifield and Senator Abetz have eloquently outlined, are not of the opposition’s making. We have been ready to debate these bills at any moment over the last few days. We came here on Monday morning ready to debate the bills, but they were taken off the agenda by the government. The government then spent days messing around, drafting amendments to these bills to fix problems in their own legislation. These are problems that they have had not just days or weeks to fix but months to fix. They have had months to fix these problems because, I repeat, these bills were first introduced into the parliament in November of last year.

Now they come in here at the eleventh hour on the Thursday, when usually there is only a limited amount of time available for government business. They have known all week that if they let it drag on until Thursday there would be problems, but they have come in here and pleaded for extra hours, to keep us here tonight and to keep going tomorrow, to rush through consideration not of bills that have been examined by the committee previously, not of bills that were examined by the House of Representatives previously but of fundamentally different bills. They are fundamentally different because there are 28 pages of amendments to these bills—not just a couple of amendments but 28 pages worth. Within that there would be a couple of hundred or more changes to these bills. There are hundreds of amendments that they now suddenly want all senators to get their heads around.

Let us remember the significance of this. This is a $50 billion project, all of it funded one way or another by taxpayer debt, a debt that will be owned by the Commonwealth in some form, and they want us to rush it through just in the next few hours. They want us to rush it through tonight or tomorrow. They want us to rush it through without some decent consideration by the industries and sectors that will be impacted.

What should happen, as Senator Abetz rightly pointed out, is that this amendment should be referred back to the Senate Environment and Communications Legislation Committee. The committee that has looked at these bills should look at the amendments and should provide the key stakeholders—in particular, the telecommunication companies—with the opportunity to express their views. The government have got these bills so fundamentally wrong to date that there is absolutely no guarantee that there are not further mistakes in the 28 pages of hundreds of amendments that they are now trying to put through. If the Senate lets them get away with this and we spend the next couple of days debating these amendments and shunting this bill through, we will find that there are further mistakes, that the government have got it wrong in other ways. Then we will be back here again, at some stage, fixing the flawed agenda of the government.

These amendments are substantive enough that they should go back to the committee and they should go back because there are genuine concerns. The model that they are proposing is utterly different from the wholesale only model of the NBN that Senator Conroy has proclaimed it to be all along. The model that these amendments and this legislation will allow for will see NBN Co. selling services directly to large customers. In doing that, ultimately, if we let them get away with it, we will create yet another large, vertically integrated monopoly. If we let the government get away with it, they are going to recreate something that looks exactly like the company they are spending billions of dollars trying to dismantle—namely, of course, the old Telstra.
The telecommunication companies are expressing their concern about these amendments and, in particular, as Senator Abetz highlighted, the division 16 amendments. These amendments would largely cut the ACCC out from having input into the operating decisions on price discrimination, bundling of services and points of interconnection. This will utterly change the way NBN Co. and its operations are regulated. The amendments would utterly change it from the legislation that I spoke on in this chamber on Monday—legislation that the House has already considered—and utterly change it from the legislation that the Senate committee has considered.

So I urge the crossbenchers to recognise that these are fundamentally significant changes, that it would be grossly irresponsible of the Senate to not allow stakeholders the opportunity, firstly, to have some time to digest these changes, which were dumped on the Senate and the rest of the world only last night. We must give people the opportunity to digest hundreds of pages and, secondly, give them the opportunity to comment on them, to have some input into the decent process that the Senate is meant to pride itself on. Thirdly, we must allow the Senate committee to come back and provide the kind of rational, considered thought that led the government to adopt these 28 pages of hundreds of amendments in the first place.

If we do not do that, we are just allowing the government to treat the Senate with contempt, the telecommunication industry with contempt and, ultimately, the Australian consumer public with contempt. They will be saddled with not just the $50 billion of government debt for this NBN but all of the other problems that will come with a flawed process that allows NBN Co. to operate in a space that the government says it will not be in, yet which this legislation allows. It will be in the retail space, which will see the emergence of a company operating in a far more vertically integrated way than the government claims it wants, in doing so distorting and destroying the telco market in the future. The government should be willing to let consideration happen. There is a real question as to what they have to hide. I would urge the crossbenchers, if they believe in the primacy of the Senate and the primacy of the parliament, to reject these extended hours, to refer these amendments to a committee. We will come back. We will come back in a few weeks if you want. Senators may not like it, but let’s give it decent consideration rather than just trying to rush it through a few days.

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

The Senate divided. [1.02 pm]
(The President—Senator the Hon. JJ Hogg)

Ayes............ 35
Noes............ 32
Majority........ 3

Question agreed to.

AYES

Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Collins, J. Conroy, S.M.
Crossin, P.M. Farrell, D.E.
Faulkner, J.P. Feeney, D.
Fielding, S. Forshaw, M.G.
Furner, M.L. Hanson-Young, S.C.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Ludlam, S.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A. *
Mihe, C. Moore, C.
Polley, H. Pratt, L.C.
Sherry, N.J. Siewert, R.
Stephens, U. Sterle, G.
Wong, P. Wortley, D.
Xenophon, N.
The Clerk—A petition has been lodged for presentation as follows:

**Sisters of Charity Outreach**

To the Honourable President and members of the Senate in Parliament assembled:

The petition of the undersigned draws to the attention of the Senate the deep concerns of the people of Devonport and surrounding communities about the imminent closure of the Sisters of Charity Outreach grief and trauma counselling service, in particular the failure of the Commonwealth Government to assist Sisters of Charity Outreach to continue providing this vital mental health service.

Sisters of Charity Outreach provides an invaluable and unique counselling service to the Devonport region, specialising in grief and trauma issues and available to all in need regardless of financial circumstance.

Outreach has had Commonwealth funding since 2008 and has consistently exceeded client and counselling session targets whilst keeping within budget allocations.

We therefore request that the Senate support Senator Colbeck’s Motion:

That the Senate—

(a) Recognises the important, unique and successful service provided by Sisters of Charity Outreach to the Devonport Community;

(b) Recognises the strong desire of the Devonport and wider communities to retain this vital mental health service;

(c) Seeks that Prime Minister Julia Gillard meet her promise that a re-elected Labor Government would make mental health a priority;

(d) Seeks Government reconsideration of its decision not to extend funding for the Sisters of Charity Outreach service beyond the current four-year period; and

(e) Calls on the Government to provide $1.25 million over three years for this vital North West Tasmanian health service.

by Senator Colbeck (from 84 citizens)

Petition received.

**NOTICES**

**Presentation**

Senator Brandis to move on the next day of sitting:

That general business order of the day no. 54, relating to the Assisting Victims of Overseas Terrorism Bill 2010, be discharged from the Notice Paper.

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the humpback whale is listed as a threatened species,

(ii) human generated habitat degradation is identified as a major threat to humpback whales by the Department of the Environment, and Heritage’s *Humpback Whale Recovery Plan 2005-2010*,

(iii) the plan notes the following forms of possible habitat degradation:
(A) acoustic pollution, for example, commercial and recreational vessel noise and seismic survey activity,
(B) entanglement, for example, in marine debris, fishing and aquaculture equipment,
(c) physical injury and death from ship strike,
(d) built structures that impact on habitat availability and/or use, for example, marinas, wharves, aquaculture installations, mining or drilling infrastructure,
(e) changing water quality and pollution, for example, runoff from land based agriculture, oil spills, outputs from aquaculture, and
(f) changes to water flow regimes causing extensive sedimentation, and
(iv) building a gas hub at James Price Point, Western Australia, could result in habitat degradation for humpback whales who can typically be found along various parts of the Kimberley coastline for up to 9 months of the year from April to December; and
(b) calls on the Government to invest in more scientific research into the effect of development on the Kimberley coast on the humpback whale.

COMMITTEES
Selection of Bills Committee
Report

Senator McEWEN (South Australia) (1.06 pm)—I present the third report of 2011 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—
SELECTION OF BILLS COMMITTEE
REPORT NO. 3 OF 2011
1. The committee met in private session on Wednesday, 23 March 2011 at 7.35 pm.
2. The committee resolved to recommend—That—
(a) the provisions of the Customs Amendment (Anti-dumping Measures) Bill 2011 be referred immediately to the Economics Legislation Committee for inquiry and report by 22 June 2011 (see appendix 1 for a statement of reasons for referral);
(b) the provisions of the Intelligence Services Legislation Amendment Bill 2011 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 21 September 2011 (see appendix 2 for a statement of reasons for referral);
(c) the Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 16 August 2011 (see appendix 3 for a statement of reasons for referral);
(d) the provisions of the National Health Reform Amendment (National Health Performance Authority) Bill 2011 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 9 June 2011 (see appendices 4 and 5 for statements of reasons for referral); and
(e) the Tertiary Education Quality and Standards Agency Bill 2011 and Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011 be referred immediately to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 10 May 2011 (see appendices 6 and 7 for statements of reasons for referral).
3. The committee resolved to recommend—
   That the following bills not be referred to committees:
   Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011
   Electoral and Referendum Amendment (Provisional Voting) Bill 2011
   Midwife Professional Indemnity Legislation Amendment Bill 2011
   Trans-Tasman Proceedings Amendment and Other Measures Bill 2011.
   The committee recommends accordingly.

4. The committee deferred consideration of the following bills to its next meeting:
   Aviation Transport Security Amendment (Air Cargo) Bill 2011
   Child Support (Registration and Collection) Amendment Bill 2011
   Crimes Legislation Amendment Bill (No. 2) 2011
   Customs Amendment (Export Controls and Other Measures) Bill 2011
   Customs Tariff Amendment (2012 Harmonized System Changes) Bill 2011
   Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011
   International Tax Agreements Amendment Bill (No. 1) 2011
   Migration Amendment (Detention of Minors) Bill 2010
   Native Title Amendment (Reform) Bill 2011
   Product Stewardship Bill 2011
   Responsible Takeaway Alcohol Hours Bill 2010
   Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011
   Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011
   Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011
   Anne McEwen
   Chair
   24 March 2011.

APPENDIX 1
Proposal to refer a bill to a committee
Name of bill: Customs Amendment (Anti-Dumping Measures) Bill 2011
Reasons for referral/principal issues for consideration: There are significant (and growing) problems with Australia’s anti-dumping system. Senate Committee examination of this Bill could be complementary (or even concurrent) to the committee process already initiated for consideration of proposed changes to the wider anti-dumping regime through a related Private Senator’s Bill introduced by Senator Xenophon: Customs Amendment (Anti-Dumping) Bill 2011.
Possible submissions or evidence from: Similar for the submissions and hearings on Senator Xenophon’s Bill, including:
Representatives of companies in industries that are significantly impacted by anti-dumping legislation - such as the steel fabrication, paper, timber, food processing, cement/concrete and plastics and chemicals industries.
Industry associations, such as the Australian Industry Group (and the Trade Remedies Taskforce that is convened under its auspices), the Australian Chamber of Commerce and Industry, Australian Food and Grocery Council, Plastics and Chemicals Industries Association and Ausbuy.
Committee to which bill is to be referred: Senate Economics Committee
Possible hearing date(s):
Between late March and May/June 2011
Possible reporting date:
The Senate Committee process on Senator Xenophon’s anti-dumping Bill is due to report on 22 June 2011. A similar timetable for this Bill would be appropriate.
(signed)
Senator Parry
Whip/Selection of Bills Committee member
APPENDIX 2
Name of bill: Intelligence Services Legislation Amendment Bill 2011
Reasons for referral/principal issues for consideration:
Need to assess whether privacy issues, employment issues, the collection of foreign intelligence and the sharing of information with ADF have been assessed adequately.
The government has not provided the Bill with enough time to examine these complex issues adequately before weighing up considerations before referral, therefore referral is necessary.
Possible submissions or evidence from:
Australian Law Council
Castan Centre for Human Rights Law
Australian Privacy Foundation
Australian Commission for Law Enforcement Integrity
Committee to which bill is to be referred: Legal and Constitutional Affairs
Possible hearing date(s):
August 2011
Possible reporting date:
September 2011
(signed)
Senator Siewert
Whip/ Selection of Bills Committee member

APPENDIX 3
Name of bill: Migration Amendment (Detention reform and Procedural Fairness) Bill 2010
Reasons for referral/principal issues for consideration:
To look into implementing time-limits and procedural fairness on immigration detention.
Possible submissions or evidence from:
AHRC
Refugee Council of Australia
Amnesty International

APPENDIX 4
Name of bill: National Health Reform Amendment (National Health Performance Authority) Bill 2011
Reasons for referral/principal issues for consideration:
Governance, national standards and consistency, powers of authority. Possible submissions or evidence from:
John Dwyer, Lesley Russell, Stephen Leeder,
Committee to which bill is to be referred: Community Affairs
Possible hearing date(s):
April - June 2011
Possible reporting date:
June 9th 2011
(signed)
Senator Siewert
Whip/ Selection of Bills Committee member

APPENDIX 5
Name of bill: National Health Reform Amendment (National Health Performance Authority) Bill 2011
Reasons for referral/principal issues for consideration:
This Bill was the subject of a House Committee inquiry which held one brief public hearing to take evidence from the Department of Health and
Ageing. Eight organisations made submissions to that inquiry. Several expressed their willingness to appear to detail their views. Several of the key organisations have all expressed concerns about the lack of detail about how this proposed new National Health Performance Authority will operate. The Bill does not detail the very performance indicators that the Authority is established to monitor and report on. Additionally several organisations believe that data set should be specified before the Authority is formed, that it is made public and that it is presented to the Parliament as regulations which can be disallowed.

Possible submissions or evidence from:
- Australian Medical Association
- Australian Private Hospitals Association
- Catholic Health Australia
- Australian College of Emergency Medicine
- Australian College of Nursing
- Consumers Health Forum
- Business Council of Australia
- National Primary Health Care Partnership
- Australian General Practice Network
- Rural Doctors Association

Committee to which bill is to be referred:
COMMUNITY AFFAIRS

Possible hearing date(s):
To be set by committee

Possible reporting date:
21 April 2011

(signed)
Senator Parry
Whip/ Selection of Bills Committee member

APPENDIX 6
Name of bill:
Tertiary Education Quality and Standards Agency Bill 2011 and
Tertiary Education Quality and Standards Agency (Consequential Amendments) Bill 2011

Reasons for referral/principal issues for consideration: This is complex legislation with a number of issues on which many stakeholders have yet to have input.

There are a variety of issues which must be examined including a potential over-reliance on delegated legislation; allowing Universities to automatically self-accredit their own courses and the reservation of the name “Universities” to bodies which undertake research work.

Possible submissions or evidence from:
Private Higher Education Providers The Group of Eight
Universities Australia
Innovative Research Universities Australian Technology Network DEEWR
State Governments
Committee to which bill is to be referred:
Senate Standing Committees on Education, Employment and Workplace Relations
Possible hearing date(s):
To be set by committee
Possible reporting date:
1 July 2011

(signed)
Senator Parry
Whip/ Selection of Bills Committee member

APPENDIX 7
Name of bills:
Tertiary Education Quality and Standards Agency Bill 2011; and
Tertiary Education Quality and Standards Agency Bill (Consequential Amendments and Transitional Provisions) Bill 2011

Reasons for referral/principal issues for consideration:
Appropriateness of the regulatory environment for higher education established by the Bill.

Possible submissions or evidence from:
Universities Australia; Council of Private Higher Education; TAFE Directors Australia; Australian Council for Private Education and Training; staff and student associations
Committee to which bill is to be referred:
Senate Education, Employment and Workplace Relations Legislation Committee
Possible hearing date(s):
Matter for committee. Likely to require up to 1.5 days of hearings in Canberra.
Possible reporting date:
Tuesday 10 May
(signed)
Senator Parry
Whip/ Selection of Bills Committee member

BUSINESS
Rearrangement
Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (1.07 pm)—I move:
That the following general business orders of the day be considered under the temporary order relating to the consideration of private senators’ bills on Thursday, 12 May 2011:
No. 55 Wild Rivers (Environmental Management) Bill 2011.
No. 46 Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010.
No. 54 Assisting Victims of Overseas Terrorism Bill 2010.
No. 50 National Broadband Network Financial Transparency Bill 2010 (No. 2).
No. 17 Evidence Amendment (Journalists’ Privilege) Bill 2010 (No. 2).
Question agreed to.

NOTICES
Postponement
The following items of business were postponed:
General business notice of motion no. 199 standing in the name of Senator Cormann for today, relating to a proposed tax summit, postponed till 10 May 2011.

COMMITTEES
Rural Affairs and Transport References Committee
Meeting
Senator PARRY (Tasmania—Manager of Opposition Business in the Senate) (1.08 pm)—by leave—At the request of Senator Heffernan, I move:
That the Rural Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 4.30 pm to 6 pm, to take evidence for the committee’s inquiry into the Asian honey bee.
Question agreed to.

Economics References Committee
Extension of Time
Senator PARRY (Tasmania—Manager of Opposition Business in the Senate) (1.08 pm)—by leave—At the request of Senator Eggleston, I move:
That the time for the presentation of the report of the Economics References Committee on competition within the Australian banking sector be extended to 27 April 2011.
Question agreed to.

Community Affairs References Committee
Reference
Senator SIEWERT (Western Australia) (1.09 pm)—I move:
That the following matter be referred to the Community Affairs References Committee for inquiry and report by 18 August 2011:
The effectiveness of the special arrangements established in 1999 under section 100 of the National Health Act 1953, for the supply of Pharmaceutical Benefits Scheme (PBS) medicines to remote area Aboriginal Health Services, with particular reference to:
(a) whether these arrangements adequately address barriers experienced by Aborigi-
nal and Torres Strait Islander people living in remote areas of Australia in accessing essential medicines through the PBS;

(b) the clinical outcomes achieved from the measure, in particular to improvements in patient understanding of, and adherence to, prescribed treatment as a result of the improved access to PBS medicines;

c) the degree to which the ‘quality use of medicines’ has been achieved including the amount of contact with a pharmacist available to these patients compared to urban Australians;

d) the degree to which state/territory legislation has been complied with in respect to the recording, labelling and monitoring of PBS medicines;

e) the distribution of funding made available to the program across the Approved Pharmacy network compared to the Aboriginal Health Services obtaining the PBS medicines and dispensing them on to its patients;

(f) the extent to which Aboriginal Health Workers in remote communities have sufficient educational opportunities to take on the prescribing and dispensing responsibilities given to them by the PBS bulk supply arrangements;

g) the degree to which recommendations from previous reviews have been implemented and any consultation which has occurred with the community controlled Aboriginal health sector about any changes to the program;

(h) access to PBS generally in remote communities; and

(i) any other related matters.

Question agreed to.

**PARLIAMENTARY ZONE**

**Approval of Works**

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (1.10 pm)—At the request of Senator Ludwig, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone relating to the installation of artwork known as ‘The Prime Ministers’.

**Senator HUMPHRIES** (Australian Capital Territory) (1.10 pm)—Mr Acting Deputy President, I seek leave to make a short statement.

The **ACTING DEPUTY PRESIDENT** (Senator Trood)—Leave is granted for two minutes.

**Senator HUMPHRIES**—This is a motion to approve the erection of two statues in the Parliamentary Zone, one to former Prime Minister John Curtin and the other to former Prime Minister Ben Chifley. The opposition does not oppose this motion and believes it is appropriate to honour Australian Prime Ministers in the national capital. Works of this kind are appropriate in that sense. I do not particularly wish to question the judgment of the ACT government as a senator in funding this work—it is not a federal government funded work but an ACT government funded work—although as a taxpayer in the ACT I do have some misgivings about the priorities of the ACT government when we have the longest waiting times in the country in our hospitals and we cannot provide affordable housing to our citizens, but that is a debate for another place and another time. My concern with this motion and this process is that it seems to sideline the role of the federal
government and the federal parliament in determining systematically how Australia’s prime ministers will be commemorated within the Parliament Zone. This is a process that sees which prime ministers will be commemorated and how and when determined not by the federal government or by the National Capital Authority, for example, but by who comes through the government’s door with a proposal to erect a statue or other commemoration.

Senator Brandis—Why do only Labor prime ministers get statues?

Senator HUMPHRIES—Indeed, Senator Brandis, this will be the third statue that the ACT Labor government has erected to federal Labor government ministers. The first of course notoriously was the statue of Al Grassby. This process needs to be revised. It is not a good process and I think we should reconsider the way in which this is occurring.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.13 pm)—Mr Acting Deputy President, I too seek leave to make a short statement.

The ACTING DEPUTY PRESIDENT (Senator Trood)—Leave is granted for two minutes.

Senator BOB BROWN—I agree with Senator Humphries. I think there does need to be a review of where this process is going and what it ultimately means. Ought we not have a statue to all prime ministers and maybe several ministers as well? We need to have a strategy about this that is clearly understood, otherwise we have governments of the day selecting who they think is worthy of a statue in the national capital. It may well be that that is based on a political determination. In brief, it ought to be at arms length. Maybe there needs to be some independent authority looking at it. Otherwise it might be like Mount Rushmore—there is no end to it and nobody quite knows how to stop the process that is underway. So I agree with Senator Humphries that it does need some long-term strategy and some independence put into the process. I am not going to oppose the motion but I agree with Senator Humphries on this.

Question agreed to.

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

Senator SIEWERT (Western Australia) (1.14 pm)—I seek leave to amend general business notice of motion No. 221 standing in my name relating to the 20th anniversary of the report of the Royal Commission into Aboriginal Deaths in Custody in 1991.

Leave granted.

Senator SIEWERT—I move the motion as amended:

That the Senate

(a) notes that 15 April 2011 will denote 20 years since the release of the report of the Royal Commission into Aboriginal Deaths in Custody in 1991;

(b) draws attention to increasing and alarmingly high rates of incarceration of Aboriginal and Torres Strait Islander people, who are 14 times more likely to be incarcerated and represent 26 per cent of our prison population, despite representing less than 3 per cent of our total population and that between 2000 and 2010 their rate of imprisonment increased from 1 248 to 1 892 prisoners per 100 000 adults, as compared to a change from 130 to 134 non-Indigenous prisoners per 100 000 adults;

(c) raises concern at continuing disproportionately high rates of deaths in custody of Aboriginal and Torres Strait Islander people with 269 deaths in custody since the report in 1991, that is, nearly one in 5 of all deaths in custody;

(d) expresses concern that 20 years later the majority of the recommendations of the Royal
Commission have not been fully implemented; and

(e) calls on the Government to:

(i) consider the outcomes of current reviews underway into the implementation of the recommendations of the Royal Commission, undertake to report on progress and gaps, and map out further action, and

(ii) work with the states and territories to undertake an audit of standards and independent monitoring of places of detention and consider options to promote consistency across jurisdictions.

Question agreed to.

TASMANIAN FORESTRY NEGOTIATIONS

Order

Senator COLBECK (Tasmania) (1.15 pm)—I move:

That there be laid on the table by the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities (Senator Conroy) by 6 pm on Thursday, 24 March 2011, a copy of the interim report on the Tasmanian Forestry Negotiations prepared by Mr Bill Kelty, or if the Minister has not yet received the report, within 24 hours of receipt of the report from Mr Kelty.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.16 pm)—Mr Acting Deputy President, I seek leave to make a short statement.

The ACTING DEPUTY PRESIDENT (Senator Trood)—Leave is granted for two minutes.

Senator COLBECK—It is a little bit of a surprise to hear Senator Brown talk about this. I would have appreciated a call; I would have been happy to respond to that. I have considered the time frames. I do not believe that there is any impediment to releasing the information as soon as it becomes available. It is my view that the government, on receipt, should proceed to the release of this information promptly so that there is the capacity for all of those who have a significant interest in this—and I understand and recognise that the Greens also have a significant interest in the negotiations that are being conducted at the moment—to respond in a timely way.

There are already press reports of what might or might not be discussed. The Tasmanian Premier indicated yesterday that she would be receiving the documentation imminently. I think it is fair that we all receive it as quickly as possible. I do not think there is anything there that is going to cause any great consternation or need for government consideration. So, unfortunately, Senator Brown, I cannot agree to your motion. From my perspective, there is nothing to stop the government from releasing the interim report and tabling it within the 24-hour time frame.

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

The Senate divided. [1.23 pm]

(The President—Senator the Hon. JJ Hogg)

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

AYES

Abetz, E. Aziz, R.
Back, C.J. Bernardi, C.
Birmingham, S. Boyce, S.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Cormann, M.H.P. Eggleston, A.
Ferguson, A.B. Fielding, S.
Fifield, M.P. Fisher, M.J.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kroger, H. Macdonald, I.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.
Parry, S. * Ronaldson, M.
Ryan, S.M. Scullion, N.G.
Troeth, J.M. Trood, R.B.
Williams, J.R. Xenophon, N.

NOES

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

PAIRS

Barnett, G. Arbib, M.V.
Boswell, R.L.D. Carr, K.J.
Brandis, G.H. Conroy, S.M.

* denotes teller

Question agreed to.

WORLD TUBERCULOSIS DAY

Senator PRATT (Western Australia) (1.26 pm)—I, and also on behalf of Senator Carol Brown, move:

That the Senate—

(a) recognises that 24 March 2011 is World Tuberculosis Day, in observance of a disease that still claims the lives of 1.7 million people every year and which:

(i) is currently the leading killer of people living with HIV and the third leading killer of women,

(ii) has the highest growth in the southeast Asian region, which accounted for the largest number of new tuberculosis (TB) cases in 2008, and

(iii) could be dramatically reduced by improved detection and diagnosis;

(b) recognises that the Global Fund to Fight AIDS, TB and Malaria currently provides more than two-thirds of the global funding to combat TB and that:

(i) Australia should increase aid to 0.5 per cent of gross national income to ensure the resources for TB as well as AIDS and malaria are sufficient to achieve the goal of significantly reducing the number of people suffering from these diseases, and

(ii) action by Australia to increase its commitment may influence other donor countries to also increase their support; and

(c) acknowledges that the widespread adoption of the new Xpert diagnostic tool, which cuts the time for diagnosis from several weeks to less than 2 hours, would lead to significant improvements in detection and treatment of TB and requests the Government to facilitate the adoption of Xpert in southeast Asia.

Question agreed to.
TAXATION

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (1.26 pm)—I move:

That the Senate notes the Gillard Government’s reliance on new ad hoc taxes such as the flood tax, student tax, mining tax and carbon tax instead of undertaking genuine tax reform in the national interest.

Question put.

The Senate divided. [1.32 pm]

(The President—Senator the Hon. JJ Hogg)

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

AYES

Abetz, E. Adams, J.
Back, C.J. Bernardi, C.
Birmingham, S. Boyce, S.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Cormann, M.H.P. Eggleston, A.
Ferguson, A.B. Fifield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S. *
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Williams, J.R.

NOES

Arbib, M.V. Bilyk, C.L.
Brown, B.J. Brown, C.L.
Cameron, D.N. Collins, J.
Conroy, S.M. Crossin, P.M.
Farrell, D.E. Faulkner, J.P.
Feeney, D. Fielding, S.
Forshaw, M.G. Furner, M.L.
Hanson-Young, S.C. Hogg, J.J.
Hurley, A. Hutchins, S.P.
Ludlam, S. Lundy, K.A.
Marshall, G. McEwen, A. *
McLucas, J.E. Milne, C.
Moore, C. O’Brien, K.W.K.
Polley, H. Pratt, L.C.
Sherry, N.J. Siewert, R.
Stephens, U. Sterle, G.
Wortley, D. Xenophon, N.

PAIRS

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Carr, K.J.
Brandis, G.H. Evans, C.V.
Ferravanti-Wells, C. Ludwig, J.W.
Payne, M.A. Wong, P.

* denotes teller

Question negatived.

COMMITTEES

Australia’s Food Processing Sector Committee Establishment

Senator COLBECK (Tasmania) (1.35 pm)—I move:

(1) That a select committee, to be known as the Select Committee on Australia’s Food Processing Sector be established to inquire into, and report by 30 June 2012 on the following matters:

(a) the competitiveness and future viability of Australia’s food processing sector in global markets;
(b) the regulatory environment for Australia’s food processing and manufacturing companies including but not limited to:
   (i) taxation,
   (ii) research and development,
   (iii) food labelling,
   (iv) cross-jurisdictional regulations,
   (v) bio-security, and
   (vi) export arrangements;
(c) the impact of Australia’s competition regime and the food retail sector, on the food processing sector, including the effectiveness of the Competition and Consumer Act 2010;
(d) the effectiveness of anti-dumping rules;
(e) the costs of production inputs including raw materials, labour, energy and water;
(f) the effect of international anti-free trade measures;
(g) the access to efficient and quality infrastructure, investment capital and skilled labour and skills training; and
(h) any other related matter.

(2) That the committee consist of 9 senators, 4 nominated by the Leader of the Opposition in the Senate, 3 nominated by the Leader of the Government in the Senate and 2 nominated by any minority party or independent senators.

(3) That:
(a) participating members may be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate or any minority party or independent senator;
(b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee; and
(c) a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of members of the committee if a majority of members of the committee is not present.

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

(5) That the committee elect as chair one of the members nominated by the Leader of the Opposition in the Senate and, as deputy chair, a member nominated by any minor party or independent senators.

(6) That the deputy chair shall act as chair when the chair is absent from a meeting of the committee or the position of chair is temporarily vacant.

(7) That the chair, or the deputy chair when acting as chair, may appoint another member of the committee to act as chair during the temporary absence of both the chair and the deputy chair at a meeting of the committee.

(8) That, in the event of an equally divided vote, the chair, or the deputy chair when acting as chair, have a casting vote.

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

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

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

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

Senator MILNE (Tasmania) (1.35 pm)—Mr Acting Deputy President Trood, I seek leave to make a short statement.

The ACTING DEPUTY PRESIDENT (Senator Trood)—Leave is granted for two minutes.

Senator MILNE—I rise to say that the Greens will be opposing the establishment of this Select Committee on Australia’s Food Processing Sector. We do so noting that the coalition had a select committee on food pro-
duction, which went for a couple of years at least in the Senate, chaired by Senator Hef- ferman. I am unaware of any recommendation of that committee being carried out or fulfilled in any shape or form. I note that, when I moved in this chamber for a recom- mendation to reinstate antidiscrimination provisions, the coalition voted against it hav- ing agreed in a tripartite report, I might say, to have that as one of the recommendations that came out of the dairy inquiry. The ap- propriate place for this kind of investigation is the Senate Standing Committees on Rural Affairs and Transport. That is where we would normally do this kind of thing and this will just be yet another coalition based com- mittee. I think it is not an appropriate use of the resources of the committee system. It should go to one of the existing committees.

Senator FEENEY (Victoria—Parliamen- tary Secretary for Defence) (1.37 pm)—Mr Acting Deputy President, I also seek leave to make a short statement.

The ACTING DEPUTY PRESIDENT (Senator Trood)—Leave is granted for two minutes.

Senator FEENEY—I wish to indicate that the government will be opposing this motion. The government has already em- barked on a comprehensive range of work on food related issues in Australia. The Aus- tralian government is developing a national food plan encompassing Australia’s food supply chain. The plan is expected to have a broad scope including issues such as food security, productivity and efficiency; sustain- ability; health and nutrition in general; and economic policy relating to the food sector.

In conjunction with the national food plan the Minister for Innovation, Industry, Sci- ence and Research has established a food- processing industry strategy group to de- velop a long-term strategy for an innovative, sustainable, responsive and globally com- petitive Australian food-processing centre. The group is comprised of industry leaders across the field as well as academic and union representatives. The terms of reference for the proposed Senate inquiry overlap sub- stantially with this strategy group.

Other recent or current initiatives in the field include a review of food security in Australia by the Prime Minister’s Science, Engineering and Innovation Council, the report of an independent committee on food labelling, the 2008 national food regulation agreement and the current Senate inquiry into the dairy industry, which is the second in recent years. A further inquiry by the Senate will only create confusion and duplication as well as absorbing government and industry resources already working on food industry issues.

Senator COLBECK (Tasmania) (1.38 pm)—I seek leave to make a short statement.

The ACTING DEPUTY PRESIDENT (Senator Trood)—Leave is granted for two minutes.

Senator COLBECK—Specifically in re- lation to Senator Feeney’s statement, I reject that the government has exclusive right to undertake processes to look at particular is- sues that might be of interest to the Aus- tralian community or to the parliament. This is a parliamentary process. I understand that the government has its own processes underway. I was present at the announcement of one of those and I have followed them closely from a portfolio responsibility perspective. But the government does not have exclusive rights to gather information. This parliament has the right to make that decision and to have a process occurring at the same time. In fact, it may be that this process assists the govern- ment process. I hope that is the case. I reject the government’s reasons, in particular, for opposing this reference.

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

The Senate divided. [1.44 pm] (The President—Senator the Hon. JJ Hogg)

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

AYES

Abetz, E.          Adams, J.
Back, C.J.         Bernardi, C.
Birmingham, S.     Boyce, S.
Bushby, D.C.       Cash, M.C.
Colbeck, R.        Coonan, H.L.
Corrnann, M.H.P.   Eggleston, A.
Ferguson, A.B.     Fielding, S.
Fifield, M.P.      Fisher, M.J.
Heffernan, W.      Humphries, G.
Johnston, D.       Joyce, B.
Kroger, H.         Macdonald, I.
Mason, B.J.        McGauran, J.J.
Minchin, N.H.      Nash, F.
Parry, S.*         Ronaldson, M.
Ryan, S.M.         Scullion, N.G.
Troeth, J.M.       Trood, R.B.
Williams, J.R.     Xenophon, N.

NOES

Bilyk, C.L.        Bishop, T.M.
Brown, B.J.        Brown, C.L.
Cameron, D.N.      Collins, J.
Crossin, P.M.      Farrell, D.E.
Faulkner, J.P.     Feeney, D.
Forsyth, M.G.      Furner, M.L.
Hanson-Young, S.C. Hogg, J.J.
Hurley, A.         Hutchins, S.P.
Ladlam, S.         Ludwig, J.W.
Landy, K.A.        Marshall, G.
McEwen, A.*        McLucas, J.E.
Mills, C.          Moore, C.
O’Brien, K.W.K.    Polley, H.
Pratt, L.C.        Sherry, N.J.
Siewert, R.        Stephens, U.
Sterle, G.         Wortley, D.

PAIRS

Barnett, G.        Arbib, M.V.
Boswell, R.L.D.    Carr, K.J.
Brandis, G.H.      Conroy, S.M.
Fierravanti-Wells, C.    Evans, C.V.
Payne, M.A.          Wong, P.

* denotes teller

Question agreed to.

AUSTRALIAN LEARNING AND TEACHING COUNCIL

Senator MASON (Queensland) (1.47 pm)—I move:

That the Senate—

(a) deprecates the waste and mismanagement by the Gillard Government which has led to the decision to abolish the Australian Learning and Teaching Council (ALTC);

(b) condemns this decision because the ALTC better directs the expenditure of billions of taxpayers’ dollars on teaching and learning in higher education;

(c) considers that, in light of the Gillard Government nominating education and skills as top priorities for 2011, the abolition of the ALTC sends the signal that, despite its rhetoric, the Government does not care about improving excellence in teaching and learning;

(d) considers that the abolition of the ALTC will have a deleterious effect on the Bradley agenda of higher education reform, particularly the Government’s commitment to increase the participation in higher education to 40 per cent of all 25 to 34 year olds by 2025; and

(e) notes that more than 2 200 concerned citizens have now signed an electronic petition calling for the ALTC to be retained.

Senator HANSON-YOUNG (South Australia) (1.47 pm)—Mr President, I seek leave to make a short statement.

The PRESIDENT—Leave is granted for two minutes.

Senator HANSON-YOUNG—The Australian Greens cannot support the motion put forward by Senator Mason, although I do concur that the ALTC’s funds should not have ever been put in the bucket to make funding cuts from. That is, of course, why...
the Greens, in the negotiations over the flood levy, ensured that some of that money—and the important roles of the ALTC—would be retained. I would also like to point out while I am here that Senator Mason’s own leader, Tony Abbott accepted—and I am not sure whether or not Senator Mason is aware of this—all of the original cuts put forward by the Gillard government in the face of the debates over the flood levy, so Senator Mason’s own party had actually already accepted those cuts. Thankfully, the Australian Greens were able to negotiate to keep those roles and to ensure that some of the responsibilities were protected.

**Senator MASON (Queensland) (1.48 pm)**—Mr President, I seek leave to make a short statement.

The **PRESIDENT**—Leave is granted for two minutes.

**Senator MASON**—The job of the ALTC is to improve the quality and excellence of teaching at Australia’s universities. It costs the Australian taxpayer about $88 million over four years. The government have already said that they will provide $50 million of that $88 million and move the functions into a department, thereby saving about $38 million over four years—less than $10 million a year. What the ALTC does is better direct the expenditure of hundreds of millions of dollars to Australian universities for teaching and learning. For the price of less than $10 million a year, and that is all it is, we are going to waste potentially hundreds of millions of dollars by expenditure of that money that is not as well directed, so not better directed. It is a charade coming from this government, who have wasted a fortune in so many other areas of government expenditure.

Question put:

That the motion (Senator Mason’s) be agreed to.

The Senate divided. [1.54 pm]

(The President—Senator the Hon. J.J. Hogg)

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<th>Ayes</th>
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<td>Abetz, E.</td>
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<td>34</td>
<td>Bilyk, C.L.</td>
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**AYES**

Abetz, E.  Adams, J.  
Back, C.J.  Bernardi, C.  
Birmingham, S.  Boyce, S.  
Bushby, D.C.  Cash, M.C.  
Colbeck, R.  Cooman, H.L.  
Cormann, M.H.P.  Eggleston, A.  
Ferguson, A.B.  Fifield, M.P.  
Fisher, M.J.  Heffernan, W.  
Humphries, G.  Johnston, D.  
Joyce, B.  Kroger, H.  
Macdonald, I.  Mason, B.J.  
McGauran, J.J.J.  Minchin, N.H.  
Nash, F.  Parry, S.  
Ronaldson, M.  Ryan, S.M.  
Scullion, N.G.  Troeth, J.M.  
Trood, R.B.  Williams, J.R.  

**NOES**

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

**PAIRS**

Barnett, G.  Arbib, M.V.  
Boswell, R.L.D.  Carr, K.J.  
Brandis, G.H.  Conroy, S.M.  

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**CHAMBER**
Senator SIEWERT (Western Australia) (1.56 pm)—I move:

That the Senate—

(a) notes that smoking is the largest preventable cause of death and disease in Australia and places our health system under severe financial strain;

(b) recognises that Australia has in the past been a world leader in anti-smoking initiatives;

(c) acknowledges the important ongoing work and recent initiatives of Australian governments to reduce the burden of diseases caused by smoking, including plain packaging, advertising and point of sale bans, mass media campaigns, the Tackling Indigenous Smoking initiative and cessation support;

(d) expresses concern at the investment of more than $100 million of taxpayers money in shares in international tobacco companies by the Commonwealth Future Fund; and

(e) calls on the Government to review and revise investment criteria as a matter of urgency to ensure that the Future Fund is invested into ethical enterprises that are consistent with the health and wellbeing of the nation and not into tobacco.

Question negatived.

ALPINE NATIONAL PARK

Senator WILLIAMS (New South Wales) (1:57 pm)—I move:

That the Senate—

(a) notes, with concern, the decision of the Minister for Sustainability, Environment, Water, Population and Communities (Mr Burke) to assess under the Environment Protection and Biodiversity Conservation Act 1999, the decision of the Victorian Government to allow the grazing of cattle in the Alpine National Park; and

(b) further notes the undisputed evidence that cattle grazing in national parks reduces fuel load and reduces the risk and severity of bushfire.

I seek leave to make a short statement.

The PRESIDENT—Leave is granted for two minutes.

Senator WILLIAMS—I do not know when the Greens are going to get some common sense about bushfires and the level of fuel on the ground. The coalition government of Victoria has put 400 head of cattle into this region to reduce fuel levels on the ground. Once you get more than five tonnes per hectare of fuel—grass, twigs under six millimetres—and you get a 40 degree day and a 50 kilometre an hour wind, a fire will burn totally out of control. We saw that in the Black Saturday bushfires in Victoria. Those fires put 90 million tonnes of CO2 into the atmosphere. They were totally out of control. The seriousness of those fires was caused by mismanagement of the environment.

I do not know how many Greens have ever been to a bushfire. I went to plenty in my young days living in South Australia. Here is a case where the government of Victoria is reducing the fuel levels to control that country, and the Greens are saying you cannot have hard-hoofed animals in those areas. There are hundreds of thousands of deer, there are numerous wild pigs and brumbies, thousands of feral goats, and what do we have? We have Minister Burke driving in there in a four-wheel-drive in wet conditions and digging the country up but saying you cannot run cattle there. That is outrageous and that is why this motion should be supported.

If we are going to lock up country and leave it, it is going to burn, it is going to destroy the environment, it is going to kill the...
animals and it is going to destroy the timber. And the Greens call this conservation. I call it stupidity. I urge support for this motion.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.59 pm)—Mr President, I seek leave to make a short statement.

The PRESIDENT—Leave is granted—but there are only 40 seconds before two o’clock.

Senator BOB BROWN—Our choice here is between Senator Williams’s tirade and the science. We will be voting with the science.

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

The Senate divided. [2.04 pm]
(The President—Senator the Hon. JJ Hogg)

Ayes............ 34
Noes............ 34
Majority........ 0

AYES

Adams, J. Back, C.J.
Barnett, G. Bernardi, C.
Birmingham, S. Boyce, S.
Brandis, G.H. Bushby, D.C.
Cash, M.C. Colbeck, R.
Coonan, H.L. Cormann, M.H.P.
Eggleston, A. Ferguson, A.B.
Fielding, S. Fifield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S.*
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Williams, J.R.

NOES

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

PAIRS

Abetz, E. Carr, K.J.
Boswell, R.L.D. Conroy, S.M.
Fierravanti-Wells, C. Crossin, P.M.
Payne, M.A. Forshaw, M.G.

* denotes teller

Question negatived.

QUESTIONS WITHOUT NOTICE

Carbon Pricing

Senator BRANDIS (2.07 pm)—My question is to the Minister representing the Prime Minister, Senator Evans. I refer the minister to the Prime Minister’s statement last weekend reported in the Sunday Telegraph under the headline ‘Julia Gillard offers tax cuts … to offset price on carbon’ in which the Prime Minister is quoted as saying that tax cuts were a ‘live option’ in the government’s plans to provide compensation following the introduction of its carbon tax. I refer also to the report in this morning’s Australian Financial Review that the government has ruled out linking personal income tax cuts to the introduction of the carbon tax. If the carbon tax is inflicted on Australian families, will there be compensation by way of a reduction in personal tax or will there not be?

Senator CHRIS EVANS—I thank Senator Brandis for the question. Firstly, I would make the comment that one ought not take as fact everything one reads in the papers and
the debate about those reports ought to be
couched in that context. What I can say is
that the government has made it clear that
any revenue from a price on carbon, the tax
that will apply to Australia’s 1,000 largest
polluting companies, will be distributed in
the Australian community to assist individu-
als, families and businesses adapt to the new
environment. We have made it very clear that
the revenue would be used in that way—

Senator Brandis—All of it?

Senator CHRIS EVANS—and that all of
the revenue would be provided, as we did
under the proposed CPRS scheme, to assist
individuals, families and businesses to adapt
to the new regime. Senator Brandis asked
about how that revenue will be distributed.
What the government has made clear—

Senator Brandis—Mr President, I raise a
point of order. I did not ask about how reve-
nue would be distributed; I asked whether
there would be or would not be tax cuts.

The PRESIDENT—Senator Brandis, I
believe the minister is answering the ques-
tion. The minister has 49 seconds remaining.

Senator CHRIS EVANS—I do not know
what Senator Brandis is auditioning for, but,
when one is talking about how one distrib-
utes the revenue, one of the options is taxa-
tion.

Senator Brandis interjecting—

Senator CHRIS EVANS—If I am al-
lowed to finish, Senator Brandis, I will ex-
plain to you that one of the options open to
the government is to provide relief in terms
of personal taxation as a way of distributing
that revenue from the taxation. But it is also
ture that people like pensioners, for instance,
are not necessarily paying tax and, therefore,
a compensation arrangement which was only
based on taxation reductions would not assist
those people. We made it very clear that one
of our priorities would be to assist the most
disadvantaged in our community and people
like pensioners and families doing it tough.
So taxation is one of the options the govern-
ment will look at in meeting its broader com-
mitment.

Senator BRANDIS—Mr President, I ask
a supplementary question. Given that the
Prime Minister and other senior ministers
have been talking up tax cuts as compensa-
tion for the carbon tax, when will the gov-
ernment stop playing its rule-in rule-out
game and reveal precisely how it plans to
compensate Australian families for price
rises following the introduction of its carbon
tax, or will Labor just leave working families
in the lurch once again?

Senator CHRIS EVANS—As I made
clear to Senator Brandis in the answer to the
primary question, the question of distributing
revenue from a carbon tax to members of the
Australian community through a taxation
mechanism is a live option. But we are not
playing the game of rule-in rule-out. You are
asking us to play the game of rule-in rule-
out. We are not playing that game. What I
can assure the Australian public of is that this
government will ensure that the revenue that
comes from the tax on Australia’s big pollut-
ers will be distributed in the community to
assist those individuals and businesses to
adapt to the new environment, as the econ-
omy moves to a cleaner energy environment.
What we do know is that the Liberal Party
have committed to take away that compensa-
tion. They have committed to remove any
compensation given to Australian families
and pensioners. That is what we do know.

Senator BRANDIS—Mr President, I ask
a further supplementary question. Can the
minister guarantee that no Australian family
will be worse off as a result of the carbon
tax: yes or no?

Senator CHRIS EVANS—Clearly, if the
Liberal Party were to come to power, people
would be worse off, because they have committed to remove any compensation. So clearly I cannot give any guarantees to the Liberal Party, because they have announced a plan to make people worse off. Their plan is to take away any compensation that is paid to families and pensioners as a result of the introduction of a tax on Australia’s big polluters. What we have made clear, as we seek to transform the economy to a cleaner energy economy, is that we will distribute any revenue from taxation on carbon polluters to families and businesses in order to help them adjust to the new arrangements. That has been made perfectly clear, and the only risk to any compensation arrangements is the Liberal Party, who threaten to take them away.

Mining

Senator STERLE (2.14 pm)—My question is to the Minister representing the Prime Minister, Senator Evans. Can the minister inform the Senate of the progress of the government’s consultations with industry over the new resource taxation arrangements?

Senator CHRIS EVANS—I thank Senator Sterle for his keen interest in the mining industry, particularly in our state of Western Australia. I am pleased to report that today the government has taken the next step in implementing resource taxation reforms that will deliver benefits for all Australians. The Treasurer and the Minister for Resources and Energy have announced that the government has accepted all of the recommendations of the policy transition group, chaired by Mr Don Argus. The group was established last year to consult with industry and advise government on the implementation of the proposed reforms.

The group’s 98 recommendations provide a balanced package that ensures Australians receive a fair return from our mineral resources while maintaining Australia’s international competitiveness in the sector. These important taxation reforms will deliver a cut in company tax for all companies, an instant tax write-off for 2.4 million small businesses, a $6 billion investment in regional infrastructure, a boost to superannuation for 8.4 million Australians and superannuation concessions for 3.5 million low-income earners.

Today marks the completion of the policy design phase of the tax. We will now embark on the legislative phase and we will continue to work closely with industry and consult on the draft legislation. The legislation will be released for public consultation by the middle of the year, with us looking to have the legislation in the parliament later in the year. These reforms mean that every Australian will benefit from the development of our non-renewable natural resources. Our actions will ensure that not just the Australians of today but also the Australians of tomorrow will benefit from the resources boom. This is a good outcome for industry and it is a good result for the nation, not just for the resource-rich states but for the whole nation, and allows all Australians to benefit from the boom in the mineral resources sector.

Senator STERLE—Mr President, I ask a supplementary question. Can the minister explain to the Senate how communities in the resource richest states of Western Australia and Queensland will benefit from these important reforms?

Senator CHRIS EVANS—This important reform will ensure that all Australians share in the benefits of the resources boom. As a Western Australian I am pleased to say that the resource-rich states of WA and Queensland will also directly benefit from a $6 billion regional infrastructure fund. In WA this government will invest more than $2 billion on critical regional infrastructure like roads, rail and port. Already, the government has committed $480 million to fund the im-
portant Perth airport road project, which will help reduce congestion. More than $2 billion will also be invested in Queensland to build roads, rail and port. We have already committed to fund the Townsville ring-road and a major upgrade of the Peak Downs Highway. In addition to funding critical infrastructure, which will enable the Western Australian and Queensland economies to continue to grow, businesses will also benefit from the cut in company tax and an instant tax write-off for small businesses.

Senator STERLE—Mr President, I ask a further supplementary question. Can the minister outline to the Senate the strength and resilience of the resource sector in Australia?

Senator CHRIS EVANS—I am pleased to inform the Senate that, despite cries to the contrary, the resource sector is both strong and growing. This is clearly demonstrated by a massive pipeline of investments and record profits being reported by a number of resource companies. There is clear evidence that these taxation reforms have not had a negative impact on the sector. Investment is strong, exploration is strong and confidence is robust. Indeed, investment in resource projects now stands at a staggering $132 billion and the sector continues to enjoy very strong profit results, with a $25 billion profit recorded in the September quarter. It is only right that all Australians benefit from this record investment and profit in the resources sector, and that is what these reforms will achieve.

Carbon Pricing

Senator KROGER (2.18 pm)—My question is to the Minister for Finance and Deregulation and Minister representing the Minister for Climate Change, Senator Wong. I refer to research by JP Morgan stating that the carbon tax will have a devastating impact on the share earnings of many Australian companies—for example, BlueScope shares could be hit to the tune of 56 per cent under a $30 a tonne carbon tax. Considering the fact that millions of Australians have superannuation directly linked to the earnings of share investments, can the minister guarantee that super savings will not be adversely affected by a carbon tax?

Senator WONG—Is this the next stage in the fear campaign—you are not safe even in your superannuation funds? The thing that the opposition never speak about is what the impact of their policy will cost the economy, what the impact of their policy will cost Australian families, now and out to 2020 and beyond. The senator knows that in the context of the last parliament we worked in great detail with industries, including the company that she mentions and other companies and industries in Australia, who will be paying a carbon price for the pollution that they emit. We worked in great detail with them because we are a Labor Party, a Labor government, that have always supported jobs and have always supported superannuation. May I say, this is in stark contrast to those on the other side, who are actually opposing an increase in superannuation, which is consistent with their past performance of opposing the introduction, as I recall it, of superannuation for working Australians. So I think the opposition’s position on this is quite clearly hypocritical.

The other point I would make is that the government has released costings which show that the policy of the coalition would cost some $30 billion out to 2020. I would invite the senator to consider the impact of that cost, not only on the budget but on the economy as a whole, and reflect perhaps on the economic impact on the families she now professes to be supporting in the context of her question.
Senator KROGER—Mr President, I ask a supplementary question. Clearly, the minister did not understand that we were asking about the implications of the carbon tax that the government is imposing. Given that thousands of Australians who contribute to super funds linked to trade-exposed industries, such as CBus in the construction industry, MTAA in the motor industry, TWUSuper in the transport industry and FIRSTSuper in the timber pulp industry—(Time expired)

Honourable senators interjecting—

The PRESIDENT—There are 30 seconds for supplementary questions. That is known in the chamber and I do not need help on either side.

Senator WONG—I think I get the gist of the question. I am sure the superannuation funds that the senator mentioned have investments in a great many companies. One of those companies might, for example, be BHP Billiton. The senator might like to recall what the CEO of that company said in relation to the introduction of a carbon price. Mr Kloppers stated:

… we do believe that such a global initiative will eventually come and … when it does come Australia will have needed to act ahead of it coming in order to maintain its competitiveness.

This is from the CEO of BHP Billiton. He also stated:

We are pleased government is progressing with a policy to begin the transition to a low carbon future for Australia.

Fundamentally, these issues come down to whether you believe that Australia’s long-term prosperity is secured by shrinking from the reality of—(Time expired)

Senator KROGER—Mr President, I ask a further supplementary question. Can the minister please outline what impact the carbon tax will have on the earnings and income for those who receive benefits under schemes that the minister is directly responsible for, such as ComSuper funds?

Senator WONG—This government believes that Australia’s prosperity is secured by recognising that we need to be competitive in a low-carbon world. Those on the other side might believe that the way to prosperity is to freeze-frame the economy and not go forward, but we are a party that believe in continued economic reform to ensure that our economy remains competitive in the future and not just today.

Unlike those opposite, we will continue to progress those national reforms, such as pricing carbon, which are about meeting future challenges and which sensible business leaders have recognised are important for Australia’s prosperity now and in the future. The difficulty with the senator’s question is that it assumes that we simply should do nothing. The reality is that we do have to do something in order to preserve our competitiveness in a world where low-carbon competitiveness will come at a premium.

Japan Natural Disasters

Senator LUDLAM (2.25 pm)—My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. My question relates to the situation at the Fukushima nuclear power complex in Japan, including reports that radioactive iodine, at levels unsafe for consumption by infants and pregnant mothers, has been detected in Tokyo’s water supply. Has the minister been briefed by ANSTO, CSIRO, ARPANSA or any other relevant agency on the disaster and will the minister table any such briefings?

Senator CARR—I thank Senator Ludlam for his question. I have been kept up to date with advice from ANSTO. I have not received advice from the CSIRO and ARPANSA reports to another minister. That is fitting because the agency within the innovation portfolio with the relevant nuclear
expertise is ANSTO. It provides the specialist expert advice to the government as a whole. This advice is provided through an interdepartmental emergency task force chaired by the Department of Foreign Affairs and Trade. There are detailed briefings made public on these issues, particularly in regard to the current situation, and I understand they have been available on the ARPANSA website.

Regarding the levels of iodine-131 that are exceeding the Japanese government-set levels, there have been detections of iodine-131 in water, milk and spinach collected outside of the 30-kilometre exclusion zone. However, the levels measured are said, according to the advice I have, to pose no immediate threat to human health and will diminish rapidly due to the short half-life of iodine-131. This is obviously a matter that is being continuously monitored and, according to the advice I have been provided, the Japanese government has taken appropriate actions, such as banning the shipment of certain foodstuffs. The levels of radioactivity that have been reported have been detected in seawater in one location near a discharge channel—(Time expired)

Senator LUDLAM—Mr President, I thank the minister for the answer and I ask a supplementary question. For the agencies that the minister does have portfolio responsibility for, what is the policy on agency spokespeople commenting to the media or the general public, and has the minister instructed these agencies not to comment on the radiation impacts of the disaster?

Senator CARR—I do not have to take that on notice. I have a note here from the relevant minister indicating that ARPANSA has not been gagged. ARPANSA has acted as a regulator providing technical advice to the government. It has itself taken the view that it is not in a position to provide a running commentary to the media.

Home Insulation Program

Senator RYAN (2.29 pm)—My question is to the Minister for Finance and Deregulation and Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to the case of a constituent in Ormond Victoria, whose name I am happy to provide to the minister privately, who at his own expense was forced to have an electrician fix the faulty workmanship carried out in his family home under your disastrous $2.4 insulation program because he feared that his house would burn down. Minister, is this constituent entitled to be reimbursed by the government for the cost of fixing this mess in his home? If not, why not?

Senator WONG—Obviously, I am not aware of the specifics of the case. I appreciate the senator’s offer to have a discussion privately about it to ensure that we can make
the necessary inquiries. I am quite willing to do that. In relation to this program, I think that Minister Combet and the government have been quite upfront about the objective of remediating the range of problems associated with this program. I do not think that anyone in the government has sought to underplay or minimise the difficulties and problems with this scheme.

As you would be aware, under the Home Insulation Safety Program, which is the remediation program associated with this, safety inspections of, I am advised, at least 150,000 homes with non-foil insulation are being carried out. These inspections are based on a risk assessment. I am also advised that households with safety concerns can request an inspection through the safety hotline. On the advice that I have been provided with, these inspections are being performed in addition to the minimum of 150,000 homes to which I referred earlier.

The Senate would also recall that there was another remediation program, the Foil Insulation Safety Program. Under that scheme, over 50,000 householders who had foil insulation installed are being offered a choice based on the advice of a qualified electrician to have their insulation removed or safety switches installed.

Senator RYAN—Mr President, I ask a supplementary question. Minister, doesn’t the government have an obligation to provide an act of grace payment to all those people who, like the constituent I have just mentioned, have had to resort to fixing problems themselves because the government failed to provide timely assistance when they believed that their homes were in danger? Do you believe that the government has an obligation to make such as act of grace payment?

Senator WONG—Act of grace payments are something that governments of both political persuasions have put in place. What we have put in place in relation to this scheme, however, is a set of remediation programs with a very substantial focus on ensuring that the errors in this program are being remedied. As I said, my understanding—and this is based on the advice that I have been provided—is that people who call the hotline who have concerns about safety can request an inspection through that hotline. That inspection is performed in addition to the risk based inspections that the government is undertaking. As I said to the senator, I am very happy to get the details from him and to make further inquiries.

Senator RYAN—Mr President, I ask a further supplementary question. Minister, I am sure that that long explanation will provide comfort to those who believe that their house is in danger. Given that this constituent first raised these concerns with the government 12 months ago and was told by a government inspector that the problem would need to be rectified, why will the minister not answer the question as to whether constituents who act on their own behalf to protect their own homes are at least worthy of an act of grace payment?

Senator WONG—Senator, you should know—and perhaps you would like to speak to Senator Minchin about this—how act of grace payments are dealt with. They are certainly not dealt with through this type of question in question time. If there is an implication that we do not regard these issues as important, I completely reject that. I have outlined to you, Senator, the measures that the government has put in place to remedy these issues. I have offered in good faith to sit down with you to seek to deal with this. But it is quite clear from the way that you are approaching these questions that an outcome is probably not the thing that you are seeking; you are seeking to make a point here. The government understands absolutely the difficulties and problems with this program.
We have been upfront about that, which is why we have put a substantial amount of effort into the remediation programs that regrettably have been necessary. And we will continue to do that. *(Time expired)*

**Taxation**

**Senator HUTCHINS** *(2.35 pm)*—My question is to the Minister for Small Business, Senator Sherry. Can the minister outline to the Senate how the government’s tax package will build a stronger economy and a fairer, simpler tax system? What role will the minerals resource rent tax play in delivering the benefits of the mining boom to all Australians through higher superannuation for individuals and lower taxes for small businesses?

**Senator SHERRY**—Thank you, Senator Hutchins. I am very pleased to outline the benefits that will flow from the range of tax cuts that we are introducing as a consequence of the revenue of the minerals resource rent tax. We have announced a package of tax reform measures. The first is the superannuation guarantee. That will be increasing from nine per cent to 12 per cent. That provides a significant increased benefit to all those Australian workers who have superannuation. Secondly, we will be abolishing the superannuation contributions tax that low- and middle-income earners pay as part of their superannuation. Well over three million Australians will see the removal of the contributions tax from their superannuation contributions.

We will be extending the $50,000 superannuation cap for those over 50 with balances below half a million dollars. We will be extending, for the first time, the age cap on the superannuation guarantee. Currently, if you are aged over 70 you cannot receive compulsory superannuation. We will be extending that to age 75. We will be introducing a standard deduction, which will radically simplify the tax affairs of over 6.4 million Australians who will be able to claim a standard tax deduction. This will radically simplify the tax system. We will be cutting the tax on savings through a 50 per cent discount on up to $1,000 of interest income. We will be reducing company tax for small business from 30 to 29 per cent. We will be introducing a new and more generous accelerated depreciation arrangement for small businesses through a $5,000 write-off measure. We will be boosting banking competition by slashing interest withholding tax. *(Time expired)*

**Senator HUTCHINS**—Mr President, I ask a supplementary question. In addition to tax reform, can the minister outline what other key policy reforms that seek to deliver sustained economic growth and expand economic capacity will be funded by the minerals resource rent tax?

**Senator SHERRY**—I thank the senator for his question. I outlined some nine areas of major tax reform, either reduction or abolition, that flow as a consequence of the minerals resource rent tax. Of course, we know those opposite are very proud to boast that they oppose the minerals resource rent tax. As a consequence, the reduction or abolition of those nine taxes that I have outlined would not go ahead under a Liberal-Nationals government.

A further important area of benefit as a consequence of the resource rent tax is infrastructure investment. It is a key policy priority, long an area neglected by the Liberal-Nationals. We will be reinvesting in our regions through a $6 billion Regional Infrastructure Fund. This is an important part of the government’s Regional Development Australia Fund. So, if we took the Liberal-Nationals point of view and perspective, there would be no investment in infrastruc-
ture and no reduction in nine taxes. *(Time expired)*

Senator HUTCHINS—Mr President, I ask a further supplementary question. Is the minister aware of any alternative policies to the government’s tax package? And could Australians miss out on these essential economic reforms?

Senator SHERRY—The minerals resource rent tax announcement of 2 July 2010 will provide a fairer return on Australia’s resources and allow us to cut taxes, and abolish taxes, in the areas that I have outlined. It will cut tax for small business. It will cut tax on superannuation. It will simplify personal tax and it will also lead to investment in infrastructure. All of those tax cuts and investments the Liberal-Nationals oppose. They oppose investment in superannuation. They oppose cuts in taxes for small business. They oppose improved depreciation arrangements for small business. They oppose company tax cuts for small business. They oppose, they oppose, they oppose—because they will not support the minerals resource rent tax. That is their only approach to improving this economy: to oppose, oppose, oppose. *(Time expired)*

Health

Senator WILLIAMS *(2.41 pm)*—My question is to the Minister representing the Minister for Health and Ageing, Senator Ludwig. In relation to the rural health facilities, I draw your attention to the failed New South Wales Labor government’s decision to close the Gulgong Hospital in central-west New South Wales after last year’s federal election because your state counterparts had not kept up the maintenance of that facility. There is state support for the construction of a multipurpose health service at Gulgong. Will the Gillard government provide its share of funding to make this project a reality?

Senator LUDWIG—I thank Senator Williams for his interest in rural health. This government has done more for rural health throughout Australia than the previous Howard government did. If you look across—

Opposition senators interjecting—

Senator LUDWIG—We have opened more than 1,300 new beds and built new operating theatres; we are upgrading emergency departments and training 6,000 more doctors. We are providing this funding because our hospitals need it, but extra funding must come with reform. When you look at elective surgery lists, the Gillard government recognises that all Australians deserve a fair share, including those in New South Wales, including those in regional areas. That is why we are making unprecedented investments in our regional health facilities.

We are also pleased by the strong interest shown by those opposite, particularly from regional areas, in the need for funding and assistance and in the Health and Hospitals Fund Regional Priority Round. The government received, in that round, 237 compliant applications for funding for a combined total of approximately $5.3 billion. But, in relation to the specific issue of that particular hospital, I will have to take that on notice and seek further information from the Minister for Health and Ageing. I do not have a specific brief that I can turn to in relation to that.

But I do know that, when you look at the areas around Port Macquarie, we have announced funding of $96 million for the Port Macquarie Base Hospital. So this government is working very strongly with regional communities to ensure that we do provide assistance for individuals, for families, for regional areas, for health and hospital assistance—*(Time expired)*

Senator WILLIAMS—Mr President, I ask a supplementary question. Minister,
given that you will take on notice that question about the Gillard government’s funding for the Gulgong MPS, when will the Gillard government provide its share of funding for the Gulgong MPS and stop treating the 5,000 residents of Gulgong district as second-class citizens?

Senator LUDWIG—What this government has done in this area of health and hospital funds you will see if you look at regional Australia, where you will see that we are not about treating regional health funding like the Howard government did. They ripped $1 billion out of the health system. Start with rural health infrastructure as one example. The Gillard government acted to deliver better health infrastructure to provide high-quality health services in rural and remote communities. That is where the focus of this government has been. We have developed and delivered rural infrastructure programs to inject capital funding where it is needed most. The current regional round of the Health and Hospitals Fund dedicated up to $1.8 billion to regional Australia. This builds on the 37 per cent of the first, $3.2 billion, round that was allocated to regional projects. This government has been working hard to provide—(Time expired)

Senator WILLIAMS—Mr President, I have a further supplementary question to the minister. The government has promised 64 so-called GP superclinics since 2007 at a cost of over $650 million, only 10 of which are operational. Many superclinics are not in areas of need but in Labor marginal seats. Why won’t the government put patients’ needs above political needs and provide funding for the Gulgong MPS as urgently as it is needed by that local community?

Senator LUDWIG—You can see that those opposite really do not like helping regional communities. They do not like ensuring that we provide medical facilities in regional and remote areas. GP superclinics are but one way we can do that. For each and every GP superclinic, the location was carefully considered according to the health needs of local communities, and they were all satisfied. This approach ensured that places like Modbury had a GP superclinic, for which the first stage of construction was completed in late November. The South Australian government, which operates the clinic, is in the process of sourcing a GP service provider. Twenty-nine of the 36 original GP superclinics are either open and delivering early services or under construction. Tendering, planning or approval activities are underway at the remaining eight sites. This is a government that is getting on with the job of delivering better services to regional Australia. (Time expired)

Family Relationship Services

Senator FIELDING—My question is to the Minister representing the Attorney-General, Minister Ludwig. Given the government’s decision to cut $48 million from the Family Relationship Services Program for postseparation services that assist separated and divorced couples to reach agreement on planning issues and focus on the needs of their children, can the government explain why it believes that these services are not important and should be culled? Doesn’t the decision completely contradict the government’s approach of trying to encourage parents to resolve disputes through other means without going to court?

Senator LUDWIG—I thank Senator Fielding for his question. The government is committed to the Family Relationship Services Program and to funding services to assist Australian families to find alternative and meaningful ways to resolve their disputes. I am sure Senator Fielding would appreciate it if we put these claims into perspective. From 2010 to 2011, total funding
for the Family Relationship Services Program is $269 million. This includes an annual investment of $90 million per annum for mediation services which support separating families in resolving issues involving children.

This government remains committed to this important service. It does deliver in this area. The government is proposing $48.4 million in savings over four years for the Family Relationship Services Program, and the majority of these savings have been found by reducing internal government spending to ensure efficiencies in the overall program. Looking at how this will be done, there are reductions of $6.4 million for training and $6.5 million for research and evaluation. But, as I indicated right at the outset, the size of the program—$269 million—shows that the government remains strongly committed to ensuring that the Family Relationship Services Program can get on with the job of resolving disputes and issues involving children and ensuring that mediation and support is there. Overall, the savings measures represent about four per cent of the overall program, with minimal impact on services. The proposed savings of $9 million over three years—(Time expired)

Senator FIELDING—Mr President, I ask a supplementary question. Is the department aware that for organisations such as Centacare Catholic Family Services there is already an eight-week wait for access to post-separation services and that the concern is that these cuts will only increase these waiting times even further? Also, can the government explain why there was a lack of consultation with the organisations about the likely impact of these budget cuts?

Senator LUDWIG—I will deal with the latter part of the question first. I am unaware of whether there has been a lack of consultation, but I will certainly take that part on notice. The concerns raised in the correspondence from Centacare Catholic Family Services about a proposed refocus towards at-risk and disadvantaged clients related to early intervention services that are the responsibility of the Minister for Families, Housing, Community Services and Indigenous Affairs. But, broadly, there will be no narrowing of the target group for postseparation services funded by the department. Specifically in relation to the waiting period, I do not have anything within the brief that identifies that there is an eight-week wait. I take it that the issue you have raised about an eight-week period is a serious issue, and I will seek further information about that specific matter.

Senator FIELDING—Mr President, I ask a further supplementary question. I am wondering whether the government could commit to approaching those services that do have concerns and reporting back to the Senate about what it has done, especially in the case of Centacare Catholic Family Services and their concerns.

Senator LUDWIG—As I indicated in the answer to the previous supplementary question, I will take on notice two matters relating to the consultation and the eight-week period, as the brief does not specifically mention those issues. I will say that service providers are seeking clarity about funding arrangements for postseparation services from July 2011. The consultative process that would have to have been undertaken is about ensuring that they have that clarity. The minister has approved extending funding agreements for the Family Relationship Services Program’s postseparation services for three years from 1 July 2011 and for two years for the 14 postseparation cooperative parenting services that end on 30 June 2012. So, the parts of your questions that I have not answered I will also ask to be—(Time expired)
Tasmanian Forestry

Senator COLBECK (2.52 pm)—My question is to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig. With the government appointed mediator in Tasmania’s forest industry talks suggesting that 572,000 hectares of Tasmanian forests may be traded off to the environment movement in exchange for support for the Gunns pulp mill, would the minister advise what independent scientific work has been undertaken to assess these forests under the long-accepted scientifically based criteria, such as JANIS and CAR, to determine their suitability for removal from the existing industry wood supply?

Senator LUDWIG—The Gillard government has welcomed the landmark agreement and believes that it is important that we play a constructive role in supporting this significant community-led initiative. Together with the Tasmanian government, the government appointed Mr Bill Kelty as the independent facilitator to work with the signatories to the community-led statement to help build and implement plans for the principles. The Gillard government looks forward to receiving—

Honourable senators interjecting—

The PRESIDENT—Senator Abetz and Senator Carr, I need to hear the answer that the minister is giving. If you two want to have an argument about it, just go outside.

Senator LUDWIG—And we have appointed Mr Bill Kelty to lead that process. We already have the interim report on the statement of principles process and we will consider its findings. In terms of the specific issues raised by the opposition about this, it will mean that there will need to be work undertaken to ensure that definitional issues are resolved. The Gillard government remains committed to working with the Tasmanian community to respond to the challenges that are facing the forest industry.

It is a credit to those who have brought this forward, because it is about trying to resolve the way forward for the industry in Tasmania after decades of conflict. It is critically important—and I think the opposition makes the point—that we do get an assessment on these matters. We will undertake the type of work that will ensure that, under the statement of principles, community and industry groups are coming together to ensure—

Government senators interjecting—

Senator LUDWIG—If the others could remain silent while I do this it would be a lot easier.

The PRESIDENT—Senator Ludwig, I invite those who are sitting to your right to remain silent so that I can hear your answer. I know that Senator Abetz is particularly interested, as well.

Senator LUDWIG—The due diligence by the Australian and Tasmanian governments will provide an assessment of the implications of implementing the statement of principles. The preparatory work is underway, including—(Time expired)

Senator COLBECK—Mr President, I ask a supplementary question. What assessment has the government made of the social, economic and environmental impact of locking up an extra 572,000 hectares of Tasmanian forests—that was last suggested by your former leader Mark Latham?

Senator LUDWIG—I went to that first, of course. A moratorium is essential in this. The Australian government endorsed the Tasmanian government’s initial moratorium in December covering 39 coupes. Mr Kelty announced on 11 March 2011 that a six-month moratorium had been agreed and that logging will not occur in areas environment...
groups identified as ‘high conservation value forest’ unless it is necessary to meet existing contracts or is subject to the approval of a reference group for the assurance of wood supply for existing industry.

I understand that a blanket moratorium across all areas identified by environment groups is impractical at this stage. What I—

Honourable senators interjecting—

The PRESIDENT—It may well be very interesting to those who are participating, but I cannot hear the minister.

Senator LUDWIG—I am sure those opposite will be jealous about this answer. The due diligence by the Australian and Tasmanian governments will provide the assessment of the implications of implementing the statement of principles. That work is underway and being done, because it is required to have due diligence. (Time expired)

Senator COLBECK—Mr President, I ask a further supplementary question. Given that the government has previously conceded in answer to questions on notice that it does not have a definition for ‘high conservation value’, what is the assessment process that was promised in the joint state and Commonwealth statement of 14 December for locking up further public forest resources? Or will this be merely another capitulation to the Greens for some of their favourite places?

Senator LUDWIG—It is disappointing to hear that Senator Colbeck is not joining in with the process to ensure that we do get an outcome in this area after years—

Honourable senators interjecting—

The PRESIDENT—Senator Brandis, Senator Conroy and Senator Carr.

Senator Conroy interjecting—

The PRESIDENT—Senator Conroy, your colleague is going to answer this question, if you will keep quiet for a moment.

Senator LUDWIG—It is not only the due diligence process but also the preparatory work that is underway, including gathering timber resource and industry employment data to examine the impacts of the proposal by signatories to implement the statement of principles. This work requires agreement by the signatories on the shape of the final agreement before the social and economic impacts and opportunities can be truly assessed. I encourage those opposite, those from Tasmania and those who support the direction in which the government is heading in this area to watch and assist Mr Kelty in that work.

Senator Colbeck—Mr President, I raise a point of order on relevance. My question was about the process to evaluate the forests in Tasmania. It was not about the social and economic; it was specifically about the assessment of the forests, and that is the critical issue in respect of my question.

Senator Conroy—Mr President, on the point of order—

Senator Abetz interjecting—

Senator Conroy—He took the point of order. I am sorry, but that was the most absurd point of order. Senator Ludwig’s answer was clearly relevant and in fact directly relevant to the question that was asked. The senator is redefining his question in a way that he chooses, because he does not like the answer he is getting and then takes a frivolous point of order. It should be dismissed out of hand, Mr President.

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

Senator LUDWIG—As I understand it, I asked them to join in Mr Kelty’s process. Of course, he will be— (Time expired)
Mining

Senator MARSHALL (3.01 pm)—My question is to the Minister representing the Treasurer, Senator Wong. Can the minister outline to the Senate the benefits to the Australian economy of ensuring a fairer return on profits from Australia’s resources?

Senator WONG—I am very pleased to take that question from Senator Marshall. It is interesting, isn’t it, that the opposition, who have talked so long and loud about how much they hate the MRRT, have not asked a single question today, despite the announcement by the Treasurer and the Minister for Resources and Energy, Senator Cormann, who is supposed to be the warrior for the mining—

Honourable senators interjecting—

The PRESIDENT—On both sides!

Senator Ian Macdonald—Mr President—

The PRESIDENT—Wait a minute, Senator Macdonald. You will get the call when there is silence on both sides.

Senator Ian Macdonald—Mr President, I raise a point of order on the grounds of relevance. The question has been answered now for almost 30 seconds. The minister has gone nowhere near the question and has spent her first 30 seconds, as she always does, in attacking the opposition or the questioner or explaining how the question should have been asked. Could you please draw the minister’s attention to the question and get her to answer it?

Senator Ludwig—Mr President, on the point of order: again, whilst the minister was being directly relevant in answering the question, the difficulty we always have with this is that we get a point of order which simply seeks to re-agitate the issue. Those opposite use the point of order to make their political point in this chamber. It is completely inappropriate. The minister has been answering the question.

Senator Ian Macdonald interjecting—

Senator Ludwig—The minister is being directly relevant to it, and again we hear those opposite—in fact, the offender himself—seeking to interject again. It is completely inappropriate. If the point of order were taken properly we might proceed with a better outcome for them.

The PRESIDENT—There is no point of order.

Senator WONG—I am very happy to talk about the minerals resource rent tax and the announcement today. I am just making the point that the opposition has refused to ask any questions on this.

Senator Ian Macdonald interjecting—

Senator WONG—I am surprised that Senator Macdonald wants to interject complaining that I have too much of a go at the opposition. He called me a ‘precious little petal’ a couple of days ago. One wonders who the little petal is. Who is the precious one, Senator Macdonald? But turning now to—

Honourable senators interjecting—

The PRESIDENT—On both sides, I need order!

Senator WONG—Of course, today’s announcement on the MRRT is about ensuring that we are able to set aside money from the boom to invest in the future. We need to do this to make sure that our success as a nation outlasts the boom. Let us remember what this taxation reform will deliver: a boost to national savings, a cut to company taxation and of course investment in infrastructure, particularly in the mineral rich states of Western Australia and Queensland.

We have a Liberal Party that are opposed to a reduction in company taxation, a Liberal Party opposed to reductions in the company
tax rate—who would have thought? On the one hand, we see the Liberal Party wanting a government grants program when it comes to climate change, and they also want to oppose a reduction in company tax despite the fact that they say they are a party of low tax. (Time expired)

Senator MARSHALL—Mr President, I ask a supplementary question. I thank the minister for that answer, which was both comprehensive and directly relevant. Can the minister outline to the Senate the importance to all Australians of introducing new taxation arrangements—

Honourable senators interjecting—

The PRESIDENT—On both sides! I am sorry; I cannot hear the question.

Senator MARSHALL—Would you like me to start again, Mr President?

The PRESIDENT—Ask the question.

Senator MARSHALL—Can the minister outline—

Honourable senators interjecting—

The PRESIDENT—Senator Marshall, continue. Ignore the interjections.

Senator MARSHALL—I will try. Can the—

Honourable senators interjecting—

The PRESIDENT—Senator Marshall, ignore those interjections and continue.

Senator MARSHALL—Can the minister outline to the Senate the importance to all Australians of introducing new taxation arrangements for Australia’s resources and discuss the capacity of the Australian economy to respond to these new arrangements?

Senator WONG—The chamber might like to be aware of the trend in mining industry investment, including since the announcement of the MRRT, despite the sort of scare campaign we saw from those opposite: $34 billion last year, $55 billion this year and industry expectations of $76 billion next year. What this really shows is that we have a once in a generation opportunity driven by the massive investment in the mining sector, yet what do we have from the other side? Just a bit more opposition; just for a change, a bit more opposition. ‘We don’t want a sensible taxation regime when it come to this mining investment boom, we don’t want to ensure that our success outlasts the boom’— (Time expired)

Senator MARSHALL—Mr President, again I thank the minister for that answer, and I ask a further supplementary question. Can the minister outline to the Senate the risks of any alternative views on resource taxation arrangements in this country?

Senator WONG—The risks are that yet again the opposition turn their back on reform for the future, just as they did in government. They like to pretend they were such great economic managers. Let us remember: $334 billion in revenue windfall, and what did you do with it? Where were the investments in the future? Now what do we see?

Opposition senators interjecting—

The PRESIDENT—Order! On my left!

Senator WONG—It was $334 billion in revenue windfall, and where was the investment in the future? Now we see an investment expectation in the next financial year of some $76 billion in the mining sector, very substantial increases in investment, and what does the opposition say? ‘Look, we don’t want to do anything with that, we don’t want to recognise the benefits of a lower company tax rate.’ (Time expired)

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

Disabilities Ambassador

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations) (3.09 pm)—On 3 March Senator Fifield asked me a question in my then capacity as Minister representing the Minister for Families, Housing, Community Services and Indigenous Affairs. The question concerned the appointment of an ambassador for the 2010 International Day of People with Disability. I seek leave to incorporate in Hansard further information from the Minister for Families, Housing, Community Services and Indigenous Affairs, Ms Macklin.

Leave granted.

The document read as follows—

I do not endorse attempts at humour that ridicule or demean people with disability.

Ms Deveny is no longer an ambassador for International Day of People With Disability.

Tasmanian Forestry

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting the Attorney-General on Queensland Floods Recovery) (3.09 pm)—In answer to a question by Senator Colbeck today I may have said—and I will check the transcript—that Mr Kelty handed down a report on a particular date. Mr Kelty announced on 22 March 2011 that he will provide us with his interim report on the statement of principles process this week. I am taking a belt and braces approach here.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Carbon Pricing

Home Insulation Program

Senator RONALDSON (Victoria) (3.10 pm)—I move:

That the Senate take note of the answers given by the Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) and the Minister for Finance and Deregulation (Senator Wong) to questions without notice asked by Senators Brandis, Kroger and Ryan today relating to the proposed carbon tax and to the home insulation program.

I was interested to read this morning some comments by the Victorian Minister for Ports, Dr Denis Napthine, I will read some of his comments given to the Victorian parliament. He said:

In Adelaide recently the Prime Minister said that a carbon pricing scheme would create a wealth of new jobs and clean energy generation particularly in the manufacturing of clean energy equipment. Therefore I raise the very real concerns of the 400 workers at Keppel Prince, Portland, our largest and most experienced manufacturer of wind towers.

He continues:

Keppel Prince has just been advised that the proponents of a 13 tower wind farm near Hamilton, less than 100 kilometres from the Keppel Prince plant in Portland, are planning to import wind towers from China, creating new jobs in China and costing jobs in south-western Victoria.

That comes on the back of the comments yesterday from Graham Kraehe, the Bluescope chairman, who said that the consultation with industry in relation to carbon tax has been appalling and warned that a carbon price could be ‘a tipping point for the steel industry in Australia’. So already, as Dr Napthine said, we are seeing jobs going from Australia to China. We have now seen the pressure, as indicated in the Australian today, about what the risk would be to the steel industry. So what is going to happen? These wind towers will actually come through the port of Portland under the noses of these workers from Keppel Prince on the way to Hamilton.

This is what the government fails to understand, and this is what Gary Banks, the
head of the Productivity Commission, is saying in the *Australian* this morning, that this government has not looked at the risks. It has made assumptions that do not stand up. This is a government that is going headlong into a carbon tax without doing the work that is required. What will happen is that Australian jobs will go, as they are already. You put more competitive pressure on Australian industry and Australian jobs will go. Wind towers are made of steel predominantly. Thirteen of these towers are coming in from China already through the port of Portland, which Dr Napthine has represented passionately and with great dignity and great courage for many years now.

Dr Napthine has belled the cat on these jobs and the clean energy promise of the Prime Minister. There will not be new jobs. There will not be new jobs in the manufacturing of clean energy equipment. They will go overseas because this government is incapable of assessing the risk to Australian industry. It has embarked on a process that is going to damn Australian jobs. It is rushing headlong into a carbon tax without even telling us what the price will be, what planning has been done, implementation, what the risks are—none of it. It is a political fix by a Prime Minister in enormous strife. I thought it was absolutely fascinating. You know when a political party has slipped into the absolute depths. You know that when they are reduced to complaining and—I use the word of Senator Carr interjecting today—‘sooking’ in relation to some banners at a public protest. I would like to go back and look at some of the banners that people were holding up behind Labor prime ministers in relation to John Howard and others.

Let us get serious about it. This ridiculous notion that the Leader of the Opposition was in any way responsible for slogans and banners is quite frankly just childish. Go back and look at footage of the comments that were made about John Howard at Labor Party rallies, attended by Labor Party Prime Ministers or opposition leaders. Have a look at what they were saying about John Howard and other people, and then come back and complain to me. I do not think John Howard complained about that. I do not think John Howard was sooking about comments written on banners. It is about time the Australian Labor Party started to protect Australian jobs. When you see the pressure those people in Portland are under, as was indicated again by Dr Napthine, these ships will sail past another closed business. That was in relation to the Vestas wind blade manufacturing plant which closed in December 2007, costing 136 jobs. That was clean energy manufacturing and it lost 136 jobs a couple of years ago. You watch the jobs go if this carbon tax comes in. (Time expired)

**Senator POLLEY** (Tasmania) (3.15 pm)—What an honour it is to follow on from that very poor, lacklustre performance! I am really disappointed in Senator Ronaldson because even in estimates he is far more theatrical than he was here today. I have to say that his really poor defence of the Leader of the Opposition, who appeared and spoke in front of that rally yesterday, clearly demonstrated that the Leader of the Opposition is unfit to be Prime Minister of this country. And as for the weak attempt to
apologise this morning, that was a little bit too late and not a very good attempt.

Let us get back to some of the other issues in relation to climate change. Those opposite are already on the public record as being an opposition for opposition’s sake: they oppose everything. We know that their policy shifts, we know that the Leader of the Opposition cannot stick to one area of policy in relation to climate change, we know he is a sceptic and we know those opposite do not believe in climate change, but there is very clear scientific evidence to state the contrary to that.

The government have already put on the record that with a carbon price there will be compensation; we will be generous to Australian households and families. For those opposite to come in here and hypocritically show some heartfelt concern for Australian working families is almost hysterical. We know their history, we know their policy and we know they were in government for 11½ very long years and that they did nothing. Since those times they have shifted their policy and their position to where they are now—that is, an opposition for opposition’s sake. We will be generous, as I said, in protecting Australian families. We will also protect jobs as businesses make the transition to a clean energy economy. We will invest to ensure these climate change programs will be explained to the Australian community, so that there is an understanding within the community of how important it is for this government to take action to address climate change.

If we go to some of the comments that Senator Ronaldson made in relation to the Productivity Commission, we will see that Mr Banks in his recent speech concluded that while we may not be able to deliver everything that some people expect:

I am confident the study will shed much light on what other countries are doing, how the various policies work, the uncertainties surrounding the efficacy of many of them, how much they achieve and at what cost.

We on this side of the chamber look forward to seeing the final report, which will be handed down in May.

The government have made it very clear that the final decisions associated with this carbon price will be taken in consultation with the community, so that the community and business have an understanding. We have also put on the record that we will compensate low-income families and pensioners, but those opposite have already said that they will take away those benefits, that they will take away any tax cuts for those people. For opposition to then come into this chamber and talk about the so-called effects that might have an impact on people’s superannuation—the same opposition that attacked working-class families, brought in Work Choices when they were in government and have always voted down any increase to Australian workers’ superannuation contributions—is mighty hypocritical for them to lecture us when we are prepared to take action on climate change. (Time expired)

Senator CORMANN (Western Australia) (3.20 pm)—Every single day of every week of every month, all we do under this Labor government is talk tax. Every day of every week of every month they come up with another tax on the Australian people; another tax that will make it harder for people across Australia, that will push up the cost of living and that will put our economy under pressure. Of course, this morning the Secretary of the Treasury confirmed what the Prime Minister suggested was a baseless attack and were baseless figures being circulated by the opposition about a carbon tax. The Treasury Secretary let the cat of the bag this morning. The carbon price will have to be at least $26 a tonne if the government is to go ahead with
its five per cent emissions reduction target by 2020. At least $26 per tonne; probably higher. Here we have it. This is a tax on all Australians, ultimately, which is another thing he said. Senator Cameron was trying to protect the government. He said, ‘This is really just a tax on polluters.’ This is what the Treasury secretary said: ‘It will work its way through the economy.’ That is code for saying every single Australian will end up paying the price for yet another Labor Party tax.

Do not give us the story that somehow this is going to do anything about reducing global greenhouse gas emissions. You do not have a clue whether it will do anything of the sort, because you do not have a clue what other countries in other parts of the world will do. You have not done any new modelling. The government made this decision about imposing a carbon tax without doing any fresh modelling. The most recent modelling from Treasury in relation to the carbon tax is that which was published in 2008. That was a time when this Labor government assumed that the United States would have an emission trading scheme in place by 2010. Does the United States have an emissions trading scheme in place? No, of course it does not. Does Russia have an emissions trading scheme in place? No, it does not. The government thought all these countries were going to have emissions trading schemes in place by 2010, but we have known since Copenhagen that there is no suggestion that there will be an appropriate and comprehensive global agreement to price carbon any time soon—possibly never.

I was drawn to an article today which was published by AAP where Mr Partridge, Australia’s largest brick and tile maker, said the federal government’s carbon price proposals will add about 10 per cent to the cost of housing across Australia—10 per cent. When he said it would add about 10 per cent to the cost of housing, he was working on the basis of a carbon price of $20. We know that it is going to be more than $20. We know it is going to be at least $26, because that is what the Treasury secretary, Dr Parkinson, told us this morning. So of course people across Australia will pay for it. Of course there are going to be fewer jobs as a result of the carbon tax. Of course this is going to put pressure on the economy, and what for? For nothing.

The previous speaker, Senator Polley, talked about compensation. I say: what compensation? I asked Dr Parkinson this morning whether he had prepared any tax cuts, whether he had prepared any proposals to increase the pension. There is nothing. There is nothing on the table. And you know what? They are ‘working on some options’, he says. But are any of these options going to be in the budget? No, they are not. There has been no modelling so far. There is not going to be any information in the budget, either about how much revenue it is going to raise or how much it is going to cost to provide compensation. We know from Professor Garnaut that it is going to raise about $12 billion, but there is not going to be any information about compensation for people across Australia to deal with cost-of-living pressures. But we do know that the government can do one thing, and that is advertise. They can advertise a tax on which they have not done their homework, on which there is not going to be any information in the budget and which is going to cost every Australian more for no net benefit in reducing global greenhouse gas emissions. What is the sense of that?

Before I finish, let me just pick up on some comments made by Senator Wong in her earlier answer in relation to the mining tax. Trust me, Minister. Our position is very clear. This mining tax remains a bad tax. Your accepting all of the recommendations
of the Argus committee, which was not a genuine consultation process, does not improve a bad tax. It came out of a dodgy process which was highly inappropriate. The government negotiated in secret with the three biggest taxpayers, excluding all of their competitors, excluding state and territory governments. It is not the way to produce a tax in Australia. *(Time expired)*

**Senator STEPHENS** *(New South Wales)* *(3.26 pm)*—I too rise to take note of answers to questions this afternoon. Picking up on Senator Cormann’s contribution, it is quite interesting that it took until the last 30 seconds of that contribution to come around to the MRRT, simply because the opposition is opposing for opposition’s sake. It is very frustrating to think that nothing this government could propose would the opposition recognise as being some kind of decent way forward and part of a reform agenda. We are very proud of our reform agenda. After 11½ years of a government that was prepared to milk the mining industry for all it is worth but not invest in the future of Australia, what have we got now? We have an agreement on the recommendations from the Argus committee about the MRRT, the minerals resource rent tax. It is going to deliver some significant issues for us.

As Senator Sherry outlined for us all today, it is going to make a significant difference. First of all, we are going to see some tax cuts for the first time. It is going to make a difference for working Australians. Almost 6½ million taxpayers are going to benefit from the simpler standard deductions that will be part of the agreement on the MRRT. That represents $47 billion in tax cuts. It is a tax cut for a person on $50,000 a year of about $1,750 a year.

We are going to reduce company tax. Again, the opposition are not prepared to support a reduction in company taxes, yet they purport to be a low-tax party. We are extending the superannuation contribution cap. We are abolishing the superannuation contribution tax. We are increasing the cap on the age at which people can contribute to their superannuation from 73 to 75. We are introducing a small business write-off measure of $5,000 a year, supporting small businesses at a time when they need it as much as everyone. We have such a strong strategy of investment. We have the infrastructure investment fund of more than $6 billion, which will particularly support investment in infrastructure in Western Australia and Queensland, the big mining states. These are critical investments that should have been part of the previous government’s approach to supporting our mining industry but never were. It is going to make such a significant difference for us.

But what do we do? We look at the opposition which, having spent years squandering the opportunities, now want to block any sense of reform. They do not want reform here. They do not want reform in our taxation system, which is cumbersome, punitive and unfair. They do not want reform. They do not want to support the mining industry, which seeks clarity and comparable treatment. They do not want to support the manufacturing industry in Australia.

Unlike Senator Ronaldson’s suggestion that the manufacturing industry in Australia is against a price on carbon, many industries see this as a real opportunity, industries such as Origin Energy. They really understand that this is an opportunity for innovation and a new low-carbon, green economy that is going to produce some great initiatives and opportunities for work.

Let us get real about what this opposition are all about—opposition for opposition’s sake. The opposition are not about being constructive. They do not want to see us
have a broader debate around taxation. They only want to play politics with the process. They do not really want to confront the issues that are ahead of us. In that respect, it means that they are always going to be obstructionist in any way they can.

We need to put a price on carbon for the big polluters to change their behaviour. We know we need to do this. Everybody understands that. The processes which will put that in place will ensure that this is not carried just by consumers; it will be for everybody.

Senator MASON (Queensland) (3.31 pm)—I will commence by saying that, despite all the criticism this week of Senator Wong, I think at times she actually gets it right. Three years ago in February 2008, when she was addressing an Australian Industry Group lunch in Melbourne, she said this:

The introduction of a carbon price ahead of effective international action can lead to perverse incentives for such industries to relocate or source production offshore. There is no point in imposing a carbon price domestically which results in emissions and production transferring internationally for no environmental gain.

Senator Wong was right three years ago. I can prove she was right. Have the Brazilians started to move in anticipation of a global agreement? No. What are the Russians doing? Have they said they are going to lower their emissions? They have not. Have the Indians said they will? These are the major emitters. Have the Chinese said that they will? These are the major emitters in the world and yet somehow this government says we should move before there is a sufficiently comprehensive global agreement. That case has never been made out.

The question is very simple. Is it in our national interest, in the interests of our country, to move before there is a sufficiently comprehensive global agreement? The government has never made out that case because, despite all the rhetoric about a tax on polluters and so forth, the fact remains that the cost of living for average Australians will go up. The cost of living will go up; Senator Cormann was dead right about that. How can it be in our national interest to increase the tax burden on ordinary families, on those working families that Mr Rudd used to talk about? How can that be in our national interest?

How can it be in our national interest to willingly, knowingly increase the cost of living? How can that be in our national interest? How can it be in our national interest to damage our industries, particularly our export industries? Why would you knowingly and willingly do that before there was a sufficiently comprehensive global agreement? The government have never answered that. Why would you want to prejudice the employment prospects of young Australians without any certainty of any environmental benefit whatsoever? This has been the critical point of the debate for the last 2½ years. Right from the beginning, the government have never answered this particular point. Why should Australia sacrifice its interests before we have an agreement at least among the G20 and certainly including Brazil, Russia, India and China? The government have never made out this case. They seem to think it is quite okay to sacrifice Australia’s national interests, to sacrifice employment and, in fact, to be certain that there will be an increase in the cost of living. If it was okay and it made sense, other countries would be doing it.

Professor Garnaut, Senator Wong and others have never justified why we should move in anticipation of a global agreement—never, not once. If it was such a good idea, the Brazilians, the Russians, the Indians and the Chinese would be doing it. I am sick to death of this government parading around with this moral vanity that somehow people on this
side are troglodytes who do not care about the environment. That is not the point. There is absolutely no certainty that their policy will lead to a better environment for the world. In fact, as Senator Wong said in Melbourne three years ago, it could even make the environment worse.

Question agreed to.

COMMITTEES

Environment and Communications Legislation Committee

Extension of Time

Senator McEWEN (South Australia) (3.30 pm)—by leave—At the request of Senator Cameron, the Chair of the Environment and Communications Legislation Committee, I move:

That the time for the presentation of the report of the Environment and Communications Legislation Committee on the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011 be extended to 9 June 2011.

Question agreed to.

Environment and Communications References Committee

Extension of Time

Senator ADAMS (Western Australia) (3.37 pm)—by leave—At the request of Senator Fisher, the Chair of the Environment and Communications References Committee, I move:

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 7 April 2011.

Question agreed to.

BUSINESS

Rearrangement

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister) (3.38 pm)—by leave—I move:

That business of the Senate order of the day No. 6 be called on immediately.

Question agreed to.

SENATE TEMPORARY ORDERS

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister) (3.38 pm)—In relation to the Procedure Committee’s first report of 2011, I move:

That the recommendation of the Procedure Committee in its first report of 2011, be adopted as follows:

The order of the Senate providing modified rules for question time continue to operate as a temporary order until 18 August 2011.

Question agreed to.

BILBIES

Senator LUDLAM (Western Australia) (3.39 pm)—by leave—I move:

That the Senate—

(a) notes:

(i) Main Roads Western Australia have submitted a proposal to build a road to James Price Point through pristine Kimberley bushland which is prime habitat for the bilby, acknowledged as a vulnerable species by both the Western Australian Government and the Federal Government,

(ii) that building a road through this area would directly destroy the habitat as well as threatening the species by opening up its habitat to predators such as dogs and feral cats,

(iii) the construction of a major road through this area may contravene the Australian Government’s own National Recovery Plan for the greater bilby,

(iv) the status of the greater bilby in large parts of Western Australia is unclear, as
identified in the National Recovery Plan, and

(v) that the decision to locate a gas hub or other heavy industry at James Price Point is still being considered under the Federal Government’s environmental assessment process and this proposal presupposes the outcome of that process; and

(b) calls for:

(i) the Minister for Sustainability, Environment, Water, Population and Communities (Mr Burke) to take careful note of the information provided through the environment protection and biodiversity conservation process and examine the proposal in light of its impact on the endangered bilby, and

(ii) investment in more scientific research into the status and habitat of the bilby.

Question put.

The Senate divided. [3.44 pm]

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

Ayes……………. 35
Noes……………. 35

Majority………. 0

AYES

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

NOES

Abetz, E. Adams, J. *
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Cormann, M.H.P. Eggleston, A.
Ferguson, A.B. Fielding, S.
Fifield, M.P. Fisher, M.J.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kroger, H. Macdonald, I.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.
Parry, S. Ronaldson, M.
Ryan, S.M. Scallion, N.G.
Troeth, J.M. Trood, R.B.
Williams, J.R.

PAIRS

Carr, K.J. Payne, M.A.
Evans, C.V. Boswell, R.L.D.
Hogg, J.J. Fieravanti-Wells, C.

* denotes teller

Question negatived.

BUSINESS

Rearrangement

Senator McEWEN (South Australia) (3.48 pm)—by leave—I move:

That the presentation of the report of the Selection of Bills Committee be postponed till a later hour.

Question agreed to.

DOCUMENTS

Tabling

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

Details of the documents appear at the end of today’s Hansard.
COMMITTEES
Rural Affairs and Transport References Committee
Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking to vary the membership of a committee.

Senator Lundy (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister)

(3.49 pm)—by leave—I move:

That Senator Colbeck replace Senator Heffernan on the Rural Affairs and Transport References Committee on 24 March 2011, and Senator Heffernan be appointed as a participating member.

Question agreed to.

NATIONAL BROADBAND NETWORK COMPANIES BILL 2010
TELECOMMUNICATIONS LEGISLATION AMENDMENT (NATIONAL BROADBAND NETWORK MEASURES—ACCESS ARRANGEMENTS) BILL 2011
Second Reading

Debate resumed from 21 March, on motion by Senator Jacinta Collins:

That these bills be now read a second time.

Question put.

The Senate divided. [3.54 pm]

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

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

AYES

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

NOES

Abetz, E. Adams, J.*
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Cooman, H.L.
Cormann, M.H.P. Eggleston, A.
Ferguson, A.B. Fifield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Williams, J.R.

PAIRS

Carr, K.J. Fierravanti-Wells, C.
Evans, C.V. Payne, M.A.
Hogg, J.J. Boswell, R.L.D.

* denotes teller

Question agreed to. Bills read a second time.

In Committee

NATIONAL BROADBAND NETWORK COMPANIES BILL 2010

The CHAIRMAN—Is it the wish of the committee that the bill be taken as a whole?

Senator Birmingham (South Australia) (4.00 pm)—I wish to speak on this. There is an important question here for the
minister to answer before we get into whether or not the bill should be considered as a whole or how we consider these two bills. That question is whether we have all of the amendments, all of the information and all of the detail before us here and now so that we can go through this. The challenge to you is for you to stand up and say that there will no more government amendments tabled during the course of this debate and no more amendments to government amendments from the government during the course of this debate. The challenge is for you to say that you have settled with this thing, these bills that you have been going on with since November last year when you first introduced them into the other place. That was on 25 November last year. You have had all of the time since then to get these bills right— all of those months.

This week, the bills were listed for debate on Monday—the beginning of the week. We came in here and started that debate. Then, presumably with your instruction, Minister Arbib adjourned that debate. We have not come back to it until this point in time. So the rest of Monday went by, Tuesday went by and Wednesday went by. Late on Wednesday, we were provided with the reams of amendments that your government is proposing to make. There are 28 pages of amendments across the two bills—hundreds of them in total—for us to consider. You have insisted that the Senate consider these bills today and, if need be, tomorrow, the day after and so forth. We want to be certain that these bills and amendments will be the bills and amendments that we will be considering. We want to be certain that there is no way that you are going to come in here and present further amendments. If you are going to do that, we might as well go through and consider each bill clause by clause.

More significantly, as I advocated during the discussion of hours, we would be wiser to simply refer these bills, and these amendments in particular, back to the legislation committee to let the stakeholders have their say to ensure that you have it right, because—quite clearly—to date you have not got it right. If you had got it right in the first place, you would not have had to amend one of these bills and reintroduce it subsequent to the first introduction in 2010. If you had got it right in the first place, you certainly would not have had to introduce 28 pages of amendments in the last couple of days.

These are the questions for you, Minister: have you settled the whole thing? Is this it? Will there be no further changes? Should we say, ‘Let us not debate it now; let’s wait until you get your house in order’? I want to know, and I think that every senator deserves to know, whether the government has its house in order on this issue now. This is important.

This is a $50 billion package. I know that you love to take people to task on that, Minister, but we all know that, when you consider government’s direct equity into the NBN Co. and the debt-raising activities that the NBN Co. will have to undertake and the payments that the NBN Co. and the government will ultimately make to Telstra, we are talking about a sum that reaches beyond $50 billion. This is a vast project. These bills have vast implications, implications for how the NBN Co. will work, how it will be scrutinised in future, whether it will be subject to the FOI Act—and we know that you are seeking to provide sweeping exemptions there—and whether it will be subject to the full scrutiny of this parliament. We already know that you are seeking to exempt it from the scrutiny of the Public Works Committee.

These bills have vast implications for the operations of the telecommunications market and the NBN Co. in particular. Will it be the wholesale only provider that you claim it
will be? Will that be the case? If not, we need to get to the bottom of why not, of who they will be able to provide services directly to and why you think that breaching the wholesale only provider promise is justified. We will need to get to the bottom of why you think that you can go back on your word in that regard and set the NBN Co. up as a potential retail provider as well. We need to go back and find out what implications that will have for the operation of the telecommunications market in this country and whether or not you will be starting the NBN Co. off on the path of potentially being another vertically integrated telecommunications company, but one with a government legislated and mandated monopoly in the fibre space. We need to know whether you will be taking us back many years in this space because of your failure to get this right. These are vital issues and questions.

We need to understand whether these amendments will, as is being alleged, wind back the capacity of the ACCC to have decent oversight of critical things such as how the NBN Co. discriminates on price to its retail customers, how the NBN Co. bundles services or discriminates on the bundling of services to its customers and how the NBN Co. decides on points of interconnection. Will the ACCC have full and strong oversight in this regard or have you taken a step back to weaken it? These are questions that arise out of the amendments that you have tabled. They are questions that arise from the bills that are under debate. But, from what we understand, you are still trying to make your mind up as to whether this is the final equation—whether you have it all bedded down now or whether we are going to see further iterations as this debate goes on.

If we are going to see further iterations, it is just not good enough for this debate to go on. Every senator who has an interest in this deserves to be able to start this debate knowing exactly what the government is proposing and having a clear idea of what it is that you intend for this parliament, this Senate, to decide upon with these bills. You are the government. You are meant to be in charge of this agenda. So far, you have failed miserably in that regard. You came in here during the debate on the hours and proclaimed, as did Senator Ludwig, the vital importance of getting these bills through to allow the deal—the already delayed deal—with Telstra to proceed.

That deal has already been delayed. It may be at risk of further delay—I do not know—as a result of this legislation. But, if it is, there is nobody to blame but yourself and your government. You are masters of your own destiny in this regard. And, as I emphasised at the outset, these bills were first introduced way back in November last year. You have had not just days to get your house in order on this, not just weeks to get your house in order; you have had months to get your house in order on this. Now you come in here, on the last day of the last week of this session, and try to extend the hours—as you have successfully done—and expect us to roll through all of these amendments, of particular substance, to your legislation and expect, in some way, for the Senate to be happy. Well, we are clearly not happy about it. What we will be even less happy about is if we get halfway through this debate and discover that—wait, there are more amendments from the government; wait, there are more things that you need to fix up with your own legislation. Or, potentially, most amazingly, will be the likelihood that you will come in here with amendments to some of the amendments in your 28 pages of amendments. That is quite likely because, given the way you have got it wrong so far with the drafting of these bills, given the fact that you have seen it necessary to move these 28 pages of amendments, there is every likeli-
hood that you are going to find, as this debate goes on—as no doubt will be pointed out in your consultations and discussions with industry stakeholders outside this building who are worried about these changes and who are concerned, like senators, that they have not had a chance to adequately consider these changes—that there are flaws and there are problems. That will push you into potentially having further amendments.

We think that it is not unreasonable for the Senate to expect to see the government’s final position at the start of the committee debate, that it is not unreasonable for us to know that you have actually got your house in order, made your mind up, locked it all in and settled where you are going at the start of the committee debate. So before we move on to this procedural motion about whether the bill be taken as a whole, I have one simple question, Minister: will there be any more amendments? Can you rule out bringing any further amendments into these bills into this chamber during the committee debate?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.09 pm)—What staggering hypocrisy—I mean, seriously. I have one simple question for you: is your policy position still to abolish the NBN? Is that still your position? It is your leader’s stated position. Is it still your position? It is staggering hypocrisy to actually suggest that, if an amendment came forward that would improve the legislation or correct a typo, it should not be brought forward. What staggering hypocrisy from those opposite.

Senator Ian Macdonald interjecting—

Senator CONROY—I have participated for not quite as long as you, Senator Macdonald, but I know that you have stood in this chamber during the committee stage and moved further amendments to bills. I know you have done that.

Senator Cormann interjecting—

Senator CONROY—Senator Cormann, unfortunately you have not, and are not likely to for some considerable period, especially once Malcolm takes over. But for you, Senator Birmingham, to actually come into this chamber and say no-one should be allowed to move an amendment that could improve legislation or correct an error is quite disingenuous. You have promised this chamber—I have had discussions—that we are going to be here until Saturday afternoon. That is just a game of the opposition seeking to delay and demolish the NBN. You are frauds when it comes to this debate. It is just fraudulent behaviour to suggest you are remotely interested in any amendment to any of the bills that are before—

Senator Ian Macdonald—Mr Temporary Chairman, because of the quite ridiculous rulings that have been made of late that ‘impertinence’ is unparliamentary—

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Senator Macdonald, before you go any further, you just then reflected on the chair by commenting on his rulings. It should be withdrawn.

Senator Ian Macdonald—I withdraw that. But there has been a ruling that calling someone impertinent is unparliamentary. Is Senator Conroy calling us, collectively, ‘frauds’ parliamentary?

The TEMPORARY CHAIRMAN—If Senator Conroy referred to the opposition collectively as ‘frauds’ he should not have.

Senator CONROY—I withdraw. As I was saying, for those opposite to even remotely suggest they are interested in one single amendment, one single clause in this bill—you are voting against it! Do not come
in here and pretend that you are the slightest bit interested in the amendment process. If there is an amendment that can come from the floor that improves this legislation, or corrects an error, then of course this chamber should consider it.

Senator BIRMINGHAM (South Australia) (4.13 pm)—Minister, you have taken a nice outclause there. You have said, ‘Well, if there is a typo that needs correcting, perhaps we should allow that’—

Senator Conroy—I said ‘improve’.

Senator BIRMINGHAM—You said ‘improve’ as well. Answer this question, then: is your department working on potentially more amendments? Are there more amendments still to come? Do you know that there are actually more amendments to come that you will proclaim will improve this bill? Are there further changes? Tell us whether, to the best of your knowledge, at this point in time, this is the final version of the bill; whether to the best of your knowledge, at this point in time, we have all of the amendments before us; and whether, to the best of your knowledge at this point in time, each one of these amendments is settled, unless something unforeseen comes up, unless there is an amendment that fixes a typo. Tell us whether there is work going on to produce further amendments or not. If you do not deny the fact that there is work going on, work happening to produce further amendments, then it will be quite clear that you are asking the Senate to start this process with one hand tied behind its back—not knowing exactly where you are going, not knowing exactly what it is that you are planning to undertake during this debate.

You are right—the opposition has fundamental problems with your National Broadband Network. We have made absolutely no secret of that, none at all. We have real concerns, and we have highlighted those again and again. Our concerns are valid and understand able. This is a vast, vast expenditure of taxpayer money. This is a vast interference in the way the telecommunications market operates in this country. This will have implications for many, many years to come. As I have said many times before, the debate is not about whether Australians should have access to fast, affordable, reliable broadband. That is something that we want, it is something that you proclaim you want and it is something that I think every senator in this chamber proclaims that they want to see happen. The debate is about how you give Australians access to fast, affordable broadband—how you make sure that that broadband is delivered in the most cost-efficient way for taxpayers, in the most effective way for the operation of the telecommunications market and in the best way to give consumers, in future, the best chance of accessing what is necessary for the technologies of today and of years ahead and accessing it at the lowest possible price.

We believe that your National Broadband Network is the wrong way to go about doing that. We believe that because it involves such vast sums of public money being spent to create a new, vast government-owned monopoly that will involve overbuilding and overlaying infrastructure in many areas that already have good broadband services. It will involve taking services out of the hands of, in many areas, a market that is actually working to provide good broadband services and duplicating or taking over those services in all of those areas, rather than focusing, as government should, on the areas of market failure—on the people who are actually missing out on broadband services. These are the areas we think government should get in and focus on. These are the areas in which you should be delivering your services.

The backhaul rollouts that have been undertaken focus on areas of geographic disad-
vantage. These are not unreasonable areas for government focus. But you are building a giant new government monopoly and building it in a way that takes away any competitive sense in large tracts of the Australian community and takes away from what is, in many parts of Australia, an already functioning broadband market. In many parts of Australia, people already have good, reliable broadband services—fast services—that are priced competitively. That seems to us to be the wrong direction for government to go.

That is why I do not shy away from the fact that, yes, we oppose the NBN, we oppose the spending of these billions of dollars of taxpayer money and we oppose the fact that you are going to borrow billions of dollars as a government—that your 100 per cent government-owned entity, NBN Co., is going to borrow billions of dollars on behalf of the government. All up, some $50 billion will be churned around in this.

Senator Conroy—Put a bit of substance in it at least, Simon! Come on—a bit of passion!

Senator BIRMINGHAM—Minister, would you prefer it if I yelled at you the whole time? That is fine! I can give you a bit of passion if you want and plenty of substance to this argument as well. I can give you plenty of substance for the Australians who are going to be paying off the debt on this for many years to come. I can give you plenty of substance for the Australians who are going to be wondering why they have been burdened with this pipedream of yours and why they have been burdened with this white elephant from the government. I can give you plenty of substance to allow Australians to ask why the government is insisting on rolling this out up and down every street of Australia in the manner it is proposing, rather than focusing on delivering services where they are genuinely most needed. There is plenty of substance there.

As I said, I do not shy away from our opposition to this—not at all. Yes, we will be opposing these bills, but we have also approached these bills constructively. We have highlighted problems in these bills. Opposition senators who participated in the Senate inquiry into these bills highlighted concerns, some of which your amendments have at least attempted, in some ways, to actually address. While your government senators were happy to brush it under the carpet and propose that the bills be passed as they were, you clearly were not satisfied with that, because you have come out with 28 pages of amendments since then. The opposition has at least subjected these bills to far greater scrutiny than your own senators have. The opposition in the other place proposed and raised issues of concern and moved some amendments there as well. The opposition is proposing a raft of amendments here, because although we think this is a bad proposal—a flawed proposal—we are willing to put in the hard yards to try to make sure that it does as little harm as possible. That is what we are hoping to at least achieve from this process.

We want to hold you to your word. You say that this will be a wholesale only provider, and that is what we want to hold you to. We want to make sure that that is what it is. When you say that this will be subject to stringent competition rules, we want to hold you to that. When your government says that it wants to be open, accountable and transparent in its operations, that is what we want to hold you to. That is why we have proposed the amendments that we have proposed in this space. The folly of it all, of course, is that you have now proposed your own raft of amendments, most of which fail to deal with the concerns that we have highlighted, yet you come in here and want to
have a debate about proposals that are substantially different from what they were this time yesterday. You want to have a debate about those all of a sudden, and you want it to be a debate of substance. What is not unreasonable is the fact that we asked the question whether, to the best of your knowledge, this is it—what we have before us. That is the question for you, Minister, as I put it at the outset: will you tell us whether your department is working on any further amendments or any further changes to the amendments before us—whether you know that there are other changes to come. Do not give us the glib answer, ‘We might correct a typo here,’ or that you ‘might’ do something else. Tell us the truth—is the work happening behind the scenes? Are senators going to be ambushed with yet more amendments and do you know that they are already on the way?

Senator IAN MACDONALD (Queensland) (4.22 pm)—Can I just reinforce Senator Birmingham’s question. I note that Senator Xenophon and Senator Fielding are not currently in the chamber during this process and neither are the Greens. Should we assume from that that they are being consulted?

Government senators interjecting—

Senator IAN MACDONALD—I am talking about their being in the chamber, where you can speak to these amendments. I cannot see any of the crossbenchers or the Greens. That suggests to me that perhaps amendments are being discussed.

Senator Cormann—Senator Conroy must be on the phone to the department.

Senator IAN MACDONALD—Senator Conroy, I assume that you are ringing the department to get the answer.

Senator Conroy—You ran out of things to say after one minute.

Senator IAN MACDONALD—Senator Conroy, I want you to listen to the question. Mr Temporary Chairman Bishop, I can talk about this bill for hours, but we are here in the committee stage. We want to get this bill dealt with. We want to have our amendments dealt with. We are asking the minister a question and the minister chooses to speak on the telephone and not listen to any of the questions being asked of him. How can he possibly answer the questions when he does not listen to them?

Senator Conroy—Have you run out of things to say again?

Senator IAN MACDONALD—I am asking you a question, Minister. I am expecting that you might do the Senate the courtesy of actually listening to questions so that you might answer them. This just shows contempt. There he is. He has hung up the phone, so he is listening.

Senator Conroy, can you please tell us if the department is currently working on additional amendments? If so, why are we bothering with this farce of a debate? Why don’t we just refer the amendments to a committee to be looked at? Let TransACT work out whether the amendments actually deal with the very genuine concerns they raised in the committee. Let Telstra and Optus work out whether the amendments genuinely deal with the concerns they raised. If other amendments are currently being drawn, please tell us so that we all know where we are going. It is pointless debating these amendments that you have put on the table if they are not the final amendments.

In deference to crossbench and Greens senators, I now report to the chamber that Senator Xenophon and Senator Ludlam are in the chamber taking part—

Senator Conroy—I rise on a point of order, Mr Temporary Chairman. It is not within standing orders for Senator Macdonald to
mislead the chamber. Senator Ludlam has not left the chamber at any stage. The fact that Senator Macdonald could not notice him in the chamber does not mean that he is entitled to mislead the chamber or anyone listening to this debate into believing that he had left the chamber.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—There is no point of order. Senator Macdonald has the call.

Senator IAN MACDONALD—Senator Xenophon has now explained to me his very good reason, which I will not disclose, for not being here. I do not care whether they are here or not. My only concern is whether they are around in the department drafting the next set of amendments. Clearly they are not. Perhaps their advisers are. That is all we want to know. Minister, if you could tell us that, you could curtail this debate quite considerably. Please confirm, as Senator Birmingham has asked you, whether or not additional amendments are currently being drafted. If they are, why are we proceeding with this farce of a debate? If they are not, let us get on with it and debate the amendments before us.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.26 pm)—There are days when I wish I could suffer from the same affliction as those opposite: the inability to remember what happened the day or the week before. I have watched the opposition—the then government—move amendments on the floor many times. I have seen amendments brought in. If they improve the bill, they are welcome—unlike the efforts by those opposite, which are simply to demolish, delay and destroy the NBN. That is all they are about. Credibility is absolutely zero when you want to cry crocodile tears here.

Senator IAN Macdonald—So there are more amendments being done now.

Senator CONROY—As I said, if there are amendments that can improve this bill then we will always consider them, and we are always open to consultation. I appreciate that Mr Turnbull has taken some time off from his full-time job of destabilising Mr Abbott to focus on the portfolio for a moment. He has moved to 90 per cent destabilising Mr Abbott and 10 per cent on the—

Senator Cormann—Malcolm Turnbull is doing a great job.

Senator CONROY—Yes, I can see why you would be smiling, Senator Cormann. I am pleased that Mr Turnbull has taken some time off from his full-time job of destabilising Mr Abbott to actually do a little bit of policy work. I am sure that even Senator Birmingham, who is very diligent in the pursuit of his portfolio areas and very diligent in representing Mr Turnbull in this area, gets tired of carrying Mr Turnbull. I know you got tired of carrying him, Senator Cormann. We are always open to consultation and amendments that will improve it.

Senator Cormann—That job should have been done before you brought it in.

Senator CONROY—Even if you came up with one right now, Senator Cormann, we would give it consideration. If you wanted to make a positive contribution with an amendment that improved this bill, Senator Cormann, I would even consider yours.

Senator XENOPHON (South Australia) (4.29 pm)—I just want to be upfront. I think the government and the opposition know that my negotiating style is to tell everybody—both sides at the same time—what I am doing. I think that is the best way to deal with things in this place. I just had a quiet private conversation with Senator Macdonald, and I am happy to repeat what I said to him to the chamber—that is, the government introduced
some further amendments yesterday. They were not insubstantial amendments. There were two amendments that I have some concerns about in relation to the points-of-interconnection authorisation and also in relation to the bundling of services and how those services can be offered. Senator Birmingham would be familiar with those amendments, as would other colleagues and of course the government. I do have some concerns, principally in relation to those two amendments. I would like to discuss that further with my colleagues. In fact, I had a brief conversation with Senator Birmingham about those concerns. I want to reserve my position to, if necessary, move amendments.

Senator Cormann—So the government is not ready yet?

Senator Xenophon—I think the government’s position is clear, but I have the right, as Senator Cormann has the right, if need be to move amendments in relation to issues of concern as a result of the recent amendments. I am being completely upfront with all my colleagues in relation to this, and I think I have been consistent with respect to this. I want to reserve my position in relation to those issues. I do not think we will be getting to them for some hours, and I expect not by tonight—

Senator Cormann—So there is still some work going on behind the scenes?

Senator Xenophon—What I can tell you is that I have raised these issues with the government, the opposition and the Australian Greens. I have not had an opportunity to have a detailed discussion with Senator Fielding about this, but I will raise it with all parties concerned. I think that is being upfront about it. And, of course, you have some of the key stakeholders such as the Competitive Carriers Coalition, Optus and I think Macquarie Telecom who have expressed concerns about some recent amendments, and it is a question of working through those. I want to be upfront with the committee about this, and it may be that I reserve my position with a view to introducing further amendments in relation to those areas of concern.

Senator Birmingham (South Australia) (4.31 pm)—It is quite clear from what the minister has said and from what Senator Xenophon has said—and, indeed, Senator Xenophon is perfectly within his entitlements and his responsibilities as a crossbench senator to work through matters with the government—

An honourable senator—And the opposition.

Senator Birmingham—and the opposition and all parties, as Senator Xenophon does in a very dutiful way, to ensure that he is satisfied with the legislation as it progresses through the parliament. But the questions that the opposition have been asking the minister have not pertained to whether he is assisting crossbenchers or whether he is looking at crossbench amendments; they have pertained to whether the government are drafting further amendments of their own, whether the government are actually developing amendments of their own.

And it is quite clear from his obfuscation, from his failure to tell us whether what we have before us is, from the government’s perspective at this point in time, the complete set of amendments without further ones that he knows are already being prepared, already being drafted. It is quite clear that the government is trying to work on further ways to fix up its flawed legislation, to fix up the mistakes it made when it first drafted this legislation and brought it into the House in November last year, to fix up the mistakes it made when it brought back the legislation into the House this year and passed it through the House, to fix up the mistakes it
made after it began the debate in this chamber on Monday and then realised that it could not go ahead with what it had before it—and to fix up the mistakes that it has no doubt made in the two bundles of amendments totalling 28 pages that we have already.

No doubt there are many mistakes that still need to be fixed up, and that is why the opposition has serious concerns about what you are doing here. That is why we want to make sure that you are held to some account on this and that there is thorough scrutiny. Thorough scrutiny, frankly, is not provided by us spending endless hour upon hour upon hour in here debating this. It is not what I would want to be doing. I am sure it is not what the minister wants to be doing or what anybody else wants to be doing. Thorough scrutiny can be had by giving a little breathing space, by ensuring that we step back from this debate to some extent and that we have a couple of days and an opportunity for everyone who has an interest in this to give decent analysis to the hundreds of amendments the government has proposed—ensuring that we have that breathing space so that everyone can consider it.

In an ideal world, the minister would have had these amendments ready to roll on Monday, in which case we would have had easily a couple of days to give them the consideration they deserve. We could have had the time in that window to talk to stakeholders, to make sure that everyone was comfortable that the amendments you are proposing are going to do the job that you say they will do. But, no, you were not ready on Monday—and that is not Senator Xenophon’s fault; it is not Senator Ludlam’s fault; it is not the opposition’s fault. The only blame for the fact that this debate has not progressed further this week is on your shoulders, Minister, and the shoulders of the government for not being ready to debate it when you said you were going to.

You had it listed first up on Monday morning. We all came in ready and rearing to go. We were there, happy to debate straight on from there. I was expecting to be clearing the diary for Monday and clearing the diary for Tuesday as we progressively went through it. Had you proposed amendments of such substance as these, perhaps we would have sought an adjournment of the debate for a day or two so that everyone could go away and consider them. But, no, you were not ready. You did not do any of those things. Instead, of course, it was last night that these amendments were dropped on the table. It was late yesterday that these amendments were dropped on the table.

Senator Conroy—No, it wasn’t.

Senator BIRMINGHAM—In terms of the full package of amendments, Minister—

Senator Conroy—You should check when they were tabled in the chamber.

Senator BIRMINGHAM—Well, Minister, I have said this, and this point has been made numerous times already, and now is the only time that you are deciding to quarrel with it.

Senator Conroy—I’m just pointing out that you’re wrong.

Senator BIRMINGHAM—You have had many opportunities previously to quarrel with it if you had wanted to. Now is the only time that you are pointing this out. The reality is—

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Resume your seat, Senator Birmingham. Senator Conroy, you should not be interjecting on the speaker, and the speaker should be addressing his remarks to the chair.

Senator BIRMINGHAM—The reality is that you have had the opportunity during this week to get out there and do the job properly and you failed to do it, failed to actually en-
sure that these amendments can be properly considered. As I said before, the opposition thinks there should be some breathing space. There should be an opportunity for these amendments to be properly considered. If you have further amendments, if you have other amendments that you are working on as a government, then there should be an opportunity for them to be properly considered for a couple of days. If you have other amendments that are necessary for the government to secure the support of the cross-benchers to get this through, there should be an opportunity for them to be considered for a couple of days. There should be a transparent opportunity for anyone who has a stake in this to have a say, to look at it and to consider all of the amendments on the table for a couple of days at least.

In reality it would be far better if we had a bit longer than that, but I understand that the government is time pressured on this. I understand the government is desperate to ensure that this legislation passes quickly so that you can get on with your negotiations with Telstra, delayed and fraught though they may already be. So I understand the government has a sense of urgency in wanting to deal with this. But a couple of days is not too much to have asked for to ensure that these amendments of substance are thoroughly considered by all of the parties and stakeholders involved in this debate. A couple of days is not unreasonable in that regard. It is especially not unreasonable when the government is conceding that there will be further amendments to come, that we have not seen the last of the amendments, that there will be more—so we will have to continue to update our understanding and knowledge of what it is you are proposing without the opportunity to thoroughly go out and consult stakeholders.

The reality is that these bills are not going to become law this week. The House of Representatives, the members of the other place, are probably starting to file out now, or pretty close to it, I suspect. They are heading off home, heading off to whatever they are doing back in their electorates for the weekend. They will be coming back next week. It is not unreasonable to suggest that perhaps they should come back late next week rather than early next week, to provide for the opportunity to have those couple of days’ breathing space. It is not unreasonable to suggest that the Senate should do likewise—rather than debating this now, coming back in the middle of next week after having had a couple of days to give thorough and decent analysis to these bills and to the amendments you are proposing.

Senator Cormann—Come on, Steve, let’s come back next week. You’re not ready.

Senator BIRMINGHAM—As Senator Cormann says, it would give you an opportunity, Minister. It would give you another day or so to get your house in order, to make sure that you finalise the amendments that you want to move in relation to this legislation, to make sure that you actually had the final bill and the final package of amendments before us so that everyone can have an informed debate; so that we can all be informed by the various stakeholders in relation to this matter; so that we can know for sure, for certain, that your intentions are as you proclaim them to be in relation to this legislation—that you will be creating a wholesale only network in the guise of a national broadband network company and that the NBN Co., this national wholesale only network, will meet all of the criteria that you proclaim it needs to—and so that we can test it with the stakeholders, test it with the telco companies, test it with the consumer advocates and test it out there with the academics and the media. It would give us all that couple of days’ breathing space to make sure it lives up to what you say it does.
What we saw after your amendments were released yesterday were stories such as those today that say it does not live up to what you promised, that in fact there will not be comparable pricing for comparable services for people in the seven per cent as there will be in the 93 per cent and that people getting wireless or satellite services may well find themselves at a disadvantage—not just on speed but also on price, potentially—to those in the 93 per cent. You shake your head, Minister, but of course this was a story, this was news that came out—

Senator Conroy—In the *Australian*? Even you can’t keep a straight face.

Senator BIRMINGHAM—Nothing like wanting to vilify the media outlet. That is the standard stock approach of your side—

Senator Conroy—Even you are laughing.

Senator BIRMINGHAM—I laugh because you are so predictable in your desire, if you cannot win the argument, to simply vilify the opponent. That is your simple approach and in this case you choose to do it against a newspaper. The questions have been asked. You shake your head, but it is not unreasonable for the questions to be asked, because these amendments were provided yesterday. The explanatory memorandum that is quoted in that newspaper story was released just yesterday. It is not unreasonable for people to be trying to digest what that means. If we had a couple of days’ breathing space to work it out and to ensure that we had confidence in knowing what it means, the Senate could come back and debate it with full confidence, confidence that your shake of the head, your assurances that people in the seven per cent will not be worse off, are actually to be taken—

Senator Conroy—It’s a complete fabrication.

Senator BIRMINGHAM—In which case, Minister, the challenge that I put to you, having failed to answer satisfactorily whether we have the final amendments before us and whether the government is planning further changes of its own volition to try to get its house in order, is that we take those couple of days’ breathing space, that we actually allow these amendments to go back to the Senate Environment and Communications Legislation Committee and give them the opportunity to consider this—not for weeks, not for a long inquiry, because I am willing to accept your arguments of urgency, but for just two or three working days—and to give them the opportunity to air these amendments, to shine a spotlight on them, to ensure that all the stakeholders get their say. Indeed, you can provide further amendments if need be into that process so that the whole package is thoroughly considered. Then we can come back here next Wednesday, have the proper debate and get it done. Our colleagues from the other place can come back on Thursday or Friday, have their debate and get it done, and you will have your legislation by the end of next week, I am sure, if you do the job properly. That is all—one week. It could take one week in total to actually give these amendments proper airing, proper consideration, thorough examination and a full opportunity for stakeholders to actually have their say. That is all—it would take, a full one-week period in which the committee could have a few days, the Senate gets a couple of days and the House gets a day or two. Everyone gets the opportunity to give that consideration and make sure the job is done properly rather than rush in the manner that you are proposing.

So I indicate that it is my intention to move that the committee report progress so that the Senate can then debate a motion to allow these bills, and more particularly these amendments, to be referred to the committee for consideration. That will give the commit-
tee those couple of days in which it can air those amendments and get feedback from the carriers, consumer groups, academics, the department and the government—get all of the relevant information—and do the homework that you seem to be so unwilling to do. The committee will do the homework you are unwilling to do and make sure that all of your amendments live up to your commitments and promises—that they all make sense and will actually do the job of providing the NBN as you claim you want to build it—whilst doing the best we can within this framework to protect consumers, to protect the taxpayer’s dollar and to ensure that the best interests of all are protected.

Senator Conroy, there is no need to pretend this is some great delaying tactic, because it is not a delaying tactic. I have told you: bring the Senate back next week and we will deal with it next week, but give these substantive amendments—these hundreds of amendments—a day or two of airing. Actually give them the consideration they deserve. Give them that consideration. I assure you, Senator Conroy, that if you do this then by this time next week you will have it all done and dusted, I am sure. By this time next week it will have been sorted, but the bills will have had the proper consideration given to them. With that, I move:

That the committee report progress and ask leave to sit again.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.47 pm)—Yet again: block, delay and demolish. Unbelievable! Those opposite are now moving the gag; closing down the debate. This is the height of hypocrisy.

Senator Birmingham—It’s not a gag!

Senator CONROY—You are closing the debate. You are seeking to close the debate yet again. This must be the 20th time that you have sought to block debate on an NBN bill. You are a bunch of frauds! You claim you want the chamber—

Senator Cormann—Mr Temporary Chairman, I raise a point of order. In fact, there are two points of order. Firstly, the minister has again referred to members of the opposition collectively as ‘a bunch of frauds’ and he should withdraw that, as you have previously asked him to withdraw. Secondly, he is misleading the Senate. Senator Birmingham made a very constructive suggestion, given that the minister is not ready to proceed with the debate because he does not have all his ducks in a row in relation to his amendments. There is no suggestion at all of blocking anything; the suggestion is that the Senate debates it so we can deal with this.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Senator Cormann, resume your seat. The first point of order I uphold; I ask the minister to withdraw.

Senator Conroy—I sincerely apologise and withdraw.

The TEMPORARY CHAIRMAN—On the second point of order, there is no point of order. I am now informed that the motion is not a debatable motion, after having debated it.

Question put:

That the committee report progress and ask leave to sit again.

The committee divided. [4.53 pm]

(The Temporary Chairman—Senator TM Bishop)

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AYES

Abetz, E. Back, C.J.
Barnett, G. Bernardi, C.
9 Supply of eligible services to be on wholesale basis

(1) An NBN corporation must not supply an eligible service to another person unless:

(a) the other person is a carrier or a service provider; and

(b) the eligible service is supplied on the basis that the other person, or a member of that person’s immediate circle, must:

(i) re-supply the eligible service; or

(ii) use the eligible service to supply a carriage service or content service to the public.

(2) For the purposes of this Subdivision, a service is supplied to the public if:

(a) it is used for the carriage of communications between 2 end-users, each of which is outside the immediate circle of the supplier of the service; or

(b) it is used for point-to-multipoint services to end-users, at least one of which is outside the immediate circle of the supplier of the service.

(3) In this section:

immediate circle has the meaning given by section 23 of the Telecommunications Act 1997.

This is one of the more substantial and significant amendments the opposition proposes and it is of particular substance and importance to this debate. Senator Conroy has said time and time again that it is to be a wholesale only network—that NBN Co. is to operate on a wholesale only basis. In fact, let us look through some of Senator Conroy’s quotes, even some of his recent quotes. In March 2010 Senator Conroy, talking on Lateline, said:

… the National Broadband Network Bill that we’ve put out is a draft exposure. In actual fact, puts regulations around the National Broadband Network.

Question negatived.

Bill—by leave—taken as a whole.

Senator BIRMINGHAM (South Australia) (4.57 pm)—I move opposition amendment (R5) on sheet 7049 revised:

(R5) Clause 9, page 15 (lines 4 to 8), omit the clause, substitute:

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… the National Broadband Network Bill that we’ve put out is a draft exposure. In actual fact, puts regulations around the National Broadband Network.
If I can just digress for a moment in terms of it being an exposure draft, the number of changes the government has had to make to it shows just how much of a draft it was. He went on:

So it looks at what constraints would we need on a company that could ultimately become a wholesale monopoly. And so they’re important regulatory protections for all Australians so that in the future, when the National Broadband Network is up and running, that it has some regulations, powers for the ACCC to deal with the National Broadband Network, because there’s no point in creating—getting rid of one vertically integrated monopoly to create another—vertically integrated monopoly. He continues:

So this bill around the National Broadband Network is actually an important bill to ensure that the NBN Company ultimately down the track is not able to abuse its position.

‘To abuse its position’—very important words from Senator Conroy and a very important sentiment. Notwithstanding the opposition’s concerns about the entire concept of the NBN, if you are to go down this path, we want to make sure and guarantee that NBN Co. cannot in future abuse its position. We do not want to find ourselves in the future in a situation where we have gotten rid of one vertically integrated monopoly to create another unregulated or poorly regulated monopoly.

We note that in the NBN implementation study, or at least those parts of it that we have seen, NBN Co. states that:

NBN Co’s wholesale-only, open access mandate is crucial to achieving the Government’s competition objectives. A great competition is held back in telecommunications in many markets around the world by a monopoly wholesaler offering better wholesale services to its own retail arm than to the retail businesses of competitors.

These are important points. These are critical points that the government has made time and time again. So it is of great concern to the opposition and industry that we have come along here to debate this bill, the National Broadband Network Companies Bill 2010, to discover that the government has not put an appropriate fence around what the NBN Co. can do in future.

I turn to the substance of this amendment—clause 9 in division 2 of the NBN Companies Bill. It is a pretty simple one. It states:

An NBN corporation must not supply an eligible service to another person unless the other person is:

(a) a carrier; or
(b) a service provider.

That is it. They are the only criteria of clause 9. The opposition is proposing to amend clause 9 in the means and ways listed on sheet 7049 revised. This amendment will provide a far clearer definition as to where and to whom services may be supplied. It will provide a far clearer definition to ensure that services are supplied on a wholesale basis and that services are supplied in a manner where, to paraphrase Senator Conroy, ultimately down the track NBN is not able to abuse its position.

The amendment we have proposed provides a lot more clarity and substance than the proposal in the government’s legislation. The amendment we have proposed provides that:

(1) An NBN corporation must not supply an eligible service to another person unless:

(a) the other person is a carrier or a service provider; and

(b) the eligible service is supplied on the basis that the other person, or a member of that person’s immediate circle, must:

(i) re-supply the eligible service; or

(ii) use the eligible service to supply a carriage service or content service to the public.
(2) For the purposes of this Subdivision, a service is supplied to the public if:

(a) it is used for the carriage of communications between 2 end-users, each of which is outside the immediate circle of the supplier of the service; or

(b) it is used for point-to-multipoint services to end-users, at least one of which is outside the immediate circle of the supplier of the service.

(3) In this section:

*immediate circle* has the meaning given by section 23 of the [*Telecommunications Act 1997*](#).

The opposition has proposed this amendment that goes into far more detail as to what an eligible service supplied on a wholesale basis is because we think it is important that there is not mission creep or scope creep in what NBN Co. does and that when NBN Co. says it intends to be a wholesale only provider and the government says NBN Co. should be a wholesale only provider that is what actually happens, that is what the public gets and that is what consumers get. We think that is only fair and reasonable. We think it is important to hold the government to its word in this regard and that we ensure that NBN Co. are not able to step out of being a wholesale only provider and in doing so risk having that situation where down the track they are able to abuse their position so that we will have potentially gotten rid of one vertically integrated monopoly and instead created a poorly regulated monopoly that is able to step, in some way, into a field of vertical integration.

We heard during the Senate committee inquiry genuine concern from carriers that there were real prospects of NBN Co. supplying directly to end users of services and that there were real prospects that there were carriage service providers, companies and organisations, who already met the definition of being a carriage service provider who would be eligible under the government’s act, if it is passed, to be able to get services directly from NBN Co. We heard everything in that regard from library groups, local government groups, supermarket groups to potentially big banks. You can only imagine what would happen if NBN Co. were able to snatch all of those big customers—the supermarket groups, the big banks, the big companies, large local government entities and big library services—and provide services directly to any of these bodies. It would rip the more profitable aspects out of the retail market. It would leave the retail service providers providing smaller services to large numbers of people. It would take out some of the biggest customers and in the process NBN Co. would have stretched ‘way beyond’—your words—your promise throughout the entirety of this debate that NBN Co. would be a wholesale only provider. What would have happened is that they would be quite clearly providing retail services. They would be providing retail services because they would be providing to customers at the end point of that service. There is no denying that is what it would become in those circumstances. Indeed, in evidence to the Senate committee, it was clear that NBN Co. was quite happy with that situation, that they saw nothing wrong with the situation of them being able to provide services directly to end users. Under questioning from Senator Ludlam, the revelation became quite clear that NBN Co. saw nothing wrong in providing services directly to end users.

So, Minister, the question for you to answer here relates to this very narrow definition you have provided, where many entities, who will have absolutely no intention whatsoever of on-selling communications services but who are defined as carriage service providers, would actually be able to buy services direct from NBN Co. without on-selling them. Why should those companies
be able to meet it? We have the example that was given of Woolworths, who meet the definition of a carriage service provider because of some of the mobile services that they sell—that is all. That is how they meet that definition. But if Woolworths were to find it cost effective to buy their services direct from NBN Co. there would be nothing in your legislation at present that would prevent them from doing so. They would be, therefore, a retail customer if that is all they were doing. If they were buying the service, if they were using it themselves, if they were not on-selling it, they would be a retail customer—a total retail customer.

Senator Conroy—You are outrageous. Your party is meant to be about competition.

Senator BIRMINGHAM—You want to talk about competition, Minister?

The TEMPORARY CHAIRMAN (Senator Forshaw)—Order! We have been going along very well, with no interruptions. Minister, it would help if you would refrain from making interjections. Senator Birmingham, you should not respond to them.

Senator BIRMINGHAM—Thank you for your guidance, Mr Temporary Chairman. Perhaps if Senator Xenophon would come back and distract the minister for the next three minutes and 50 seconds, that would—

The TEMPORARY CHAIRMAN—Senator, I think you should return to your speech on the amendment.

Senator BIRMINGHAM—Minister, the question that needs to be answered in this committee stage in relation to this amendment is: why do you think it is reasonable, after all of your protestations along the way that this would be a wholesale only network, to provide that scope, to provide that window, to provide that opportunity for this mission creep to occur? What is wrong with closing that window off? What is wrong with ensuring that NBN Co. wholly, solely sells services to companies who have an intention of being retailers and on-selling those services? What is wrong with that occurring given your stated mission that this be a wholesale-only provider? Why would you want to provide that opportunity? Why would you want to risk it?

Minister, you have railed for many, many years against Telstra and the vertically integrated monopoly they had. You got the legislation through at the end of last year that in theory will see Telstra broken down, that will see that separation take place. The opposition acknowledged during that debate—Mr Turnbull has acknowledged many times—the importance of that separation. But why would you want to leave the slightest glimmer of possibility that the same mistakes of public policy will happen again? Why would you want to leave the slightest chance that the same thing could happen again? Why, Minister, would you not support a far, far tighter definition, as the opposition is proposing? The opposition is proposing a very clear, very detailed amendment—

Senator Conroy—You should be embarrassed—an anticompetitive amendment.

Senator BIRMINGHAM—So, Minister, is this what you are wanting?

The TEMPORARY CHAIRMAN—Order! Senator Birmingham—

Senator BIRMINGHAM—Mr Temporary Chairman, I am being provoked.

The TEMPORARY CHAIRMAN—Would you resume your seat for a moment. I am going to end up hearing all this in stereo and it is very hard then to follow the debate, let alone for Hansard. Please, Minister, if you could refrain from interjecting, and, Senator Birmingham, if you could return to your speech and not respond directly to the minister but through the chair, if you so wish.
Senator BIRMINGHAM—Through you, Mr Temporary Chairman, the minister comments that this is an anticompetitive amendment. The question for the minister is: why does he seem to want NBN Co. to operate as a competitor in the retail space?

Senator Conroy—It’s not. You can’t just keep making up—

The TEMPORARY CHAIRMAN—Order! Minister, you will get an opportunity to respond. There is one minute and 18 seconds to go. Can we get to the end of Senator Birmingham’s speech with no more interjections or across-the-chamber discussion and see how we go from there.

Senator BIRMINGHAM—This is a matter that is important. It is a matter that has vexed the telecommunications carriers. It has also vexed those on the cross benches. It has concerned many people as to ensuring that the NBN Co. is what you say it will be. That is the crux of the amendment we are attempting to get agreement to in this regard. The opposition wants to hold you and your government to account in this, to account against your promises. It is a long, long time since you made your first grand promises on this—since we had fibre to the node, since we had all of that policy development from the government, a modest $4.7 billion project if my memory stands correctly. But ever since you moved to the fibre-to-the-home proposal you have been emphatic about it being a wholesale only network. We just want to make sure it is a wholesale only network. Through this amendment we are attempting to ensure that is the case, attempting to do nothing more than to hold you to your word and ensure that is what is delivered.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.13 pm)—The government does not support this amendment. The bill as drafted makes NBN Co. a wholesale only provider. The mechanism it uses is a restriction on selling to any party other than a carrier or carriage service provider or specified utility—that is, it cannot sell to end users. The proposed amendment puts a further restriction—this is what is critically important—on the parties that NBN Co. can supply. It leaves the requirement that NBN Co. supply only carriers or carriage service providers, but only those carriers or carriage service providers or a member of their immediate circle that supply a service to the public.

A couple of very important points need to be made in response to this. First, NBN Co. will only supply a service that by its nature is a wholesale service—for example, a layer 2 service on the fibre network. This is not a service that can be used by an end user as considerable resources and capability are required in order to turn a layer 2 service into an end-user or retail service. You cannot use the service that the NBN is providing without changing it and adding to it. But most importantly—and the hypocrisy of Senator Birmingham and those opposite—the restriction proposed by the opposition would prevent an arrangement that has been permitted by the Howard government’s own legislation since 1997—that a person can become a carrier even if that person wishes to supply services primarily to his or her own operations.

You are actually seeking to amend your own legislation to restrict people in a completely anticompetitive way. You are actually seriously proposing to this chamber to restrict your own previous legislation to be more anticompetitive. That is what you are proposing. It is quite an astonishing and astounding thing for the Liberal party, the supposed party of competition—although in the telco sector we know there have been a few black marks over the last 15 years. But seriously, this is your chance to shake off the
chains and to shake off the anticompetitive position that you and your party have endorsed for 15 years. There is an opportunity to actually get on board for a pro-competition piece of legislation.

This amendment is also poorly drafted. It prevents carriers or service providers from using NBN Co. services for their own internal communications. For these reasons, the government does not support this anticompetitive and restrictive amendment.

**Senator XENOPHON** (South Australia) (5.17 pm)—I am not able to support the amendment moved by Senator Birmingham for a number of reasons. My understanding is that this relates to utilities. Is that correct, Senator Birmingham? I think that is the position of this particular amendment.

**Senator Birmingham**—No, it is not. But in terms of the ability of wholesale operators, I would be concerned and have some sympathy for Senator Birmingham’s amendment if this bill were to come out of this place with provisions to allow for price discrimination. If you remove the provisions on price discrimination then I think that takes away the reason or the rationale for, or the benefits of, this particular amendment. I think the appropriate way to deal with this bill is to ensure that the NBN offers the same deal and is required to offer the same terms and conditions to a carrier as it does to a retailer. It will then not make any difference; there will be a level playing field. I think it would enhance competition.

So I would simply like confirmation from the minister that, in the event the amendments I have tabled are passed—which would remove all vestiges of price discrimination—the position would be this: that the NBN Co. would have to offer the same terms and conditions to all parties that seek to access its services. I think that would provide a very strong safeguard for competition and ensure that there is a level and fair playing field.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.19 pm)—I indicate that the government will be supporting your amendments and that the answer to your question is yes.

**Senator LUDLAM** (Western Australia) (5.19 pm)—The Australian Greens will not be supporting this amendment. This situation occurred before Senator Birmingham arrived here. It occurred before I arrived here as well, although I was not too far away. The coalition sold Telstra. The coalition left us with a market structure that we have inherited. The CCS bill that we spent two years mulling over and finally debated at the end of last year, and now this bill, are an attempt to fix that structure, which was landed upon us.

The ALP and the crossbenchers at the time voted against the privatisation of Telstra. Perhaps Senator Birmingham, if you had been here when that occurred, you would have crossed the floor and saved the day; we will never know. But your side left us with the market structure that we have today. It is extraordinary to then come in and get a lecture on setting up a wholesale-only, open-access network that we are hoping will be as free from contamination by retail activities as possible. And to hear that from the side that sold this vertically integrated thing down into the market, where it then did everything it could, what it was legally obliged to do—that is, maximise shareholder returns. The public interest went out the window, not because Telstra’s management were bad people but because they were legally obliged to do what they spent the last couple of years doing.
The Australian Greens are very concerned that this so-called scope-creep that has been discussed—I suspect we will hear a great deal about it over however long this debate spills out—does not occur. We agree with the principle, as it was outlined years ago, that this is to be a wholesale-only, open-access network. I believe the amendments that the coalition have put up are poorly drafted. I am not going to suggest, or anything of the sort, that there is malicious intent. Let us be very careful here about whether the amendments the coalition are going to bring forward into this debate are genuinely designed to improve this bill. I ask Senator Birmingham to answer the question—I know he does not have to—that if the amendments the coalition put forward were to get up, would he vote for this bill? Or is the coalition intending to trash this thing no matter what happens over the next couple of days? I would be genuinely interested to know that.

So we will not be supporting these amendments. I think the questions that Senator Xenophon raised are entirely appropriate and I foreshadow that the Australian Greens will be moving amendments at the appropriate time to make sure that when we are debating a real NBN rather than a hypothetical one we will know how these provisions are being used. I am interested to know, as I suspect everybody in this chamber is, about the degree to which this supposed scope creep actually occurs.

I think we need to make a very important distinction here: NBN Co. is selling a wholesale service, and we are then debating what kinds of entities it is able to sell to. I will have this argument in the case of utilities, carriage service providers and so on—people using these services for their own use—but the service that NBN Co. is selling to the market will be a wholesale service to everyone. I think that is a very important distinction to make. I may rise again if Senator Birmingham cares to address any of the issues that I have raised, but otherwise I will just state that the Australian Greens will not be voting for these amendments.

Senator BIRMINGHAM (South Australia) (5.22 pm)—I think I caught a good number of Senator Ludlam’s comments, if not all. In the earlier debate we had, where I pleaded for the government to provide some extra time for consideration of its detailed amendments to ensure that we got all of them right, I think I made it quite clear that the position of the opposition coming into this debate is that we are trying to put forward amendments in good faith, but that does not vary our position of opposition to the NBN and does not ultimately vary our position of opposition to these bills and what the government is trying to do around the NBN.

I am not attempting to hide anything there. I made it clear earlier and I make it clear again that our opposition is based on some of the fundamental concerns we have with the NBN. But along the way we are attempting to do our best to hold the government to account and ensure that—on the presumption that this will eventually pass and become law—it reflects what the government has said is its intention and that it does what is best for the consumer and the telco sector by providing the necessary outcomes.

Senator Ludlam heard, as did I, the evidence provided to the Senate committee. I heard the various terms on which parties raised concerns about this. Let me quote a couple of those areas of concern from the committee report.

Senator Conroy—Don’t quote yourself!

Senator BIRMINGHAM—I am not quoting myself, Minister. I will let you know when I quote myself.
The TEMPORARY CHAIRMAN (Senator Forshaw)—Order! If you do that, you will let him know through me.

Senator BIRMINGHAM—Certainly. In section 2.17 of the majority report of the committee it highlights:

Telstra argued that the statutory terms ‘carrier’ and ‘carriage service provider’ are ill-suited to define NBN Co’s scope of business. Firstly, a carrier licence can be easily obtained and there is no requirement to use it to supply services to the public...

Quoting from Telstra’s submission, the report says:

It is very easy for a customer to ‘convert’ from a retail customer to a carrier, because a carrier licence can be readily obtained with minimal investment requirements, and there is no requirement that a person who holds a carrier licence actually use a network unit to supply services to the public...

That is the key problem that I highlighted before. I will just repeat the last sentence: This is a simple loophole enabling a corporate customer to buy communications services directly from NBN Co without being a retailer.

Senator Conroy—You want to tell them how to use it. That is the truth.

Senator BIRMINGHAM—Mr Temporary Chairman, I am attempting not to be provoked. Minister, through you, Mr Temporary Chairman, this bill is attempting to constrain—allegedly—what NBN Co. can do. This bill is meant to be about ring-fencing NBN Co. and putting a barrier around it to ensure that it is a genuine wholesale only provider. We think that that is a wise intention: if you are going to construct this thing it should be a wholesale only provider. That is not an unreasonable intention—in fact, that is exactly what the intention should be and you should be held to account on that.

That is what we believe should be the outcome from this legislation and that is why we are concerned about the definition you have given in the clause that relates to the supply of services on a wholesale basis. From the evidence provided, it appears that it is wide open to potential abuse. We would rather knock that abuse out from day one than risk the type of mission creep that is of concern and risk getting to a position where NBN Co. is able to abuse its position and pick-off profitable customers from the retail service providers.

If you want to set up NBN Co. as a genuine wholesale only business we invite you to narrow your definition to ensure that it is only a wholesale only provider. The minister seems to be putting his entire faith—not in his clause related to whether or not it is a wholesale only provider—in technical definitions of the type of service NBN Co. will provide but not who it will provide to. We do not think that that is good enough because there is still some debate to be had about whether those technical definitions are satisfactory.

Putting that aside, as the minister well knows, technology in this area shifts rapidly and the potential capacity of retailers to convert that layer 2 bitstream service in the future into something that they can use in a cost-effective manner may expand significantly. What if that happens? Why not make the ring fence tighter from day one? Why not ensure from the outset that you protect the market, NBN Co. and the consumer from having NBN Co. stray into this retail space? Just as Telstra highlighted in their evidence questions about the terms ‘carrier’ and ‘car-
riage service provider’, they equally highlighted questions in relation to the definition of service providers. In their submission Telstra argued:

An entity may become a [carriage service provider (CSP)] by reason of supply of one particular kind of service – for example, a supermarket chain that is a mobile reseller. Such an entity would operate under the CSP class licence, and – under the proposed NBN Companies Bill – could acquire all of its fixed services from NBN Co directly, even though they may be entirely unrelated to functions as a mobile reseller.

Nothing the minister has said provides the clarity or the comfort or the certainty that this bill, or any of the amendments he is proposing, will eliminate the potential for the misuse of these definitions, will eliminate the potential that NBN Co. could become effectively a provider of retail services. I again emphasise that just relying on the technological definitions, just relying on where NBN Co. may or may not be able to draw the line on exactly what technical services it provides, is not good enough, because the technology and the ability to use that and adapt to that and the cost of doing so will inevitably and invariably change in years to come.

What is important in this case, what is significant, is making sure that, if you are true to your word, if you genuinely mean what you have been saying in your implementation study, in all of your speeches in this place and in all of the documents that have been outlined, NBN Co. is actually as you have promised and stated time and time again—a wholesale-only network. A wholesale only network, by anyone’s definition, by the definition of any layman or anyone walking down the street, should surely be a network that provides services only to retailers who on sell them. It should be that simple. That is all the opposition in this amendment is trying to achieve—to distil it down to those basic few words.

If Senator Ludlam or Senator Xenophon have concerns with aspects of our amendment, let us look at them and let us fix the problems, or let us look at an alternative. What we should be expecting here is a very clear ring-fencing, as I have put it, of NBN Co. that ensures it is a wholesale-only network, as the government has promised. That is what we urge the chamber to support. The current definitions in the bill are not satisfactory in that regard; they do not provide that protection. I would urge the minister to outline exactly why he thinks this very open definition in clause 9 that he has is somehow going to prevent that.

It seems the minister has indicated he actually does not think it is going to prevent that and he does not think there is anything wrong with it. Well, if you do not think there is anything wrong with it, then please explain to us why you think, having proclaimed the virtues of NBN Co. being a wholesale-only network, it is appropriate for them to be able to sell services directly to end users. Tell us why you think that. Why have you changed your mind? Why do you want to provide capacity for NBN Co. to step into providing services direct to end users and therefore be a retail provider. Why do you think that that is a reasonable thing? Tell the Senate that; be honest about your intentions in this regard. If you let the bill go through in its current form without changes to this clause, without accepting the opposition’s amendment or proposing some other substantive alternative, your words that this is to be a wholesale-only network will ring hollow to anyone in the sector who cares to look at this bill. It will be clear to all that your intention is to allow NBN Co. to engage in this mission creep.
Why will that be your intention? I have no doubt that will be your intention because you need to get some return; you desperately need to somehow provide the capacity for NBN Co. to provide some return on the billions of dollars of taxpayers’ money that is being pumped into it. Quite possibly the only way you are going to be able to get that return is to allow them to engage in this sort of mission creep, to allow them to stretch their mandate beyond being a wholesale-only provider into providing these sorts of retail services. Is that the reason? Is that why you are happy to provide this unsatisfactory definition of wholesale-only services? Are you happy to leave it this open? Your hope, really, is that the only chance for NBN Co. to provide the returns to government that the government claims to be seeking is for it to actually stretch its mandate, is for it to cherry pick profitable retail customers off those retail service providers and make sure that it provides a service directly to them.

Is that what you are expecting? Is that what you think is going to be the outcome here? Is that why you are rejecting any means of tightening the definition of this? If it is, it shows just how unsatisfactory your approach to this whole issue is, just how hollow your words are, just how shameless the approach is when you say one thing about it being a wholesale only network but then when it comes to the legislation, when it comes to the nitty-gritty on how NBN Co. is going to work, you do something quite different by simply defining that it can provide services to a carrier or a service provider, knowing full well that the definition of those words will allow service provision to a whole range of other businesses and entities, will allow NBN Co. to get into providing direct services to retail customers. Why not support the opposition amendment that satisfactorily ring-fences it, that ensures—

Senator Conroy—Just say it four more times and you’ll be there; your time will be up.

Senator Birmingham—A few interjections will help. Minister, why don’t you accept the reality here that your definition is inadequate, that your definition will see scope creep by NBN, that your definition leaves that wide open? Are you not accepting this because you are happy for that to happen from a budgetary perspective? Is it all about getting better return from NBN Co. somehow down the track? Is what you desire here somewhere? Is that what you are after?

The opposition has tried constructively here to propose an alternative amendment to this. We do not draft these amendments for fun, you know, Minister. We do not do it for fun at all. We have done it to ensure that there is something here to debate, to say, ‘Let’s make sure that we keep you to your word.’ If you want this to be a wholesale only network, the challenge is here. Support this amendment or come up with something else, but tell the chamber before we vote on this what the alternative is, to keep you to your word.

Senator Conroy (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.38 pm)—Congratulations, Senator Birmingham. You must have repeated the same speech three times to fill up that 15 minutes.

Senator Fisher—Give us an answer.

Senator Conroy—I was unfair. It is the hokey-pokey. Look, I was unfair. I confess I was unfair to Senator Birmingham when I said he was quoting himself because, to my shock and horror, I discover in actual fact he was quoting Telstra. He was basically parroting Telstra’s line and they are saying that the bill should include a requirement that the NBN’s corporate customers must acquire
the service for the purpose of on supply, not for their own consumption. So people should know exactly where the Liberal Party stand when it comes to competition in the telecommunications sector yet again: just do Telstra’s bidding. Senator Ludlam, we had hopes. There was a chance for the opposition to finally break free of their mindless anti-competitive pro-Telstra position, but again we have been disappointed.

Let me give you an alternative view from the same report that you are quoting Telstra from. The Australian Telecommunication Users Group also did not support limiting NBN Co. in this way. I quote:

… as we feel this will reduce the emergence of specialist service providers who may otherwise emerge to provide services in the mining sector, health sector, energy sector and the like.

That is what this amendment is really about: competition. You should hang your head in shame that you are in here wanting to tell corporations who pay for a legal service what they can do with it. At the end of the day that is what this is about. You want to tell them how they can use a service they buy. They can only buy a wholesale service. A company then has to decide what it wants to do with it. But, no, you on behalf of Telstra want to tell them what they can do with it. You are in here saying that they can only use it for one purpose and they cannot use it for another. Talk about anticompetitive. You have just been exposed again. I quote you again from ATUG:

We feel an amendment of the kind that you are suggesting on behalf of Telstra will reduce the emergence of specialist service providers who may otherwise emerge to provide services in the mining sector, the health sector, the energy sector and the like.

Senator Fisher—Tell us how that will happen, Minister.

Senator CONROY—We will never know because they will not be allowed to.

The TEMPORARY CHAIRMAN (Senator Forshaw)—Order! There are people listening to this debate. It is an important bill and whilst we have had some interjections it is now getting to the stage where it is impossible for me to hear the speaker and probably impossible to hear the interjector as well. Would you just return to your speech, Minister, and everybody calm down.

Senator CONROY—Thank you, Mr Temporary Chairman. Let me be clear.

Senator Ian Macdonald—I am very calm; I am almost going to sleep.

The TEMPORARY CHAIRMAN—I was not going to say anything about you, Senator Macdonald. You were acting perfectly there, but you just spoiled it.

Senator CONROY—I believe you could not possibly be sleeping with that screaming banshee in your ear right behind you. It would not be possible. I say that in the kindest possible way. As Senator Fisher knows, I said that with a smile on my face.

Back to the more serious part of this debate: as I said, you want to tell a company after it buys a wholesale service what it can do with it. Could you be more Stalinistic in intervention? Could you be more anticompetitive if you tried? You are actually going to amend your own legislation to be anticompetitive. It is quite extraordinary behaviour by a party that claims it is pro-competition, that it is pro-small business, that it is pro-innovation but the same simple pro-Telstra, anticompetitive lines are coming from those opposite.

Senator IAN MACDONALD (Queensland) (5.43 pm)—This is a matter which concerns not only the coalition but also many in Australia who are looking for a profitable commercial communications industry and network across Australia. As Senator Birmingham has very rightly pointed out—and as many of the witnesses to the committee
hearings into these bills have said—there is a genuine concern that the NBN Co. will enter into the retail area.

One of the reasons that makes that suggestion believable is that on the current figures we have clearly the government is never going to get a commercial return on the $50-odd billion that it is spending on this. I appreciate and anticipate Senator Conroy’s objections that it is not $50 billion but, once you add up what they are going to pay to Telstra, in a global sense this is going to be a $50 billion investment by the taxpayer in this national broadband network.

I will just interpose on myself there to remind everyone that for about $5 billion a fast broadband service would already have been operating in Australia had the coalition won the 2007 election. We had issued contracts for a mix of fibre, wireless and satellite that would have provided a very fast broadband service to everyone in Australia at a cost of about $5 billion. It was gazumped by the Labor Party prior to the 2007 election by promising that they could provide a national broadband network.

You spent $20 million on one proposal and then scrapped it. Then you spent another $20 million on something else. You were throwing the money around. It is easy to do when it is not your money, of course, but that is typical of the Labor Party. Then when nothing fell into place we had Senator Conroy come up with the $50 billion proposal at taxpayers’ expense. That is one thing, but at the same time to say, ‘This will be a commercial operation and we’ll get a return on the taxpayers’ investment and there will be co-investment,’ is something else. We do not hear too much about these things at the moment. Go out to the market and see who wants to invest as a partner in this sort of project. Yet, Senator Conroy, that was your original proposal.

NBN was going to be partly government funded and partly funded by the market. Once anyone saw the figures you did not have to be a mathematician to work out that it would never make a profit, particularly if you do what you have been doing in Tasmania and give away the NBN services absolutely free. It will not cost them a cent in Tasmania until 1 July this year. No wonder it is a cheap service to users in Tasmania; they are not paying for it. They are being given it for free. How are you ever going to get a return on your investment if you are not charging anything for the $50 billion investment you are putting into it? Nobody believes it, not even you.

Senator Ludlam is at least honest and consistent about it. He never wants the entity to be privatised as he knows no private entity would ever invest in this because it will be a
financial dud. It may work in the end. It may provide very fast broadband. But it will not provide it at a price that Australian consumers or Australian taxpayers will be able to afford. That is clearly why the government and NBN want to leave this little option open to be able to retail their services to certain defined, I concede, consumers.

I want to ask the minister: which government department or large entity does not currently take its broadband services and telephone services from one of the retail service providers? I do not know and I hope I am not giving away any secrets here, but I do not think Defence buy their services. I think they have their own network. That is stuff that is probably not relevant here. I think most other government departments, most big entities, most utilities currently get their services from someone else. That is a question; I am not asserting that. I am asking the minister as it is appropriate to do in this committee stage of the debate where senators, on behalf of the Australian taxpayers, are able to raise these questions. That is a question for you, Senator Conroy. Are there any government agencies not now buying their services through one of the retail service providers?

Having answered that and it will depend on your answer, of course—I do not claim to be an expert on this and that is why I am asking these questions, as is appropriate, as it is what this committee stage is all about—I then want to ask the minister: under his legislation as it stands as of three o’clock yesterday I think it was—we suspect that it is being amended as we speak—could any of those agencies, or utilities or big operations then get layer 2 services from NBN Co. and add to those layer services the additions that the retail service providers will add to provide a service to the general public?

Just to make sure that Senator Conroy understands, the question I am asking is: would those large entities—his department, say, or the Commonwealth government as a whole—be able to take the layer 2 services direct from NBN, add some value to them and then use the service without going near Vodafone, Telstra, Optus, Primus, iiNet or any of the other service providers? Perhaps, Senator Conroy, you could answer those two questions for me to make sure that I understand this appropriately. When you have answered them, I will then move on to say—I will not argue this now; I will come back to this once I have your answers—wouldn’t it be better if some amendments were adopted? I suggest the amendment we have moved, but, if not, then perhaps we and the Greens could get together and prepare an alternative amendment that might ensure that NBN is a wholesale-only company. Otherwise we could get to the situation that I think Senator Birmingham enunciated, and that is that you have a vertically integrated telco, as we have had in the past and which many people have said is inappropriate. Perhaps we could start with those two questions, and then I will refer to our amendment.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.54 pm)—I am not sure that where government agencies secure their services is actually relevant, and I am not sure I could get you that information in the near future even if I tried. If agencies want to become carriers, they can, just as they have always been able to under your legislation, Senator Macdonald. If a government department did acquire a licence or resupplied, it could acquire an NBN wholesale service and then transform it. It could only buy a wholesale service, because NBN will only sell wholesale services.

Senator IAN MACDONALD (Queensland) (5.54 pm)—Thank you for that. But
the amendment we want to adopt would require, if a government department took a carrier licence—

Senator Conroy—As they could now.

Senator IAN MACDONALD—Don’t we need to then ensure that anyone taking a carrier licence must actually then retail services more broadly, not just to themselves? Otherwise the import of it is that NBN is dealing directly with a government department. And I suspect it would not be just a department; I suspect it would be, for example, the whole of the Commonwealth government or the whole of the Queensland government—

Senator Conroy—Just as it could be now.

Senator IAN MACDONALD—That would take away from the business of the retail service providers. Senator Conroy, you said that they could do that now.

Senator Conroy—Exactly.

Senator IAN MACDONALD—As I understand it, Optus have not worried about that, Telstra have not worried about that and the other big telcos have not worried about that to date, but they are now worried and have been for some time that NBN Co. might actually be effectively operating in the retail market by selling its layer 2 services on in a retail sort of way. That is why they are concerned. Senator Conroy, you will no doubt—as you have in the past—get up and have a tirade against your old mates Telstra, who weren’t your old mates for a while, then they were back as your new mates and then they weren’t. I am not quite sure where you are at the moment in your relationship with Telstra, although if you believe what you read in the popular press Telstra are getting a bit tired of you. They have already put back their extraordinary general meeting from 1 July till sometime in September or October. With the amendments you dropped on the table yesterday, I suspect they are going to be even less enthused about taking something to their shareholders. If NBN Co. are going to be in a position where they can compete with Telstra, what is in it for Telstra? That realisation is coming out. That is why I think it is important to look at the amendment we have moved, which provides that:

1) An NBN corporation must not supply an eligible service to another person unless:
   a) the other person is a carrier or a service provider; and
   b) the eligible service is supplied on the basis that the other person, or a member of that person’s immediate circle, must:
      i) re-supply the eligible service; or
      ii) use the eligible service to supply a carriage service or content service to the public.

The amendment we have moved goes on to define and clarify some of the terminology used and to define how you can determine whether a service is supplied to the public. You determine that if:

a) it is used for the carriage of communications between 2 end-users, each of which is outside the immediate circle of the supplier of the service; or

b) it is used for point-to-multipoint services to end-users, at least one of which is outside the immediate circle of the supplier of the service.

As I understand these amendments, they would address the concerns that we have had and they would address the concerns that the Greens have had. I have not heard Senator Xenophon on this point. I guess this issue would be of concern to him but, more importantly, of concern to—

Senator Conroy—Telstra!

Senator IAN MACDONALD—Is it only Telstra? I thought Optus were a bit—

Senator Conroy—You’re simply representing Telstra. Why don’t you try representing consumers?
Senator IAN MACDONALD—I am not representing Telstra, Minister. I cannot think when I last spoke to anyone from Telstra—except the committee service, and that is all on the Hansard record. I think my only connection with Telstra is the mobile telephone that the government supplies to me. I think it is with Telstra—yes. That is my connection. I am not here to represent Telstra anyway. There is only one group of people I am here to represent, and that is the taxpayers of Australia. You are interjecting, Minister, and diverting me and taking me back to my lament that we lost the election sort of fair and square in 2007. I cannot say the same for 2010. In 2007 we lost it fair and square. But if we had not lost it, the OPEL contract would have been up and running and supplying a very fast broadband to places like—

Senator Conroy—OPEL lives!

Senator IAN MACDONALD—Senator Conroy, I live in the bush. I live in a medium-sized country town up in North Queensland, and part of my portfolio responsibilities on behalf of the opposition is remote Australia. Had the OPEL contract proceeded, if it had not been cancelled capriciously by your government, we would have that fast broadband now. In fact, it would have been delivered to most of Australia a year or so ago. It would be a mix of things.

Senator Conroy—It was a dog that couldn’t deliver.

Senator IAN MACDONALD—Mark my words, Minister, that is where you are going to end up. Your fibre-to-the-home proposal gave you a lot of excitement: it gave you tingles up the spine. But as Mr Turnbull mentioned at the first meeting of the new joint committee this morning, he has just been to Korea and Singapore. They do not have fibre to the home there. They have fibre to the node. Even in these brand new, high-rise buildings there is fibre to the node and they send it out from there. You can dismiss that. It is only Singapore; it is only South Korea—two of the quickest and most technologically advanced communication nations in the world. They are already doing that. Hopefully, you will be able to have a look at Mr Turnbull’s video. He has offered to make it available to the committee. I am sure he would make it available to your department, because I think you might find it a bit instructive. This is what happens when you make these policies on the run. They sound good and, for a little while, you can talk a language that nobody else can talk and you can get away anything.

Senator Ludlam—I have seen the video.

Senator IAN MACDONALD—You have seen the video—good.

Senator Ludlam interjecting—

Senator IAN MACDONALD—No fibre to the home.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Order! Senator Macdonald, could you please address your remarks to the chair and not engage in conversation with other senators.

Senator IAN MACDONALD—Thank you, Mr Temporary Chairman. Senator Conroy keeps attracting my response to his disorderly interjections. He has again diverted me from the question I was asking. So I might leave it there and get Senator Conroy to answer the questions that I asked earlier. I think Senator Fisher might have some questions as well.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.03 pm)—I am sorry, Senator Macdonald. I always enjoy your contributions. I would not necessarily have defined your OPEL lament as a question—perhaps a stream of con-
sciousness. But when it comes to OPEL, I know that the next speaker is the master. This amendment prevents a carrier acquiring services for self-supply. This is a right they have today. You actually want to tell people, tell companies, how they can use a service. That is what you are proposing. I invite you, Senator Macdonald, to reflect on what you are actually proposing. You are saying that it is okay for a company to buy a wholesale service from NBN Co. and then they can onsell it. That was not your position a while ago—not yours personally. At least you have come round to not wanting to be too embarrassingly anticompetitive. But once they have purchased it, you are deciding for them what they can do with it. That is actually what you are doing. That is something that they have the choice to do now. You are seeking to restrict your own former legislation to tell a company that buys a wholesale service what it can do. I do not think you could be more interventionist. Joe Stalin would be proud of you. Seriously, you want to tell them in a piece of legislation that you can do this with a legally purchased product from NBN Co. Senator Macdonald and Senator Fisher want to tell them what they can do with it.

Senator Ian Macdonald—It’s got to onsell them

Senator CONROY—You do. You want to say this thing is good; this thing is bad. That is something that they have the choice to do today. So I am not sure if there is anything else that I can address. I would love to debate with you the OPEL lament. I have also been lucky enough, as Mr Turnbull recently has, to have visited Singapore. I have met with all the companies providing the fibre-to-the-home build-out in Singapore. I have been to people’s homes and looked at what was going on. I have been to South Korea and talked with the people there who have been rolling out networks.

Senator Ian Macdonald—Fibre to the node.

Senator CONROY—It depends on whether you want to call it basement or node. You are being a little disingenuous. Let us go back to the Economist Intelligence Unit—that oxymoron for the particular publication in this instance—where it talked about how South Korea were rolling out a fibre-to-the-home proposal. Did Mr Turnbull not meet anyone involved in that rather large—I think to quote from the Economist Intelligence Unit—$24 billion project. This involves converting from the basement or node, if you want to use that word, to people’s flats—actually into their homes. Did he not meet anyone involved in that $24 billion project that is underway in South Korea? I am quoting those figures; I could be wrong. I am quoting that from the Economist Intelligence Unit so it is entirely possible that it is wrong, given the way that they incorrectly described our build. But perhaps Mr Turnbull did not meet any of those companies involved in that somewhat significant project in South Korea on his tour of telecommunications facilities.

Let me be clear: I have actually visited the fibre-to-the-home displays in Singapore; I have visited homes that are receiving it; I have visited the companies that are building it. So I am intrigued.

Senator Ian Macdonald—It’s not the government, though, is it?

Senator CONROY—This is really funny: the South Korean government are still in shock to this day at the claim that they have had no involvement in the fibre project in South Korea. They are in shock. They are in shock at the suggestion that they had nothing to do with the fibre-to-the-home and the network build in South Korea. They are still in shock.
Singapore has a unique industry structure. The government has its own influence over various companies through various investment bodies. I think you know exactly what I am referring to, Senator Macdonald.

Senator Ian Macdonald—They can’t believe that a government monopoly is doing this.

Senator CONROY—They are building fibre-to-the-home. I met with the minister. I have discussed the tender process they went through for fibre-to-the-home.

Senator Ian Macdonald—Are you telling the truth that he didn’t say to you, ‘Why is the government doing this?’ Didn’t he say that to you?

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Senator Conroy, I urge you to address the chair and not have a conversation with Senator Macdonald.

Senator CONROY—I will ignore Senator Macdonald but I will give the following information: no.

Senator FISHER (South Australia) (6.09 pm)—Minister, you have accused the opposition of doing the bidding of Telstra with this amendment. That is pretty curious when, with your maintenance of your position on this aspect of the legislation, you are doing the bidding of NBN Co. Your government is doing the bidding, quite happily, of NBN Co. and its current master, Mr Mike Quigley, not only with this provision of this bill, which this opposition amendment seeks to change, but also in respect of Mr Quigley’s constant opposition to any reasonable scrutiny of his being in charge of a government-owned entity expending significant amounts of taxpayers’ money. Far from the opposition doing the bidding of Telstra with this particular amendment, your government is doing the bidding of NBN Co. and its boss, Mike Quigley.

But it is worse than that. The fact that more than one person or body has a good idea does not discredit the goodness of that idea. There is no mortgage on a good idea. Great minds often think alike. Maybe in this particular respect, Minister, you could consider the fact that Telstra’s great mind just happens to think alike to the opposition’s great mind in this respect.

When you hang up the phone, Minister, you will probably remember that it is also true that fools seldom differ. Maybe that is why the government is choosing in this respect to do the bidding of NBN Co. and its boss, Mike Quigley—that is, the sad fact that fools seldom differ. You have also tried to suggest that this opposition amendment ‘tells them what to do with it’—I am not quite sure who ‘them’ is—and is therefore anticompetitive. You are deliberately missing the point. The effect of this opposition amendment is not to tell them, or indeed anyone, what to do with it. The intent of this opposition amendment is to tell them—to the extent that there is a ‘them’ defined by you—what they cannot do with it. It is hardly anticompetitive to say what they cannot do with—

Senator Conroy interjecting—

Senator FISHER—I am speaking your language, or at least trying to, Minister. How obfuscatory it is. You try to say that our amendment effectively tells ‘them’ what to do with it when in fact our amendment simply says one thing that they cannot do with it. That one thing is not to on-supply to the public. We do not dare to prescribe what and how about on-supply to the public. We are hardly telling them what to do with it. All that we are doing is saying what they cannot do with it—we get the amendment, Minister—and we are making it very clear that retail service providers continue to have a role in this market.
As for telling ‘them’ what to do with it, the government’s bill very clearly tells the retail service providers what to do with it and what to do with their business. Your government is very clearly telling the retail service providers they can stick it up their jumper. They can stick what has been their business right up their jumper because the government owned enterprise, NBN Co., is about to do things that would be a profanity, if I named them in this chamber, to the market. So, you will be very pleased to know that I shall refrain.

Minister, you have tried to say that as of today the market allows the very thing that this opposition amendment is trying to outlaw. You seem to be conveniently forgetting that your NBN proposition is to move from the market scenario of today to a world of tomorrow—a totally different world of tomorrow. But it now may be even more different than we thought it was going to be because with this raft of amendments that you have tabled overnight. It really is quite an indecent proposal for this Senate to consider your 20-or-so pages of amendments, delivered overnight at this short notice. It is an indecent proposal because, Minister, deep in your heart of hearts you know that these amendments so turn on its head the underlying spirit of what was the companies bill that really you should have tabled a new bill. You should not be trying to amend the bill that is currently before the Senate. You should have gone back to the drawing board and started again.

In your heart of hearts you know you should have done that. But you know that were you to do that you would also have to start the process all over again and that might put a spanner in the spokes as to your need to reach an agreement with Telstra and the need for your government owned enterprise to get access to certain things that Telstra has. You also know you are not going to get a deal with Telstra until you have got legislation in some form or other through this chamber—and that needs to be quick smart. So, Minister, do not talk to us about telling them what to do with it when your bill very clearly tells the retail service providers what to do with it and what to do with their business and that is to stick it up their jumper—and that is putting it politely. Minister, my question is: what in the bill or the bill as proposed to be amended by the government stops NBN Co. from stepping into the shoes of would-be retail service providers in any circumstance? What provisions in the bill or in the amendments tabled by the government stop NBN Co. from being a retailer?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.16 pm)—It only sells wholesale services.

Senator FISHER (South Australia) (6.16 pm)—Minister, what is your definition of ‘wholesale’ and what is your definition of ‘retail’? It would help if you would refer to particular provisions in the bill or to the amendments that make this crystal clear.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.16 pm)—I have just consulted to get some specific detail for you. I refer to page 15. Under Division 2, ‘Rules about operations of NBN corporations’, there is ‘9, Supply of eligible services to be on wholesale basis’—a fairly straightforward sentence—and then there is a definition. Further on, on page 18, under Subdivision B, ‘Supply of other goods and services’, there are clauses 17, 18 and 19. I am sure there are others but I thought those would be a good start for you.

Senator FISHER (South Australia) (6.17 pm)—Minister, does the fact that something
that might be wholesale at the point in time at which it leaves, in this case, the hands of NBN Co. remain wholesale even if NBN Co., as in this case, is effectively stepping into the shoes of what would otherwise be a retailer who would then provide those services to another party?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.18 pm)—It cannot be used for telephony. It is a wholesale service. Even you were forced to use the words ‘effectively stepping into’. So even you are accepting that they are not supplying retail services; they are only supplying wholesale services. They are not a retailer. They are not moving into that market. The legislation is very specific on this. I see Senator Birmingham. Welcome back!

Senator BIRMINGHAM (South Australia) (6.18 pm)—I am never far away, Minister. To follow on from the astute line of questioning of my colleague Senator Fisher, Minister, I would appreciate it if you could cite other examples where a wholesale service is defined on the product rather than on the nature of the fact that a wholesaler is usually a wholesaler who sells to a retailer. As I said in comments earlier, the general understanding that I think any layman or laywoman would have about the definition of wholesale is that wholesale, and wholesaling, is seen to be an instance of onselling a product to a retailer. You seem to be wanting to define wholesaling activity not as the onselling of a product but by the product that is being sold. These are markedly different definitional approaches. They are vastly different definitional approaches. What the coalition’s amendments are seeking to do is to take a very routine, standard, traditional approach to a wholesale-only service and define it by virtue of the fact that it be onsold. There is nothing terribly radical or new in that. It would be quite commonsensical and logical, I think, to anyone who cared to listen and consider the debate. What is perplexing in the debate is why you are attempting to define a wholesale service not by the sales actions of the company but by the product that is being offered. Why do you want to create a totally different understanding of wholesale services for NBN Co. compared with what anybody else would define to be a wholesale service activity?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.21 pm)—The question is not: why are we seeking to redefine something? You are seeking to close it down and dictate to companies who buy a legal wholesale service—it is legal because they have got themselves the licence—and tell them what to do. You are seeking to take over close it down and dictate to companies who buy a legal wholesale service—it is legal because they have got themselves the licence—and tell them what to do. You are seeking to change the definitions in the existing bill. You are actually closing down a market. That is what you are doing. NBN Co. can only supply a wholesale service. I think even you would have to concede that. You may disagree with a definition about something else but I do not think you could argue that it is only supplying a wholesale service.

Now, if you want to talk about it being layer 2 or layer 3, I will accept that a layer 3 style service is needed when it is turned on before a RSP is part of the equation. When someone plugs it in and turns it on in their house, a little sign will come up that says, ‘You need to go and get a RSP service.’ I will accept that a layer 3 style component at the absolute minimum is necessary to tell a consumer to go and contact an RSP. If you want to talk about technology and layer 2 or layer 3, I would accept that as a legitimate criticism, although I think most people are comfortable with that.
You have to explain to this chamber why you want to dictate to a company that chooses to take out a carrier service licence that it cannot do something tomorrow that it can do today, because that is what your amendment will do. A company that could do something today will not be able to do it tomorrow because you have decided it. It could not be more anticompetitive. It is straight out of Telstra’s songbook, as I read out before. If you listened to someone other than Telstra—and I quoted the Australian Telecommunications Users Group—then perhaps you would have a slightly different perspective. I appreciate that you have been a wholly owned subsidiary of Telstra for so long that you cannot look in the mirror without seeing a big orange T on your forehead. But I want you to know that I still have hope for you, Senator Birmingham, because I know deep down under that tie there is a Liberal heart beating and a Liberal heart would actually support competition.

Senator BIRMINGHAM (South Australia) (6.23 pm)—Firstly, to the big orange T that may or may not be tattooed anywhere: the minister has raised concerns about the fact that I have quoted Telstra’s submission a couple of times in this debate—

Senator Conroy—No, you are parroting their position.

Senator BIRMINGHAM—‘Parroting their position’ is his stance. Why don’t I quote from the Optus chief executive then. Why don’t I quote what Mr O’Sullivan has to say. Let us see what he has to say. As you have invited me to distance myself from Telstra, Minister, I will go to their prime competitor, in Optus. Let us see what he had to say:

“We and many in the industry have spent quite a bit of time recently working through the consultation process to provide feedback on the draft bills and the bill that is now before parliament,” Mr O’Sullivan told a business lunch in Sydney on Thursday.

Senator Conroy—I have read it.

Senator BIRMINGHAM—I am sure you have. He went on:

To be frank these new amendments have thrown us a curve ball.

So we know that Optus is very concerned about the amendments that have been presented. In fact, Mr O’Sullivan goes on and says of the government’s amendments and approach in this legislation:

It’s hard to screw up the NBN. Getting the competition settings wrong is a good way to screw it up …

That is what he seems to think of your approach to date in regard to where you have taken this debate. He thinks you are screwing it up. Those are the words that Mr O’Sullivan has chosen to use.

In regard to this debate, you continue to come back to this perverse notion that somehow you can define a wholesale service on the basis of what it is they are selling, not the activity they are undertaking. That is not anybody’s understanding of a wholesale service except yours and the proposal you are putting forward.

Senator Fisher—And your silly bill.

Senator BIRMINGHAM—Senator Fisher is astute as always. Sometimes we have to put it in the most simple of terms—you and your silly bill.

Senator Conroy—Try to keep your eyes open when you refer to Senator Fisher.

Senator BIRMINGHAM—Minister, my eyes are wide open to the failures in your amendments and the failures in your bill. You want to define wholesale services in a wholly different way to what anybody else accepts as a normal or reasonable approach in this regard. You base it all on the concept that the technology being provided is not
suitable for retail application. That is your sole line of defence, it seems, as to why you think that it is reasonable at present to accept your bill in its current terms.

Senator Conroy—It is exactly the same as the current definition. You are changing the current definition.

Senator BIRMINGHAM—I would have thought, Minister, having been in this place for as long as you have been, you would understand that when we stand here to debate bills before the parliament, what we are usually doing is changing something. That is usually what happens in this place when a bill is before us. That is usually what happens when an amendment is being debated; we are changing something. This is not some new revolution to anybody else. I am not sure why you are amazed that an amendment may seek to change something. That is the very nature of amending something. Yes, we are seeking to change something. We are seeking to change it because we want it to apply in a way that conforms with what you have been saying—that this is to be a wholesale only service. I will say it again: technology will change and adapt and there is a potential that in the future many more businesses may find it viable to take a layer 2 bitstream service and to apply it to their own needs.

Senator Conroy—And you want to stop them.

Senator BIRMINGHAM—Minister, if you are happy to stand up and say, ‘I am happy for the NBN Co. to become vertically integrated and to step into the retail space,’ then that is fine. Until you say that, if you are going to continue with the charade of pretending that you want this to be a wholesale only service on the one hand yet leaving a gaping gap wide open for NBN Co. to engage in retail service provision direct to customers on the other hand, then that is fine; be frank and honest about it. As long as you continue the charade of saying one thing but promulgating this bill that does something totally different, we will continue the debate arguing that you have got it wrong and that you should front up to that fact. Minister, please, I urge you to recognise that your definition of wholesale does not match anybody else’s.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.29 pm)—It is embarrassing when you have got so little substance in your debate that you have to try to misrepresent people. I know Mr O’Sullivan well. You sought to take some views that he gave today about amendments that were circulated yesterday and apply them to the debate on the exposure draft and the draft that existed to try to cover for the fact that you are doing nothing more than being an apologist for Telstra. Mr O’Sullivan was not commenting on the proposal that you tried to pretend he was commenting on. He was actually commenting on—

Senator Birmingham interjecting—

Senator CONROY—You have taken his comments from today and backtracked them to something he was not talking about. It is very naughty of you to misrepresent Mr O’Sullivan like that.

Sitting suspended from 6.30 pm to 7.30 pm

Senator FISHER (South Australia) (7.30 pm)—I have a question to ask of the minister before we proceed to the opposition amendment. It follows on from the earlier debate. The minister seems wholly entertained by his own concept of wholesale versus retail. Perhaps the minister is consulting the world according to Willy Wonka to find out what Willy Wonka reckons wholesale and retail
are, because he might have worked out that he needs some help.

Senator Abetz—He isn’t even here.

Senator FISHER—But I will proceed to ask my question anyway and hope that the minister can hear it somehow in his absence. Taking the point that the minister’s view seems to be that, when defining that which is wholesale and that which is retail, you focus on the good or the product supplied alone—

Senator Birmingham—Mr Temporary Chairman, I rise on a point of order. I hate to interrupt Senator Fisher, because she is asking very valid questions. I regret to interrupt her but, sadly, the minister is not yet here to hear those valid questions. I see Senator McEwen looking anxiously towards the door—

The TEMPORARY CHAIRMAN (Senator Barnett)—Senator Birmingham, I do not think that is a point of order.

Senator McEwen—Mr Temporary Chairman, I rise on a point of order. I understand that Senator Conroy is on his way. He has just been inadvertently delayed for a small period of time, so I will just take this opportunity to also address a question to the minister. Perhaps in his answer to Senator Fisher’s question he could deal with the issue of why passing this legislation is so important to the future of the telecommunications industry in Australia. We appreciate that the opposition have many questions to ask. I know that the minister has been seeking briefings from his department on the answers to some of those questions and that he will be providing those to the Senate as we proceed through this debate about the amendment moved by—

The TEMPORARY CHAIRMAN—Order! Senator McEwen, thank you for that. That is also not a point of order. Senator Fisher had the call and I will return to Senator Fisher because we have had no points of order.

Senator FISHER—Thank you—

Senator Abetz—Mr Temporary Chairman, I rise on a point of order. I was wondering whether the minister would like to provide an apology to the chamber and an explanation for his late arrival.

The TEMPORARY CHAIRMAN—That is also not a point of order.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.33 pm)—I am happy to apologise for being a few minutes late. I was caught in a briefing on some important matters. I do sincerely apologise.

Senator FISHER (South Australia) (7.33 pm)—I will take the liberty of answering Senator McEwen’s question. The minister needs this legislation passed because without it he will not get a deal with Telstra and without a deal with Telstra the NBN is naught.

Minister, your attempted definition of wholesale versus retail seems to rely wholly and solely upon the nature of the product or service passed from one party to another without any regard to the nature or activities of the party or entity who supplies those services. Surely it is a combination of the two and surely, if there were to be more than a 50 per cent balance in one or the other, it would be in the nature of and activities of the entity, organisation or party which supplies those goods or services. To have a relationship you need at least two parties. You are essentially envisaging a scenario where you have only two parties—an NBN Co. and then a consumer who are attempting to say obviates any place for a retailer in the relationship.
But let us compare this scenario with, for example, spare parts for a motor car. We could have a manufacturer of those spare parts who then supplies those spare parts to the next party. According to your definition, the manufacturer would be a wholesaler simply by virtue of passing on spare parts. However, if you have a manufacturer who supplies those spare parts to a second party, who then supplies those same spare parts with nothing done to them to a third party who then supplies those same spare parts to a fourth party who consumes those spare parts by putting them in a motor vehicle and driving away, that surely has to be this sort of scenario where at the very beginning you have a wholesaler and at the very end you have a consumer. Maybe the second step, but certainly the third and fourth steps, have to be retailers of a sort because they have passed on that good to another party who ultimately consumed that good. Surely that is more the test of wholesale versus retail in the relationship of the parties in the supply chain to one another in the context of what then happened to the good or service itself. I put to you, Minister, that it is simplistic for you to attempt to constrain a wholesale-retail relationship simply by saying, ‘The legislation defines it as such; therefore it is,’ particularly if what it is in the legislation turns on its head a common understanding in the everyday marketplace and also probably what has been the subject of case law over many years.

So, Minister, please give us an example of an analogous scenario which has a body not unlike an NBN Co. as a wholesaler supplying a service to another body, and where that body or person who then takes that good or service somehow must be a retailer—because NBN Co. in this analogy is not; in your world, NBN Co. is a retailer. Give us an analogy in the commercial world where your definition of wholesaler and retailer works.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.38 pm)—We have canvassed this and I have probably already answered this question half-a-dozen times in the last three hours. I have explained over and over again that the NBN is a wholesale only company. It is selling wholesale only services. You do not understand what a wholesale service is and that is not something that I am going to be able to explain tonight in the chamber. I could not possibly begin to explain it because I do not have the technical competence. I do not make any pretence whatsoever.

**Senator Heffernan**—That’s bullshit.

**Senator CONROY**—Temporary Chairman Barnett, if you are deaf, then perhaps I could assist you in pointing out what Senator Heffernan has just shouted out across the chamber.

**Senator Heffernan**—I said it’s bullshit.

**Senator CONROY**—I am sure you actually heard it there again.

**The TEMPORARY CHAIRMAN** (Senator Barnett)—Senator Heffernan, I heard that on that occasion.

**Senator Heffernan**—I hope you did.

**The TEMPORARY CHAIRMAN**—I ask you to withdraw.

**Senator Heffernan**—The term ‘bullshit’?

**The TEMPORARY CHAIRMAN**—Yes.

**Senator Heffernan**—I withdraw ‘bullshit’. It’s crap.

**The TEMPORARY CHAIRMAN**—Order! That is also unacceptable, Senator Heffernan. I would also ask you to withdraw that because it reflects on the chair.

**Senator Heffernan**—I withdraw that; it’s garbage.
Senator McEwen—Mr Temporary Chairman, I raise a point of order. I note that Senator Heffernan is making interjections in the chamber, he is not in his chair and he is refusing to obey your order to withdraw that remark.

Senator Heffernan—I withdrew!

Senator McEwen—I think Senator Heffernan should return to his seat and if he has got a comment to make in the debate he should make it in the appropriate fashion.

The TEMPORARY CHAIRMAN—I have asked Senator Heffernan to withdraw both his initial—

Senator Heffernan—I withdraw ‘bullshit’, ‘crap’ and ‘it’s garbage’.

The TEMPORARY CHAIRMAN—Excuse me, Senator Heffernan, I am speaking. I have asked you to withdraw your first comment—

Senator Heffernan—Which one was that?

The TEMPORARY CHAIRMAN—Which was ‘bullshit’.

Senator Heffernan—I withdraw ‘bullshit’.

The TEMPORARY CHAIRMAN—I have asked you to withdraw that unreservedly, and then I have asked you to withdraw the second comment—

Senator Heffernan—I withdraw ‘crap’.

The TEMPORARY CHAIRMAN—which I took as a reflection on the chair. I have asked you to withdraw it.

Senator Heffernan—Yes, ‘crap’. But it’s garbage.

The TEMPORARY CHAIRMAN—Senator Heffernan, I have asked you to withdraw the second statement.

Senator Heffernan—I’ve withdrawn that.

The TEMPORARY CHAIRMAN—Thank you.

Senator CONROY—I did not think he ultimately ended up withdrawing his reflection on the chair, but I will leave you to handle that.

The TEMPORARY CHAIRMAN—He has.

Senator CONROY—Senator Fisher, I do not know that I am going to be able to help you much further. We have been kicking this exact same issue around for two to three hours and I do not know that I am going to be able to help you any further.

Question put:

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

The committee divided. [7.46 pm]

(The Temporary Chairman—Senator G Barnett)

Ayes........... 31

Noes........... 33

Majority........ 2

AYES


NOES

Arbib, M.V. Bishop, T.M. Brown, C.L. Brown, B.J. Cameron, D.N.
Question negatived.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.49 pm)—by leave—I move government amendments (2) to (16) on sheet BR280.

(2) Clause 10, page 15 (after line 17), after sub-clause (1), insert:

(1A) Paragraph (1)(a) does not apply to a carriage service supplied to Airservices Australia unless the carriage service is supplied on the basis that Airservices Australia must not re-supply the carriage service.

(3) Clause 10, page 15 (after line 28), after sub-clause (2), insert:

(2A) Paragraph (2)(a) does not apply to a carriage service supplied to a State or Territory transport authority unless the carriage service is supplied on the basis that the State or Territory transport authority must not re-supply the carriage service.

(4) Clause 10, page 16 (after line 5), at the end of the clause, add:

(4) Paragraph (3)(a) does not apply to a carriage service supplied to a rail corporation unless the carriage service is supplied on the basis that the rail corporation must not re-supply the carriage service.

(5) Clause 11, page 16 (line 7), before “Section”, insert “(1)”.

(6) Clause 11, page 16 (after line 15), at the end of the clause, add:

(2) Paragraph (1)(a) does not apply to a carriage service supplied to an electricity supply body unless the carriage service is supplied on the basis that the electricity supply body must not re-supply the carriage service.

(7) Clause 12, page 16 (line 17), before “Section”, insert “(1)”.

(8) Clause 12, page 16 (after line 26), at the end of the clause, add:

(2) Paragraph (1)(a) does not apply to a carriage service supplied to a gas supply body unless the carriage service is supplied on the basis that the gas supply body must not re-supply the carriage service.

(9) Clause 13, page 16 (line 28), before “Section”, insert “(1)”.

(10) Clause 13, page 17 (after line 4), at the end of the clause, add:

(2) Paragraph (1)(a) does not apply to a carriage service supplied to a water supply body unless the carriage service is supplied on the basis that the water supply body must not re-supply the carriage service.

(11) Clause 14, page 17 (line 6), before “Section”, insert “(1)”.

(12) Clause 14, page 17 (after line 13), at the end of the clause, add:

(2) Paragraph (1)(a) does not apply to a carriage service supplied to a sewerage services body unless the carriage service is supplied on the basis that the
sewerage services body must not re-supply the carriage service.

(13) Clause 15, page 17 (line 15), before “Section”, insert “(1)”.

(14) Clause 15, page 17 (after line 24), at the end of the clause, add:

(2) Paragraph (1)(a) does not apply to a carriage service supplied to a storm water drainage services body unless the carriage service is supplied on the basis that the storm water drainage services body must not re-supply the carriage service.

(15) Clause 16, page 17 (line 26), before “Section”, insert “(1)”.

(16) Clause 16, page 17 (after line 32), at the end of the clause, add:

(2) Paragraph (1)(a) does not apply to a carriage service supplied to a State or Territory road authority unless the carriage service is supplied on the basis that the State or Territory road authority must not re-supply the carriage service.

I table two supplementary explanatory memoranda relating to the government amendments to be moved to the National Broadband Network Companies Bill 2010 and the Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 201. The memoranda were circulated in the chamber on 23 March 2011.

While the companies bill as drafted makes it clear that services supplied by an NBN corporation to a utility must be for the sole use of the entity concerned and for the purposes of their own particular lines of business, these amendments are being made to reinforce these restrictions given concerns expressed by industry. Clause 9 of the companies bill provides the general rule that an NBN corporation must not supply an eligible service to another person unless the other person is a carrier or a carrier service provider. Clauses 10 to 16 of the bill set out exemptions to the general rule with each of those exemptions relating to the provision of eligible services to the specified utilities. Amendments (2) to (4), (6), (8), (10), (12), (14) and (16) make it clear that the exemption does not apply unless the services are supplied on the basis that the utility must not re-supply the service. Amendments (5), (7), (9), (11), (13) and (15) are minor consequential technical amendments. Concerns have been expressed that utilities could use wholesale services sourced from NBN Co. to offer retail services to the public. While this is clearly not the case, given the concerns that have been expressed and to put the matter beyond any doubt, these amendments make it clear that the services cannot be re-supplied and are solely for internal use.

Senator BIRMINGHAM (South Australia) (7.51 pm)—I thank the minister for his explanation of these amendments. We note that these amendments are an attempt by the government to address some of the issues that industry and the opposition have expressed concerns about. This is an area not altogether unrelated to the debate we have had over the last few hours about whether the NBN is genuinely a wholesale only provider or not. In this instance, the government seems to think that where it has provided exemption to the NBN on providing services to other entities it is reasonable to put a condition on those exemptions that would prohibit the on-supply or resupply of the service by those entities.

Strangely, the government just voted against a very similar proposal that would have done it for anybody who accesses the NBN service. It is a very peculiar inconsistency in the government’s approach, but we are quite used to such inconsistencies from the government. The opposition are not convinced these amendments go far enough. We have amendments of our own which will be
debated following this; however, we will support these amendments as a second-best solution to the government’s flawed approach.

Senator LUDLAM (Western Australia) (7.53 pm)—I do not propose to speak for very long on these amendments. I think they are a fairly straightforward attempt to calm some of the nervousness that has been expressed in the debate so far about what kind of customers NBN Co. will be able to supply. The amendments, as the Australian Greens read them, simply remove some of the ambiguity that has arisen over the uses to which utilities can put the services they are buying from NBN Co.

I know it is perhaps a little bit unorthodox to produce lists of specific entities, and I know drafters are generally a little reluctant to do that kind of thing in case you leave people out, but I think in general the intention here is reasonably sensible. So the Australian Greens will be supporting these amendments.

I might just put a question to Senator Birmingham. Does coalition support for these amendments indicate that you will be changing your position or withdrawing some of your amendments down the track? I am not sure if I heard your statements correctly.

Senator BIRMINGHAM (South Australia) (7.54 pm)—For the benefit of Senator Ludlam, we intend to continue with our proposed amendments.

Senator LUDLAM (Western Australia) (7.54 pm)—I will confirm then that the Australian Greens will be supporting these amendments. I am wondering if the government is proposing to put any other speakers or if the minister will close the debate by putting the question after I sit down?

The TEMPORARY CHAIRMAN (Senator Barnett)—Senator Ludlam, the question is that amendments (2) to (16) on sheet BR280 be agreed to. That is the question and then we have a number of other amendments to work through.

Senator LUDLAM—Thank you, Mr Temporary Chairman. I am very happy that the Australian Greens will be supporting the amendments on this sheet.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.55 pm)—I thank Senator Ludlam for the Greens’ support. I know the whole chamber is looking forward to hearing from other senators on this. Senator Birmingham, I am shocked but pleased by the sensible approach that you are taking on this. I am interested in why you do not think these amendments are enough. I think they are pretty direct and straightforward, and they confirm what we stated upfront was always the intention. I am interested if you would like to tell me—and I am quite serious when I say this—why they are deficient. Do you intend to assist in that for a moment?

Senator BIRMINGHAM (South Australia) (7.56 pm)—Out of politeness, I indicate to Senator Conroy that I will be happy to elaborate on my arguments when I move my amendments in a moment.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.56 pm)—I look forward to your contribution, Senator Birmingham. It is important that we clear this up. The government’s stated intent was always to ensure that utilities could not resupply the broader community in a retail sense. We believe that to be fair. It is what we set out to achieve, and we believe the original legislation did that. But the point has been made by a range of senators that the industry did have concerns that this was not
clarified enough and we welcome the support of the chamber in clarifying this to ensure that people do not feel that the legislation is deficient. We welcome the opportunity to ensure that the government’s aims are absolutely clear in this bill.

Senator FISHER (South Australia) (7.57 pm)—We say it is deficient because you are still intending, depending on what you do with our next amendment, to allow utilities to acquire directly. If you are going to agree to our next amendment then you are probably going to heed our call about the deficiencies. We look forward to you acquiescing to our next amendment, which Senator Birmingham will move.

Senator XENOPHON (South Australia) (7.58 pm)—I want to give an explanation of the reasons I do not support the opposition’s position. The Telecommunications Act currently states that utilities can do things that make them carriers or carriage service providers without requiring a carrier’s licence. The government’s provisions in this bill are therefore consistent with existing legislation. Further, the government will clarify in its amendment relating to access to utilities that it may only be used for internal uses and not for the resupply of the carriage service. I support the government’s position on utilities because by enabling utilities to directly access NBN Co. they will be able to introduce smart technologies, such as electricity networks and road monitoring capabilities, which telecommunications providers may not necessarily offer.

I understand that the opposition is concerned about the blurring between wholesale and retail if you allow utilities to access NBN Co. But, under the legislation, utilities will not be accessing NBN Co. for everyday telecommunications services but only for necessary and desirable uses that will enhance its ability to improve monitoring systems and innovate smart technology, which in turn will benefit the consumer of those utilities. Utilities are not end users and the government’s amendment makes it explicit that they may not resupply the carriage service. For those reasons, I cannot support the opposition’s position in relation to this.

Question agreed to.

Senator BIRMINGHAM (South Australia) (8.00 pm)—The opposition oppose clauses 10 to 16 in the following terms:

(2) Clauses 10 to 16, page 15 (line 9) to page 17 (line 32), clauses 10 to 16 TO BE OPPOSED.

I move this, noting the comments that Senator Xenophon has made and the comments that the minister has made already about the amendments that the government has moved to do with these issues. But it does come back for the opposition to a point of principle. The point of principle is the very basic one that we have spent a very long time already debating in this place, and that is whether the NBN is genuinely a wholesale only network. What the government has written in here is a raft of exemptions—exemptions for transport authorities, electricity supply authorities, gas supply bodies, water supply bodies, sewerage services bodies, stormwater drainage services bodies and state or territory road authorities. There is a raft of exemptions in each of those categories. We would start from the principle and the premise that it would be better for the government, who proclaim that these exemptions might be necessary—they do not say that these exemptions are necessary—to curtail the NBN as much as possible from day one to ensure that its mandate is restricted as much as possible from day one. That will ensure that it is ring fenced—and I have used that phrase before—from broadening its scope or range of activities outside of being a wholesale only provider.
We would further note that, while the arguments have been put that these types of entities, these utilities, may need to access the type of service that the NBN Co. is offering or that the NBN Co. may be able to develop a special offering for these utilities, we equally would argue that the retail service providers may be able to develop a special offering needed by these utilities. We do not see that it is necessary to start out on this process of developing the NBN and of setting its operational framework in place by weakening it by providing exemptions from day one, from the get go. It would make far more sense for the government to not have these exemptions and for the government to be open to hearing sound and rational arguments that can be put to the public on a case-by-case basis as to why perhaps there should be some exemptions some time in the future. But as to giving blanket exemptions now, although the government’s amendments that were just moved tighten it a little and at least stop these entities from onselling, we see no reason why, at the outset, these entities should have immediate and ready access. That is why the opposition maintains its opposition to these exemptions within the bill.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.03 pm)—The government does not support this amendment. The general rule is that the NBN Co. supply only carriers and carriage service providers. But NBN Co. can also supply to specified utilities for limited purposes. There are three reasons for permitting supply to utilities. First, under existing legislation, utilities can do things that otherwise make them carriers or carriage service providers without being classified as carriers and carriage service providers under the Telecommunications Act. The bill simply seeks to allow NBN Co. to treat them as carriers and carriage service providers when it comes to the supply of services. Second, these arrangements will support the growth of smart infrastructure management in Australia, including smart management of energy supply. I would have thought, Senator Birmingham, that you would have been very supportive of that. Third, it puts pressure on telcos to provide utilities with the services that they need.

The bill imposes tight limitations on the way the utilities use NBN Co. sourced services. They must use them for the sole purpose of carrying communications necessary to monitor and administer their own networks. Utilities cannot use these services to provide retail services to end users. To clarify this matter, the government has proposed its own amendment, which makes it clear that a utility cannot resupply a service that it has bought from NBN Co. Utilities and transport authorities will still need to purchase normal communications services, like telephony or broadband internet, from retail providers. Services that NBN Co. makes available to utilities should also be available to other carriers and carriage service providers and they could offer these to utilities if they wished.

This opposition amendment would deprive utilities of the benefits of arrangements that they have now, as well as undermining efforts to develop smart infrastructure and reducing incentives for carriers. That is why the government does not support it. Let me now go to the Senate committee report.

Senator Birmingham—Are you killing time, Stephen?

Senator CONROY—No, I want to be clear so that you understand what it is that you are actually advocating. You are again being anticompetitive. Your position demonstrates that you have a large yellow T tattooed on more than your forehead, possibly.
Senator Birmingham—I thought that it was orange.

Senator CONROY—Yellow, orange.

The TEMPORARY CHAIRMAN (Senator Boyce)—Senator Conroy, please direct your remarks through the chair.

Senator CONROY—I accept your admonishment, Madam Temporary Chairman. Utility stakeholders supported the exemption. For example, the Energy Networks Association said:

Maintenance of this exemption is very important to the ability of electricity and gas network businesses to meet 21st century expectations around affordability, reliability and quality of energy supplies.

That is the key here. There are those in this chamber and those out there in the broader community who are trying to drag the country into the 21st century. And there are those sitting here fighting over a 20th century regulatory framework and fighting to try and hold Australians back—from getting access to the 21st century technology that will allow them to deliver to the broader efficiencies of the Australian economy.

Smart Grid Australia said:

Removing these exemptions would require electricity utilities to have to deal with a carrier (or service provider) in working through network design and architecture issues to connect with NBN Corporation’s communications network. This is an impractical and unworkable proposition …

This is the sector—this is the industry—saying that your solution is impracticable and unworkable. So try and see if you can scrape that orangey-yellow T off your forehead and join the 21st century.

The CHAIRMAN—The question is that clauses 10 to 16, as amended, stand as printed.

Question put.
In this regard it is a relatively simple tightening of the wording used. Currently clause 18 in subdivision B under the heading of ‘Non-communications services not to be supplied’ reads very simply:

An NBN corporation must not supply a non-communications service to another person.

The opposition is proposing an amendment to clause 18 such that it would read under a revised heading of ‘Services not to be supplied’:

An NBN corporation must not supply a service to another person unless that service is an eligible service.

An eligible service, as the minister would know, is a service as defined and approved by the ACCC for provision by NBN Co. to retail service providers. This is an attempt by the opposition to ensure that we do not have NBN Co. supplying non-eligible services, non-approved services, to other persons or other bodies in this case. Minister, I hope that you and the crossbenches see that this is a sensible, rational amendment and one that should not cause particular duress if the NBN Co. is to operate in the manner in which you proclaim that it will. I hope that you will support this amendment.

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the scope of the services NBN corporations may provide while still ensuring they can operate effectively to supply all necessary services to wholesale customers. For this reason the government opposes this amendment. Clauses 17 to 19 in the bill limit NBN Co’s activities to communication services and goods.

Senator BIRMINGHAM (South Australia) (8.19 pm)—I have noted what the minister has said in this regard. He has cited an argument that there are certain non-eligible services that may need to be provided. He suggested that these may be services that are in some way analogous or incidental to the primary services to be provided. What he has not done, however, is provide an explanation of or an example of just what such services that are not approved eligible services may be that warrant NBN Co. once again having this flexibility in the bill.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.19 pm)—I am advised of two examples: billing services and duct access are sorts of things that we would deem to be incidental—things like that.

Senator BIRMINGHAM (South Australia) (8.20 pm)—I note the minister’s comment: billing services and duct access. On either of those fronts I wonder how they fit within your current definition of a non-communications service. That would seem to me to suggest that you are providing communication services, not billing services, to customers. So if you are going to cite that as an example, it does not seem to be an example that is congruent with the bill as it currently stands.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.20 pm)—On page 9 of the definitions it states:

\[ \text{non-communications service means a service other than:} \]

\[ \text{(c) a service that is ancillary or incidental to the supply by an NBN corporation of an eligible service} \]

I think that, if you clarify your question, we can ensure we are not at cross-purposes. But that is the definition.

Senator BIRMINGHAM (South Australia) (8.21 pm)—I am looking at the definition here of a non-communications service. It means a service other than ‘a service that is ancillary or incidental to the supply by an NBN corporation of an eligible service’. So in fact non-communications service does not necessarily mean that NBN Co. cannot provide a service that seems unrelated to communications. It just means that the way a non-communications service has been defined in the act provides a fairly broad reach of opportunity to say that pretty much anything that is ancillary or incidental to the supply of an eligible service is therefore an appropriate service for NBN Co. to be supplying.

The opposition is not convinced that any reasonable consideration or interpretation of the act would not ensure that, were our amendment to be approved, things that are incidental or ancillary would logically be considered part of an eligible service. However, we would have thought that that is a sensible approach to, again, enable us to be certain, be confident and prevent any semblance of mission creep by NBN Co.—any sense that they may start to provide services other than genuine ACCC-approved eligible services.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the
Prime Minister on Digital Productivity) (8.23 pm)—I will read from the EM, page 72, in the middle of the last paragraph down the bottom:

The reference in the definition of non-communications services to ancillary or incidental services is intended to clarify that an NBN corporation may supply a range of supplementary services to customers that enable the customer to supply services to end-users. Examples of this are facilities access services (such as leasing of duct or conduit space) or access to an NBN corporation’s operational and business support systems (to facilitate service ordering, provisioning and billing). The reference to ancillary or incidental services is also intended to permit NBN corporations to engage in the provision of minor services necessary in the conduct of a business, such as subleasing of surplus office space.

I hope that gives a broader picture and possibly allays your concerns, Senator Birmingham.

Senator BIRMINGHAM (South Australia) (8.24 pm)—It gives a broader picture, yes; it allays my concerns, no. It gives a broader picture and in doing so gives a better understanding of how NBN Co. may potentially be being set up to have alternative revenue streams to the primary revenue streams that would come purely from providing eligible services as part of a wholesale only access network, the type the minister has claimed NBN Co.’s remit to be. The opposition stands by its amendments and by its belief that it is far better, far wiser and far more sensible to ensure that NBN Co. has a clearly defined, explicit, limited remit and is not able to stray into providing other services that are not part of its core objectives.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (8.25 pm)—I think it is important to get a couple of things on the record. Quite obviously, we can see where the numbers are on this. It is going to go through and I suppose the sooner issues are brought to a head, the better. It seems inevitable. But there are a couple of things that I think should be put on the record to do with service provision and a whole range of issues. There are a whole range of queries and now is as good a time as any to ask them.

When we first had a look at this, Baulderstone Hornibrook said they would build a service across the nation for $7 billion—that was for the whole lot. We are always rather amazed at the extent of inflation. The question I want the minister to answer, just so we can finally clarify this, is: how much is this actually going to cost to build? How much is the entity actually borrowing to do this? If the commercial plan, unbeknownst to you or to anybody else, does not stand up, is the taxpayer underwriting this and having to pick up the bill and pay it all back? Why are you building a service of fibre to the home when you could provide it to the node and provide a wireless service from there and really trim your costs? And why are you providing a service in cities? Why did you not start at the outside—in the country, where the service is not—and put the optic fibre around the optic fibre trunk lines around the country and then concentrate on the cities at a later stage? You might have even been able to get the market to look after if for you and avoid the costs.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.26 pm)—I would love to spend the evening re-litigating the NBN. I think the cost of the build came in at 36, roughly. I am sure you remember—

Senator Ian Macdonald—$36 billion.

Senator CONROY—Yes, $36 billion. I am not for a moment trying to take away from that, Senator Macdonald. I have not come prepared to debate those particular de-
tails. I would not want to give you misleading information on those. A range of those questions I will happily take on notice. They are not actually relevant to the bill. They are relevant to the general debate. I accept that they are legitimate questions to ask, but I have not come with information on the detailed corporate business plan. The disappointment is: why do you want to deliver a second-rate service to your traditional base? Why do you want your traditional base to be locked into a second-rate wireless network when we are going to build a world-best broadband network, Senator Joyce? Why are you preparing to let the Liberals twist your arm and make you betray your constituency? You came here as someone who wanted to represent your constituency against the oppression of the Liberal Party, yet you have folded to it like a deck of cards. I am not going to waste the chamber’s time by debating at length with you the broad principles of the NBN. If you would like to talk about the legislation, I will happily spend as much time as you would like discussing the actual legislation, but I do not think it is a great use of the chamber’s time tonight to relitigate all the issues we have litigated over many, many hours in the chamber previously.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.29 pm)—Was he addressing—

The TEMPORARY CHAIRMAN (Senator Boyce)—I hoped that Senator Joyce had heard what I said about the use of the second person, but perhaps you could demonstrate how it is best done, Senator Conroy.

Senator CONROY—I will do my very best to follow your wise counsel, Madam Temporary Chairman.

The TEMPORARY CHAIRMAN—Thank you.

Senator CONROY—Again, Senator Joyce, the information you are seeking is publicly available. It has been litigated—through you, Madam Temporary Chairman—many times in this chamber, in both question time and Senate estimates and in the debate on the substance of the bill in December. None of your questions are relevant to the bill, Senator Joyce. If you would like some further information on the bill, I am happy to assist you.

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Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (8.30 pm)—I will just start with one. I will ask for the third time. Do you know how much the entity is actually borrowing, Minister? Do you have any clue whatsoever how much the entity is borrowing, what happens if it falls over, who picks up the tab and is the taxpayer underwriting it, just so we can get it on the record. Have you ever crossed the floor on anything, Minister, in your life?

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borrowing? And I just want to know: if it falls over, does the taxpayer have to pick up the tab?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.30 pm)—As I said, the questions you are asking are not relevant and should be ruled out of order. I invite you to show to which clause of this bill—and we are on a specific clause—or how those questions are relevant, Senator Joyce. As I said, I will happily debate the NBN and the amount of debt that the company may be borrowing till the cows come home, but tonight we are here to debate this clause and this bill. I am just not going to waste the chamber’s time. I am drawing a line, Senator—through you, Madam Temporary Chairman. I am happy to discuss the bill and the clauses at length. I am not going to waste the chamber’s time being drawn into a conversation in which the questions have no relation to the bill before us or the clauses before us.

Senator BIRMINGHAM (South Australia) (8.31 pm)—Not that Senator Joyce needs my assistance at all in this regard, but I would just make the point to the minister that this amendment, like many of the amendments we have discussed, goes to whether the scope of NBN Co. is being expanded in any way—whether indeed you are leaving the door ajar, or wide open, potentially, for NBN Co. to be able to expand its activities. Of course, we all know what expanding its activities is about. That of course will be about making the dodgy finances of NBN Co. stack up better in the long run and giving the government some slight chance of not confronting the type of circumstances that Senator Joyce is asking you about—and they are reasonable circumstances to ask about. This bill is the fundamental piece of legislation that this parliament is going to debate about NBN Co., about how it is going to work, how it is going to operate, and—to the points that Senator Joyce makes—how it is going to be funded and paid for.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (8.33 pm)—If the minister cannot provide the most basic answer to a quite simple question which should be at the forefront of his mind—and unfortunately the minister has a bad habit of not knowing what is in his own bill—I think it is very important at this juncture. We can go back into our rooms and watch this on television, and I am quite happy to do that. All he has to do is tell us how much the entity is borrowing. It goes to the point of the capacity to finance it and it goes to the service delivery. It is all interconnected; he knows that. It is a very simple question: does the taxpayer pick up the tab if the whole thing falls over? Watching tonight, that is what they want to know.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.33 pm)—I always enjoy debating Senator Joyce on many aspects of the NBN, but Senator Joyce is fully aware that his questions have no relevance to this bill. I am not going to be drawn into a lengthy debate about why we built a fibre-to-the-home network as opposed to a fibre-to-the-node network. It is a wonderful debate. I will debate you. Let us go on Sky. Let us go on A Current Affair. Let us go anywhere you want, Senator Joyce—through you, Madam Temporary Chairman.

Senator Joyce—Madam Temporary Chairman, I raise a point of order on relevance. The questions are quite specific. How much is the entity borrowing? If it falls over, does the taxpayer have to pick up the tab, pick up the bill?
The TEMPORARY CHAIRMAN (Senator Boyce)—There is no question of relevance, Senator Joyce.

Senator CONROY—Senator Joyce is asking a hypothetical question on an issue not relevant to this bill. As I said, I am not going to waste the chamber’s time, Senator Joyce. We have an important bill. Senator Birmingham has already indicated that this is a substantial bill. I invite you to ask a question on the substance of the bill. You are asking a hypothetical question, Senator Joyce.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (8.35 pm)—You cannot get more simple than an answer which was either going to be yes, the taxpayer picks up the bill, or no, they do not. You cannot get anything simpler than that, Minister. You have two options. You have a 50 per cent chance of getting the answer right even if you know nothing, but you will not give the answer. You obviously have no idea of how much the entity is actually borrowing.

Senator IAN MACDONALD (Queensland) (8.35 pm)—I am sure Senator Joyce did not really want me to answer it, but—

The TEMPORARY CHAIRMAN—Sorry, are you making a point of order or speaking on the amendment?

Senator IAN MACDONALD—No, I am speaking to—

The TEMPORARY CHAIRMAN—Thank you.

Senator IAN MACDONALD—I am just assisting the minister. The minister does not know the answer, but yes. Senator Joyce, quite clearly the taxpayers will pick up the bill—

Senator Joyce—$27 billion in borrowing.

Senator IAN MACDONALD—$27 billion in borrowing. It was said that this was going to be a commercial operation, you might remember. They were going to make a profit. They were going to bring in private enterprise partners, you might recall. How many of them are rushing to invest in this? Of course they would not because they know it is a white elephant financially. Senator Joyce, I am sorry; you really were not asking me to answer it, but the minister seems incapable so I was just helping the minister with the right information.

Senator LUDLAM (Western Australia) (8.36 pm)—I feel as though Senator Birmingham started off very much on topic on this amendment, and we were speaking to an opposition proposal to prevent the kind of scope creep that has been discussed in this public debate for a good long period of time. Since then, we have just drifted completely off topic. This is really more or less nothing at all to do with the amendment that is before the chair.

I just indicate very briefly, for reasons I sketched out right at the opening of this debate, that we do not believe there is some vast conspiracy to turn the NBN into some Soviet-style retailer and completely move outside the mandate.

Senator Birmingham—That is what you want, isn’t it?

Senator LUDLAM—I find that highly objectionable. I do not actually think that that is afoot. What we do plan on introducing to these bills later in the debate is some kind of transparent review so that we actually know whether this is going on. The problem we have at the moment is that the government has proposed a hypothetical national broadband network, the opposition has attacked a hypothetical broadband network, the industry is circling around trying to work out how their business models are impacted by this hypothetical network, and nobody actually knows how this is going to play out in reality.
On this amendment, and I will refer to this a couple of times as we move through it, we are seeking to have some kind of transparent record of how this network is operating as it is built. Is there scope creep occurring? Are electricity utilities becoming covert retail service providers? Heaven forbid. Are the legitimate interests of the telco providers, who by and large still support the passage of this legislation, being trespassed upon? I do not think anybody in this chamber can say for certain how these issues will be resolved until we start to see the market perform. Predictions of how competition policy is going to impact on any given sector are notoriously unreliable. We believe the redrafting, as far as this clause is concerned anyway, that the government has proposed is about right in terms of the way the utilities will interact with the broadband network. I will state now for the record that the Greens will not be supporting this opposition amendment and we hope that we can get back vaguely on topic.

**Senator XENOPHON (South Australia)** (8.39 pm)—I know I beat Senator Joyce to the call, but that is a rare event when I do. Further to what Senator Ludlam has said, I indicate that I do not support the opposition’s amendments but I do share concerns about the issue of scope creep, as it has been described. I think the government has clarified what the intent of that scope will be. I do not want to put Senator Ludlam on the spot and he may want to take this on notice for later on in the debate: if it is apparent that the intent of the current framework of the bill when the market is operating is not working as intended, despite the best drafting possible, does that mean that the Australian Greens after 1 July will be seeking to revisit these issues as a matter of some urgency?

**Senator Ian Macdonald**—The horse has bolted.

**Senator XENOPHON**—Not necessarily. The idea is that we can have it as rigorous as we can now, but if there are any unintended consequences with respect to this, will the Australian Greens undertake to revisit any unintended consequences with some urgency?

**Senator LUDLAM (Western Australia)** (8.40 pm)—If Senator Joyce is okay to yield, I will respond briefly because I think it is an entirely fair question, and maybe I did not spell it out in my comments a few moments ago. There are a number of live issues here. We believe the government, in consultation with industry and other parties, corporate and otherwise, over the last couple of years have put in quite a bit of work to try to work out how this market structure is actually going to function. This has never been done before in Australia. We have had a vertically integrated government owned incumbent and we have never had a wholesale only provider before. We have never tried to do this. I think it is somewhat unlike what has been tried elsewhere in the world; every experience is different.

I do not necessarily propose on 1 July to open up this package of bills again and try to fix things because I think it is going to take a little bit of time. Right now in early 2011 we have a handful of first release sites, we have a handful of proposed second release sites, but we do not actually have an NBN. We have a hypothetical national broadband network. The government says it is going to work one way and every stakeholder who has expressed a view thus far believes it is going to work in one way or another—but nobody actually knows. In this instance I can absolutely commit to Senator Xenophon and the rest of the chamber that if it is going sideways we will absolutely revisit it—

**Senator Xenophon**—What kind of time frame?
Senator LUDLAM—I guess Senator Xenophon’s question goes to what Senator Macdonald said before: that the horses have bolted, and what is the point of fixing this after the market structure has blown out or people are being squeezed out. I think that is a difficult question to answer because the time lines will be different for different aspects of the bill. We will know whether freedom of information provisions are being abused within 12 months because if the commission is being pelted with malicious FOI requests or ones that are being knocked back one after another, we will know that straightaway.

I think there are several aspects of this, including issues like scope creep, and it will take some time to tell. If NBN Co. is starting to grow out of its box and move into a space that it clearly was not intended for, we are proposing rolling reviews on a fairly regular basis that will transparently tell us that that is happening and when it is happening. So I can commit that we are not proposing simply to set and forget. As part of his agreement with the government late last year, Senator Xenophon proposed the establishment of a joint standing committee that would oversee the rollout of this project—that would be its whole job; that is all it would do—and I feel that would be a very important vehicle in determining whether the reality was matching what was in the business plan, what was in the minister’s speech and what we were told this entity would do. I am not planning on going anywhere in the next little while. I hope these issues do not need to be revisited but if they do we will certainly be there to perform that function.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (8.43 pm)—To my knowledge—you can correct me if I am wrong—the cost of the network is approximately $36 billion. The entity is borrowing $27 billion and will need to borrow a further $10 billion to roll out the network. That will be picked up by the taxpayer if it falls over. It will have disastrous effects on the Australian economy if that happens. You are building it as fibre to the home because you got sucked in. You are rolling it out in the cities and not in the country because you live in the seven per cent of the country and you have lost interest in the rest—it is purely hypothetical until we have to pick up the tab. The tab is coming; it is going to be massive and it is going to be a complete and utter disaster.

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

The committee divided. [8.49 pm]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes............ 31
Noes............ 33
Majority....... 2

AYES

NOES

Bilyk, C.L. Brown, B.J. Cameron, D.N. Collins, J. Crossin, P.M. Faulkner, J.P.
Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.52 pm)—by leave—I move government amendments (17) and (18) on sheet BR280 together:

(17) Clause 24, page 21 (line 18), after “Communications Minister”, insert “and the Finance Minister”.

(18) Clause 24, page 22 (lines 9 and 10), omit subclause (4).

Subclause 24(1) of the companies bill provides that the communications minister may, in writing, set up the functional separation principles that apply in regard to the manner in which the functional separation of an NBN corporation is to be achieved and maintained. Amendment (17) inserts the words ‘and the finance minister’ after ‘communications minister’ in subclause 21(4) of the companies bill. The purpose of this amendment is simply to require both shareholder ministers to jointly make such a determination. This is consistent with clause 25 of the bill, which requires both ministers to make a functional separation requirements determination that reflects the joint shareholder responsibility of the ministers for NBN Co. Amendment (18) is a minor technical consequential change.

Senator BIRMINGHAM (South Australia) (8.53 pm)—As I noted in granting leave for these amendments to be moved together, these are very significant amendments. I say with tongue planted firmly in cheek. However, I have noticed during question time, divisions and other opportunities today the number of occasions on which the finance minister appears to have been providing guidance and counsel to the communications minister. I did not notice Senator Wong here in the last division, but I am sure she is monitoring proceedings very closely, disappointed though she would be. Indeed, perhaps if Senator Joyce wanted to get decent answers to the questions he was posing about government debt—

Senator Conroy—Ask Penny!

Senator BIRMINGHAM—indeed, perhaps he could ask Senator Wong. I think Senator Joyce would differ in your suggestion that Senator Wong would necessarily give answers to questions on government debt. She may give more informative or entertaining responses, Minister, than when you open up the laptop in question time, but I doubt that we would get greater fact in the answers than you provide. But the fact that these amendments specifically enhance the role of the finance minister in making decisions around the operation of the NBN and NBN corporations and put the finance minister, as the equal shareholder, on an equal footing with the communications minister does make sense. It particularly makes sense given the enormous levels of debt that this project involves and the role that the finance minister will have in helping to raise that
debtor and managing that debt in years to come.

Senator IAN MACDONALD (Queensland) (8.56 pm)—Senator Birmingham has indicated that we will be supporting these amendments. But I inquire of the minister: why is it appropriate that two ministers certify in relation to functional separation, as I read the clause? Why isn’t there some other perhaps more independent assessment—with respect to whoever may be the communications minister and finance minister of the time? It could be someone who, with respect, might have a little bit more of an understanding of whether the functional separation is appropriate or otherwise.

The TEMPORARY CHAIRMAN (Senator Boyce)—Senator Conroy? Senator Macdonald asked a question. Do you wish to answer?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.57 pm)—I am sorry, Senator Macdonald. I thought you were sitting down because you were tired.

Senator IAN MACDONALD (Queensland) (8.57 pm)—I was asking you a question, Minister. I was hoping you would give me an answer, but perhaps you did not hear the question. You were busy on the telephone. If you would like, I can repeat it.

Senator Conroy—That would be good. I would be very grateful.

Senator IAN MACDONALD—This is going to be a long debate if we have to repeat every question because you are on the telephone.

Senator Joyce—Maybe he doesn’t know the answer.

Senator IAN MACDONALD—No, I won’t go there, Senator Joyce. I was just saying that Senator Birmingham has indicated the opposition have no objection to adding the finance minister to the joint decision making on functional separation. But I just wonder why there is not some outside authority who determines functional separation rather than leaving it, with respect, to whoever might be the communication minister or finance minister at the time. It could be someone who might have a bit better of an idea of what it is all about.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.58 pm)—This is a debate that we have had publicly quite a bit. At first Telstra are involved in the process. Ultimately, if the ACCC is unhappy then the minister makes a final determination. All we have done there is add that the finance minister joins with the communications minister to make that final determination. The ACCC and the regulators will have a role in advising the joint ministers, as opposed to what currently happens where they advise only the one minister. So there is a role for the regulators involved in giving advice on this.

Senator IAN MACDONALD (Queensland) (8.59 pm)—As I say, that is adding another minister to the communication minister, regardless of who the individuals are who might hold those roles at a given time. In discussing this bill today, I raised this question. The ACCC, as you indicated, have a view on it, although it is a view that is apparently not shared by others. Why is it left effectively to two politicians to determine whether a company is functionally separated or not? It just seems to me to be inappropriate to be anointing ministers with those decisions. My question is: why wouldn’t some independent, knowledgeable person—I say this with respect for whoever the individuals
might be—make the decision rather than leaving it effectively to two politicians?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.01 pm)—As I have indicated, it is two politicians, consistent with and in consultation with advice from regulators. I am not sure I could add much more than that. That was the process.

Question agreed to.

Senator BIRMINGHAM (South Australia) (9.01 pm)—I move opposition amendment (7) on sheet 7049 revised:

(7) Page 36 (after line 4), after clause 41, insert:

41A Restrictions on services higher than Layer 2

(1) An NBN corporation must not supply an eligible service that is higher than Layer 2 in the Open System Interconnection (OSI) Reference Model.

(2) The Minister may, by legislative instrument, exempt a specified eligible service from the operation of subsection (1).

(3) The Minister must not make or vary an instrument under subsection (2) unless the Minister is satisfied that the instrument complies with the following network layer principles:

(a) an NBN corporation should not supply services at a layer in the network hierarchy of the national broadband network that is higher than Layer 2 unless the relevant demand cannot be satisfied by means of the provision of a service at Layer 2;

(b) an NBN corporation should not supply services at a layer in the network hierarchy of the national broadband network other than the lowest technically feasible layer;

(c) an NBN corporation should not compete for the supply of services if competition for the supply of the same or equivalent services already occurs, or if there is a reasonable prospect that competition for the supply of the same or equivalent services will occur;

(d) the proposed exemption will assist to promote competition in downstream wholesale and retail markets.

(4) Before making or varying an instrument under subsection (2), the Minister must:

(a) cause to be published on the Department’s website a notice that:

(i) sets out the draft instrument or variation; and

(ii) gives the reasons why the Minister is satisfied that the instrument or variation complies with the network layer principles; and

(iii) invites persons to make submissions to the Minister about the instrument or variation within 14 days after the notice is published; and

(b) ask the ACCC to give advice to the Minister, within 28 days after the publication of the notice, about the instrument or variation; and

(c) consider the advice and any submissions.

The amendment is related to placing a restriction on services higher than layer 2. It inserts after clause 41 in the bill a new clause, 41A, that outlines these restrictions. I would hope this is an amendment that the minister would welcome, because we have learnt from the debates we have had tonight and earlier this afternoon on the provision of wholesale only services that the minister seems to place almost the entire emphasis on the type of service that is being sold as being the preventative mechanism to stop NBN Co. from moving up the value chain and from
engaging in some type of scope creep, or mission creep as it has been termed by many.

Given the minister has rejected out of hand, and unfortunately the chamber has rejected, amendments that the opposition sought to move that would have more clearly defined the wholesale only operations of NBN Co. and would have sought to ensure that NBN Co. was a wholesaler in the generally understood parlance of the term and generally accepted notion of the term ‘wholesaler’—that is, someone who takes a product and sells it to a retailer who onsell it to an end user—the government has left open numerous opportunities for NBN Co. to directly sell products to end users.

But the minister’s defence throughout this debate as to why he thinks it is acceptable in his definition of a wholesale only carrier for NBN Co. to sell direct to an end user has been based entirely on the type of service that is being provided. That type of service that he says is being provided is a layer 2 bitstream service. However, the bill does not provide for absolute clarity around that type of service. The bill does not provide a guarantee that NBN Co. will not engage in mission creep in what it is selling. If we cannot close at least one of those doors, we have a real problem.

The minister has not allowed us to close the door in relation to who NBN Co. is selling to, so instead we seek the support of the chamber to close the door in relation to what it is selling. But, just as the minister made it clear in previous comments that he was not going to attempt to define for the chamber the technical specifications and differences between a layer 2 bitstream service and higher value services, I am not about to attempt to do that. Importantly, the amendment does not attempt to do that. The amendment makes it clear that in fact what it does is empower the minister through the capacity of regulatory power to put a restraint on NBN Co. from moving up the value chain in this regard. This is about empowering the minister to be able to do what he says this legislation is about and to be able to ensure that NBN Co. is providing what he has defined to be the wholesale only service, even though he wants to define ‘wholesale’ in terms of the product that is provided. That is fine; here is his opportunity to define wholesale in terms of the product that is provided. This amendment seeks to do that. In seeking to do that, it therefore again is an attempt by the opposition to keep the government to its word to the public, the industry, consumers and the parliament about what its mission for the NBN Co. is.

Why is it important to ensure that the product of NBN Co. has a limited offering? It is important because we want the minister to foster maximum competition at the retail end. We want to make sure that NBN Co. is not shutting out the potential for innovation and product development by retail service providers. We want to make sure that it is offering a flat, uniform service that is available to retail service providers for them to be able to innovate, value add and provide competitive outcomes.

This is an amendment designed, Minister, to empower you so that, in the operation of this act, ultimately you will be able to ensure that the mandate that you claim to be giving NBN Co. is adhered to by NBN Co., that it is the mandate that they operate by, without the potential need to come back to this chamber in future years and seek tighter amendments because you suddenly discover they have strayed outside their brief; they have strayed into areas that you wish they had not. I know that these are technical areas and issues, but equally I know that Senator Ludlam and others have looked at these issues. I hope they recognise that there is some value in provid-
ing the minister with this power and, in doing so, providing the minister with the capacity and opportunity to ensure that he and future ministers can keep NBN Co. to the mandate that you have told all of us today and many times prior you believe the government is giving them and wants them to operate within.

Senator CONRO

(9.08 pm)—Although I think this is a very constructive and thoughtful amendment, I suggest there is an alternative way to do what you are seeking to do. I do not think it actually needs a legislative fix, which is why the government is not support this amendment. NBN Co.'s corporate plan and the government’s statement of expectations very clearly set out that NBN Co. will operate at layer 2 of the network stack, but for good reason the bill does not include that restriction. I appreciate the point you made that you have not sought to be too inflexible. A simple black-and-white layer 2 rule is inflexible and could be counterproductive in terms of the services provided to customers. This was even recognised by Telstra in its submission to the Senate committee that examined the bills.

Once the market situation is clearer and should such certainty be required, clause 41 of the bill provides for the minister to make licence conditions on which services NBN Co. must and must not supply. With suitable carve-outs, a restriction of the type contemplated by this amendment would most appropriately be dealt with by a carrier licence condition if the need arose. During the next four months the government will consider placing a condition on NBN Co.'s carrier licence to restrict it to layer 2. The coalition’s revisions to the amendment it moved in the house do not address these fundamental issues. The revisions to the amendment would allow the minister to exempt a specified eligible service by legislative instrument subject to public consultation. This function is already met by clause 41 of the bill. So I think it is a very constructive amendment, Senator Birmingham, and I do actually think this is an important issue for us to follow closely. As I have said, I have indicated the government will consider placing a condition on NBN Co.’s carriers licence.

As I did mention earlier in the debate, there is a capacity for a minor layer 3 function to be able to flash up on the screen that the individual consumer needs to go and get an RSP. So we need to actually have a minute amount of layer 3 capacity just to make the actual connection serviceable. I hope that genuinely can help with your concern and that perhaps you may not feel the need to even go ahead with this amendment given our indications, which are essentially that we can do it without this.

Senator LUDLAM

(9.10 pm)—I suspect Senator Birmingham was about to reply directly; I thought it might be useful to put the position of the Australian Greens on the record at this stage. I went back and had a quick look at the submission that Telstra put to the committee—the one that the minister referred to briefly in his contribution. Telstra wrote an amendment. I do not know whether it is exactly word for word what Senator Birmingham is proposing tonight; I would not suspect that other people are doing the coalition’s homework under any circumstances at all. But in the submission they put that accompanied their proposed amendment they did state:

Telstra acknowledges that in limited circumstances, it may be necessary for NBN Co to engage with certain functions at Layer 3 in order to provide Layer 2 services to RSPs.

So there is even an acknowledgment there from Telstra. They went on to sketch one
 carve-out. So if it is a satellite service, for example, perhaps Telstra proposed a specific amendment to catch that. My point of view is that this is perhaps one of the very rare instances in this NBN debate where the coalition and the government are not actually all that far apart and the intentions are more or less the same, and I will associate the Australian Greens with that. It does undermine the entire principle of NBN Co. if it is working its way up the stack or up the value chain. I do not think anybody is seriously contemplating that it should be able to do that, but for purely technical reasons it is not possible to legislate a black-and-white boundary between the two kinds of service that NBN Co. might choose to offer.

I am a bit concerned at the amendment that Senator Birmingham has proposed. There again there is another carve-out. There are ways dealing with exemptions. But to me it sounds like a recipe for terrible micromanagement by the minister if he has to sign off on every one of these variations to the instrument. To me it feels as though there is potentially unnecessary intervention there by the minister. So we will not be supporting this amendment, although we do support the intention and we believe that the bill as drafted probably does take care of that potential for scope creep vertically, if you will. Again, this is another issue—and I am probably going to reference this a few times during the evening and tomorrow—where we want that reported. We want some transparency around what kind of entities and how often NBN Co. has gone and done that. We think this is probably not particularly a deal breaker for the coalition, but we will be voting with the government on this occasion.

Senator IAN MACDONALD (Queensland) (9.13 pm)—As I understand the minister’s response, he is saying, ‘You do not need this because we can include it as a carrier licence condition.’ I cannot quite understand Senator Ludlam’s reason for not supporting the coalition. This amendment states:

(2) The Minister may, by legislative instrument, exempt a specified eligible service from the operation of subsection (1).

So we are acknowledging, as Senator Ludlam indicated, and as Telstra and others have said in their submissions, that there may need to be some additional services to layer 2. We are just saying that it should be the parliament that determines this, and that is why this amendment here puts it in. Senator Conroy is saying that the parliament does not need to do it because we can, if we want to, make it a carrier licence condition. That is right: you might do that, but then you might not decide to do that.

This amendment would involve the parliament agreeing that the NBN corporation cannot supply higher than layer 2, except by the minister by legislative instrument, which I assume would be disallowable in the chamber. So it gives the parliament and the people of Australia the ability to oversight this, rather than leaving it to the minister, as I understand his objection, saying, ‘You do not need to do that because we will include it, or we may include it, as a condition of the carrier licence being issued.’ But I repeat: they may not include it as a condition. I am surprised that the Greens and the Independents cannot allow the parliament to have oversight of this rather than just leaving it to the government to make a decision. The end result, as Senator Conroy rightly said, is the same if the government does impose that condition. But if they do not impose that condition then the restrictions on better than layer 2 are perhaps a bit looser. I would have hoped that the Greens and the Independents would have supported the parliament having that role. Being a legislative instrument—and being disallowable—does allow the parliament to have that oversight rather than leaving it to the possibility of the minister
including it as a condition of the carrier licence.

**Senator BIRMINGHAM** *(South Australia) (9.16 pm)*—I thank the minister, Senator Ludlam and Senator Macdonald for their comments on this amendment. I particularly thank the minister for his comments on clause 41, the carrier licence conditions, and the expectations of the government in regard to developing and imposing some conditions in this space. The coalition welcomes that commitment, we note it, we bank it and we look forward to seeing it honoured. It is important in these debates for commitments like that to be noted and to be recorded so that all understand where they are going in this space.

I equally note Senator Ludlam’s approach—a little from column A, a little from column B—and I appreciate that he is attempting to work with the government and show some good faith to the government in regard to the development of this bill. I also appreciate his comment that he is hoping in the future to see some provisions that surround the disclosure of some of these arrangements and matters. If there are further amendments to come we certainly look forward to seeing them, getting to them and seeing just what shape and form they take. We hope that the Greens and the other crossbenchers, if they are working with the government on such disclosure amendments, ensure that they are rigorous, comprehensive and cover many of the concerns that we have discussed.

Notwithstanding the assurances of the minister and the comments of others, the opposition, as Senator Macdonald has indicated, does believe that our amendment still has value and that it is important. We believe that to be the case largely because we are approaching this, as we have with numerous other amendments, from a position of caution going into this debate. We think it is better, wiser and more sensible to ensure that risks are minimised, that doors are closed rather than left ajar and that we actually have a very tight framework in place for the operation of NBN Co. from day one. If the government then needs to open the door a little to create some exemptions and to find the space to have a bit of extra flexibility, we can do that. But, to start with, the parliament should be ensuring that this entity is living by the principles that the government has set out and works within the mandate that the government has stated time and time again. We believe that when we look at this there is a real concern that NBN Co. could move up the value chain and could start to operate outside of that mandate. We trust the government will act to ensure that does not occur, in the way that Senator Conroy has outlined, but we would rather not have to finish this debate operating on trust. We would rather conclude this debate operating on certainty. We think the industry, the sector and consumers all deserve to be able to conclude this debate operating on a level of certainty as well, rather than on just a level of trust.

That is why we think that the amendments we have proposed that provide for a clearer definition, but equally provide the minister with a capacity by means of legislative instrument to have some exemptions, give the right balance between security and confidence. They also ensure that NBN Co. will not move up the value chain and engage in mission creep of any sort whilst providing the flexibility that may be necessary for the minister, the government and NBN Co. to operate in a sensible way into the future. This is probably going to be a point of principle on which we differ, but it is fundamental to the approach the opposition has taken. It is consistent through most of the amendments that we have moved to date and it is consistent in the fact that we are arguing, in
so many of these instances, for an approach where we expect NBN Co. to be operating very firmly within its mandate. This legislation is the means to define that mandate and to curtail that mandate. We should not be leaving wriggle room, we should not be leaving room for expansion and we should not be leaving room for doubt in the future. We should be creating certainty tonight and tomorrow and however long it takes to pass these bills. We should be ensuring they leave a certain framework and environment, and not a framework that allows NBN Co. to expand its scope or mission into the future.

That is why I would again implore the chamber to look favourably upon these amendments. As the minister has indicated, and I welcome his indication, they are offered in a constructive way. We have taken on board concerns from the debate in the House of Representatives and made sure that more flexible amendments are put forward in this place. We think that it is a stronger, better and more secure way for the parliament to ensure it gets what the minister says he is going to give us. This is so we do not wake up in two, three, four, five or 10 years time to find that we have a new government owned monopoly that is starting to sell, or has been selling, in markets that none of us thought or wanted to see happen, and as a result we have a whole new problem in the telco sector.

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

The committee divided.  [9.27 pm]
(The Chairman—Senator the Hon. AB Ferguson)

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

AYES
Abetz, E. Adams, J.
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Cooman, H.L.
Eggleston, A. Ferguson, A.B.
Fifield, M.P. Fisher, M.J.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S.*
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Williams, J.R.

NOES
Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Carr, K.J. Collins, J.
Conroy, S.M. Farrell, D.E.
Faulkner, J.P. Fielding, S.
Forshaw, M.G. Furner, M.L.
Hanson-Young, S.C. Hurley, A.
Hutchins, S.P. Ludlam, S.
Ludwig, J.W. Landy, K.A.
Marshall, G. McEwen, A.*
McLucas, J.E. Milne, C.
Moore, C. O’Brien, K.W.K.
Polley, H. Pratt, L.C.
Sherry, N.J. Siewert, R.
Stephens, U. Sterle, G.
Wortley, D. Xenophon, N.

PAIRS
Boswell, R.L.D. Feeney, D.
Cormann, M.H.P. Evans, C.V.
Fierravanti-Wells, C. Wong, P.
Heffernan, W. Crossin, P.M.
Payne, M.A. Hogg, J.J.

* denotes teller

Question negatived.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.30 pm)
—I move government amendment (19) on sheet BR280:

Clause 48, page 39 (line 31), omit “30 June 2018”, substitute “31 December 2020”.

This amendment alters the date by which the NBN must be declared by the communications minister to be built and fully operational under subclause 48(1). Clause 48 of the National Broadband Network Companies Bill 2010 provides that the communications minister must declare that the NBN should be treated as built and fully operational during the period starting at the commencement of the section and ending at 30 June 2018. Amendment (19) changes this end date to 31 December 2020 to make the time frame consistent with the corporate plan of NBN Co. Ltd, dated 15 December 2010, which indicates that the rollout of the NBN will be complete by 31 December 2020.

Senator BIRMINGHAM (South Australia) (9.31 pm)—I note this change of date in the bill by the minister, which changes the period of the initial declaration by the minister from an end date of 30 June 2018 to an end date of 31 December 2020. While I must confess I had colleagues chatting around me at the time and did not hear all of the minister’s brief explanation, I am curious as to whether the minister could inform the house as to what has precipitated this 18-month extension?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.32 pm)—As I mentioned—and I appreciate that you were also consulting colleagues and that there were some very noisy people around you, Senator Birmingham—this is consistent with the corporate plan. The build has expanded, because we undertook, when we went from 90 per cent to 93 per cent, to incorporate an extra three per cent of homes. We also took on board greenfields, which meant that we were picking up a million-odd extra homes as part of those two decisions. We have well over a million homes extra in the 93 per cent and the greenfields, and that is what is behind this change. This was announced in December last year.

Senator BIRMINGHAM (South Australia) (9.33 pm)—That last addition by the minister may provide at least some modicum of clarity, because I was scratching my head at the explanation, thinking that I have been dealing with 93 per cent figures for quite some period of time and that we had an expansion of greenfields for a period of time and that none of that appeared to be terribly new. It still seems odd, Minister, that this was not perhaps fixed up through an amendment in the other place before it came here, but I shall take your word for it that this has been known for some period of time and is of little consequence when compared to the more substantive amendments related to Commonwealth ownership provisions that the opposition will be moving in a moment.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.34 pm)—We announced well before the election that we would move from 90 per cent to 93 per cent. Greenfields was a decision made much later in the course of the year. The corporate plan was then released publicly towards the end of December. This updates the legislation based on the corporate plan. There was a sequence of events and this legislation is just catching up with those.

Senator FISHER (South Australia) (9.34 pm)—Minister, you are proposing to extend by a year and a half—from June 2018 to December 2020—what was before this extension essentially a 10-year plan, as I under-
stand it. You are extending a 10-year plan to an 11½-year plan.

**Senator Conroy**—No.

**Senator FISHER**—Sorry; my apologies. I got that wrong. You are extending an eight-year plan. I sorted that out without even hearing you, Minister, through the hubbub around you. Okay, so you are extending an eight-year plan to a 9½-year plan. That is an extra year and a half out of eight years, and 1.5 over eight does not make an extra three per cent. You are saying that you need an extra year and a half to cope with an additional three per cent—go from 90 per cent to 93 per cent. That does not really add up for me, even taking into account the greenfield sites. If that is the rationale—

**Senator Conroy interjecting**—

**The TEMPORARY CHAIRMAN (Senator Forshaw)**—Minister, please.

**Senator FISHER**—Is there a point of order, Chair?

**The TEMPORARY CHAIRMAN**—No, you are on your feet and you are still speaking. While Senator Fisher is on her feet and speaking, unless someone wants to raise a point of order, other senators should not rise. I am trying to make sure that you get to finish your questions or comment, Senator Fisher, and then the minister can make his reply.

**Senator FISHER**—Thank you, Chair. Your former union days serve you well.

**The TEMPORARY CHAIRMAN**—Senator, just stick to what you want to ask and do not make any reflections upon the chair, past or present.

**Senator FISHER**—An appropriate point, Chair. Thank you. Minister, if you are seriously arguing that, together with the greenfields sites, it is the government’s extended promise in increasing coverage from 90 per cent of homes to 93 per cent of homes—an additional three per cent—that might be consistent with an additional three per cent in terms of the time frame. By my probably other than perfect and crude computations, one and a half years out of eight years is something closer to 20 per cent than three per cent. Can you explain how in fact there is almost a seven-fold increase rather than a pure or crude, if I can use the word, three per cent increase?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.37 pm)—Just very quickly: no, Senator Fisher—through you, Mr Temporary Chairman—the maths you have done is accurate but the greenfields and the three per cent are what lead to the extra time. It is a combination of both of those things, and they are a much larger number. We have changed the division that you have done.

**Senator IAN MACDONALD** (Queensland) (9.37 pm)—In dealing with this amendment I just want to make the point that, had the OPEL contract been honoured, Australia would by now have a national fast broadband network. What this amendment does is talk about when the minister may declare that the network is built and fully operational. Whether is it is 2018 or 2020 I guess matters little. What it does highlight to the people of Australia is that the minister will have 9½ years to declare that the whole thing is fully operational. The minister may well get up and say, ‘That is the outside date; we could declare this in two years’ time’—well, you could, but if you had any thought that that might be the case, why are you extending this period by another 18 months with this amendment?

You talk about greenfields sites. This just demonstrates to me that not even the minister—who I have to say has been consistently
optimistic; nobody else knows why—believes that the whole network will eventually be declared to be built and fully operational. But even the minister is not prepared to put two bob on the fact that it will be built and fully operational before 2020 if you go by this amendment. It is has been like this from day one. The minister first said, ‘Look we can build this for $4.7 billion’—$4.7 billion! It is now—

Senator Fisher—Multiply by 10!

Senator IAN MACDONALD—Add everything together and it is up around $55 billion—$4.7 billion to $55 billion. To the people of Australia who might be listening to this: you have to pay that! Someone has to pay this $55 billion. The minister originally said it would be built quickly. Even when this bill was put down he said, ‘At the very latest it will be 30 June 2018, and everyone will have it.’ Now, with this amendment that the government is putting forward, we are extending it by another 18 months, to 31 December 2020. So not even the minister is confident that this is going to be built and fully operational any time before 31 December 2020.

My only lament, again, is that we lost the 2007 election fairly and squarely—not the 2010 election but the 2007; that was the decision of the people—and there was a legally binding contract in place, the OPEL contract, and this government came in and just wiped it. I said to those involved in the OPEL contract, ‘Why didn’t you take them on?’ They said, ‘You know, you can’t fight with the government’—particularly one as focused as this one; I was going to say narrow minded, but I won’t—so they just rolled over. But had that gone through, everyone in Australia would have had that fast broadband network by today. By this amendment we are pushing back by another 18 months, to 31 December 2020, the time up until which the minister has the opportunity of declaring it built and fully operational.

If the minister has a response, I will be happy to hear it. But I suspect it is probably not a contribution that the minister could properly respond to. It is the fact of the matter; it is their legislation. They said it will not be finished until June 2018, but we are not even confident about that now, so we are going to blow it out to 31 December 2020. I think that is a very telling amendment by the government which just demonstrates clearly what this whole fiasco is about.

Senator FISHER (South Australia) (9.43 pm)—If I might ask the minister whether, in the process of answering Senator Macdonald’s question, he could also detail—

Government senators interjecting—

The TEMPORARY CHAIRMAN (Senator Forshaw)—Order! Senator Fisher, excuse me, but there is a little bit too much audible conversation on my right.

Senator Ian Macdonald—Yeah, throw them out!

The TEMPORARY CHAIRMAN—If you want to stay here a lot longer, that is where you will end up on that one!

Senator FISHER—Could the minister, in answering Senator Macdonald’s question, also, in passing, detail for me whether he is saying, in addition to the three per cent which is warranted from the government’s increased coverage promise from 90 to 93 per cent of Australian homes, that the other part of the computation relates to greenfields sites, and that the three per cent plus the greenfields sites—if I understand the minister correctly—justifies the increase in the quantum of years of close to 20 per cent, that being an additional year and a half over eight years. Could the minister please detail the numbers that he has used to justify the greenfields sites, adding to the three per cent
to come up with an additional year and a half, so that I can help my homespun maths?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.44 pm)—I do not know that I can add much more to assist your homespun maths, Senator Fisher. The estimate is that to achieve all of these things it will need another year and a half given the volume of the extra work that has been undertaken due to a string of new policy decisions that were made after the original eight-year date. The eight years then bounced up to whatever year it was and then we have amended it to incorporate the extra year and a half. But we announced this last December.

Senator FISHER (South Australia) (9.45 pm)—Minister, what is the detail of the estimates, what is the detail of the new work and how does that underpin the new policy decision? Give us the maths, please.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.45 pm)—I can get an exact calculation of what the three per cent is for you, Senator Fisher, but I do not have it handy. I am not sure that anything I say could help you with your homespun maths.

Senator FISHER (South Australia) (9.46 pm)—For the purposes of tonight let us accept the three per cent, but it is the extent to which you are saying greenfields justifies the beyond three per cent addition of years to take it up to an extra one and a half years. How do you do that maths? You must have had some way to come up with other than wind.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.46 pm)—Given how you are coming up with yours, Senator Fisher, I would agree with you that I have not done it that way. I can seek some information from NBN Co. on that for you and hopefully get back to you during the course of the debate.

Question agreed to.

Senator BIRMINGHAM (South Australia) (9.47 pm)—by leave—I move opposition amendments (1) to (4), (8), (10), (12), (14) and (15) on sheet 7049 revised:

(1) Clause 3, page 3 (lines 8 to 22), omit paragraph (1)(b).

(2) Clause 4, page 5 (lines 9 to 26), omit the fourth and fifth dot points.

(3) Clause 5, page 7 (line 2), omit the definition of Commonwealth ownership provisions.

(4) Clause 5, page 7 (lines 14 to 16), omit the definitions of declared pre-termination period and declared sale deferral period.

(8) Clause 43, page 37 (lines 5 to 22), omit the first and second dot points.

(10) Heading to Subdivision B, page 39 (lines 6 and 7), omit the heading, substitute:

Subdivision B—Productivity Commission Inquiry

(12) Clause 49, page 41 (lines 19 to 22), omit subclause (1), substitute:

(1) This section applies if it is proposed to enter into an NBN Co sale scheme and there has not been a previous reference to the Productivity Commission under this section.

(14) Clause 52, page 46 (lines 10 and 11), omit “unless the Commonwealth ownership provisions have ceased to have effect”, substitute “until 15 sitting days after the Parliamentary Joint Committee on the Ownership of NBN Co has reported to both Houses of the Parliament”.

(15) Clause 53, page 46 (lines 16 and 17), omit “unless the Commonwealth ownership provisions have ceased to have effect under section 51”, substitute “until the completion of

CHAMBER
15 sitting days after the Parliamentary Joint Committee on the Ownership of NBN Co has reported to both Houses of the Parliament, under paragraph 3(1)(b) of Schedule 2, on the Committee’s examination of the report of the Productivity Commission inquiry mentioned in section 49”.

I seek the guidance of the chair as to whether I should move amendments (9), (11) and (13), noting that they will need to be put separately.

The TEMPORARY CHAIRMAN (Senator Forshaw)—That will just be a separate question that is related to the outcome of the first set of amendments we referred to.

Senator BIRMINGHAM—This package of amendments—and I will not burden the chamber with the detail of each of them—relate very much to the fundamental issue of Commonwealth ownership of the NBN Co. I see Senator Ludlam already with a wry smile on his face and a little shake of the head in my direction. I know that these amendments pain Senator Ludlam and I know in fact that these provisions in the bill even pain Senator Ludlam to a degree, because it would no doubt be his preference if instead there were a simple, clear statement of prohibition on the sale of NBN Co. That is fine. I respect anybody who comes into this place who has a view and puts that view with passion based on their principles and philosophical belief, no matter how greatly I may differ from them in regard to that.

We have here a deal done by the government with Senator Ludlam and the Greens, and good on them for getting the concessions that they wanted in this legislation. But unfortunately for Australians and for the operation of the telco industry in Australia and for Australian taxpayers in particular, these amendments that Senator Ludlam has so carefully helped to craft pretty much seem to make it almost impossible for the Commonwealth to ever sell the NBN. I know that that is something that Senator Ludlam will welcome and be grateful for, if that is the case, but the opposition does not welcome it. We do not think that through this bill we should be seeking to tie the hands of future governments. We do not think that it is reasonable to present a situation where, essentially, the NBN cannot be sold. In particular we have, as my colleagues highlighted in the debate on the previous amendment, this question around whether or not the NBN can be sold until it is complete. The question that remains over whether and what it is to say that the NBN is complete. We have a series of definitions that are attempted to be given here, but many people are not unreasonably sceptical of whether this project will ever reach a point at which it can be declared to be complete. It is a project that will take many, many years and there will be several different elections in that time—we hope, on our side of the fence, just one change of government in that time—and we will see many changes to government policy and many different approaches in years to come, yet we have this very prescriptive process put in place here. We do not think it is appropriate to tie the hands of future governments in this way. We think there is a chance that the future capital investment that NBN Co. will need may ultimately not be forthcoming and that the direction of this project, as is so often the case with this government, or with future governments, could change. So we seek to delete these provisions that tie the Commonwealth’s hands. We seek to eliminate the opportunity for the government hand-in-hand with the Greens and at the instigation of the Greens to try to make this very much a permanent government monopoly. We do not think that is the right thing for Australia, especially not for Australia’s taxpayers.
I do note, and we will come to aspects of this debate, that part of the requirements for the sale as well as a declaration that it be complete is to have a Productivity Commission inquiry into the potential sale of the NBN. In principle, that is not something that the opposition would object to. Of course, one of our qualms about this is that we have been calling for a Productivity Commission inquiry into the building of the NBN and calling for it consistently for a long, long period of time.

Senator Ian Macdonald—Not to mention a cost-benefit analysis.

Senator BIRMINGHAM—As Senator Macdonald rightly points out, not to mention a cost-benefit analysis as well. Indeed, we would hope that the Productivity Commission inquiry would undertake a thorough and rigorous cost-benefit analysis into the building of this NBN. There are amendments that I will come to later to once again try to encourage that. But we do note the strange hypocrisy whereby the government and the Greens think it is reasonable to come into this process of debating these bills and say that in relation to terminating the NBN as a Commonwealth entity, in relation to privatising it, there is a good case at that point to have a Productivity Commission inquiry. Yet the government—and the Greens, whenever they have been given the opportunity to vote on this matter—have consistently argued that there not be a Productivity Commission inquiry into actually spending billions upon billions of taxpayer dollars building this thing. That is the question. It is very strange that the government would want to have a Productivity Commission inquiry at one end of this process but not have one at the other end.

We think that future governments—future parliaments—will of course set the terms on which NBN Co. may ultimately be sold. That is not an unreasonable thing. That is what we would expect to ultimately happen in the many, many years ahead, potentially, if indeed we were to wait until this thing were complete. But there is no reason to leave these provisions, proscriptive as they are, in place—no reason at all, aside from the government’s desire to have a deal that stands in place with the Greens. This is a government desperately conceding a few points that will hamper future governments so that it can get its way today with the Greens. It is not acceptable, and that is why we seek to remove these various provisions and provide the amendments I have moved.

(Quorum formed)

Senator LUDLAM (Western Australia) (9.58 pm)—In the 30 seconds remaining before we reconvene tomorrow, I suppose I do not have time to fully express the depth of my feelings about the points Senator Birmingham put on the record. For the record’s sake, I will say that we will be opposing these coalition amendments. I think they are half-baked, counterproductive and remarkably cynical and are probably just to express a deeply felt intention not to learn anything at all from the privatisation of Telstra. Anyway, I quite look forward to resuming my remarks when the building is a bit more awake in the morning.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.59 pm)—Perhaps I could indicate that I called, prior to the sale of Telstra—as was an agreed outcome with all the national competition reforms—for a Productivity Commission inquiry prior to the sale of an asset. That was actually something the Howard government refused to do, which is why I have always enjoyed the demands from those opposite that the Productivity Commission be in-
volved in the NBN debate. They specifically refused to comply.

Senator Birmingham—You asked me for that.

Senator CONROY—I asked for it prior to the sale, so I am quite comfortable supporting the position on the agreement.

Senator Birmingham—Why did you change your position then?

Senator CONROY—I have a completely considered position: prior to sale, there should have been an inquiry. But you were a complete hypocrite on this.

Progress reported.

Sitting suspended from 10.00 pm to 9.00 am

Friday, 25 March 2011

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9 am and read prayers and made an acknowledgement of country.

COMMITTEES

Meeting

Senator McEWEN (South Australia) (9.01 am)—by leave—I move:

That the following committees be authorised to hold public meetings during the sitting of the Senate today:

(a) Community Affairs References Committee, from 9 am to 4 pm, to take evidence for the committee’s inquiry into the impacts of rural wind farms;
(b) Legal and Constitutional Affairs References Committee, from 9 am to 3.30 pm, to take evidence for the committee’s inquiry into the Australian film and literature classification scheme;
(c) Joint Standing Committee on Foreign Affairs, Defence and Trade;
(d) Joint Select Committee on Gambling Reform, from 9 am; and
(e) Joint Standing Committee on Treaties.

Question agreed to.

Selection of Bills Committee

Report

Senator McEWEN (South Australia) (9.01 am)—I present the fourth report of 2011 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 4 OF 2011

1. The committee met in private session on Thursday, 24 March 2011 at 4.06 pm.

2. The committee resolved to recommend—

That—

(a) the provisions of the Carbon Credits (Carbon Farming Initiative) Bill 2011, the Carbon Credits (Consequential Amendments) Bill 2011 and the Australian National Registry of Emissions Units Bill 2011 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 20 May 2011 (see appendix 1 for a statement of reasons for referral); 
(b) the provisions of the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 23 June 2011 (see appendix 2 for a statement of reasons for referral); and
(c) the Product Stewardship Bill 2011 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 28 April 2011 (see appendix 3 for a statement of reasons for referral).

3. The committee resolved to recommend—

That the Social Security Amendment (Sup-
porting Australian Victims of Terrorism Overseas) Bill 2011 not be referred to a committee.

The committee recommends accordingly.

4. The committee deferred consideration of the following bills to its next meeting:
Aviation Transport Security Amendment (Air Cargo) Bill 2011
Child Support (Registration and Collection) Amendment Bill 2011
Competition and Consumer Amendment Bill (No. 1) 2011
ComSuper Bill 2011
Crimes Legislation Amendment Bill (No. 2) 2011
Customs Amendment (Export Controls and Other Measures) Bill 2011
Customs Tariff Amendment (2012 Harmonized System Changes) Bill 2011
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011
Governance of Australian Government Superannuation Schemes Bill 2011
International Tax Agreements Amendment Bill (No. 1) 2011
Migration Amendment (Detention of Minors) Bill 2010
National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011
Native Title Amendment (Reform) Bill 2011
Remuneration and Other Legislation Amendment Bill 2011
Responsible Takeaway Alcohol Hours Bill 2010
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011
Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2011
Tax Laws Amendment (2011 Measures No. 2) Bill 2011
Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011

(Anne McEwen)
Chair
25 March 2011

APPENDIX 1

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee

Name of bill:
Carbon Credits (Carbon Farming Initiative) Bill
Australian National Registry of Emissions Units Bill
Carbon Credits (Consequential Amendments) Bill

Reasons for referral/principal issues for consideration:
The effective legislative implementation of the Government’s commitment to establish the Carbon Farming Initiative which is a voluntary carbon offset scheme for agricultural emissions, forestry, legacy waste; and sources and sinks not covered by Australia’s international Kyoto Protocol obligations.

Possible submissions or evidence from:
Department of Climate Change and Energy Efficiency
Department of Agriculture, Fisheries and Forestry
National Farmers Federation
National Association of Forest Industries
A3P
National Regional NRM National Working Group
Landcare Australia
CO2 Group
Greenfleet
Greening Australia
Carbon Conscious
Australian Conservation Foundation
Climate Institute
Australian Industry Greenhouse Network
Wentworth Group of Concerned Scientists
Voluntary Carbon Markets Association
North Australia Indigenous Land and Sea Management Alliance


Committee to which bill is to be referred:
Environment and Communications Legislation Committee

Possible hearing date(s):
1 day mid-April (i.e. either 12, 13, 14 or 15 April)
Possible reporting date:
20 May 2011
(signed)
Anne McEwen
Whip/Selection of Bills Committee member

APPENDIX 2
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011
Reasons for referral/principal issues for consideration:
Significant reform to family law requires inquiry.
Possible submissions or evidence from:
Women’s Law Centres
Legal Aid Commissions
National Council for Single Mothers
Law Council
Committee to which bill is to be referred:
Legal and Constitutional Affairs

Possible hearing date(s):
Possible reporting date:
12 September 2011
(signed)
Rachelle Siewert
Whip/Selection of Bills Committee member

APPENDIX 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Product Stewardship Bill 2011
Reasons for referral/principal issues for consideration:
To assist with appropriate and timely consideration by the Senate of the Bill.
Possible submissions or evidence from:

Committee to which bill is to be referred:
Environment and Communications

Possible hearing date(s):
Possible reporting date:
28 April 2011
(signed)
Anne McEwen
Whip/Selection of Bills Committee member

Meeting
Senator McEWEN (South Australia) (9.02 am)—by leave—At the request of the Chair of the Education, Employment and Workplace Relations Legislation Committee, Senator Marshall, I move:

That the Education, Employment and Workplace Relations 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.

Question agreed to.
Legal and Constitutional Affairs
Legislation Committee

Extension of Time

Senator CROSSIN (Northern Territory) (9.02 am)—by leave—I move:

That the time for the presentation of the report of the Legal and Constitutional Affairs Legislation Committee on the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010, together with the amendments on sheet no. 7031 circulated by the Australian Greens be extended to 4 May 2011.

Question agreed to.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.03 am)—I seek leave to do lunch, if I may.

Senator Conroy—Is anyone else allowed to come too?

Senator Fifield—Where do you suggest? Your shout!

The PRESIDENT—Order! Interjections are disorderly, but I would like to know if everyone is included.

Leave granted.

Senator LUDWIG—I move:

That the sitting of the Senate be suspended from 12.30 pm to 1.30 pm today.

Question agreed to.

NATIONAL BROADBAND NETWORK COMPANIES BILL 2010

TELECOMMUNICATIONS LEGISLATION AMENDMENT (NATIONAL BROADBAND NETWORK MEASURES—ACCESS ARRANGEMENTS) BILL 2011

In Committee

Consideration resumed from 24 March.
be making a profit because it will only be half built. We will have some towns that will have the National Broadband Network and some that will not. This proposal is to take out the protections that the Australian Greens, in agreement with the Gillard government, had inserted to provide some minimal public interest protections before the sell-down occurred. What the coalition amendments propose is, essentially, to emphasise that they did not learn a thing from the privatisation of Telstra, which left us with a vertically integrated entity in the place of a public utility, and to sell the network without any protections whatsoever whether it is built or not. How they imagine that would work I have to admit is completely beyond me.

I will just sketch through what the Australian Greens came to agreement on late last year with the government because these are the provisions that the coalition is seeking to repeal. The clauses that we had inserted last year do three things to this bill. They remove the automatic assumption that privatisation would occur. Senator Conroy has just told us it is still fully the intention of the Gillard government to sell this network. Let us just imagine that it is the year 2020, the network is fully built and, hypothetically, the Prime Minister is still Julia Gillard. She could simply go ahead with that policy and sell the network because we cannot bind a future parliament from doing whatever it pleases.

Let us imagine that it is not Julia Gillard or let us imagine that between now and 2020 the Australian government has changed its mind and does not automatically and ideologically insist that the Commonwealth government is not competent to run a utility. That is effectively what the opposition is saying. The coalition is saying: ‘We admit we’re not competent to run a utility. We’re not competent to run an electricity network or even a phone company. We want it sold. We think business can do it better than we could.’ That is fine. It is an interesting declaration of incompetence and it is one such that perhaps it would be best for the country if they were not running these kinds of things. But we do not agree. We think it is entirely within the powers, the wit and the remit of government to run public services in the public interest.

So, let us imagine a future government in 2020; the network has been declared fully built, 93 per cent of the population has fibre, the rest have some other form of wireless or satellite service, and the government come across these provisions, blow the dust off them and take a look at what the parliament was doing in early 2011. They will find three things. First of all they will find there is no automatic assumption of the need to sell the network. When the finance minister and the communications minister make the declaration that this thing is fully built and operational the matter can rest there. There is no automatic trigger for privatisation, sell-down provisions or investigation to even commence. Those provisions are there if a future government need them to guide their discretion but the automatic assumption that the network will be sold down is gone. I think that is actually very important. Even though the minister has just told us it is the Gillard government’s intention to sell the network, the future government will not have to. Under the original exposure draft of the bill that we saw there was an automatic assumption that, come what may, we are going to sell this thing as long as the price is right. That automatic assumption, that automatic trigger, is gone.

The second thing we did—and it is an irony to have the coalition voting this part down—was say, ‘Why don’t we conduct a public interest test to decide whether it is a good idea to sell the network?’ The coalition said: ‘No, those things must go. This net-
work must be sold whether it is a good idea or not, whether the public interest has been taken into account or not.’ To compound the irony, what we propose is that the Productivity Commission undertake quite a detailed inquiry, not a cost-benefit analysis—and that is a distinction that I should not need to draw to Senator Birmingham’s attention, but I will. It is a public interest test; it is an assessment of whether or not it is a good idea. We have inserted some quite detailed provisions into this bill to guide the work of the Productivity Commission in undertaking that public interest test.

When that has been done it will feed into the work of a parliamentary committee which will take a look at the broader claims of public interest: is it a good idea to sell the network into the market? There will be serious competition concerns, and what we have heard from much of the rest of the industry over the course of negotiating these provisions is that they are not opposed at all to the Commonwealth holding on to the National Broadband Network. Of course, we can bring Mike Quigley into Senate estimates committees. It does not sound like he enjoys it very much, from his recent public comments, but that is too bad. The Australian government is writing out cheques for tens of billions of dollars, so one of the expectations is that, in a Commonwealth entity, that is one of his responsibilities; he is actually still working for the parliament of the people of Australia, not just for a range of shareholders.

Basing its work in part on what the Productivity Commission will have found, the committee will then provide for the parliament an assessment of whether selling down the National Broadband Network is a good idea or not. I find it mind-blowing that the coalition do not even want that work to be done, and it does speak a little to the degree to which they are determined not to learn from the sale of Telstra, which left us with this highly out of balance market that has taken many years to come to grips with—proposing to do that again without conducting a test of whether it is in the public interest. As far as I am concerned, the coalition could frame that as narrowly as they like: even just the competition implications of selling an entity like NBN Co. and handing it over to shareholders who will then be pursuing the shareholders’ interests.

Senator Ryan—Tell the truth. You will never vote to privatise this.

Senator Ludlam—I am sorry, Senator Ryan?

The Temporary Chairman (Senator Hutchins)—Senator Ludlam, please speak to Senator Ryan through the chair. Senator Ryan, you will have your chance in a moment.

Senator Ludlam—I apologise, Mr Temporary Chairman, but Senator Ryan’s interjection that the Australian Greens would never vote to privatise it is entirely appropriate, the point being that that is up to the Australian parliament. The third clause that we inserted into this bill is that the instrument to sell down the network, if the government or the parliament of the day chooses to do so, should be disallowable and it should be brought into parliament. The coalition say: ‘No, no, that’s inappropriate as well. It shouldn’t be put to the representatives of the people of Australia. It should just be sold, because we’re not competent enough to run a public utility or a telephone company. We are not competent. We want no part of that.’ So they are going to sell it automatically. Going even further than that, the coalition amendments propose to sell the thing whether it is built or not. How they imagine that would work in reality I find very difficult to understand.
I understand that before too much longer Senator Birmingham will move the amendments relating to the cost-benefit analysis of the Productivity Commission. There has been much alarm and despondency at the idea that the Greens would be interested in having the Productivity Commission examine whether it is in the public interest to sell the network but that we were not interested in the Productivity Commission conducting a cost-benefit analysis. They have found it extraordinarily difficult to work out why on earth we would be thinking along those lines.

I just point out the obvious distinction here. This is not about the Productivity Commission. There is very highly specialised expertise in that body, and the parliament should draw on that expertise when it is appropriate. Conducting a cost-benefit analysis— and I will speak in a bit more detail on this when Senator Birmingham moves his amendments a bit further down the line—is very different to conducting a public interest test once this network is built. So this is not about the PC; it is about the kind of work and whether the body of work that you are proposing is appropriate for the task.

I will leave it there. It is my great hope that these amendments will be voted where they belong, which is off the Notice Paper, because they have absolutely no place in this legislation.

The TEMPORARY CHAIRMAN—I will put the first of Senator Birmingham’s amendments. The question is that opposition amendments (1) to (4), (8), (10), (12), (14) and (15) on sheet 7049 revised be agreed to.

Question negatived.

Senator BIRMINGHAM (South Australia) (9.14 am)—by leave—I move opposition amendments (16) and (17) on sheet 7049 revised:

(1) Clause 96, page 79 (lines 13 to 15), omit the clause, substitute:

96  Public Works Committee Act
NBN Co is taken to be an authority of the Commonwealth to which the Public Works Committee Act 1969 applies under section 6A of that Act.

(2) Page 79 (after line 15), after clause 96, insert:

96A  Freedom of Information Act
NBN Co is taken to be a prescribed authority for the purposes of the Freedom of Information Act 1982.

These are two very important amendments. They go to the matter of proper oversight of the NBN Co. One relates to oversight by the Public Works Committee. The Public Works Committee is one of the oldest committees of this parliament. It has an appropriate role in overseeing major capital expenditure projects, and in the Commonwealth’s history you do not get a capital works project any more major than this one. And yet for some reason the government seeks to exempt it.

The second one relates to the Freedom of Information Act. We are very concerned with the deal that was stitched up in the other
place with the Greens in relation to the Freedom of Information Act. We believe that NBN Co. should be subject to reasonable application of the FOI Act and that the terms that were developed—I know that we have canvassed these in the second reading debate, if not also in the committee stage with Senator Ludlam, so I will not go into great depth—will essentially exclude everything that the NBN Co. does from being applicable under FOI. We do not think that is appropriate. We think that NBN Co. should stand with the same application of principles on FOI as other government business enterprises.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.16 am)—The government does not support either of the coalition’s amendments on these issues. The bill makes NBN Co. exempt from the Public Works Committee Act, and this amendment removes that exemption. This is just another of the ongoing lengthy opposition tactics to delay the rollout of the NBN. Without an exemption, NBN Co. would be in breach of the Public Works Committee Act if it commenced a public work with an estimated cost exceeding $15 million unless it had been referred to the PWC, the committee had examined and reported on the matter and the House had resolved that the work could be proceeded with. In other words, work cannot commence unless these processes have concluded. Criminal penalties can apply for breaches of the act. That is why NBN Co. should be exempt from the Public Works Committee Act.

While NBN Co. has been given an exemption from the PWC Act by regulation, this does not provide the same level of certainty as the statutory exemption being sought. Such an exemption reflects the fact that NBN Co. operates in commercial markets and needs to roll out networks in response to market conditions. This is why a similar exemption has been granted to Australia Post and was previously granted to Commonwealth owned carriers such as Telstra, Aussat and the OTC. The process of referrals to the committee would have a high compliance cost and inhibit the flexibility of NBN Co.

The opposition are exposed yet again for simply trying to delay and destroy the NBN. This is yet another attempt and we do not support this amendment.

In respect of amendment (17), the government is committed to a high level of transparency and accountability regarding NBN Co. activity. The establishment of a joint committee on the rollout of NBN with very wide terms of reference and a balanced membership demonstrates the government’s commitment to openness and transparency for the NBN. The government supported the amendment to the NBN access bill in the House of Representatives to add NBN Co. as a prescribed authority under the FOI Act, with an exemption for documents in relation to its commercial activities. NBN Co. is able to demonstrate that a wide range of information is likely to be accessible under the proposed FOI amendments agreed in the House, and I understand that Senator Ludlam also has a further amendment with regard to FOI and I look forward to hearing that.

Senator LUDLAM (Western Australia) (9.19 am)—I will speak briefly to these; they are two quite different amendments. Before I speak in detail, I am wondering whether Senator Birmingham could advise us whether it is his understanding that a matter that is referred to the PWC requires work to stop while that reference is being assessed by the Public Works Committee?

Senator BIRMINGHAM (South Australia) (9.19 am)—I thank Senator Ludlam for the question. We have had some discussions
on this matter outside of this place. We understand that there is the capacity for the Public Works Committee to allow work to continue and it is not the case that work would have to freeze pending a total PWC investigation.

Senator LUDLAM (Western Australia) (9.20 am)—That does accord with my understanding, but it is at the discretion of the Public Work Committee as to whether it decides to accept any particular referral.

Senator BIRMINGHAM (South Australia) (9.20 am)—I understand—and I stand to be corrected here—that advice from the secretary of the Public Works Committee is that there is a level of discretion there but it is within their capacity. Without having checked this, I would assume that, like most House of Representatives committees, the government probably has a majority on it, so if it wished it could ensure that that were the case.

Senator LUDLAM (Western Australia) (9.20 am)—Thank you, Senator Birmingham. We will not be supporting either of these amendments, for reasons that have been pretty well canvassed over the last couple of months. It is a bit entertaining that the opposition has brought up the PWC amendment dead horse for one last flog. That is fine. We just do not think that it is an appropriate oversight mechanism for a project of this kind, partly for reasons a bit similar to my understanding of why Australia Post was exempt. This is not a bridge; this is not a warehouse. It is a series of quite large projects that are being rolled out at the same time as the network. Potentially, the PWC, should it choose, could conduct 1,000 inquiries over the next couple of years on different modules or parts of the network as it goes out, because each of them will meet the threshold test that would involve them being caught by the PWC and potentially brought into its mandate.

There is no disrespect intended to the Public Works Committee, which obviously does important work. No other infrastructure project that I am aware of, though, has its own joint standing oversight committee, and that is what was agreed to by the government and Senator Xenophon late last year. We have spent a bit of time thinking about and working on the terms of reference, the make-up of the committee and the details of its quorum and so on. We are quite happy with where that process landed, and I am quite looking forward to working on that committee, which does not have a government majority if and when push comes to shove—and it is quite rare in my experience that a committee’s push matters to a vote anyway. But it is chaired by a crossbencher, Mr Rob Oakeshott, and it has a Senate crossbencher, me. So I am expecting that committee to be quite fearless in the work that it does. I also understand that Mr Turnbull will be on that committee. We are going to have some very robust and interesting discussions about the NBN on that committee, and that is the appropriate place for those debates to be heard.

Briefly, on the matter of freedom of information, these arguments were all canvassed very freely in the House. I do not really propose to revisit them here. I want to draw the minister out a little bit later on the running sheet around freedom of information and the kind of information that will be available. Also, we are proposing an amendment that I believe is being circulated now or will be very shortly to push this debate a little bit further. I do not completely disagree with the comments that Senator Birmingham raised, either, on the matter of freedom of information. We will have a little bit more to say about that later today. But for obvious reasons we will not be supporting either of these two coalition amendments.
Question negatived.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.23 am)—by leave—I move amendments (1) and (20) on sheet BR280:

(1) Clause 2, page 2 (table item 2), omit the table item, substitute:

2. Sections 3 to 98
The later of:
(a) the start of the day after this Act receives the Royal Assent; and
(b) immediately after the commencement of item 2 of Schedule 5 to the Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010.

2A. Section 98A
22 March 2011.

2B. Sections 99 to 101
The later of:
(a) the start of the day after this Act receives the Royal Assent; and
(b) immediately after the commencement of item 2 of Schedule 5 to the Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010.

(20) Page 79 (after line 22), after clause 98, insert:

98A Exemption from stamp duty—matters related to the creation, development or operation of the national broadband network

(1) In this section:

category A designated matter means any of the following matters:

(a) an action taken by Telstra to cease to supply fixed-line carriage services to customers using a telecommunications network over which Telstra is in a position to exercise control, where:

(i) under section 577BA of the Telecommunications Act 1997, the action is authorised for the purposes of subsection 51(1) of the Competition and Consumer Act 2010; and

(ii) the cessation relates to the creation, development or operation of the national broadband network;

(b) an action taken by Telstra to commence to supply fixed-line carriage services to customers using the national broadband network, where, under section 577BA of the Telecommunications Act 1997, the action is authorised for the purposes of subsection 51(1) of the Competition and Consumer Act 2010;

(c) the receipt of money by a person in respect of a matter covered by paragraph (a) or (b);

(d) an agreement that:

(i) is between Telstra and an NBN corporation; and

(ii) relates to a matter covered by paragraph (a) or (b);

where, at the time when the agreement is entered into, an undertaking is in force under section 577A of the Telecommunications Act 1997;

(e) an agreement that:

(i) is between Telstra and an NBN corporation; and

(ii) relates to a matter covered by paragraph (a) or (b);

where the operative provisions of the agreement are subject to a condition precedent, namely, the coming into force of an undertaking under section 577A of the Telecommunications Act 1997.

category B designated matter means any of the following matters:

(a) the transfer, from Telstra to an NBN corporation, of:

(i) a conduit, wire or cable; or
(ii) any equipment, apparatus or other thing used, or for use, in or in connection with a conduit, wire or cable;

where:

(iii) under section 577BA of the Telecommunications Act 1997, the transfer is authorised for the purposes of subsection 51(1) of the Competition and Consumer Act 2010; and

(iv) the transfer relates to the creation, development or operation of the national broadband network;

(b) the giving to an NBN corporation, by Telstra, of access to a facility owned or operated by Telstra, where:

(i) under section 577BA of the Telecommunications Act 1997, the giving of the access is authorised for the purposes of subsection 51(1) of the Competition and Consumer Act 2010; and

(ii) the access relates to the creation, development or operation of the national broadband network;

(c) the giving to an NBN corporation, by Telstra, of access to a site:

(i) owned, occupied or controlled by Telstra; and

(ii) on which there is, or is proposed to be, situated a facility;

where:

(iii) under section 577BA of the Telecommunications Act 1997, the giving of the access is authorised for the purposes of subsection 51(1) of the Competition and Consumer Act 2010; and

(iv) the access relates to the creation, development or operation of the national broadband network;

(d) the supply to an NBN corporation, by Telstra, of an eligible service, where:

(i) under section 577BA of the Telecommunications Act 1997, the supply of the service is authorised for the purposes of subsection 51(1) of the Competition and Consumer Act 2010; and

(ii) the supply of the service relates to the creation, development or operation of the national broadband network;

(e) the receipt of money by a person in respect of a matter covered by paragraph (a), (b), (c) or (d);

(f) an agreement that:

(i) is between Telstra and an NBN corporation; and

(ii) relates to a matter covered by paragraph (a), (b), (c) or (d);

where, at the time when the agreement is entered into, an undertaking is in force under section 577A of the Telecommunications Act 1997;

(g) an agreement that:

(i) is between Telstra and an NBN corporation; and

(ii) relates to a matter covered by paragraph (a), (b), (c) or (d);

where the operative provisions of the agreement are subject to a condition precedent, namely, the coming into force of an undertaking under section 577A of the Telecommunications Act 1997.

facility has the same meaning as in the Telecommunications Act 1997.

fixed-line carriage service has the same meaning as in section 577BC of the Telecommunications Act 1997.

Telstra has the same meaning as in the Telstra Corporation Act 1991.

Category A designated matters

(2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

(a) a category A designated matter; or
(b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a category A designated matter.

(3) Subsection (2) ceases to have effect 24 months after the day on which the Communications Minister makes a declaration under section 48 that, in the Communications Minister’s opinion, the national broadband network should be treated as built and fully operational.

Category B designated matters

(4) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

(a) a category B designated matter; or

(b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a category B designated matter.

(5) Subsection (4) ceases to have effect when the Communications Minister makes a declaration under section 48 that, in the Communications Minister’s opinion, the national broadband network should be treated as built and fully operational.

Position to exercise control of a telecommunications network

(6) For the purposes of this section, the question of whether Telstra is in a position to exercise control of a telecommunications network is to be determined under Division 7 of Part 33 of the Telecommunications Act 1997.

Transitional—definitions etc.

(7) For the purposes of this section, assume that:

(a) sections 5 to 7; and

(b) section 93; and

(c) Schedule 1;

had been in force throughout the period:

(d) beginning at the commencement of this section; and

(e) ending at the commencement of section 5.

Amendment (20) inserts a new clause 98A in the bill as part of the process of implementing structural separation in accordance with part 33 of the Telecommunications Act 1997. Telstra is expected to enter into certain agreements with NBN Co. Those agreements are known as definitive agreements. The definitive agreements are expected to provide for three transactions: the migration of Telstra subscribers, set out in category A designated matters; the acquisition by the NBN Co. of Telstra conduits, set out in category B designated matters; and access by NBN Co. to Telstra infrastructure, set out in category B designated matters.

The purpose of this new clause is to ensure that the transactions and conduct involved in the definitive agreements between Telstra and NBN Co. are not subject to any state or territory stamp duty or other state or territory tax. The definitive agreements will give effect to the structural separation of Telstra underpinning the government’s reform of the telecommunications industry. Given this, it is not appropriate for states and territories to be granted a windfall tax bonus which could add to the cost of and time required for implementing this important policy. The agreements are not part of normal business operations.

The exemption offered by proposed clause 98A is closely linked to the operation of section 577B(a) of the Telecommunications Act to ensure that the proposed exemption only covers transactions and conduct relating to structural reform of the telecommunications industry. NBN Co. and Telstra would continue to be subject to Commonwealth and
state and territory duties and taxes in the usual manner in respect of dutiable, taxable transactions arising from their ordinary day-to-day business operations.

Statutory exemptions from stamp duty and other state and territory taxes have previously been granted under Commonwealth legislation in analogous circumstances. For example, the Australian Energy Market Act 2004 provided stamp duty exemptions for internal separation of activities required because of the structural reform of energy markets and the National Transmission Network Sale Act 1998 provided stamp duty exemptions from the transfer of assets from one corporation to another. Similar exemptions are often given under state and territory law as well for comparable transactions.

The exemptions are sunsetted. Category A matters cease to be exempt 24 months from the day the communications minister declares under proposed section 48 of the future NBN Companies Act that the NBN is built and fully operational. Category B matters cease to be exempt on the day the communications minister declares that the NBN is built and fully operational. Amendment (1) sets out the commencement provisions to enable exemptions to take effect from 22 March 2011.

The TEMPORARY CHAIRMAN (Senator Hutchins)—Are there further speakers? If not, I will put the question.

Senator LUDLAM (Western Australia) (9.26 am)—I was expecting Senator Birmingham to jump and he did not. The Greens will be supporting these amendments. I do not mean to be unkind but is there a reason why this $550 million amendment was not in the original bill? Did somebody just notice that this overhang was there and that there had been this oversight? It seems entirely sensible. I have no problem at all with the principle that underlies this, although I understand the Victorian government is a bit disappointed. I just wonder why this would not have been in the original bill.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.27 am)—Maybe when the bill was first drafted the definitive agreements were nowhere near completed. It was only as it became clear that the definitive agreements were very likely to be completed that it was felt there was a need to insert it.

Senator LUDLAM (Western Australia) (9.27 am)—Minister—through you, Chair—we have known at least since the first or second quarter of last year that there is going to be very large transfer to Telstra for its assets and for its traffic. These amendments, as I understand, do not refer in great detail to the agreement. They simply clarify the fact that the stamp duties will not be payable. I do not mean to labour the point but I still do not understand why this issue was not picked up quite some time ago.

Senator BIRMINGHAM (South Australia) (9.28 am)—I just indicate that the opposition will not be opposing these amendments. I have some sympathy with the question that Senator Ludlam has asked the minister but we accept the common sense of needing to see these moved.

Question agreed to.

Senator BIRMINGHAM (South Australia) (9.28 am)—I move opposition amendment (18) on sheet 7049 revised:

(3) Schedule 1, page 82 (line 6), omit “(1)”. We also oppose schedule 1 in the following terms:

(4) Schedule 1, page 82 (lines 12 to 25), subclauses 1(2) and (3) TO BE OPPOSED.

I think these are well understood issues across the chamber. They are not dissimilar
to many of the issues we canvassed at length yesterday afternoon and last night in regard to the principles on which NBN Co. operates. I am not going to go to the detail of them. I will let the chamber decide on their merits.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.29 am)—The government does not support this amendment. As drafted, the bill contemplates that NBN Co. might purchase other companies where this might help in the rollout of its network and the provision of high-speed broadband services. However, NBN Co. is required by the bill to be a wholesale provider, a rule that would be breached if NBN Co. acquired a company with retail operations. NBN Co. would therefore need to put in place transitional arrangements for divesting any acquired retail operations. Under this bill there is a 12-month window for such transitions, a period that the government and NBN Co. consider is reasonable and long enough to avoid NBN Co. having to engage in a fire sale at possibly reduced prices. The proposed opposition amendment removes this period within which NBN Co. must divest the retail operations. The effect of this would be to prevent NBN Co. from acquiring a business that has retail operations until the business has divested its retail arm. This would lead to delays in the rollout.

There seems to be no real justification for such an amendment and it would have the effect of promoting fire sales for the benefit of others and being detrimental to taxpayers ultimately, while limiting NBN Co. flexibility. That is why the government does not support this amendment. And a 12-month period is in other areas. If a media company, for instance, breaches some rules it is given a period to off-load the areas that would be breached.

Senator Birmingham interjecting—

Senator CONROY—I am aware of the paranoia from that big orange T on your forehead where they are concerned that NBN Co. might actually be engaged in buying a different company every 12 months so they could be engaged in retail activity. As conspiracies go, that’s not bad! I usually expect someone as sensible as you, Senator Birmingham, to be able to see through the conspiracy theories of the world. I am disappointed that you have fallen for this one.

Senator LUDLAM (Western Australia) (9.31 am)—I am probably not going to go quite that far! I had a certain amount of sympathy for this one, including the issue around the 12-month divestiture period. It does seem an inordinately long time, so I would be interested to hear a little bit more from the minister if there is precedent elsewhere, in media law at least, around that because it seemed like a long time to me. We will not be supporting the coalition amendment, though. It reverses the onus of proof, I suppose. It means that the company that NBN Co. is considering acquiring needs to restructure itself or disaggregate itself before any kind of purchase can be contemplated. We are as concerned as the coalition are, to the degree to which you are not going along with the bill at all, about NBN Co. creeping into retail operations. I think that issue has been canvassed ad nauseam through this debate, but I do not think this amendment does it. I certainly would not go so far as to accuse you of paranoia, but I do not think we are going to see the kind of behaviour that this amendment seeks to hold off.

If the minister has the time to make a couple more comments around the 12-month divestiture period, why not three months? If a sale is being contemplated then presumably you would have a disaggregation proposal or a restructure or a structural separation—call
it what you will—well underway. Twelve months to me just feels like an extraordinarily long time. I should note that some players, other than Telstra, who gave evidence to the committee pointed out that 12 months is actually quite a long time, that you can do a lot of business during that period of time and that it is potentially open to abuse. So I am not trivialising the concerns Senator Birmingham raised. I do not think his amendment fixes it at all; I think it would make the situation worse. But I wonder whether the minister would acknowledge that there is some potential of abuse here, given that that is quite long period of time.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.33 am)—We are just seeking some information. I am aware in other areas of my portfolio that ACMA and others have transition periods when people breach laws because they have made a merger or an acquisition and they are given a time period to unload assets that are in breach. Three months would probably be a fire sale circumstance—that is pretty much where you know from the day you have made the purchase. Six months it would be possible to contemplate, but 12 months was just felt to be a reasonable period. I suspect that ultimately the market—

Senator Birmingham—Why don’t you have six months?

Senator CONROY—As I said, after consultations we believe 12 months is an appropriate period. But let no-one be under any doubt: NBN Co. is not interested or has ultimately the capacity to become a retail company. Its internal systems are configured and designed to be a wholesale-only company. It will know from the moment it enters into a transaction that it has to off-load the retail component.
areas and those in underserved metropolitan areas) with an estimate of the likely timeframe and cost of each option;

(c) a consideration of the economy-wide benefits likely to flow from enhanced broadband services around Australia, the applications likely to be used on such services, and in particular a consideration of the different scale of such benefits depending on the broadband speed available;

(d) a full and transparent costing of the proposed NBN project, including any financial and economic projections, models, assumptions and sensitivity calculations underpinning the estimates;

(e) an examination of the likely pricing structure of NBN services;

(f) an examination of reasonable commercial rates of return and cash flows for NBN Co, taking into account NBN Co’s costs of equity and debt and the risk profile of both NBN Co and the market in which it operates;

(g) a consideration of the likely realisable value of NBN Co if it were to be privatised after 5 years, as currently contemplated in the NBN legislation;

(h) an examination of the design, construction and operational arrangements of the proposed NBN project, so that direct and indirect outcomes from its construction and operation can be identified and evaluated;

(i) an examination of the likely environmental and health impacts of the construction of the NBN;

(j) an analysis of the effects of the proposed NBN on competition in the Australian fixed-line broadband market, including its effects on the scope for competition among different technologies for the provision of fixed-line and wireless broadband services;

(k) an analysis of the impact of any exemption under the Competition and Consumer Act 2010 in connection with the NBN;

(l) benchmarking of the NBN against comparable broadband services available in overseas markets;

(m) consideration of potential technological advances and the likely impact on the NBN, including whether future technologies may be superior;

(n) consideration of the likely take-up rate for NBN services, having particular regard to international experience;

(o) consideration of the nation building social and community-specific benefits flowing from the NBN, particularly in relation to rural and regional communities.

(3) This Act applies in relation to the requirement in subsection (1) as if:

(a) the requirement were a matter referred to the Productivity Commission for an inquiry by the Minister; and

(b) the Minister had required the Commission to hold hearings for the purposes of the inquiry under paragraph 11(1)(a).

(4) Sections 11 and 12 do not apply in relation to the inquiry, other than as provided for by subsection (3).

These are issues that have been well and truly addressed in the chamber, in the public domain and just about anywhere and everywhere. It goes to the very simple question the opposition has continually asked: why will the government not subject this $50 billion NBN proposal to a cost-benefit analysis undertaken by the Productivity Commission?

We have addressed the arguments for this many times before. We have highlighted what we think is the hypocrisy inherent in
the fact that the government and the Greens seem to think it is reasonable and necessary to have a Productivity Commission analysis of whether or not you should ultimately privatise this NBN, yet, for some reason, they do not think it reasonable and necessary to have one into whether or not you should spend billions of taxpayer dollars in building the thing. We think that is inconsistent. We think it is foolish. We think it would make sense.

This amendment would ensure that that Productivity Commission cost-benefit analysis could take place, and this amendment would not hold up the building of the NBN but would simply ensure that the parliament and the people were informed by the expert analysis of the Productivity Commission in around six months time. Decisions could then be taken, if indeed it demonstrated that this was not a wise investment of funds. I ask the Senate to again consider this but I have heard Senator Ludlam’s concerns and the concerns of others before and so regretfully expect that it will once again fail.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.37 am)—This is a debate we have had on many occasions now. It is a debate that is about delaying, destroying and demolishing the NBN. There is little substance to it other than as a political tactic. The opposition are, as I said yesterday, on these issues, complete hypocrites. They refuse to have a Productivity Commission cost-benefit analysis done of the sale of Telstra when it is actually a part of a Commonwealth-state agreement. There are many arguments about why this is a complete waste of taxpayers’ funds to engage in.

Senator LUDLAM (Western Australia) (9.37 am)—I did indicate I would speak very briefly on this. I have addressed this issue a little bit earlier while debating some of the other opposition amendments. I have spoken on it at quite some length. I want to underline we are voting against this amendment, as Senator Birmingham has presupposed, not through any disrespect to the Productivity Commission—because we have proposed that they be engaged with any future proposed sale of the network—but for quite different reasons.

It is about a misuse of the instrument of a CBA. If you are deciding that you have got two different places you could possibly build a shopping centre, you conduct a cost-benefit analysis. You have got a couple of different options and you have got very easily monetisable quantities in either direction. You can put that into a spreadsheet and you can say it is clearly a better option to build a shopping centre there. To take a cost-benefit analysis—and they can be as detailed, as rigorous and go for as long as you like—and say, ‘Should we build a national broadband network or not?’ you have got to calculate the costs, which you can do.

Mr Quigley has gone to quite a bit of trouble over the last 12 months or so to tell us what he thinks the costs are going to be. But then how on earth do you calculate the benefits? You have to come up with the benefits you can monetise; some of them we know about and you could put those on a spreadsheet. Then you have to come up with all the imaginary benefits. At that point you have to start making things up. The benefits of an enabling telecommunications network that we hope is going to be in the ground for a hundred years or more, how on earth do you come up with a number for that? But the CBA does not work unless you come up with a number. So what ends up happening is that you get a room full of economists arguing for a couple of months and then they come up with a number.
I have had this debate with a number of economists and some folk who showed up—including Professor Henry Ergas, who, to his credit, took the time to do a cost-benefit analysis last year. He is the only one I know of who has attempted to do it. If you take a look at the methodology, we have a rough idea of the costs and we have been given some estimates; they are dollar costs and they stack up. He just had to make up the benefits. There is a whole pile of impenetrable formula based on monetising people’s attitudes towards imaginary future services and hypothetical future uses of the NBN.

It is a brave task and you end up with a number—I think he calculated the benefits at $16 billion or $17 billion. You put those two things together on a balance sheet and you say: if it costs more than $16 billion or $17 billion to build the network, then go off and do something else with that money because it is a net public loss. What an extraordinary waste of time. It is just a misuse of the expertise of economists to pretend that you can stack the two things up on the left and the right sides, work out whether one is more costly than the other and use that as a guide to whether or not to build the network. It is ridiculous.

So we will not be supporting this coalition amendment. I am a little bit surprised that the coalition is still pushing it. I guess I understand why it is, but I think it would be a waste of the Productivity Commission’s time and they could probably spend their time doing more interesting things. That said, I have no problem at all, for example, calling them before the joint committee to give us the benefit of their views. I know what the coalition was hoping would happen with conducting a cost-benefit analysis: in six or eight months time they would table a phonebook sized report full of equations that nobody really understood except for them, and they would have a magic number that maybe would end up being what Professor Ergas said or maybe it would be something else, and they would be able to say, ‘See, we told you this was all a waste of time.’ And it really would have been a waste of time.

I am glad that the government did not go down the track of supporting this amendment. I was a little concerned there for a while, but there you go. We will not be supporting it and perhaps this will be the last time this question gets raised in this chamber; we will see. The minister is shaking his head. Senator Birmingham does not look convinced either. So perhaps we will be revisiting this issue again and again. I will leave it there, noticing that we are nearly at the bottom of the running sheet. I forewarn, for Senator Birmingham’s benefit in particular, that I have just circulated an amendment that relates to FOI, with apologies to the coalition that it did not make it onto the running sheet this morning.

Senator XENOPHON (South Australia) (9.42 am)—I do not agree with the minister. I do not see this as something that would necessarily delay or destroy the NBN, but I do say this: I think that Senator Ludlam is right in that the Productivity Commission, for whom I have great regard in many respects, would have to rely on a set of assumptions. Those sorts of assumptions could be quite fluid and I think that is the nature of a cost-benefit analysis. When we debated this issue late last year, it was agreed that the Productivity Commission would have a very constructive role with the NBN in the context of parliamentary oversight and that the Productivity Commission would be required to provide advice at the first instance about the NBN and the implementation. So I think the Productivity Commission would have a constructive role and does have a constructive role under the current framework that has been agreed to date. That is where I think the Productivity Commission’s role
rests in terms of implementation, ensuring that the rollout is being handled appropriately and ensuring that level of scrutiny and oversight. The difficulty with a cost-benefit analysis is that in many respects these analyses are so ephemeral—and that is not to criticise the NBN’s cost-benefit analysis or the work that McKinsey has done in relation to this. But, ultimately, I question what value a Productivity Commission cost-benefit analysis would have in contrast to the role that the Productivity Commission will have in the context of the oversight of the implementation of the NBN.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.43 am)—Thank you. I know this has been something dear to Senator Xenophon’s heart and I appreciate that he has a very consistent view and that he has tortured himself, as any good Greek likes to do occasionally. We reached what I think is a fair compromise to allow all the sorts of information. Can I just concur with Senator Ludlam, in that I had the misfortune in my university days to take an entire unit called cost-benefit analysis, so I have studied the methodologies involved.

Senator Fifield—Where did you go?

Senator CONROY—ANU. It was a very reputable degree; some would even call it a reputable right-wing economics degree.

Senator Ryan interjecting—

Senator CONROY—They were known as Friedmanites in my day, I tell you!

Senator Ryan interjecting—

Senator CONROY—That is probably true! But I would have to concur with what Senator Ludlam has said. Ultimately, to get a cost-benefit analysis number, you have to make a number of assumptions. And, as much as economics like to pretend that it is value-free; it is the values that underpin those assumptions, or how they are disguised when you insert your own personal values into those debates. So I am very much across—

Senator Birmingham interjecting—

Senator CONROY—If I could just for a moment, given that I have been fairly busy this morning and have not had a chance to say hello to my daughter, Isabella, who is tragically being made to watch me on APAC, say hello to Isabella! I think Senator Ludlam’s comments more than summed it up.

The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that opposition amendments (1) and (2) on sheet 7055 be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—We will now move to Greens amendment (1) on sheet 7062 standing in the name of Senator Ludlam.

Senator LUDLAM (Western Australia) (9.45 am)—I move:

(1) Page 81 (after line 2), after clause 100, insert:

100A  Review of operation of the Freedom of Information Act 1982 so far as that Act relates to documents of NBN Co

(1) Before the first anniversary of the commencement of this section, the FOI Minister must cause to be conducted a review of the operation of the Freedom of Information Act 1982 so far as that Act relates to documents of NBN Co.

(2) The FOI Minister must cause to be prepared a report of a review under subsection (1).

(3) The FOI Minister must cause copies of the report to be tabled in each House of the Parliament.

(4) For the purposes of this section, the question of whether a document is a
document of NBN Co is to be determined in the same manner as that question is determined under the Freedom of Information Act 1982.

(5) In this section:

document has the same meaning as in the Freedom of Information Act 1982.

FOI Minister means the Minister administering the Freedom of Information Act 1982.

This is reasonably straightforward. There is no explanatory memorandum. I will speak to it briefly, because I have foreshadowed what we are doing here. It continues the debate that we had in the House, when Adam Bandt spoke to my amendment. What we achieved in the House of Representatives was at least to bring NBN Co. within the ambit of the Freedom of Information Act, where it was not before. I thank the government for the way in which they approached those negotiations.

This does go further. Mr Bandt said in the House that we reserve the right to continue moving on this amendment, and so we have done so. We are not happy, and I suspect the coalition will not be either, with the way the Freedom of Information Act handles definitions of commercial activities. I think there is a body of case law that has built up over the last couple of years that is pointing in the direction that says it is interpreted too broadly and that it is in need of review and repair. That is not a problem for the NBN Co. per se—it is not a communications portfolio issue—but it goes a bit deeper than that, to the operation of the FOI Act itself.

What we have done here is propose a couple of things. We want more or less an immediate rolling review of how the Freedom of Information Act is being used and/or abused with regard to the National Broadband Network. We want to know how it is actually working in practice. Senator Birmingham has not spoken on this one yet, but I suspect we are going to be to some degree in agreement with the fact that this could be abused. But let us be very careful here. The Freedom of Information Act can be abused in two different ways. The first thing that might happen is that NBN might say, ‘No, that is relating to our commercial activities; you can’t have it.’ We might see quite a lot of that. This amendment will expose whether or not that behaviour is going on.

The second way in which the Freedom of Information Act can be abused is if certain new organisations, or certain competitors to NBN Co., or people with a particular point of view, start firing freedom of information applications at a rate of 10 or 20 a week, to attempt to either paralyse or bog down NBN Co. That is part of life. Mr Quigley has a pretty thick skin, I guess, after a couple of years in the job. They are used to it and they can handle it. But what we are most keen to know is how it is actually working in practice. So every 12 months the FOI minister, according to clause 2 of my amendment, ‘must cause to be prepared a report of a review under subsection (1).’ I am going to invite the minister in a second to provide a little bit more detail about how this is actually going to work in practice. We want to know how the FOI Act is being used. This is the first time an entity like NBN Co. will have been brought within the ambit of the Freedom of Information Act. It is not Australia Post; it is not CSIRO. We know it is in the appropriate part of the act. The question is: will the act serve us well? That is what this amendment proposes to find out. Without further comment, unless either the coalition or the minister have questions, I commend this amendment to the chamber.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.48 am)—I indicate that the government supports
this amendment to hold a statutory review within the next 12 months of the operation of the FOI Act as it applies to documents of NBN Co. The government is committed to a high level of transparency and accountability regarding NBN Co. activity. We have a joint committee on the rollout of the NBN, with very wide terms of reference and a balanced membership, which shows the government’s commitment to openness and transparency for the NBN. The government supported the amendment to the NBN access bill in the House of Representatives to add NBN Co. as a prescribed authority and to the FOI Act, with an exemption for documents relating to its commercial activities.

The government also supports the Greens further amendment which will establish a statutory review of NBN Co.’s FOI arrangements within 12 months of its commencement, based on the current FOI amendments passed in the House of Representatives. The FOI minister will be responsible for initiating the review and will provide a report for tabling in both houses of parliament. This review will assist to ensure that the amendments negotiated for NBN Co. have achieved the correct balance in practice between the pro-disclosure requirements of the FOI Act and the protection of commercially sensitive information that NBN Co. may hold. Among other things, we expect the review will consider the nature and number of requests made of NBN Co. and NBN Co.’s response to those requests, and the grounds for any rejections, including the extent to which NBN Co. declines to release documents on the basis that they are related to its commercial activities. Given the importance of the NBN and of it operating according to the principles the government has set out for it, it is sensible to review these provisions to ensure that they are operating efficiently and effectively.

In respect of broader questions about the operations of the new FOI Act, I note that the government has already committed to a full review of the operation of the act two years after its commencement on 1 November 2010. No doubt, a vast array of matters will be considered in that broader review.

In just another example of what could possibly be described as some very poor parenting, I understand that Senator Hutchins’s son, Xavier, is listening in and, as the senator is in the chair and cannot say hello, allow me to say, on behalf of Steve to his son Xavier, ‘Hi.’

The TEMPORARY CHAIRMAN (Senator Hutchins)—Well said! Senator Birmingham.

Senator BIRMINGHAM (South Australia) (9.51 am)—Thank you, Chair. Can I just indicate that Matilda is not yet eight weeks old and therefore is not being subjected to A-PAC or watching the proceedings of the Senate, but after five nights away her dad would really quite like to see her again.

Thank you, Senator Ludlam, for moving these amendments—although you taught me a new tactic, which is that when I move amendments in future I will ask the minister to explain what my amendments mean. It seems obvious that there was, dare I say, some collusion in regard to these amendments moved by Senator Ludlam. The opposition welcomes them insofar as they go. There was obviously a fierce debate in the House on this matter. Strong concerns were raised by Mr Turnbull about the deal the Greens had done with the government. We welcome the fact that the Greens have at least revisited that deal with the government and got some concessions. We do not think these addressed the issue in the way it should have been addressed, in the way that we sought to address it with our own amendments. We think that this is a halfway house, but at least a halfway house is better than no
house that all. So we will not be opposing these amendments.

**Senator XENOPHON** (South Australia) (9.52 am)—Hopefully, my 18-year-old son is at university this morning as part of his engineering and economics double degree.

**Senator Conroy interjecting—**

**Senator XENOPHON**—If he was, Senator Conroy, you may have something to be worried about. I am not sure.

**Senator Conroy interjecting—**

**Senator XENOPHON**—He is probably wiser than I am, Senator Conroy. This may be a curve ball for the minister, but in relation to any review, which I welcome in respect of FOI, as I understand the argument put up by the member for Wentworth, the opposition spokesperson for this in the other place, what is being proposed for freedom of information—and I have broadly supported the position that the Greens have put—is that the exemptions might be too wide. There is a body of law set out in the case of the Commonwealth v John Fairfax & Sons— it was a decision of Justice Mason in the High Court—where the doctrine is that governments cannot claim confidentiality of their information unless they can establish real detriment. My question to the minister is: can you give an undertaking that any review of this will actually look at the issue of detriment—that is, look at the doctrine enunciated by Justice Mason in Commonwealth v John Fairfax & Sons with respect to governments not being able to claim confidential information unless they can establish real detriment? Would that be part of any review process in the context of the review that is being proposed?

**Senator CONROy** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.54 am)—I think that is a valuable thought. I am not sure we have quite defined it all at this stage. It is a welcome suggestion that we can consider as part of that review process.

**Senator LUDLAM** (Western Australia) (9.54 am)—That was something of a curve ball from Senator Xenophon, but I just indicate that that is our understanding and I strongly support that. The minister has also just told us—and the member for Wentworth did go into quite a bit of detail on this in the House—that the definition of ‘commercial activity’ is a pretty broad definition when you consider that the NBN Co. is a corporation—it is a business. It is not a government department, and we do not anticipate that it will behave like one. One thing we are keen to see the government agree to—and I am pleased that the minister has spoken to this in a bit of detail this morning— with respect to the grounds of rejection is the degree to which that commercial activity’s defence has actually been used. We will know that every 12 months. I am really interested to know both at the level of NBN Co. and in the event of an appeal to the FOI Commissioner how often that defence is being used—that it is not merely commercially sensitive but just related to commercial activity. So we are explicitly interested in that, Senator Xenophon. If it is not being abused from either side, then we are more than happy to keep a watching brief on it.

I really welcome the coalition’s concern about this issue and I will absolutely invite them later in the year or, if they wish, during next year to revisit the Freedom of Information Act. As I said in my earlier comments, this is not just about NBN Co.; it is about the apparent sacredness with which we treat this thing called commercial information. If the coalition are interested in revisiting that question in the course of the government’s review of the FOI Act then we will be absolutely delighted to engage with them on that. It is probably not worth debating it too much
further in the hypothetical, but we are on the record this morning. So let us make a commitment right here that if the system is failing us and letting us down then, by all means, we will certainly revisit that not only in the case of NBN Co. but also in terms of the Freedom of Information Act altogether. I do not think that would be a bad idea at all.

The first thing that we will obviously need, though, is the information on which to base these kinds of judgments. The review clauses that the government have agreed to with the Australian Greens will give us that base of facts on which to make judgments in the near future.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.57 am)—I think there is a little bit of confusion behind the scenes, but our officers are working on that. Senator Ludlam, I am seeking further information for you.

Senator XENOPHON (South Australia) (9.57 am)—As I have indicated, I support this amendment. I think it is a good amendment and, whilst the opposition have a different view and a broader view in relation to the FOI matters, I think they are supporting this amendment for the reason that it advances the freedom of information aspects in relation to this bill. It is important that, whilst it is Senator Ludlam’s amendment, it is the government that will need to implement this review. The scope of the Freedom of Information Act in the context of the NBN and how it will operate in the context of the regime of these bills is a very important issue for me. Can the minister indicate whether any review by the FOI minister will include public submissions? I understand the minister is engaged in a necessary conversation with Senator Ludlam and I will be patient. I have no problem with that.

Whilst this is Senator Ludlam’s amendment, which I support and which the opposition support, in the context of the amendment the scope of such a review is not determined. It really is in the government’s court and that of the FOI minister. My questions are these. I previously asked whether the decision of the High Court in the Commonwealth v John Fairfax & Sons Ltd, and in particular the decision of Justice Mason in relation to the doctrine that governments cannot claim confidential information unless they can establish real detriment, will be considered in the context of such a review?

Secondly, how will such review be conducted? Will it be an internal government review or will the review involve members of the public or submissions from key stakeholders in relation to this? To what extent will the process of the review be public, in this sense: whilst I acknowledge that under subclause (3) of this amendment the FOI minister must cause copies of the report to be tabled in each house of the parliament—so that is public and that is welcome—how will it get to that? Will there be a process by which the minister will say, ‘We want submissions from people,’ calling publicly for submissions as to how this is working so that there is some transparency in the process? I do not think it is unreasonable to ask that. Also, there is the decision of Justice Mason.

If I in any way offended Senator Conroy earlier, I apologise unreservedly. Senator Conroy could say that that does not become me either!

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.00 am)—I am not sure that I am going to be able to cope with any more abuse like this, Senator Xenophon! On some of those matters you have asked about, particularly
around some of the more complex legal issues, I probably need to take some advice and possibly talk to the A-G about how that is impacting on the broader FOI discussion, but I am happy to commit to you to have discussions about all of those issues. I do not think that Senator Ludlam and I have finalised the exact details of all of the process, so I think it is a work in progress, and we would welcome your contributions.

Senator XENOPHON (South Australia) (10.01 am)—This issue about FOI is important to me because there was an argument at an earlier stage about whether the FOI provisions in this bill should be much broader. I accept that the comfort I have been given is that this review will take place, but the review ought to have some minimum benchmarks. I do not think it is unreasonable to ask the government now for some minimum benchmarks. I do not think it is unreasonable to ask the government now for some minimum benchmarks in relation to the review. Will the review, for instance, seek to obtain submissions from key stakeholders—from the Competitive Carriers Coalition, from Telstra, from Optus, from the NBN itself and from others seeking information, such as the media? I would have thought that the review would only be as good as the information it seeks, and I would have thought that that would be pretty basic. I am not sure whether Senator Ludlam has a view on this and I do not want to delay the committee stage too long on this particular clause, but how this FOI review will be carried out is a fundamental issue. Also, given that there is a considerable body of legal authority on freedom of information—and again I refer to the Commonwealth v John Fairfax & Sons Ltd decision and in particular the judgment of Justice Mason that governments cannot claim confidential information unless they establish real detriment—is that one of the factors that will be considered in the context of this review? Presumably the Law Council of Australia, legal groups and even my good friend Associate Professor Zumbo might want to put in a submission on this. I am not sure; it is FOI rather than competition.

Senator CONROY—Is soliciting in the Senate chamber legal?

Senator XENOPHON—Senator Conroy asked me whether soliciting in the Senate chamber is legal. There are different definitions of soliciting, but I do not think I am referring to the definition of soliciting that Senator Conroy is referring to!

I think these are not unreasonable questions, and I am just hoping that I can get some clarity from the minister in relation to the scope of such a review.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.03 am)—As I said, it is a work in progress. I am sure that Senator Ludlam and I—I can speak on my behalf; I cannot speak on Senator Ludlam’s—would welcome your advice and input into how the processes are to be worked through, so we look forward to further discussions with you on these as part of the early stages that Senator Ludlam and I are up to in this process.

Senator XENOPHON (South Australia) (10.04 am)—I ask Senator Ludlam, as the mover of this amendment: is it anticipated that any such review—and I commend him for moving this amendment—would include a need to call for submissions, because it will be tabled in parliament? What does he envisage in relation to the process? What agreement has he been able to reach with the government about how this review would be conducted? Will it also include that issue of detriment, an issue that has been a live one for Senator Ludlam and the Australian Greens, which I think was well enunciated by Justice Mason in the Commonwealth v John Fairfax & Sons Ltd High Court deci-
sion? How does he see it working? At this stage I think it is pretty important, in that it is a good idea but it needs to be implemented properly and thoroughly for it to be effective.

Senator LUDLAM (Western Australia) (10.04 am)—I thank Senator Xenophon for the question. Firstly, I would quickly just like to correct the record: I think I misspoke earlier when I talked about an annual review, which makes it sound like we are going to be doing this every year. That is not actually what the amendment proposes or what the government agreed to. What we are proposing is that it would be conducted within 12 months of this act getting up. There is only a proposal for one review but, obviously, there will be continual reporting.

To go directly to Senator Xenophon’s questions; one is about process and one is about the issues that will be canvassed, so let us speak to the latter because that is probably the easiest one. Absolutely, the issue of detriment should be part of it. We certainly will not preclude that review from considering any particular questions. I will state right now on the record, as I have quite a number of times over the last couple of weeks, that that is a really live concern for us, not just in the FOI act but in public interest immunity claims more generally.

I think that the idea that commercial information is somehow all sacred, and that the public interest takes a back seat to the commercial interest, is a really serious usurpation that has just crept into public discourse over time—that information that is considered not even necessarily commercially sensitive but merely commercial is precluded from release. The issue that Senator Xenophon raises, and the particular case that he raises, are going to be extremely important. I see that absolutely as being a central part of what that review undertakes.

The central question that we have put to the government is whether or not the application of FOI as it applies to, for example, CSIRO or Australia Post is appropriate for FOI. I am quite comfortable about where we have landed in that we have found quite an appropriate middle ground. But the thing that I suppose we do not know is how this is actually going to work in practice. I think that is why the reporting is so important.

When we talk about freedom of information, we are used to that being applied to government departments that are not running businesses. They may have some kind of business interest—for example, Australia Post runs shops, the ABC runs shops and CSIRO has certain commercial activities as well—but they are not really businesses in the traditional sense of the word. NBN Co. is something different entirely; it is a for-profit corporation. The test of whether documents are commercially sensitive or not is going to be particularly important with regard to the NBN.

Senator Xenophon did ask about the process, and he is correct to say that the amendment that we have sketched here this morning really only establishes that a review will occur; it gives us a time line and a little bit of basic information, but it does not go into detail. The minister is quite correct in that we have not actually discussed this issue in great detail either. The position that I will put, seeing as how we have the government’s agreement on these amendments, is that it would be public. There would be calls for submissions—I do not think there is any reason why not. There is quite an active community in Australia with an interest in freedom of information issues and there is a reasonable amount of case law that has been assembled over the last couple of years. I see no reason at all why that would not be conducted in the full light of public submissions, commentary and consultation. The report
would be provided to parliament and the parliament can then form a judgment based on what the reviewers have discovered and also, of course, on what has actually been happening in reality with NBN Co.

I hope that satisfies Senator Xenophon in the questions that he put; I think they were quite appropriate. I commend this amendment to the chamber.

Question agreed to.

Question put:
That the bill, as amended, be agreed to.

The committee divided. [10.14 am]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes ............ 34

Noes ............ 32

Majority ........... 2

AYES


NOES


PAIRS


Cormann, M.H.P. Fierravanti-Wells, C. Heffernan, W. Payne, M.A.

* denotes teller

Question agreed to.

Bill, as amended, agreed to.

TELECOMMUNICATIONS LEGISLATION AMENDMENT (NATIONAL BROADBAND NETWORK MEASURES—ACCESS ARRANGEMENTS) BILL 2011

Bill—by leave—taken as a whole.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.17 am)—I seek leave to move government amendments (1) to (11) together.

Senator BIRMINGHAM (South Australia) (10.17 am)—I would like to speak on the issue of leave being granted and these amendments the government is seeking to move. This is the second of the two NBN bills that we are debating here. This is the access arrangements bill. It is an important bill. Of the two pieces of legislation this is the bill which is the subject of the greatest number of government amendments. This is the bill on which the government presented 23 pages worth of amendments late on Wednesday. The bill has hundreds of amendments and many of these amendments, particularly this bundle of amendments (1) to (11) that the minister is seeking leave to de-
bate together and concurrently, go very much to the heart of the issue of whether this NBN is to be subject to decent competition policy principles in the future and as to whether this NBN will have full and proper oversight by the Competition and Consumer Commission as to whether or not aspects such as price discrimination, points of interconnect and bundling are properly overseen, properly adjudicated and properly adjudged by our competition watchdog. These are serious questions in relation to these amendments.

The opposition, at the beginning of this debate into these two bills yesterday posed questions to the minister as to whether he had his house in order—whether he had all of the amendments necessary and sorted to allow these bills to progress without delay. He obfuscated and filibustered on that matter, clearly indicating that the government was still trying to get its house in order and was still trying to get enough amendments together. What was clear to the opposition at that point was that despite having many months since first introducing these bills, despite having had all week since the debate commenced in the Senate and despite having introduced 23 pages worth of amendments to this bill late on Wednesday, the government may have yet still more changes to come. There could be more problems in the government’s own house. There could be more flaws in what the government has proposed to us.

We understand that there are negotiations still occurring, related specifically to these issues contained in the amendments that the minister is seeking to have debated at present. There are still discussions continuing between crossbenchers and the department to draft further amendments that would impact on the very amendments you are seeking to have us debate right now, Minister.

We do not want to spend our time here going around and around in circles because you are spinning around in a mad flap over there in your department trying to get this right. These issues need to be dealt with in a calm, sequential, ordered and thoughtful manner. I have said many times before now in this debate that there should be proper public consultation and proper opportunity for stakeholders such as Optus, who have expressed real concern at the stuffing around on these amendments and the surprising nature of having so many changes dropped at the last minute, to have their issues taken up and considered properly. We believe, Minister, that if you do not have your house in order, if it is true that the crossbenchers are still trying to negotiate their way through these amendments, still proposing other alternatives, and the government is drafting amendments to its amendments, which you are currently wanting us to debate, we should not be debating these amendments at this time. There is plenty of other business on the Notice Paper the Senate could get on with.

Minister, I invite you to do the sensible thing and suspend the debate, suspend the committee stage on this bill and provide an opportunity for you to get your house in order. Have discussions with the Independents. Go calmly out of this chamber, sit down with Senator Xenophon, Senator Ludlam and Senator Fielding and work it out to a point so we can have a proper debate in this place about the amendments that the government is settled on, not the amendments that the government is using in some type of holding pattern. We do not want to be stuck in a holding pattern in this Senate. We certainly do not think that the telecommunications industry deserves to be put in a holding pattern. The communications sector is not your own little play thing, Minister. Much as you may think that could be the case, it is not. It employs tens of thousands of Australians. It is
an industry that turns over billions of dollars. It is an industry that is vital to our national interest and to our competitiveness as a nation. That is why we spend so much time debating these issues in this place. Yet you are treating it with utter cavalier disregard by flip-flopping around on the substance of your bill an, as Senator Brandis said, having absolutely no idea as to exactly where your finishing point is on this. That is just not good enough.

You are the government. You are the minister. You should come in here knowing what it is you are doing. Instead, you seem to be constantly changing your mind and position throughout the debate. If it is true that those discussions are taking place, if you are still drafting changes to these amendments, then frankly, Minister, we should take a break. You should take the opportunity the opposition is offering: go away and get your house in order. You can recommend when you want us to come back and fix it; whether it be later today, tomorrow or next week. You are the government. We are inviting you to run the show. We are inviting you to get it in order, come back here and let us do it properly. That is the invitation. It is up to you. But, Minister, we would urge you to do the right thing and get your house in order. Then we can have a proper debate on this matter.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (10.25 am)—Regional Australia has some real concerns about what is before us in this latest bill. At the start, there was the promise of sunny uplands for regional Australia and of a pricing mechanism that would be favourable to regional Australia. We have the distinct feeling that last night we asked what the debt was of this organisation. We did not get the answer. It was $27 billion, and then they went out and borrowed another $10 billion. That money has to be financed. The debt of our nation at the moment is $184.6 billion. Obviously, the boffins have come back and said, ‘You must pay this debt; you must finance this debt; you must get a return on your capital.’ And that requirement to get a return on your capital means that you have to start making changes in what is offered to regional Australia.
Regional Australia never asked you to go off your head and borrow the amount of money that you are about to borrow. What you are going to do is put regional Australia in a worse position than the one they were in when they had to deal with a monopoly. This is the position that we have come to at the 11th hour. The Australian people are awake to it. They are awake to the fact that we are about to launch a monopoly that has the capacity to charge regional Australia and others the money required to pay back the money that you are borrowing from overseas to stick on top of all of the other debt that you have us swimming in.

We will be listening very closely to you, Minister, to hear how you are going to look after regional Australia. I distinctly remember the Independents saying that this was the reason that you became the government. And the fruits of their labour may be but ashes in their mouths if what is actually delivered to regional Australia at the end of the day is not a better deal but a massive debt and a desired return on that debt that puts regional Australia in a position such that they are worse off than they are at the moment. We will be listening to you and looking at your amendments very closely. Because if you do not deliver on what you have promised about looking after regional Australia then I imagine that the Independents would be honour bound to make sure that this does not go through.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.27 am)—Starting with Senator Joyce’s stream of consciousness, the danger of reading the front page of the Australian when it comes to the NBN is that you will be fundamentally misled consistently. It is not just a lack of balance; this particular story is a complete fabrication. There is no change in government policy. We are proud of the fact—and you should be ashamed—that we will deliver uniform national pricing. That used to be something, when you used to be a real National Party person, that you believed in. When you entered this chamber, you believed in national uniform pricing. There has been no change. There has been one story from a newspaper that is a fabrication. There has been no change. I want to make it absolutely clear that there has been no change in government policy. That newspaper story should be treated with all of the disdain that it deserves.

Senator Birmingham has repeated the same speech that he gave yesterday. For those in this chamber to suggest that, if an amendment can improve a piece of legislation it has to be circulated days before it is discussed in the chamber is, frankly, a nonsense. I lost count of the amount of last-minute deals that those opposite did with senators to pass legislation while they were in government. They did it time after time. There was filibustering by the then government to allow negotiations on its bill. They filibustered just so the final negotiations could be completed.

Do not coming to this chamber and cry fake crocodile tears. You are going to vote against this legislation, no matter what. Mr Abbott gave instructions when he proudly announced Mr Turnbull as your spokesperson in this area. He said, ‘Mr Turnbull’s job is to demolish the NBN.’ I am happy to bring on the substance of the debate, but I am not going to let Senator Joyce continue to pretend that there has been a change in government policy. I will debate all of the government’s policies that are relevant to this bill any time, any place. In fact, let us do it now.

Senator BIRMINGHAM (South Australia) (10.30 am)—I am happy to do it now, but the minister is not ready. I am happy to
do it now, but the minister does not have his house in order. I am happy to do it now, but the minister is still trying to weasel his way through with the crossbenches, to find a way to get his house in order and to find a way to get his amendments to stack up. That is not good enough. That is not making last-minute deals; that is making policy on the run, Minister. You are making policy on the run and you are doing it with a real sense of desperation—a sense of desperation that puts at risk the future of a competitive, fair communications industry and broadband sector in this country. You are putting it at risk because you are making all sorts of concessions on the run. You are making all sorts of ill-thought-through amendments; in the process, you are bound to make all sorts of mistakes. What will happen is that, in the future, communications companies will pay the price and the mistakes of the past will be repeated with vertical integration of the NBN and its movement up the value chain. We will see jobs and innovation lost and consumers will pay higher prices. Or we will see the Senate reconvened yet again to fix up your mistakes—to try to cover them up. It will be a lot harder to fix them after the event than it is to get things right in the first place. You would be far better off to take our advice and work to get these things right in the first place. Do not pretend that it is just the opposition that is concerned about these amendments. We know that those on the crossbenches are concerned too. The reason why they are still trying desperately to negotiate with you is to find a way through these amendments.

We know that industry is concerned as well. We know that because the Optus CEO, Paul O’Sullivan, has described your amendments as a curve ball. He has talked quite publicly and openly about how he has been involved in long negotiations with the government, from the draft exposure bill right through this process. He has been quite consistent about their engagement. Yet he and the entire industry were caught by surprise late on Wednesday when these 23 pages of substantial amendments to the way that NBN Co. will be overseen by our competition regulator were dropped on the table. They were caught by surprise. They are unhappy and concerned. Their concerns have filtered through this place to the opposition and the crossbenches. The crossbenches have passed them through to you and your department. We know you are working on it and trying to fix up a deal with the crossbenches. We just want to give you the opportunity to go away, do it properly and get it right. That is all, Minister: get it done right and get it fixed up. Ensure that you actually have the final set of amendments before us and that you have your house in order. We are not trying to cause you undue delay—we are not attempting to do anything of the sort. We know, Minister, that you are in some strife with the crossbenches. If we plough through these amendments quickly—if we jump through them all rapidly—you are going to find that you have problems with the crossbenches. You are going to find that they will not have amendments ready, and therefore may not be willing to support this thing and see it go through. We will probably get to the point where you filibuster your own legislation, if that happens. We have seen that happen before; in fact, we saw it happen on the Telstra structural separation legislation, when government senators came in here and started to filibuster their own bill because, once again, you did not have your ducks in line—you did not have your house in order.

Government senators must be getting perplexed as to why it is that at the end of every parliamentary sitting session they find themselves stuck here for endless hours all because of you, Senator Conroy. All because you are the one minister who time and time
again it seems is unable to have his legislation ready in a timely manner. He is unable to have his amendments ready in a timely manner; therefore, he goes and causes inconvenience to everyone in this place, all of the staff and everyone else, by forcing us all into these extended sitting patterns. The coalition is happy to be here as long as it takes to give all of these amendments thorough and proper airing. We have made that quite clear.

We can give them even better airing if we actually know that they are the final batch of amendments. If we know that you have stitched up your deals, that you have got your house in order, that you have consulted with the industry, that you have worked it out with the crossbenches and that you have appropriate agreement and arrangement with all of those parties to actually put something forward that is your final package. It is not too much to ask for. Usually in this place we like to debate the government’s final package. Yes, it is not unusual for the government to move amendments, but it is unusual for the government, on a bill that has been around for so long, to have so many substantive amendments tabled at the last minute, and even then to be unable to say, ‘This is it. There are no more.’ It is quite unusual to find us in that position where it is a constant cycle of ongoing amendments in this regard. Senator Conroy, to make your own colleagues happy and restore a little bit of confidence from them in you, why don’t you take us up on this offer? Why don’t you take us up on suspending debate on this bill? We will come back whenever you think you are going to have your house in order and whenever you have done the right thing with the crossbenches.

I am pleased to see that you are taking the opportunity at present, Senator Conroy, to consult with the crossbenches. It goes to show the desperation that is happening.

Senator Ronaldson—About time.

Senator Birmingham—As Senator Ronaldson said, it is about time. But why don’t you do it properly. You cannot have proper conversations huddling here in the chamber like this, desperately trying to rewrite the nation’s competition laws, the nation’s consumer laws and the nation’s communications laws. You cannot be desperately rewriting these things on the spot in the chamber in huddled conversations. Get out of here, go away and sit down around a table with all of your advisers and do the job properly. Get it right. It won’t be the second, third for fourth time—I have lost count—but get it right anyway and bring it back here in its final form.

Senator Conroy, the invitation is there. It is a commonsense invitation. The opposition will not in any way obstruct you in bringing the Senate back whenever you want to bring it back to debate these bills. If you want to bring us back later today, that is fine. If you want to bring us back tomorrow, that is fine. If you want to bring us back on Monday, that is fine. The choice is yours. Just get it right. Fix it up and get it finalised.

To give the chamber the chance to make the decision, to give us the opportunity to move out of these bills and to park these amendments that you are going to seek to amend further yourself or are going to support Senator Xenophon or Senator Ludlam in amending further yourself, we are going to give you the chance to go away and do that. To give Senator Conroy that chance, I move:

That the committee report progress and ask leave to sit again.

Question put.

The committee divided. [10.43 am]

(The Chairman—Senator the Hon. AB Ferguson)
Ayes………31
Noes……….33
Majority……2

AYES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Boyce, S.
Brandis, G.H. Bushby, D.C.
Cash, M.C. Colbeck, R.
Coonan, H.L. Eggleston, A.
Ferguson, A.B. Fifield, M.P.
Fisher, M.J. Fisher, M.J.
Johnston, D. Humphries, G.
Kroger, H. Joyce, B.
Mason, B.J. Macdonald, I.
Minchin, N.H. McGauran, J.J.J.
Parry, S. * Nash, F.
Ryan, S.M. Ronaldson, M.
Troeth, J.M. Scullion, N.G.
Williams, J.R. Trood, R.B.

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

PAIRS
Back, C.J. Conroy, S.M.
Boswell, R.L.D. Evans, C.V.
Cormann, M.H.P. Moore, C.
Fierravanti-Wells, C. O’Brien, K.W.K.
Heffernan, W. Sterle, G.
Payne, M.A. Wong, P.

* denotes teller

Question negatived.

The CHAIRMAN—Order! Before that division, Senator Conroy had sought leave to move government amendments (1) to (11) together. Is leave granted?

Leave granted.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.47 am)—Yet again: another attempt to gag debate on the National Broadband Network. Those opposite’s continued efforts to try—

Senator Brandis—You are not ready with your own bill.

Senator CONROY—You are exposed. Senator Brandis, you are completely hollow on this issue. You spent months refusing to let legislation even be discussed in this chamber. You have opposed third readings. You have spoken at every stage. You have filibustered. You have no credibility on this issue—none; zero credibility.

Senator Brandis—You don’t even have a bill to put to the parliament.

The CHAIRMAN—Order!

Senator CONROY—You can shout and stamp your feet. Those opposite can stamp their feet and stamp their feet; they are just exposed yet again. You have no broadband plan. You have no alternative policy. You have a shadow minister—

Senator Brandis interjecting—

The CHAIRMAN—Order! Senator Brandis, you will not yell across the chamber.

Senator CONROY—You have a shadow minister who takes time off from his full-time job of destabilising Tony Abbott and does occasionally make the odd contribution on communications. It would not surprise me to find Mr Turnbull out there spreading tacks on the road to catch up with the Pollie Pedal.
Seriously: get a policy! Find a way to make a positive contribution to the national broadband debate rather than this pathetic effort, every time we have to discuss the National Broadband Network, of filibuster and opposition.

 Senator Brandis—We’re not filibustering; we want you to produce your bill.

 Senator CONROY—Why don’t you, instead of trying to gag the debate, have the debate? Why, instead of trying to gag the debate by closing the discussion, don’t you actually bring on the debate? I invited you to bring on the debate half an hour ago and what did you do? You moved the gag. You moved to close the debate.

 Senator Brandis—We did not.

 Senator CONROY—What else do you call it? Let’s report progress; let’s stop discussion! Let’s stop the debate!

 Senator Birmingham—Mr Chairman, on a point of order: I would suggest that Senator Conroy is misinterpreting the standing orders if he thinks that moving that the committee report progress is in some way moving the gag.

 Senator CONROY—Huh!

 The CHAIRMAN—I do not need your advice, Senator Conroy. There is no point of order.

 Senator CONROY—Thank you, Mr Chairman. Yet again what you see is an attempt to delay the commencement of this bill.

 Senator Brandis—We want to get on with it!

 Senator CONROY—That’s why you moved to report? They want to get on it so they actually try to close the debate down—effectively, to move a gag. Seriously, how transparent can you be? Yet again those opposite are exposed for not having a single policy in this area and not a single positive contribution to make—just oppose, oppose, oppose. It is Mr Abbott gone mad, in this chamber—oppose, oppose, oppose. And when you have got no credible policies to oppose you then decide what you want to do is close the debate down, to move that the Senate stop debating the NBN bill. What a great way to actually bring on the debate! What hypocrisy.

 I am very happy to bring the debate on, provided you are not going to filibuster any
further. I seek leave to move amendments (12) and (13) together.

The CHAIRMAN—Senator Conroy, you have already sought leave to move the first group of amendments.

Senator CONROY—I am withdrawing that and seeking leave to move amendments (12) and (13).

Senator Birmingham interjecting—

The CHAIRMAN—Senator Birmingham, I did say to Senator Conroy that he had already sought leave to move the first group of amendments together. He has withdrawn seeking that leave and is now seeking to move amendments (12) and (13) together. Is leave granted?

Leave not granted.

Senator CONROY—I will speak generally on the bill—

Opposition senators interjecting—

The CHAIRMAN—Order on my left! Senator Conroy, I remind you that there must be a motion before the chair before you can speak to it

Senator CONROY—I move amendment (12) on sheet BR282:

(12) Schedule 1, heading to Part 3, page 47 (line 1), omit “Ethernet”.

Senator Birmingham—Mr Chairman, can I seek clarification: had Senator Conroy moved amendments (1) to (11)?

Senator CONROY—I sought leave to do this but I postponed.

The CHAIRMAN—Senator Birmingham, no, he has not moved that. What Senator Conroy has done is moved amendment (12), which he is entitled to do.

Senator Birmingham—I understand he has now moved amendment (12). We started the discussion with (1) to (11), and Senator Conroy sought leave. Leave, as I understand it, was granted for (1) to (11), and at the end of that the question was asked whether leave was granted for—

Senator CONROY—Leave wasn’t granted.

The CHAIRMAN—Order! Let me make this clear. Leave was granted immediately after the division, but it does not mean that you have to then continue to debate those amendments that leave was sought for. The minister can move another motion, which he did. He moved that we deal with amendment (12).

Senator Birmingham—Just to be clear, because I wouldn’t want to have missed it, there was no motion then from Senator Conroy after leave was granted to consider amendments (1) to (11)?

The CHAIRMAN—No. When he spoke, he was speaking to the existing motion before the chair, and that was that the bill stand as printed.

Senator Ronaldson—Mr Chairman, I rise on a point of order. Can the minister explain why he has now changed his mind in relation to the order of priorities of these amendments?

The CHAIRMAN—He can choose to explain why he has changed it if he so desires, but he is not required to say why he has changed it.

Senator Birmingham—Can I ask a question with regard to the running sheet of the chamber. Why have we jumped around so much and why has Senator Conroy decided to be the one to reorder the running sheet of his own accord?

The CHAIRMAN—That is not a question for me to answer. If the minister chooses to answer that question, he can. But it is not for me to answer as to why he has changed it. I call Senator Xenophon.
Senator XENOPHON (South Australia) (10.56 am)—Thank you for giving me the call.

Senator Brandis—That minister doesn’t want it.

The CHAIRMAN—Order! I am trying to listen to Senator Xenophon.

Senator XENOPHON—For probably the few thousand Australians listening to this on ABC NewsRadio who may be perplexed, bemused or frustrated, I think it is important that we put this in perspective. I do not think it is fair to characterise the coalition’s motion to report progress as seeking to gag the debate. I am not saying that disrespectfully to the minister. I want to be objective about this. I think this is an important piece of legislation. It is an important piece of legislation because the way Telstra was privatised left us with a vertically integrated monopoly, which is bad for consumers. It is a question of unscrambling the egg. It is complex. It is difficult. I think the public policy consideration means that we need to have a competitive telecommunication system in this country. I see the NBN as providing a framework for that, and that is why I commend the work the minister has done on this.

But it is also fair to say that some significant amendments were filed only recently. We are working through those. There are a couple of amendments that I believe will require further amendment because I have concerns about issues of cross-subsidisation and price discrimination. I think we have come a long way towards improving this legislation in a way that will enhance competition in the marketplace, but the fact is that I put my hand up readily to say, ‘I am not ready to deal with some of those amendments.’

Senator Brandis—That’s not your fault; that’s the minister’s fault.

Senator XENOPHON—I am not ready to deal with some of those amendments because I am in discussions with the government and key players. I have been keeping the opposition and my crossbench colleagues informed. I think that is acknowledged by Senator Birmingham and others. If we can proceed with less contentious aspects of the bill, I think that is a not unreasonable way forward, because it is an important piece of legislation. If we can proceed with other parts of the bill, we should do so. I am working in good faith and diligently. My office is working around the clock on this to see if there is a form of words for an amendment that will deal with some issues that may be problematic. Senator Conroy and his office have been very diligent on this. They understand the concerns of the Competitive Carriers Coalition and others. I think that is why it is fair to set the record straight. I do not see the coalition’s motion as a gag motion as such, but I believe that we can proceed with other parts of the bill.

It should be said, for anyone out there listening, that I do not think anyone could reasonably say that the coalition’s behaviour in this debate could in any way be seen to be filibustering. They are doing nothing other than diligently going through legislation. I want that to be acknowledged. I do not think the government has accused the opposition of filibustering—I want to make that clear.

Opposition senators interjecting—

Senator XENOPHON—No, I just think we are working through it with goodwill with the government. I want to get a good result here in terms of public policy and I do not think it is unreasonable that we deal with other parts of the bill that are less contentious and settled in terms of amendments. I do not say it to criticise the minister in any way; this is an important piece of legislation,
it is complex and I think we all want to get it right.

Senator LUDLAM (Western Australia) (11.00 am)—I would just like to make a few brief comments. We just voted with the government on the motion to report progress, and I have had some brief discussions with the coalition whip about why we might have done that. As far as I am concerned, if we are on the running sheet, if we are moving through amendments that are either agreed to by various parties in this place or at least fairly clear and if we are not debating controversial amendments then let’s get on with it and do that. I do not support reporting progress at this stage because we have quite a few amendments to deal with on which I think the position of the various parties in here is relatively well understood.

But I do dispute what I heard the minister say—that the opposition had attempted to close debate down and move the gag. That is clearly not their intention. We have moved very rapidly through the companies bill. There has not been a filibuster in here—unlike the one that occurred last November. We have analysed the bill in a great deal of detail. As far as the Greens are concerned, if we are moving through the running sheet, we are very happy to stay in this debate and keep it going.

What I would ask the minister to do when he returns to the chair is at least describe for the chamber in what order he proposes to deal with the amendments so that we know where the government is. I recognise that this is a more difficult bill than the companies one in terms of the issues to be ironed out. I would appreciate some clarification, but let’s at least get on with moving through the sheet, because there is still quite a long way to go on this bill.

Senator BIRMINGHAM (South Australia) (11.01 am)—This is a chaotic and haphazard process. I understand Senator Ludlam’s intent in asking the minister to attempt to provide some order to the running sheet, now that the minister wants to revise and jump around the running sheet at will according to his wishes. That is not good enough. It is not good enough for the chamber to be jumping all over the place. It is not good enough that senators not only have had inadequate opportunity to consider these amendments since the 23 pages of them were tabled by the government, but do not know in what order we are going to consider them. We do not know what order we are going to consider them in because, as I pointed out at the outset of the debate on these bills, the minister is not ready. The government is not ready.

We have just had Mr Harris, the secretary of the department, huddled up in the back corner with advisers to the crossbenchers trying to draft new amendments. So we have the senior brass of the minister’s department running around the building trying to rewrite this legislation on the run. The minister has been bouncing between Independents and crossbenchers, from one to another, around the back of the chamber as these discussions have continued. Clearly he is desperate to bed them down on some fixed form of words. That is not the way to make good legislation. Desperation does not make for good public policy; desperation makes for mistakes and bad policy.

That is why we should take the breather that was offered by the coalition. It was not by any means an attempt to gag debate. I do not know how a motion to adjourn debate to a later hour of the day could possibly be an attempt to gag. We were not attempting to bring on any pre-emptive votes, to cut down debate, to cut down the time of debate or to eliminate anything at all. We were simply offering the government the opportunity to put their own house in order on the amend-
ments, to get their affairs together. They have failed quite miserably to do that.

The minister stood here less than an hour ago and sought leave to move government amendments (1) to (11) together and then changed his mind. He changed his mind in a matter of a few minutes—he did not want to move those amendments; he wanted to move some other amendments. He changed his mind, of course, because he had had those huddled conversations with the crossbenchers and realised his amendments would fail and he would have to go back to the drawing board. This is the type of chaotic policy on the run, legislation on the run and desperation that we are seeing from this government.

Senator Brandis—What a fiasco.

Senator BIRMINGHAM—Senator Brandis is correct. A fiasco is a polite way of describing what we see happening here at present! Minister Conroy, if you cannot manage to manage this process, Lord only knows how you are going to manage the build of such a complex network and Lord only knows how your government is going to manage the billions of dollars you are going to spend building this network.

Minister, if you and your colleagues want to get out of here at any sort of civilised hour, you need to get your house in order; otherwise, this debate is going to go on and on. That is your choice. You can work it out. What we do not want to see from the government now is you engaging in your own filibuster—and I can see it coming. I can see Senator Lundy is poised, desperate to speak, desperate to make a contribution and start off the filibuster. Senator Marshall is ready to go as well—all to give the minister time to run around this building and do laps with the crossbenchers. How must it feel, Senator Marshall?

Senator Marshall—I am here to go into the chair.

Senator BIRMINGHAM—How must it feel—

The CHAIRMAN—Order! On a point of order, Senator Marshall?

Senator Marshall—I am actually here to relieve you in the chair, Mr Chairman.

The CHAIRMAN—I understand that, Senator Marshall! Senator Birmingham.

Senator BIRMINGHAM—How must it feel for any of the government senators, whatever their purpose in this chamber, to have to be here today because their own minister—their own deputy leader in this chamber—cannot manage to get his bills together, cannot manage to get his house in order? How must it feel?

Senator Brandis—Senator Lundy would not have screwed it up like this.

The CHAIRMAN—Order!

Senator BIRMINGHAM—Look at you all. How disappointing. So the offer is there, Minister, and it remains. We will happily let you adjourn and come back any time you want to. Just stop stuffing the chamber around, stop stuffing the industry around and stop stuffing the Australian telecommunications sector and its future around by jumping around everywhere and making your policy on the run and your legislation on the run. It is just not good enough.

The CHAIRMAN—Order! Before I proceed any further, I just want to make things clear for the Senate. The running sheet that is provided for the committee stage of the bill is—

Senator Conroy—A guide.

The CHAIRMAN—Senator Conroy, I do not need any help—a guide as to the order in which business will be dealt with. It does not have to be strictly adhered to, but it would help the chair if we knew where we were going next and at this time. As I understand
it, we are currently discussing government amendment (12) moved by the minister.

**Senator BIRMINGHAM**—Mr Chairman, if it assists the minister, the coalition will revise its position and grant him leave to debate amendments (12) to (27).

**The CHAIRMAN**—Amendments (12) and (27)?

**Senator BIRMINGHAM**—No, (12) to (27). There are so many, it is hard to keep track!

**Senator Conroy**—I really appreciate your forbearance!

**The CHAIRMAN**—Leave is granted to debate government amendments (12) to (27) together.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.08 am)—I will be very brief. I know that Senator Lundy is also keen to make a contribution. I move government amendments (12) to (27) on sheet BR282:

(12) Schedule 1, heading to Part 3, page 47 (line 1), omit “Ethernet”.

(13) Schedule 1, item 85, page 47 (line 7), omit paragraph (a) of the definition of **Layer 2 bitstream service**, substitute:

(a) either:

(i) a Layer 2 Ethernet bitstream service; or

(ii) a Layer 2 bitstream service specified in a legislative instrument made by the ACMA for the purposes of this subparagraph; and

(14) Schedule 1, item 86, page 47 (line 17) to page 48 (line 5), omit section 140, substitute:

140 **Simplified outline**

The following is a simplified outline of this Part:

- A local access line that belongs to a telecommunications network (other than the national broadband network) must not be used to supply a fixed line carriage service if:
  (a) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
  (b) no Layer 2 bitstream service is available for supply to those customers or prospective customers using the network; and
  (c) the network came into existence, or was up-graded, on or after 1 January 2011.

(15) Schedule 1, item 86, page 48 (line 8), omit “network unit”, substitute “local access line”.

(16) Schedule 1, item 86, page 48 (line 9), omit “network unit”, substitute “local access line”.

(17) Schedule 1, item 86, page 48 (lines 15 to 17), omit paragraph 141(1)(c), substitute:

(c) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and

(18) Schedule 1, item 86, page 48 (lines 21 and 22), omit “after 25 November 2010”, substitute “on or after 1 January 2011”.

(19) Schedule 1, item 86, page 48 (lines 23 to 27), omit subparagraph 141(1)(e)(ii), substitute:

(ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business custom-
ers, or prospective residential or small business customers, in Austra-
(20) Schedule 1, item 86, page 48 (lines 28 to 31), omit paragraph 141(1)(f).
(21) Schedule 1, item 86, page 48 (after line 31), at the end of subsection 141(1), add:
Note 1: See also section 141B (deemed networks).
Note 2: For exemptions, see section 141A.
(22) Schedule 1, item 86, page 49 (lines 1 to 15), omit subsections 141(2) and (3), substitute:

Sole owner of local access line

(2) If there is only one owner of the local access line, the owner of the local access line must not:
(a) use the local access line, either alone or jointly with one or more other persons, to supply a fixed-line car-
riage service; or
(b) allow or permit another person to use the local access line to supply a fixed-line carriage service.

Multiple owners of local access line

(3) If there are 2 or more owners of the local access line, an owner of the local access line must not:
(a) use the local access line, either alone or jointly with one or more other persons, to supply a fixed-line car-
riage service; or
(b) either alone or together with one or more other owners, allow or permit another person to use the local access line to supply a fixed-line carriage service.

(23) Schedule 1, item 86, page 49 (line 23) to page 50 (line 9), omit subsections 141(5) to (9).
(24) Schedule 1, item 86, page 50 (before line 12), before the definition of fixed-line carriage service in subsection 141(10), insert:

alter, in relation to a telecommunications network, has a meaning affected by section 141E.

(25) Schedule 1, item 86, page 50 (after line 16), after the definition of fixed-line carriage service in subsection 141(10), insert:

local access line has the meaning given by section 141D.

(26) Schedule 1, item 86, page 50 (after line 18), after the definition of national broadband network, insert:

small business customer has the meaning given by section 141G

upgrade, in relation to a telecommunications network, has a meaning affected by section 141F.

(27) Schedule 1, item 86, page 50 (after line 25), at the end of Part 7, add:

141A Exemptions

(1) The Minister may, by written instru-
ment, exempt a specified network from section 141.

Note: For specification by class, see the Acts Interpretation Act 1901.

(2) The Minister may, by written instru-
ment, exempt a specified local access line from section 141.

Note: For specification by class, see the Acts Interpretation Act 1901.

(3) The Minister may, by written instru-
ment, exempt a specified owner from subsections 141(2) and (3).

Note: For specification by class, see the Acts Interpretation Act 1901.

(4) An instrument under subsection (1), (2) or (3) may be:

(a) unconditional; or

(b) subject to such conditions (if any) as are specified in the instrument.

(5) Before making an instrument under subsection (1), (2) or (3), the Minister must consult:

(a) the ACCC; and

(b) the ACMA.
(6) An instrument under subsection (1), (2) or (3) is not a legislative instrument.

(7) In this section:
local access line has the meaning given by section 141D.

141B Deemed networks

(1) For the purposes of this Part, if:
(a) a telecommunications network is altered or upgraded on or after 1 January 2011; and
(b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:
(c) that part is taken to be a network in its own right; and
(d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(2) For the purposes of this Part, if:
(a) a telecommunications network is extended on or after 1 January 2011; and
(b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

then:
(c) the extended part is taken to be a network in its own right; and
(d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(3) If:
(a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
(b) the network is extended to another area that is being, or is to be, developed as another stage of the project;
subsection (2) does not apply to the extension.

(4) If:
(a) a telecommunications network was in existence immediately before 1 January 2011; and
(b) the network is extended on or after 1 January 2011; and
(c) no point on the infrastructure of the extension is located more than:

(i) 1 kilometre; or
(ii) if a longer distance is specified in the regulations—that longer distance;
from a point on the infrastructure of the network as the network stood immediately before 1 January 2011;
subsection (2) does not apply to the extension.

(5) The regulations may provide that subsection (2) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the Acts Interpretation Act 1901.

141C Certain installations and connections are not taken to be an extension, alteration or upgrade

For the purposes of this Part, if:
(a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
(b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
(c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and

(d) the network is capable of being used to supply a superfast carriage service; and

(e) the network came into existence before 1 January 2011; neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

141D Local access line

(1) For the purposes of this Part, a local access line is a line that is part of the infrastructure of a local access network.

(2) However, a line does not form part of a local access line to the extent that the line is on the customer side of the boundary of a telecommunications network.

(3) For the purposes of this section, the boundary of a telecommunications network is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.

(4) For the purposes of this section, local access network has the meaning generally accepted within the telecommunications industry.

141E Alteration

For the purposes of this Part, an alteration of a telecommunications network does not include an extension of the network.

141F Upgrade of telecommunications network

For the purposes of this Part, an upgrade of a telecommunications network does not include an extension of the network.

141G Small business customer

For the purposes of this Part, small business customer means:

(a) a customer who is a small business employer (within the meaning of the Fair Work Act 2009); or

(b) a customer who:
   (i) carries on a business; and
   (ii) does not have any employees.

For the purposes of paragraph (a) of this section, it is to be assumed that each reference in section 23 of the Fair Work Act 2009 to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

I just want to very briefly point out that the game was exposed a couple of times during Senator Birmingham’s last contribution, because he kept furtively looking at the gallery, hoping that there was someone there listening to this pathetic—

Opposition senators interjecting—

Senator CONROY—Just a quick look up: is anyone there, Senator Birmingham?

Opposition senators interjecting—

Senator CONROY—Well, Mr Crowe from the Fin Review is there, so you have an audience of one. You have an audience of one.

The CHAIRMAN—Order!

Senator Brandis—This is pathetic, Stephen. It is a study in confusion.

Senator CONROY—You are just jealous, George. You are just jealous!

The CHAIRMAN—Order, Senator Conroy! Senator Brandis, you know it is out of order to use props in the chamber. I would ask you not to wave that magazine around. Thank you.

Senator CONROY—But Senator Birmingham gave the game away. At least three times during his flowery, colourful speech, he furtively glanced at the gallery in the hope that someone was writing down some of his words. People should understand what is
going on in the chamber at the moment, and that is that this is nothing more than trying to generate—

Senator Ronaldson interjecting—

Senator CONROY—It is a great read, Senator Ronaldson. I encourage you to keep going. The truth is that this should be seen for what it is—nothing more than a publicity stunt to try and draw poor, inexperienced souls in the gallery into thinking you are serious, that there is actually some substance to what you are saying. So let us bring on the debate. Let us finally bring on the debate.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister) (11.09 am)—As I understand it, at this stage we are still formally debating only amendment (12).

The CHAIRMAN—No, leave has been granted to move (12) to (27) together, so we are currently discussing all amendments.

Senator LUNDY—I would like to address my remarks to amendments (12) and (13), which, as we know, the minister earlier sought to move concurrently. I thank the opposition for granting leave to allow us to debate a series of amendments concurrently.

Senators may or may not know the substance of amendments (12) and (13). They relate to both the title and the definition of layer 2 bitstream service. The bill includes at item 85 a definition of a layer 2 bitstream service that confirms that it is an ethernet service. Ethernet is a well-known industry standard. Amendments (12) and (13) expand the definition to include either a layer 2 ethernet bitstream service or a layer 2 bitstream service specified in a legislative instrument made by the Australian Communications and Media Authority, ACMA.

This change is designed to provide appropriate flexibility to accommodate possible technological change over time, a very sensible approach in bills such as these. The amendment responds to concerns raised by the Internet Society of Australia in its evidence to the Senate inquiry into this bill. I refer to that evidence as reported in the Senate inquiry—specifically, with amendment (12) changing the title and amendment (13) addressing the substance. The comments reflected by the committee on the evidence by the Internet Society go like this. One submitter raised concerns about specifying technological standards in the bill. According to the bill, a layer 2 bitstream service must be an ethernet bitstream service. A superfast carriage service is defined in technological terms as providing a download speed which is normally more than 25 megabits per second.

So I certainly commend amendments (12) and (13) to the chamber to clarify the definition of that layer 2 bitstream service. I do not know whether members of the opposition want to comment specifically on the definition, but I am happy to take my place and see. If they do not, I can continue to speak to the additional amendments we have now been granted leave to move.

(Quorum formed)

Senator LUDLAM (Western Australia) (11.15 am)—I will just speak to these amendments very briefly. I think they are sensible amendments. A number of more technical stakeholders gave evidence at the Senate committee into these bills and pointed out gently, but with a bit of a wry smile, that there are definitions in this bill that really should not be in there. We are pinning into legislation technologies that, in some instances, are quite fast moving. We do not want parliament to have to revisit the legislation every time some particular protocol
changes or some particular kind of technology falls out of fashion. I think the government should be commended for batching these up and moving them. It will mean less micromanagement for the parliament and the last thing we want in here is more acronyms. What the government has done here is reasonably sensible. I am not sure whether the coalition has spoken to these amendments. I think they are reasonably uncontroversial, so we are happy to support them.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister) (11.16 am)—I will take this opportunity to outline the purpose and intent of amendments (14) to (27). These amendments clarify that the level playing field requirements apply to only local access lines that are part of a telecommunications network that is wholly or principally used or proposed to be used to supply eligible services to residential or small business customers and is capable of supplying a superfast carriage service.

Local access lines are part of the local access network, meaning that backhaul or transmission networks are not captured. Similarly, consistent with the original drafting of the bill, the restriction to networks supplying services to residential and small business customers makes it clear that networks supplying government and larger business customers will not be captured.

The amendments also change the date of effect of the level playing field provisions to 1 January 2011, rather than 25 November 2010, consistent with the government’s announcement of 20 December 2010. Proposed section 141A sets out powers for the minister to exempt a local access line, a network or a network owner from the provisions. Proposed section 141B provides important clarity on when a network extension or upgrade will be subject to the rules. This was a key theme in consultations with industry and in submissions to the Senate committee about the bill. Under proposed subsection 141B(1), if a network is altered or upgraded after 1 January 2011 with the result that a part of the network becomes capable of being used to supply a superfast carriage service then that part is viewed as a new network and will be subject to the provisions.

Furthermore, under proposed section 141B(2), if a network is extended after 1 January 2011 and the extended part is capable of being used to supply a superfast carriage service then that part is a new network and will be subject to the provisions. However, there are three categories of exemptions from this provision covering, firstly, extensions to other stages of real estate development projects that commenced before 1 January 2011; secondly, extensions made to a telecommunications network that existed before 1 January 2011 where no point on the infrastructure of the extension is located more than one kilometre from a point on the infrastructure of the network as in existence prior to 1 January 2011; and, thirdly, extensions specified in regulations.

Proposed section 141C also provides important clarity on the circumstances in which carriers can continue to connect customers to their existing superfast network. It ensures that lines installed to connect premises that are in close proximity to a line that forms part of the infrastructure of a network that came into existence before 1 January 2011 and is capable of being used to supply a superfast carriage service are not captured by the provisions.

Finally, these changes are carried through to the similar provisions in the Competition and Consumer Act 2010 that deal with the declaration of a layer-2 bitstream service by the ACCC. Where a network, local access
line or network owner has been exempted, then the ACCC declaration will not apply.

Senator LUDLAM (Western Australia) (11.20 am)—I will just speak briefly to these amendments, and I thank Senator Lundy for that explanation of that batch of amendments. We will be supporting these. I understand that the government has moved them together with the ones we spoke on previously.

I think there has been some justifiable concern in the industry relating to the cherry picker provisions from incumbents, people who are already there, who do not want to be accused or fall foul of the cherry-picking provisions as a result of the fact that NBN will shortly be potentially overbuilding them. I think it has probably taken quite a bit of delicate negotiation here because of the definition of what constitutes a ‘network expansion’, in this instance by a new player seeking to genuinely cherry pick the NBN, as opposed to people who are already there running their business and have legitimate interests in not being treated unfairly.

We also recognise that the government has quite a delicate balancing act here, because we do support protecting the NBN Co. from being cherry picked. The underlying theory here I think is entirely sound, and this got a very good airing during the Senate committee hearings. The taxpayer is going to the trouble of rolling this network out to places where it has never gone before, providing services in potentially some very remote locations where there is going to be quite a high cost of service provision. When we consider things like water, electricity, the postal service and the road network, we do not ask people to pay more just because they happen to live a long way from the capital city. I think it is entirely appropriate that the government in this instance has moved to say, ‘If we’re providing this network to everyone in the country, we will need to cross-subsidise the difficult areas with the easy ones, and that means that a corporate player does not get to come in and cherry pick the easy ones,’ because there is no public obligation on the Optuses of the world or any of the other providers, if they are setting up a network in Melbourne, to move it out to regional Victoria or regional Western Australia, nor should there be. We have a universal service obligation to handle those sorts of issues. But if the NBN is going to be doing it, if it is going to be happening at taxpayers’ expense, then it should not be possible for a commercial player to simply dive in and grab the easy bits and leave the hard bits to the taxpayer. If that is the case then we need cherry-picking provisions, and then of course we need to work out how they do not penalise people who are already there or players who are acting in good faith. We are having this debate in Canberra. TransACT is the most obvious example.

I am pleased that the government has sought to clarify the way that these provisions will work. I think that, again, this is something that we are going to need to take a proper look at in the rear-view mirror and make sure that it has not ended up being a cause of disputation, but we will be supporting these amendments and we look forward to moving on.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that government amendments (12) to (27) be agreed to.

Question agreed to.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister) (11.24 am)—by leave—I move amendments (28 to (35):
(28) Schedule 1, item 86, page 50 (before line 26), after Part 7, insert:

**PART 8—SUPERFAST FIXED-LINE NETWORKS**

**Division 1—Introduction**

142 **Simplified outline**

The following is a simplified outline of this Part:

- A controller of a telecommunications network (other than the national broadband network) must not use a local access line to supply an eligible service to a person other than a carrier or a service provider, if:
  1. the local access line is part of the infrastructure of the network; and
  2. the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and
  3. the network came into existence, or was up-graded, on or after 1 January 2011.

142A **Definitions**

In this Part:

- *alter*, in relation to a telecommunications network, has a meaning affected by section 159.
- *electricity supply body* has the same meaning as in the National Broadband Network Companies Act 2011.
- *eligible service* has the same meaning as in the National Broadband Network Companies Act 2011.
- *gas supply body* has the same meaning as in the National Broadband Network Companies Act 2011.
- *local access line* has the meaning given by section 158.
- *national broadband network* has the same meaning as in the National Broadband Network Companies Act 2011.
- *rail corporation* has the same meaning as in the National Broadband Network Companies Act 2011.
- *sewerage services body* has the same meaning as in the National Broadband Network Companies Act 2011.
- *small business customer* means:
  1. a customer who is a small business employer (within the meaning of the Fair Work Act 2009); or
  2. a customer who:
     1. carries on a business; and
     2. does not have any employees.

For the purposes of paragraph (a) of this definition, it is to be assumed that each reference in section 23 of the Fair Work Act 2009 to a national system employer were a reference to an employer (within the ordinary meaning of that expression).

- *State or Territory road authority* has the same meaning as in the National Broadband Network Companies Act 2011.
- *storm water drainage services* has the same meaning as in the National Broadband Network Companies Act 2011.
- *storm water drainage services body* has the same meaning as in the National Broadband Network Companies Act 2011.
- *superfast carriage service* means a carriage service, where:
  1. the carriage service enables end-users to download communications; and
  2. the download transmission speed of the carriage service is normally more than 25 megabits per second; and
  3. the carriage service is supplied using a line to premises occupied or used by an end-user.
upgrade, in relation to a telecommunication network, has a meaning affected by section 160.

water supply body has the same meaning as in the National Broadband Network Companies Act 2011.

Division 2—Supply of eligible services to be on wholesale basis

143 Supply of eligible services to be on wholesale basis

Scope

(1) This section applies to a local access line if:

(a) the local access line is part of the infrastructure of a telecommunications network in Australia; and

(b) the network is used, or proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and

(c) the network is not the national broadband network; and

(d) either:

(i) the network came into existence on or after 1 January 2011; or

(ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia.

Note 1: See also section 156 (deemed networks).

Note 2: For exemptions, see sections 144 to 151.

Person in position to exercise control of network

(2) A person who is in a position to exercise control of the network, or a person who is an associate of such a person, must not use the local access line, either alone or jointly with one or more other persons, to supply an eligible service unless the service is supplied to:

(a) a carrier; or

(b) a service provider.

Note 1: For when a person is in a position to exercise control of a network, see section 155.

Note 2: For control of a company, see section 154.

Offence

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (2); and

(b) the person engages in conduct; and

(c) the person’s conduct breaches the requirement.

Penalty: 20,000 penalty units.

144 Exemptions—Ministerial instrument

(1) The Minister may, by written instrument, exempt a specified network from section 143.

Note: For specification by class, see the Acts Interpretation Act 1901.

(2) The Minister may, by written instrument, exempt a specified local access line from section 143.

Note: For specification by class, see the Acts Interpretation Act 1901.

(3) The Minister may, by written instrument, exempt a specified person from subsection 143(2).

Note: For specification by class, see the Acts Interpretation Act 1901.

(4) An instrument under subsection (1), (2) or (3) may be:

(a) unconditional; or

(b) subject to such conditions (if any) as are specified in the instrument.
Before making an instrument under subsection (1), (2) or (3), the Minister must consult:
(a) the ACCC; and
(b) the ACMA.

An instrument under subsection (1), (2) or (3) is not a legislative instrument.

**145 Exemption—transport authorities**

(1) Subsection 143(2) does not apply if:
(a) both:
   (i) the eligible service is a carriage service; and
   (ii) the sole use of the carriage service is use by Airservices Australia to carry communications necessary or desirable for the workings of aviation services; or
(b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.

(2) Paragraph (1)(a) does not apply to a carriage service supplied to Airservices Australia unless the carriage service is supplied on the basis that Airservices Australia must not re-supply the carriage service.

(3) Subsection 143(2) does not apply if:
(a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory transport authority to carry communications necessary or desirable for the workings of the following services:
   (i) train services of a kind provided by the authority;
   (ii) bus or other road services of a kind provided by the authority;
   (iii) tram services of a kind provided by the authority; or
(b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.

(4) Paragraph (3)(a) does not apply to a carriage service supplied to a State or Territory transport authority unless the carriage service is supplied on the basis that the State or Territory transport authority must not re-supply the carriage service.

(5) Subsection 143(2) does not apply if:
(a) both:
   (i) the eligible service is a carriage service; and
   (ii) the sole use of the carriage service is use by a rail corporation to carry communications necessary or desirable for the workings of train services; or
(b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.

(6) Paragraph (5)(a) does not apply to a carriage service supplied to a rail corporation unless the carriage service is supplied on the basis that the rail corporation must not re-supply the carriage service.

**146 Exemption—electricity supply bodies**

(1) Subsection 143(2) does not apply if:
(a) the eligible service is a carriage service, and the sole use of the carriage service is use by an electricity supply body to carry communications necessary or desirable for:
   (i) managing the generation, transmission, distribution or supply of electricity; or
   (ii) charging for the supply of electricity; or
(b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this subsection.

(2) Paragraph (1)(a) does not apply to a carriage service supplied to an electricity supply body unless the carriage service is supplied on the basis that the
electricity supply body must not re-supply the carriage service.

147 Exemption—gas supply bodies
(1) Subsection 143(2) does not apply if:
   (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a gas supply body to carry communications necessary or desirable for:
      (i) managing the transmission or distribution of natural gas in a pipeline; or
      (ii) charging for the supply of natural gas transmitted or distributed in a pipeline; or
   (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
(2) Paragraph (1)(a) does not apply to a carriage service supplied to a gas supply body unless the carriage service is supplied on the basis that the gas supply body must not re-supply the carriage service.

148 Exemption—water supply bodies
(1) Subsection 143(2) does not apply if:
   (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a water supply body to carry communications necessary or desirable for:
      (i) managing the distribution of water in a pipeline; or
      (ii) charging for the supply of water distributed in a pipeline; or
   (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
(2) Paragraph (1)(a) does not apply to a carriage service supplied to a water supply body unless the carriage service is supplied on the basis that the water supply body must not re-supply the carriage service.

149 Exemption—sewerage services bodies
(1) Subsection 143(2) does not apply if:
   (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a sewerage services body to carry communications necessary or desirable for:
      (i) managing the supply of sewerage services; or
      (ii) charging for the supply of sewerage services; or
   (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
(2) Paragraph (1)(a) does not apply to a carriage service supplied to a sewerage services body unless the carriage service is supplied on the basis that the sewerage services body must not re-supply the carriage service.

150 Exemption—storm water drainage services bodies
(1) Subsection 143(2) does not apply if:
   (a) the eligible service is a carriage service, and the sole use of the carriage service is use by a storm water drainage services body to carry communications necessary or desirable for:
      (i) managing the supply of storm water drainage services; or
      (ii) charging for the supply of storm water drainage services; or
   (b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.
(2) Paragraph (1)(a) does not apply to a carriage service supplied to a storm water drainage services body unless the carriage service is supplied on the basis that the storm water drainage services body must not re-supply the carriage service.
151 Exemption—State or Territory road authorities

(1) Subsection 143(2) does not apply if:

(a) the eligible service is a carriage service, and the sole use of the carriage service is use by a State or Territory road authority to carry communications necessary or desirable for the management or control of road traffic; or

(b) the eligible service is a service that facilitates the supply of a carriage service covered by paragraph (a) of this section.

(2) Paragraph (1)(a) does not apply to a carriage service supplied to a State or Territory road authority unless the carriage service is supplied on the basis that the State or Territory road authority must not re-supply the carriage service.

Division 3—Other provisions

152 Associate

(1) For the purposes of this Part, an associate of a person (the controller) in relation to control of:

(a) a telecommunications network; or

(b) a company;

is:

(c) a partner of the controller; or

(d) if the controller or another person who is an associate of the controller under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or

(e) a person (whether a company or not) who:

(i) acts, or is accustomed to act; or

(ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with:

(iii) the controller; or

(iv) the controller and another person who is an associate of the controller under another paragraph; or

(f) another company if:

(i) the other company is a related body corporate of the controller for the purposes of the Corporations Act 2001; or

(ii) the controller, or the controller and another person who is an associate of the controller under another paragraph, is or are in a position to exercise control of the other company.

(2) However, persons are not associates of each other if the ACCC is satisfied that:

(a) they do not act together in any relevant dealings relating to the network or company; and

(b) neither of them is in a position to exert influence over the business dealings of the other in relation to the network or company.

153 Control

In this Part, control includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

154 Control of a company

(1) For the purposes of this Part, the question of whether a person is in a position to exercise control of a company is to be determined under Schedule 1 to the Broadcasting Services Act 1992.

(2) However, in determining that question:

(a) the definition of associate in subsection 6(1) of the Broadcasting Services Act 1992 does not apply; and

(b) the definition of associate in section 152 of this Act applies instead.
155 When a person is in a position to exercise control of a network

(1) For the purposes of this Part, a person (the controller) is in a position to exercise control of a telecommunications network if:

(a) the controller legally or beneficially owns the network (whether alone or together with one or more other persons); or

(b) the controller is in a position, either alone or together with an associate of the controller and whether directly or indirectly:

(i) to exercise control of the operation of all or part of the network; or

(ii) to exercise control of the selection of the kinds of services that are supplied using the network; or

(iii) to exercise control of the supply of services using the network; or

(c) a company other than the controller legally or beneficially owns the network (whether alone or together with one or more other persons), and:

(i) the controller is in a position, either alone or together with an associate of the controller, to exercise control of the company; or

(ii) the controller, either alone or together with an associate of the controller, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or

(iii) the controller, either alone or together with an associate of the controller, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or

(v) the company or more than 50% of its directors act, or are accustomed to act, in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller; or

(vi) the company or more than 50% of its directors, under a contract or an arrangement or understanding (whether formal or informal), are intended or expected to act in accordance with the directions, instructions or wishes of, or in concert with, the controller, the controller and an associate of the controller acting together, or the directors of the controller.

(2) An employee is not, except through an association with another person, to be regarded as being in a position to exercise control of a network under subsection (1) purely because of being an employee.

(3) More than one person may be in a position to exercise control of a network.

156 Deemed networks

(1) For the purposes of this Part, if:

(a) a telecommunications network is altered or upgraded on or after 1 January 2011; and

(b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia; then:
(c) that part is taken to be a network in its own right; and
(d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(2) For the purposes of this Part, if:
(a) a telecommunications network is extended on or after 1 January 2011; and
(b) the extended part of the network is capable of being used to supply a superfast carriage service to resident- or small business customers, or prospective residential or small business customers, in Australia;
then:
(c) the extended part is taken to be a network in its own right; and
(d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(3) If:
(a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
(b) the network is extended to another area that is being, or is to be, developed as another stage of the project; subsection (2) does not apply to the extension.

(4) If:
(a) a telecommunications network was in existence immediately before 1 January 2011; and
(b) the network is extended on or after 1 January 2011; and
(c) no point on the infrastructure of the extension is located more than:
   (i) 1 kilometre; or
   (ii) if a longer distance is specified in the regulations—that longer distance; from a point on the infrastructure of the network as the network stood immediately before 1 January 2011; subsection (2) does not apply to the extension.

(5) The regulations may provide that subsection (2) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the Acts Interpretation Act 1901.

157 Certain installations and connections are not taken to be an extension, alteration or upgrade

For the purposes of this Part, if:
(a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
(b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
(c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and
(d) the network is capable of being used to supply a superfast carriage service; and
(e) the network came into existence before 1 January 2011; neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

158 Local access line

(1) For the purposes of this Part, a local access line is a line that is part of the infrastructure of a local access network.
(2) However, a line does not form part of a local access line to the extent that the line is on the customer side of the boundary of a telecommunications network.

(3) For the purposes of this section, the boundary of a telecommunications network is to be determined in the same manner in which it is determined under section 22 for the purposes of sections 20, 21 and 30.

(4) For the purposes of this section, local access network has the meaning generally accepted within the telecommunications industry.

159 Alteration

For the purposes of this Part, an alteration of a telecommunications network does not include an extension of the network.

160 Upgrade of telecommunications network

For the purposes of this Part, an upgrade of a telecommunications network does not include an extension of the network.

(29) Schedule 1, item 88, page 52 (line 20), omit “subsection 46(3) of”.

(30) Schedule 1, item 93, page 53 (line 19), before “For”, insert “(1)”.

(31) Schedule 1, item 93, page 53 (lines 20 to 25), omit paragraphs 152AGA(a) and (b), substitute:

(a) a telecommunications network is used, or is proposed to be used, to supply one or more Layer 2 bitstream services wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and

(b) the network is used, or is proposed to be used, to supply a superfast carriage service wholly or principally to residential or small business customers, or prospective residential or small business customers, in Australia; and

(32) Schedule 1, item 93, page 53 (lines 28 and 29), omit “after 25 November 2010”, substitute “on or after 1 January 2011”.

(33) Schedule 1, item 93, page 53 (line 30) to page 54 (line 3), omit subparagraph 152AGA(d)(ii), substitute:

(ii) the network was altered or upgraded on or after 1 January 2011 and, as a result of the alteration or upgrade, the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia;

(34) Schedule 1, item 93, page 54 (lines 4 to 8), omit paragraph 152AGA(e).

(35) Schedule 1, item 93, page 54 (after line 10), at the end of section 152AGA, add:

(2) A network is not a designated superfast telecommunications network for the purposes of this Part if, under subsection 141A(1), the network is exempt from section 141.

Note: Section 141 deals with the supply of Layer 2 bitstream services.

Deemed networks

(3) For the purposes of this section, if:

(a) a telecommunications network is altered or upgraded on or after 1 January 2011; and

(b) as a result of the alteration or upgrade, a part of the network became capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia; then:

(c) that part is taken to be a network in its own right; and
(d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(4) For the purposes of this section, if:
(a) a telecommunications network is extended on or after 1 January 2011; and
(b) the extended part of the network is capable of being used to supply a superfast carriage service to residential or small business customers, or prospective residential or small business customers, in Australia; then:
(c) the extended part is taken to be a network in its own right; and
(d) the network referred to in paragraph (c) is taken to have come into existence on or after 1 January 2011.

(5) If:
(a) a part of the infrastructure of a telecommunications network is situated in a particular area that is being or was developed as a particular stage of a real estate development project (within the ordinary meaning of that expression); and
(b) the network is extended to another area that is being, or is to be, developed as another stage of the project; subsection (4) does not apply to the extension.

(6) If:
(a) a telecommunications network was in existence immediately before 1 January 2011; and
(b) the network is extended on or after 1 January 2011; and
(c) no point on the infrastructure of the extension is located more than:
   (i) 1 kilometre; or
   (ii) if a longer distance is specified in the regulations—that longer distance;
from a point on the infrastructure of the network as the network stood immediately before 1 January 2011; subsection (4) does not apply to the extension.

(7) The regulations may provide that subsection (4) does not apply to a specified extension of a telecommunications network.

Note: For specification by class, see the Acts Interpretation Act 1901.

Certain installations and connections are not taken to be an extension, alteration or upgrade

(8) For the purposes of this section, if:
(a) a line is or was installed for the purposes of connecting particular premises to a telecommunications network; and
(b) the installation of the line enables or enabled the occupier of the premises to become a customer in relation to carriage services supplied using the network; and
(c) the premises are in close proximity to a line that forms part of the infrastructure of the network; and
(d) the network is capable of being used to supply a superfast carriage service; and
(e) the network came into existence before 1 January 2011; neither the installation of the line mentioned in paragraph (a), nor the connection of the premises, is taken to be an extension, alteration or upgrade of the network.

Small business customer

(9) For the purposes of this section, small business customer means:
(a) a customer who is a small business employer (within the meaning of the Fair Work Act 2009); or
(b) a customer who:
   (i) carries on a business; and
(ii) does not have any employees.

For the purposes of paragraph (a), it is to be assumed that each reference
in section 23 of the Fair Work Act 2009 to a national system employer
were a reference to an employer
(within the ordinary meaning of that expression).

Alteration

(10) For the purposes of this section, an alteration of a telecommunications
network does not include an extension of the network.

Upgrade

(11) For the purposes of this section, an upgrade of a telecommunications net-
work does not include an extension of the network.

These amendments are part of a package
relating to the creation of a level playing field, so it is a cohesive grouping of amend-
ments. These amendments implement the
government’s policy announcement of 20
December 2010 when it released the corpo-
rate plan of NBN Co. Proposed part 8 of the
Telecommunications Act set out in amend-
ment (28) requires networks caught by the
level playing field provisions to be wholesale
only. Part 8 functions in a similar manner to
part 7. It targets local access lines that are
part of the infrastructure of a telecommuni-
cations network that is used to supply a super-
fast carriage service wholly or principally
to residential or small business customers in
Australia. Such networks must have come
into existence on or after 1 January 2011 or
have been altered or upgraded after that date
with the result that the network became ca-
pable of being used to supply a superfast
 carriage service to residential or small busi-
ness customers.

A person who is in a position to exercise
control of the network or a person who is an
associate of such a person must not use the
local access line to supply a service unless
the service is supplied to a carrier or service
provider. Exemptions are provided compar-
able to those applying to NBN Co. to permit
the supply of basic services to utilities and
transport authorities where the sole use of the
service is to carry communications necessary
or desirable for the workings of their ser-
tices. The definitions of ‘control’ and ‘asso-
ciate’ are derived from those in division 3 of
part 10 of the Telecommunications Act 1997.

Provisions based on those in proposed part
7 are included to allow for ministerial ex-
emptions and also to deem when a part of a
network that is altered, upgraded or extended
becomes a new network and, as such, cov-
ered by the provisions. As is also the case
with the amendments to proposed part 7,
certain categories of extensions are exempted
from the provisions, as are connections of
customers that are in close proximity to a
carrier’s existing superfast network. I hope
that that explanation is satisfactory. I com-
mand these amendments to the Senate.

Question agreed to.

Senator LUNDY (Australian Capital Ter-
ritory—Parliamentary Secretary for Immi-
gration and Multicultural Affairs and Parlia-
mentary Secretary to the Prime Minister)
(11.28 am)—We are seeking some clarifica-
tion on the sequencing of amendments, so I
thought that I would take this opportunity to
reflect on the process and the importance of
these bills. I did not have an opportunity to
do this during the second reading stage, so I
thought that I would take a few minutes now,
given my longstanding interest in telecom-
munications and particularly the National
Broadband Network. These bills are part of
an ongoing process that the Gillard Labor
government has sought to push through and
pass in these chambers. I am still surprised,
as many are, at the tactics deployed by the
opposition in trying to prevent the appropri-
ate competitive structures for the telecom-
communications sector from being put in place. In the case of these bills, the fact is that we are sitting on a Friday debating the nuts and bolts of the NBN framework. I am pleased to see that care and diligence is being taken by the government to ensure an appropriate level playing field for the National Broadband Network. We are building infrastructure that will serve Australians economic and social needs far into the foreseeable future.

For many Australians this will provide many benefits. Looking at the changing way in which we live our lives and seek the almost utopian work-life balance, one of the most profound benefits will be having a reliable, fast broadband connection. It will enable many Australian families to live in the place of their choice and be able to connect to their work, their education, their health service provider and their government services through a superfast broadband connection. That will remove the shackles of geographic location that apply currently to the lifestyles of many people.

I have always been inspired by the innovative work done by many of our regional centres on utilising their existing opportunities of not particularly fast broadband. But that level of innovation with that limited bandwidth available inspires me greatly for the potential of having a ubiquitous national broadband network that is super fast and provides a great opportunity for future upgrading and improved speeds.

We know that the National Broadband Network will be capable of speeds far greater than the government’s policy commitment. We know that the fibre technology chosen for the National Broadband Network is the most appropriate technology because of its ability to adapt and increase the speeds available as the laser technology at the end points of the fibre is upgraded and improved over time. I have always been confident about the technology choice for these reasons. I would like to thank senators for giving me this opportunity to make a few general remarks on these important amendments.

**Senator XENOPHON (South Australia)**

(11.32 am)—by leave—I move amendments (6) to (13) and (19) to (24) on sheet 7038:

(6) Schedule 1, item 67, page 29 (line 23) to page 30 (line 2), omit paragraphs 152BEBa(1)(g) to (i).

(7) Schedule 1, item 67, page 30 (line 28) to page 31 (line 7), omit paragraphs 152BEBa(2)(g) to (i).

(8) Schedule 1, item 67, page 32 (lines 1 to 17), omit paragraphs 152BEBB(1)(g) to (i).

(9) Schedule 1, item 67, page 33 (lines 7 to 23), omit paragraphs 152BEBB(2)(g) to (i).

(10) Schedule 1, item 67, page 34 (lines 14 to 30), omit paragraphs 152BEBc(1)(g) to (i).

(11) Schedule 1, item 67, page 35 (lines 20 to 36), omit paragraphs 152BEBc(2)(g) to (i).

(12) Schedule 1, item 79, page 44 (line 13), omit “(4F), substitute “(4C)”.

(13) Schedule 1, item 79, page 44 (line 14), omit “(4F), substitute “(4C)”.

(19) Schedule 1, item 109, page 63 (line 29) to page 64 (line 8), omit paragraphs 152BEBe(1)(h) to (j).

(20) Schedule 1, item 109, page 65 (lines 1 to 17), omit paragraphs 152BEBe(2)(h) to (j).

(21) Schedule 1, item 109, page 66, (lines 11 to 27), omit paragraphs 152BEF(1)(h) to (j).

(22) Schedule 1, item 109, page 67 (lines 20 to 36), omit paragraphs 152BEF(2)(h) to (j).

(23) Schedule 1, item 113, page 69 (lines 1 and 2), omit the item, substitute:

113 At the end of subparagraph 152CJH(a)(iii)

Add “and (4G) to (4J)”.

(24) Schedule 1, item 114, page 69 (lines 3 and 4), omit the item, substitute:

114 At the end of subparagraph 152CJH(a)(iv)
I also oppose schedule 1 in the following terms:

1. Schedule 1, item 50, page 21 (line 20) to page 22 (line 3), subsections 152AXC(4), (5) and (6) **TO BE OPPOSED**.
2. Schedule 1, item 50, page 22 (lines 14 to 30), subsections 152AXC(8), (9), (10) and (11) **TO BE OPPOSED**.
3. Schedule 1, item 50, page 23 (line 19) to page 24 (line 15), subsections 152AXD(2), (3), (4) and (5) **TO BE OPPOSED**.
4. Schedule 1, item 59, page 26 (line 28) to page 27 (line 2), subsections 152BCB(4D), (4E) and (4F) **TO BE OPPOSED**.
5. Schedule 1, item 65, page 28 (lines 21 to 28), subsections 152BDA(4D), (4E) and (4F) **TO BE OPPOSED**.
6. Schedule 1, item 99, page 56 (line 20) to page 57 (line 3), subsections 152ARA(4), (5) and (6) **TO BE OPPOSED**.
7. Schedule 1, item 99, page 57 (line 20) to page 58 (line 2), subsections 152ARA(8), (9), (10) and (11) **TO BE OPPOSED**.
8. Schedule 1, item 99, page 58 (line 31) to page 59 (line 24), subsections 152ARB (3), (4) and (5) **TO BE OPPOSED**.
9. Schedule 1, item 104, page 61 (lines 12 to 19), subsections 152BCB(4K), (4L) and (4M) **TO BE OPPOSED**.
10. Schedule 1, item 106, page 62 (lines 15 to 22), subsections 152BDA(4K), (4L) and (4M) **TO BE OPPOSED**.

These amendments will remove all exemptions from the non-discriminatory prices, terms and conditions provisions in the bill. Under the legislation the bill begins with a premise of nondiscrimination. The explanatory memorandum to the bill reads:

To further reinforce the open access principles underpinning the NBN, the Access Bill also sets out a clear non-discrimination obligation applying to NBN Co, giving effect to the Government’s commitment for NBN Co to provide equivalent access to all access seekers.

However, the bill then provides opportunity for NBN Co to negotiate with individual access seekers to vary the standard terms and conditions under certain circumstances.

This exemption goes against the open access principles underpinning the NBN. This is something that I have been consistent in my concerns about with the government, and I have raised them with the opposition, since last year. I see that it would undermine the very principles of the NBN to allow for price discrimination. The exemptions that were proposed that relate to efficiency and an authorisation process seemed inappropriate and fraught with difficulty, and would have allowed for a significant degree of price discrimination which would have entrenched the competitive advantage for the bigger players. This is about levelling the playing field. I would like to think that the coalition acknowledges that this is a significant step forward in relation to providing a level playing field.

Price discrimination means that different access seekers will be able to negotiate different contracts. I believe this is fundamentally wrong. We need to remember that NBN Co. will be equally owned by all Australians. It is not your normal business entity. I understand that, in business, wholesalers may provide goods or services at different rates, depending on the deal they strike with the retailer, but the NBN is a taxpayer funded investment and therefore all customers should be able to access it on equal terms, prices and conditions. These amendments achieve this, removing all provisions for exemption from the non-discriminatory open-access principles which underpin the NBN. The amendments which relate to volume discounting remove the provision for NBN Co. to offer volume discounts to any access seeker.
The CEO of NBN Co., Mr Mike Quigley, has publicly stated that it is not the policy of the company to provide volume discounting. These amendments put that into action. Volume discounting would mean that the Telstras and Optuses of this world could be able to access the NBN at different prices or terms and conditions purely based on the number of customers they have. This would only entrench the situation we have now where the big players monopolise and dominate the telecommunications market, and the smaller providers are pushed out. The end result is that it is bad for consumers.

By removing volume discounting from the legislation it again stays true to the open-access principles underpinning the NBN. I am heartened by the support this has received from the Competitive Carriers’ Coalition and the smaller telcos, who I think will be driving the competition in this. I would also like to acknowledge at this stage—at the risk of exciting the minister—the contribution that Associate Professor Frank Zumbo, from the University of New South Wales, has made to these amendments. I have been very grateful for his input, advice and his long-standing passion for ensuring that we have the fullest level of competition in all marketplaces to ensure that small and medium-sized businesses can compete fairly so that consumers can get the benefits of that competition. We do have a situation here where we have a vertically integrated monopoly, which the OECD has indicated has set Australia back in telecommunications.

I would urge all senators to support this. It would ensure a level playing field. I believe it is not inconsistent with the views of the coalition. I respect the coalition’s views to oppose the NBN for a whole range of reasons but I would like to think they would be on board with this particular amendment, which would enhance competition and prevent the big players from getting bigger or maintaining their dominant position. I think that is unambiguously a good thing for competition and a very good thing for consumers.

I am also grateful for the discussions I have had with my crossbench colleagues, Senator Ludlam from the Australian Greens and Senator Fielding from Family First, over their concerns in this as well.

The TEMPORARY CHAIRMAN (Senator Marshall)—Senator Xenophon, I want to clarify that you have moved all of your amendments as circulated. They will be put into questions that I will separate out for you, but are they all of your amendments?

Senator XENOPHON—that is the case, but I indicate there are more amendments to come. I have discussed that with Senator Birmingham, who has been doing a sterling job on behalf of the opposition in prosecuting the opposition’s case, to let the opposition know what I am doing. Both sides acknowledge that I have been letting both sides and my crossbench colleagues know of developments so that there are no surprises, no ambushes. I think that is the right way to conduct oneself in this place.

The TEMPORARY CHAIRMAN— Thank you for clarifying that.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.37 am)—The government will be supporting Senator Xenophon’s amendments. Senator Xenophon has proposed an amendment which removes the scope for price discrimination by NBN Co. Senator Xenophon has indicated a willingness to monitor the effects of this removal to ensure that the scope for appropriate innovation by retail service providers is not unduly constrained. The government will work with him and other interested senators to that end as the
NBN Co. develops its commercial arrangements over coming months.

The government, as I indicated, has agreed to Senator Xenophon’s amendment on price discrimination on the understanding that he will otherwise support looking into the matter, which we think is a very reasonable compromise, Senator Xenophon, and you should be congratulated on it. We look forward to the outcome of those discussions.

Senator XENOPHON (South Australia) (11.38 am)—I am grateful not only that the minister has indicated his support for the amendments but also that he related it to the issue of innovation. As I read the government’s position, there was a real risk. I was guided by others who were concerned that an unintended consequence of the position—and I am not critical of the government for this—could have allowed for price discrimination. The starting position is to put an end to price discrimination, level the playing field and give the small and medium-sized operators an opportunity to compete fairly in the marketplace, which is good for consumers.

There are issues of genuine innovation which the government have indicated they will look at, presumably post 1 July, and I think we ought to be vigilant about that so that there is no opportunity for price discrimination. I accept fully what the minister has said. I have to say that I am grateful for the discussion I had with Mr Peter Harris, the Secretary of the Department of Broadband, Communications and the Digital Economy. As a senior public servant should, I think he put things objectively, without any spin and set out the position in a very fair way. I am grateful to Mr Harris. I think the minister is lucky to have someone like Mr Harris, who can put things in a straightforward fashion and without hyperbole, as the secretary of his department.

Having said that, as long as it is understood that this is not about allowing price discrimination down the track, and the minister has acknowledged that, I welcome the government’s support for these amendments. Whilst the opposition oppose the NBN, and I appreciate and respect those reasons, I hope they will support provisions that will knock out price discrimination in this legislation.

Senator LUDLAM (Western Australia) (11.40 am)—I think the government would treat these in the way the bill was originally drafted—in good faith. The government was trying to promote innovation and certain kinds of specialisation in the market. I think the clause turned out to be something of a Rorschach test, in that people who looked at it saw different things depending on their perspective. We had a range of different industry players who basically fell out over these amendments because they thought that, on the one hand, they could take advantage of them but, on the other hand, they saw the opportunity for backdoor price discrimination and so on.

I think this goes again to some of the comments I made last night. We are debating a hypothetical market structure that does not exist and everybody is bringing their own preconceptions to it. I think Senator Xenophon should be congratulated for simply knocking the provisions out. It removes the ambiguity so that we will not see any of the darker predictions put to us by various participants of how these provisions may be abused.

My understanding is that the amendments that Senator Xenophon has put before us also remove volume discounts. So I would put that to the coalition. I think I indicated to Senator Birmingham yesterday that if we got his amendments first they were going to be the only opposition sheet of amendments that I intended to vote for. I apologise to Senator
Birmingham that in the only opportunity we had to be on the same side of the chamber in this whole debate we probably will not get there.

Senator Birmingham—We might.

Senator LUDLAM—You might? You might need to stand those down because Senator Xenophon has effectively taken care of that, but he has gone a lot broader than the coalition intended to. We have been persuaded to just keep it simple. This is an extraordinarily complex field. I do not pretend to be a trade practices expert or a competition policy expert.

Senator Xenophon—You will be by the end of this.

Senator LUDLAM—Yes, I am unwillingly becoming one. One thing I do know is that people tend to run arguments according to their own commercial interests as though they were parallel to the public interest, and we know that that is not always the case. I think Senator Xenophon has potentially saved us from years of disputation. I am not saying that we would not necessarily revisit this issue in the future, but I ask Senator Ludlam: is it the position of the Australian Greens to support the general principle that there ought not to be price discrimination so that the smaller and medium sized telcos are able to compete fairly? If that is the principle by which you would revisit it, then I am very comfortable with that. If it is revisited, it will be through a legislative amendment. I just wanted reassurance that that would be the basis of revisiting it, which I would be comfortable with. These amendments, in the context of price discrimination, are specifically intended to ensure that we do not entrench the position of Telstra or have a bilateral monopoly with Telstra and NBN Co.

Senator LUDLAM (Western Australia) (11.44 am)—I will answer that question because I think it is entirely appropriate. One of the things that I have discovered about competition policy is that some incredibly dodgy and anticompetitive arguments are run under the cover of competition policy. I am happy to confirm for Senator Xenophon right now that we will not be revisiting the issue of price discrimination, particularly as it relates to volume discounts. As has happened in the other sectors, arguments around competition policy—and we have the Coles and Woolworths situation—have been used to destroy diversity and squash smaller players. The telco sector will not be immune to that kind of behaviour unless we build it out of the market, and I think Senator Xenophon’s amendments quite clearly do that.

We do not propose to revisit the issue, for example, of volume discounts, because the way that it works and the way that these things seem to be structured in Australia at the moment is that they always favour the large over the small. These kinds of advantages always accrue to the people who can take the volume discounts and crowd out smaller players. We have a very diverse telecommunications sector in Australia at the moment, or we will have if we get this market set-up right. At the moment we see the risk of Telstra simply annihilating or gouging its competitors. We have started the process of winding that back—we are a long way down that road now—but we do not want to see a return to those days of either a monopoly or a duopoly. We simply do not see that kind of situation arising. Perhaps it is deeper than competition policy. Perhaps I am maligning Mr Hilmer unreasonably. Perhaps it is inherent in capitalism that the large tend to
get favoured over the small all the time. We see that, unless you write it very firmly into legislation, you get accruals of economies of scale—it is natural. People will then leverage the economies of scale to do what they are supposed to do as corporations, which means: squash competition. That is why—and I agree that we have spent quite a bit of time on this, and there are still more amendments to come that relate directly to this question—if we have created a publicly owned monopoly provider of wholesale services and that gets out of hand, we will have Telstra all over again.

Alternatively, if we allow NBN Co. to discriminate, it will be in its own interests because it is going to be trying to provide the return to government that it said it would. We do not want to create any incentives for it to favour one provider over another in ways which could damage not just competition but also diversity, which I think is the principle that we are all seeking here. I hope that satisfies Senator Xenophon’s concerns. I know that some of these issues will be revisited a bit later in the day.

Senator BIRMINGHAM (South Australia) (11.46 am)—Very briefly, I think the issues in this regard have been put very eloquently by Senator Xenophon, as always, and by Senator Ludlam and others. We have some sympathy in these areas—we have proposed our own amendments in this regard. Whilst Senator Xenophon’s do not achieve the outcomes that we would have sought through our amendments, we do not intend to be spoilers. I am happy to indicate our support for Senator Xenophon’s amendments.

Senator JOYCE (Queensland)—Leader of the Nationals in the Senate) (11.47 am)—I also think that this is extremely important. Hearing Senator Ludlam and Senator Xenophon making a couple of calls while I listened to them, it is an issue that I think—

Senator Conroy—Just because you’ve got a green tie on, don’t suck up to them!

The TEMPORARY CHAIRMAN (Senator Marshall)—Senator Joyce, just ignore any interjections and continue with your contribution.

Senator JOYCE—But I would like the minister at some point to describe, when we are talking about price discrimination for a service is: what is the tolerance for a service being of the same quality, of the same standard? What we are concerned about in regional areas is that, although they say there is no price discrimination on the service, the service people get is remarkably and demonstrably different to the service that people get in an urban area.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.48 am)—Without wanting to prolong the debate, I am glad Senator Joyce and the National Party have decided to actually care about what people in the bush want. The National Farmers Federation are out there saying, ‘We want fibre all the way to all of the homes.’ You are not even representing the National Farmers Federation. They are out there demanding that the whole country be fibred.

Senator Joyce—Mr Temporary Chairman, on a point of order: I know that to be actually, definitely, misrepresenting the National Farmers Federation.

The TEMPORARY CHAIRMAN—You can only interrupt the minister if you have a point of order, Senator Joyce, and there is no point of order.

Senator CONROY—As has been government policy since day one—Senator
Joyce knows this and Senator Williams knows this—the same product range on fibre is the same price, the same product range on wireless is the same price and the same product range on satellite is the same price, no matter where you live. That has been the government’s policy from day one. No matter where you live in this country, whether it is in St George or in Sydney, if you are on the fibre network, you get the same price for the same product. That has been our policy from day one. Notwithstanding media commentary to the contrary, that is our policy. That was our policy yesterday and the day before, and it is our policy today and tomorrow.

We are delivering to regional and rural Australia more than those who used to claim they represented them have ever gone close to doing in telecommunications. So do not come into this chamber and try to run a false scare campaign based on a dodgy article in the *Australian* yesterday. It was a fabrication yesterday, it is a fabrication today and, if you keep spreading it around, you will be misleading this chamber.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (11.50 am)—In his answer, the minister has left me with more concerns than I had before he started! He said you will get the same price on fibre because it is the one product and you will get the same price on wireless because it is another product. It is just that the people in regional areas are the ones covered by satellite. They are obviously on a different product. So they can obviously be discriminated against. He confirmed this. You have to remember that this is the same minister who has an incredible incapacity to be across the bill. Last time when he was talking about price discrimination and access regimes he did not even know that NBN was in the bill. What I am asking you, Minister, now that you have enlightened us further, is: will separate services have such a wide frame of reference that a person in a certain area who is getting a far inferior service to a person in another area be charged at the same price for an entirely different service? In the answer you just gave then you discussed that people on fibre and wireless will get one price. I want to know what is going to happen to the seven per cent of people that we represent. Have you now just opened the gate for them to be touched?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.51 am)—Perhaps the laws of physics have escaped some in the chamber. It is not possible to deliver the same products on satellite, wireless and fibre. It is actually not possible. What the NBN has been able to do with the peak products of satellite and wireless at the moment and the base product of fibre is align them. It should be congratulated on that. That was a significant engineering and organisational feat. But you cannot deliver 25 meg down and two, 10 or 20 up on satellite. It cannot be done. We are even putting up two new satellites in the next few years. Those opposite are in here hypocritically crying crocodile tears about satellite. You left them on ABG with barely 128 meg down and 28 up. We increased the minimum available product on satellite by regulation to one meg. You left them on 512 k. We have already increased the satellite service available, and we will increase it further with the new satellites.

Let us be clear. You cannot deliver the product range on a satellite that you can deliver on fibre. Everybody who understands anything about the laws of physics knows that. So do not come in here and pretend that somehow regional and rural Australians are being discriminated against. Not just with our interim satellite solution, which will start
being delivered in the next few months, but in our final satellite solution we have increased broadband for people in rural and regional Australia at least 20 times from where you left them. We are the ones who put up some new satellites. You never proposed to do anything of the kind. Not only were you closing down ABG funding, which we are funding for another few years until our new satellites are up; you are now trying to run the scare campaign that they are going to be worse off. You are absolute frauds. We are improving regional broadband for the seven per cent not once and not twice but three times. People will be 20 times better off because of this government’s program. They will be 20 times better off.

Senator Brandis interjecting—

Senator CONROY—Dear, oh, dear, Senator Brandis. I do not think you have met anyone in the bush. I will at least give Senator Joyce some credit in that I know he does meet people in the bush. On the wireless network, again, you cannot deliver the same product range on wireless that you can on fibre. But, yes, the good news is wireless products are improving. We have delivered—

Senator Brandis—And your plan will be obsolete by the time it is built.

Senator CONROY—My goodness, you are—

Senator Brandis—It will be obsolete by the time it is built.

Senator Lundy interjecting—

Senator CONROY—Thank you, Senator Lundy, for that very wise and sage advice. The same laws of physics constrain the capacity for the wireless network to match the fibre network. They are the laws of physics. No one in this chamber can challenge those. You cannot deliver the sort of capacity that a fibre network delivers on a wireless network, so to try to pretend that people are short-changed—

Senator Brandis—People have said that before every technological breakthrough in the history of science.

Senator CONROY—They are the law of physics, Senator Brandis. I know, Senator Lundy, I should ignore him.

Senator McEwen—He thinks he’s Einstein!

Senator CONROY—I know that. Let me be very clear on this. If you live in St George and you are receiving fibre—funnily enough, Senator Joyce, last time I checked, I think you were—you will pay the same as someone in Sydney. If you receive the wireless footprint in Sydney and the wireless footprint in St George, and some people will, you will be paying the same price. If someone has to get the satellite service in Sydney or the satellite service in St George it will be the same price. That has been the government’s policy from day one.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (11.56 am)—I agree with you that the issue is about wireless, satellite and fibre, but it is not an argument about physics—it is an argument about economics and commerce. If you are there for part of that group called the Satellite Group, which is almost exclusively in regional areas, it stands to reason—using your own argument of physics—that someone in Sydney will probably not want to use the satellite when they have fibre. It means that those people who are using the satellite are out in the regional areas and you can discriminate against them. You can charge them whatever you like and say, ‘It’s all unit pricing for you on satellite, it’s just that it’s at a price you can’t afford. It’s all the same. We’re being completely and utterly fair—the whole lot of you can’t afford it’ or, going to wireless, ‘We’re being completely fair. We’re
making sure that we touch the whole lot of you, not just a section—the whole lot.’

We have to discuss whether, in the delivery of satellite and wireless, it is going to be at a cost they can afford. You have said—damned by your own words—that we now have three products, not one. We have three products and unit pricing on each of those singular products. You can go to the product that looks after regional areas and do whatever you like to them and still be within the power of your act, saying ‘It’s a unit price, but it’s just not a unit price you can afford.’

The TEMPORARY CHAIRMAN (Senator Marshall)—Just before I put the amendments, I will explain to senators that the set of amendments have to be put in two separate ways. The first omits proposed subsections, so in order to support that set of amendments the question I am about to put needs to be opposed. On that basis, the question I put before the chamber is that the proposed subsections set out in amendments (1) to (5) and (14) to (18) on sheet 7038 stand as printed.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that amendments (6) to (13) and (19) to (24) on sheet 7038 be agreed to.

Question agreed to.

Senator BIRMINGHAM (South Australia) (11.59 am)—by leave—I move opposition amendments (1) to (14) on sheet 7048 revised together:

1. Schedule 1, item 50, page 21 (line 3), omit “between access seekers”.
2. Schedule 1, item 50, page 21 (line 6), omit “access seekers”, substitute “persons”.
3. Schedule 1, item 50, page 21 (line 9), omit “an access seeker”, substitute “a person”.
4. Schedule 1, item 50, page 21 (line 10), omit “access seeker”, substitute “person”.
5. Schedule 1, item 50, page 21 (line 16), omit “access seeker”, substitute “person”.
6. Schedule 1, item 50, page 21 (line 17), omit “access seeker”, substitute “person”.
7. Schedule 1, item 50, page 21 (line 22), omit “access seekers”, substitute “persons”.
8. Schedule 1, item 50, page 21 (line 26), omit “access seeker”, substitute “person”.
9. Schedule 1, item 50, page 21 (lines 20 to 32), omit subsection 152AXC(4), substitute:

(4) NBN must not discriminate between persons on the basis of the volume, number, quantity or amount of goods, services or other things that persons acquire or agree to acquire.

10. Schedule 1, item 50, page 23 (line 4), omit “access seekers”, substitute “persons”.
11. Schedule 1, item 50, page 23 (lines 16 and 17), omit paragraph 152AXD(1)(g), substitute:

(g) giving information about any of the above activities to persons who request, or propose to request, the supply of a declared service from that NBN corporation.

12. Schedule 1, item 50, page 24 (line 2), omit “an access seeker”, substitute “a person”.
13. Schedule 1, item 50, page 24 (line 4), omit “access seeker”, substitute “person”.
14. Schedule 1, item 50, page 24 (line 7), omit “access seeker”, substitute “person”.

These issues relate very much to those we have just debated with Senator Xenophon in regard to his amendments. As I indicated in response to his amendments, the opposition is of a mind that we should take a very firm view in regard to price and non-price discrimination matters and how NBN Co. operates. However, we note that Senator Xenophon’s amendments went some way towards tightening up those issues and, as a result, we were willing to support them. These amendments of ours take a harder line in that regard. We think it is still worth debating them. I am not going to take up the chamber’s time.
on these amendments because I know that Senator Xenophon and Senator Ludlam have expressed views in that regard. If Senator Ludlam is still of a mind to consider an aspect of these amendments, then I am happy to address any of those issues in further detail. But, otherwise, we will let the chamber get on with its business.

Senator LUDLAM (Western Australia) (12.01 pm)—I thank Senator Birmingham for the invitation. I do not propose to tie us down for too long on these either. I understand that you have essentially batched the second, third and fourth sets of amendments that you proposed on the running sheet. Perhaps since you have described these amendments yourself as ‘hardline’, Senator Birmingham, I wonder if you could describe, as briefly as you are comfortable to, the degree to which these exceed Senator Xenophon’s amendments, which we have already voted for. Could you just condense for us the points at which you think the business is unfinished or how these differ from the amendments that we have just voted on? I think it is worth clarifying.

I am happy to indicate at this point that the Australian Greens will not be supporting them. We believe we have just set the balance about right, recognising, of course, that the opposition has some legitimate concerns. I suppose everybody in the chamber has put these concerns fairly bluntly this morning around discrimination, price and otherwise. But perhaps for the record, Senator Birmingham, if you want to, could you clarify what exactly you are proposing to do in addition to what the chamber just voted upon?

Senator BIRMINGHAM (South Australia) (12.02 pm)—I will attempt to provide some detail for Senator Ludlam. If what I provide is not satisfactory, I will seek some advice to try to give a little more detail in this regard. We see issues of discrimination and fairness as being very important. Many have complained, as Senator Ludlam did in his comments, about the dominance of Telstra. Nobody wants to see a situation where, because of this legislation, NBN Co., Telstra, Optus or anybody else—contrary to what the minister sometimes tries to proclaim—can operate in an anticompetitive way. What we want to see is an effective market. Despite the concerns of the opposition about NBN Co. and about the vast spending of money here, if we are going to have the thing, we want to make sure that at least we get it right in the first place and that we have fair and proper terms on which this vast government monopoly is regulated.

What we are seeking to do is ensure that NBN cannot discriminate between access seekers or between retail service providers, whether they be big, small or medium sized. We do not want to see them able to discriminate on the basis of volume, number, quantity or the amount of goods, services or other things that they may be required to agree to in order to acquire services from NBN Co. We think that this is a strong set of amendments because it draws a firmer line in the sand than Senator Xenophon’s. Senator Xenophon’s amendments certainly put a stronger position in place, but we believe that this is a neater way of dealing with these amendments and gives us a stronger, clearer outcome. If there are particular aspects of difference that you want to know, Senator Ludlam, I am happy to try to seek some advice and ensure that we inform you as best we can.

Senator LUDLAM (Western Australia) (12.05 pm)—Senator Xenophon, the reason that I have asked you to go into a little bit more detail is that the running sheet indicates that there are conflicts with the Xenophon amendments, so this is not just a case of going a bit further or being a bit more hardline, or however you want to describe it. In fact,
these amendments cut across what the chamber has already passed. I suppose I am concerned about the extent to which there are legitimate reasons to try to flatten out any possibility of price discrimination or other kinds of discrimination down the track. That is one thing, and I think it is appropriate that we do have that debate.

There is the degree to which these amendments conflict with what Senator Xenophon put to the chamber and what we just supported, I believe with coalition consent, and whether the coalition has just agreed to a set of amendments that would be effectively legally completely incompatible with the amendments you are putting at the moment. It is a complex set of amendments and I do not expect you to read me through them clause by clause—and I am taking the running sheet as a guide here—but I think we should tease out the degree to which what you have put up conflicts with what the chamber just agreed to, and then move on.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Multicultural Affairs and Parliamentary Secretary to the Prime Minister) (12:06 pm)—I rise to indicate that the government is not supporting these amendments. We do of course understand the concern and we have supported Senator Xenophon’s amendments, but we do not believe these ones are necessary.

I note Senator Ludlam’s comments as well about the interaction between this set of amendments and Senator Xenophon’s amendments. It is in part for those kinds of reasons that we are satisfied that Senator Xenophon’s amendments address the concern that these opposition amendments are trying to address.

Senator BIRMINGHAM (South Australia) (12:07 pm)—We note the position of the other parties on this. We understand that it is probably not ideal in a perfect world to be debating these, given the decisions made on Senator Xenophon’s amendments. That said, we would prefer our amendments, but as I said at the outset I am not going to delay the chamber in this regard. The opposition would prefer its amendments but I respect the views of those others in the chamber.

The TEMPORARY CHAIRMAN (Senator Marshall)—Senator Birmingham, are you withdrawing or deferring your amendment? While we clarify that, Senator Xenophon has the call.

Senator XENOPHON (South Australia) (12:08 pm)—I appreciate the comments that Senator Birmingham has made about this and my question is: how does he say that this advances the cause of removing price discrimination when the amendments that I moved recently, which the coalition has broadly supported, have a blanket ban on price discrimination? The advice I have—and I think it was very good advice from Associate Professor Frank Zumbo, a competition law expert from the University of New South Wales—is that a blanket ban on discrimination is the simplest, most effective way of dealing with this. I would appreciate hearing from Senator Birmingham in relation to that.

I will have a question shortly, if I could indicate to the minister, about issues of equivalence and amendments that I supported, co-sponsored with Senator Ludlam, a number of months ago, because of concerns that have been brought to me by the Competitive Carriers’ Coalition. I am waiting for Senator Birmingham’s response, but I know that Senator Conroy is engaged in a conversation with Senator Joyce and any conversation with Senator Joyce is always engrossing—I say that without any irony—so I will wait to hear from Senator Birmingham in relation to his response.
The TEMPORARY CHAIRMAN (Senator Marshall)—Before I call Senator Birmingham, to clarify some confusion that I probably created earlier on, Senator Birmingham sought leave to withdraw amendment (9). We actually meant amendment (9A). So we will just confirm with the parties that it is amendment (9A) that is being withdrawn and not amendment (9). Amendment (9) is still there.

Senator BIRMINGHAM (South Australia) (12.09 pm)—I am sorry to have to confess, Senator Xenophon, that I was involved in discussion through most of your remarks. I heard you mention my name towards the end of your remarks. I then tuned in assiduously but I missed what it was you wanted me to respond to.

Senator XENOPHON (South Australia) (12.10 pm)—I wonder if those listening on ABC NewsRadio now are listening as assiduously as some of us have been listening. That is not a criticism. To draw a word picture for those listening, there are a few side conversations going on but they are conversations about the bill and the substance of the bill. I know that Senator Birmingham was quite appropriately getting advice from his advisers in relation to this.

I just wanted clarification from Senator Birmingham in relation to his amendments with respect to price discrimination. How does he say that goes further, which I understand is the assertion of the opposition, than the amendments that have I moved and were recently passed, effectively with the support of the entire chamber? The advice I have had, from Associate Professor Frank Zumbo of the University of New South Wales, is that just getting rid of the price discrimination provisions is the cleanest, simplest, most effective way of dealing with price discrimination. For those people out there listening on NewsRadio and on the net, the big issue here is that you do not want the NBN to give sweetheart deals to some telcos and not others, because, in effect, you will entrench unfair competition and unfair prices in the marketplace. By getting rid of price discrimination, prohibiting the NBN from doing that, you prevent it from behaving like a monopoly in the way that it dispenses its deals. If it has to give the same deal to everyone then that is unambiguously good for consumers because it means that the smaller telcos, who I believe are critical in driving innovation and driving competition—they are the market makers, if you like—will be able to compete on a much more level playing field.

Senator BIRMINGHAM (South Australia) (12.12 pm)—As the chamber will appreciate—those on ABC NewsRadio may or may not appreciate it—these are complex bills and there are lots of discussions going on around them. We have had substantial debate today and the sequence of amendments under consideration has jumped around quite considerably as we have gone through these changes. The running sheet has not been adhered to. The running sheet would have seen the opposition amendments moved first, followed by your amendments.

I have to say, after having further discussions about our amendments compared with your own amendments, Senator Xenophon, that to say that ours go further was probably not the best choice of words on my part. I think they attempted to achieve similar outcomes by slightly different means. In fact, we are all hopefully trying to achieve the same overall outcome, of a good and competitive market. The specific outcome in this regard is to put some real restrictions and parameters around the issue of price discrimination and non-price discrimination—volume discrimination and the like—and to ensure that we have some clear terms that protect the competition within this sector and
keep NBN Co. in check, as we have discussed so many times before.

I note that your amendments received support all around the chamber. I congratulate you for managing to achieve that, Senator Xenophon. Noting that we are really trying to get to the same ends and that it would be a complication to the proceedings were our amendments to now pass, given the impact of that on your amendments, it is the considered opinion of the opposition that we should now withdraw those amendments. I seek leave to withdraw amendments (1) to (8), (9) and (10) to (14) on sheet 7048 revised.

Leave granted.

Senator XENOPHON (South Australia) (12.14 pm)—I have just received a message from former senator Natasha Stott-Despoja to say that she is listening assiduously. You would have thought she would have had enough of this place not to be listening to debates, but she is listening assiduously, and I am sure she is missed in this place for her skills as a legislator.

I do have to ask of the minister some questions which are relevant to the broad concepts here about a level playing field and fairness. Last year when this was being dealt with I co-sponsored an amendment moved by Senator Ludlam—I suppose we moved it together but it was Senator Ludlam's very good idea—in relation to the issue of equivalence to ensure that when the NBN was dealing with contracts it would do so fairly with the people it was contracting with. There was an exemption there that if there was a private agreement between the parties then the ACCC determination would not apply. So you would not have the protection of the ACCC; you would not have the regulator of those Telstra services, of the copper network in this transitional period, being involved. The concern I have, from information I have received, is that Telstra has been behaving appallingly, that it has been forcing people to enter into these private agreements to escape the scrutiny of the ACCC. That would have been avoided if the amendment that Senator Ludlam moved and I co-sponsored in relation to equivalence had been supported, but it was not.

My question to the minister relates to this whole concept of a level playing field, a fair playing field. Is the minister aware of those complaints from the Competitive Carriers Coalition that Telstra is using or, rather, abusing its market power and position to treat those smaller operators unfairly and to escape the scrutiny of the ACCC? I defer to Senator Ludlam in terms of his experience and expertise in these matters and I would appreciate his input on this because I think he may have heard the same thing. This is a serious issue. While it is not the subject of this bill, it ought to be the subject of consideration by the government as to whether the question of equivalence will be considered, particularly as evidence has arisen in the last few months that Telstra is behaving in ways that are completely unfair to those smaller telcos, completely unfair in terms of their conduct with a view, I believe, to directly avoid the scrutiny of the ACCC by forcing those smaller telcos to enter into private agreements in a kind of ‘take it or leave it’ approach. That is one of the reasons why I think we need significant reform of the telecommunications sector.

Senator LUDLAM (Western Australia) (12.18 pm)—I put a similar set of questions to the minister because they relate to the amendment that Senator Xenophon and I co-sponsored late last year. Senator Xenophon has described it quite well. The amendment that we proposed, which unfortunately was not supported, was to insert effectively a no disadvantage test into the CCS bill that we
were debating which made sure that, at a later determination by the ACCC, clauses in that could be a useful fallback in the event that access seekers had been disadvantaged in this vacuum. We are in an interim now—and eight years is a very long interim; it will be nearly a decade in which this build-out will occur—and there is still a national copper network being operated by Telstra which gives Telstra substantial residual market power. We are hearing from reliable sources, from people at the table right in the thick of this, that that is being abused, which is what we predicted would happen last year. When the amendment went down we reserved the right to revisit the issue if that power was found to be abused, and we have got very good reasons to believe that exactly what we predicted is occurring.

The amendment that we put up was reasonably simple. It provided that, if people were having their arms twisted up behind their backs and the ACCC made a later determination, access seekers would have the right to fall back on the conditions that the ACCC had outlined. That was not unreasonable in November; it is not unreasonable now. As Senator Xenophon has said, it probably is not an appropriate place in the course of debate on this bill to propose an amendment, but we are very interested to know (a) whether the government are aware that this behaviour is occurring, and (b) what they are able to do about it. I will leave it there and see if the minister cares to provide a comment.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (12.19 pm)—As I am sure my colleagues remember, this was an issue that troubled me greatly last time. I think there have been some very valid issues raised. We have in place a new system. The ACCC has more powers and I want to see how that works. But I would reiterate what I said last time: this is something of an ongoing and growing problem which, I believe, the parliament will need to look at. So I give the same commitment that I gave last time, that this is something we will be monitoring and we will be keeping an eye on and if we believe there are abuses taking place then we will be reviewing the situation. We have got a new structure in place, as I think Senator Ludlam indicated, and we should let it work for a little while. But if abuses are taking place then that is not a good policy outcome and we will be welcoming the opportunity to review that.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (12.21 pm)—It is important that we try to get on the record what the proportional relationship is between the three product silos at the start of this process: satellite, wireless and fibre. We know that fibre is used predominantly in urban areas. We know that wireless is used in semiregional, regional and rural areas. We know that satellite is used in remote areas. We know that there is unit pricing within these silos of satellite, wireless and fibre, but there is no legislated relationship between the proportionality of costing that is charged between the silos. As such, the pricing at the start for satellite and wireless might seem reasonable, but we have not properly fleshed out exactly what that is and how that works. As such, there is a concern, as was pointed out—and I am concerned that this is something the government have not quite got their head around in the legislation and that is why it is lacking in this part—that as the capital investment in satellites will sweat out in 10 to 15 years, they will then say, ‘We
have got to replace the satellite.’ We have a multibillion dollar investment in satellites. The company will say it has to be covered for the unit cost provision of a satellite service. The people in regional Australia will get hit for six because there is no way on earth they will be able to afford the price of a phone call, even though there will be, within the proper construct of the legislation, a unit price for that silo which is a satellite service.

Likewise, with respect to the relationship to wireless, in the same instance you can be within the legislation, increase the price, and you can only then rely on the power that has been delivered to the ACCC to bring some sense of decency and fairness back into it. So the proportionality that is now there between the silos is in no way prescribed in the legislation as the proportionality that will be there between these costs silos in the future. This is extremely important because while you might say, ‘Well, satellite is a unit price’, no-one in Sydney is going to use satellite if they have got fibre in the house. Nor are they going to use wireless. If they have got fibre in the house they are going to use fibre. So it lacks relevance. Whether you use satellite in Sydney or satellite in Bedourie, you are paying the same price. No-one in Sydney is going to use satellite, but they are certainly going to be using it in Bedourie or Bollon or Collarenebri.

I want the minister to explain how this process is going to work if, in the future, the benevolence of the current government is gone, we are gone and there is a new government in here called ‘the happy party government’ and it says with respect to regional Australia, ‘We’ve got to get a return, we’ve got $37 billion in debt out there and we’re not going to be subsidising regional Australia; they are going to pay the true cost. We’re within the legislation. The true cost is this, and that’s the price they’re going to pay.’ The ACCC will say, ‘That is the true cost, so it’s fair enough that they should pay it. It is a unit cost. There is no discrimination. Every person on the satellite pays that price.’ The problem is that nobody in regional Australia will be able to afford it.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (12.25 pm)—Senator Joyce has raised some issues that deserve ventilation, in particular, the concern about down the track because, as I explained, once a satellite is put up the sort of product range you can deliver is pretty much locked in. Technologies can improve but the actual physical equipment in the sky, by definition, is very hard to change until you put up a new satellite.

Senator Joyce raises a good point. The government’s position is that the total bill is to deliver affordable, high-speed broadband to everybody. There is a massive cross-subsidy taking place between the fibre users and the wireless and satellite users. The prices being charged in the product range that has been issued by the NBN Co. do not remotely reflect the costs of delivering those services.

We are unashamed and, as I teased you in the chamber recently, you are traditionally an unashamed supporter of this principle as well. We do not resile from that. That will be the ongoing government policy unless somebody else changes it—and you and I both know who we mean by that.

When it comes to actual pricing in the future, the cost of a new satellite is whatever the cost of a new satellite is in the future. We have given the ACCC new powers to ensure that NBN Co. cannot exploit its position. We have given significant new powers to the ACCC.

I know, Senator Joyce, you were tortured on this. One of the great problems when the
vote for the privatisation of Telstra came was that the regulatory framework was devised for a semibenevolent government owned entity. It was upgraded to a Sol Trujillo run Telstra. You needed to give the ACCC steroids just to survive against the onslaught from a Sol Trujillo Telstra. But we have given the ACCC significant new powers to ensure they cannot exploit what is their effective monopoly supply of these services. We do not resile from that. We do believe that those powers are needed and we do believe in the future they will be needed for the NBN Company, unlike those opposite on my left, Senator Joyce, who claim it is a white elephant, it will make no money and it will fall over. We are actually worried about the more realistic outcome, which is that down the track they will have the capacity to monopoly price—

Senator Birmingham—Let’s not verbal Senator Joyce.

Senator CONROY—I think he has asked a very legitimate question, because this is what he is asking about. He has actually moved past the opposition. I would commend to you his statement also that if you have a bit of fibre in the house, you are not going to bother with a bit of wireless. That is someone who actually understands technology. You might even be Bill Gates, Senator Joyce, but the key here is ensuring that the ACCC’s powers are strong enough to ensure that with the product range of satellite they are not able to say, ‘Right, we have paid for the new satellite; therefore the pricing has to reflect the recovery of the satellite cost within the overall budget.’ I understand exactly what you are concerned about. All I can say to you is: Labor will not let that happen. In truth, I do not think you will let that happen either.

It is our policy to ensure that the principles that guide the NBN do not allow full cost recovery by the users. That is absolutely an untenable proposition to the government. In fact, there is a massive cross-subsidy at the moment from the cost of putting up those satellites to the cost of providing a whole wireless network for just four per cent. You look at the price and you think, ‘Wow, how on earth are they doing that?’ Because there is a massive cross-subsidy. We believe in it, we support it and we will not walk away from it. We have given the ACCC the powers to make sure that they cannot exploit themselves. The only people you have to worry about in the future are some of those on the other side of the chamber, Senator Joyce, who always adopt the user-pays principle.

Sitting suspended from 12.30 pm to 1.30 pm

Senator CONROY—by leave—I move government amendments (1), (3) to (6), (8) and (10) on sheet BR282:

(1) Schedule 1, page 12 (after line 22), after item 25, insert:

25A Section 151AB
Insert:

NBN corporation has the same meaning as in the National Broadband Network Companies Act 2011.

25B Subsection 151AJ(7)
Omit “subsection (2) or (3)”’, substitute “this section’.

25C Subsection 151AJ(9)
Omit “subsection (2) or (3) of”.

25D At the end of section 151AJ
Add:

(10) Despite anything in this section, a person does not engage in anti-competitive conduct if, under section 151DA, the conduct is authorised for the purposes of subsection 51(1).

(3) Schedule 1, item 50, page 19 (after line 16), after subsection 152AXB(3), insert:

(3A) Subsection (2) does not impose an obligation on an NBN corporation to sup-
ply a service in circumstances where a refusal by the NBN corporation to supply the service is authorised under section 151DA for the purposes of subsection 51(1).

(4) Schedule 1, item 50, page 19 (after line 34), after subsection 152AXB(4), insert:

(4A) Subsection (4) does not apply to an interconnection at a location that is not a listed point of interconnection (within the meaning of section 151DB).

(5) Schedule 1, item 50, page 22 (after line 30), at the end of section 152AXC, add:

Authorised conduct

(12) If conduct is authorised under section 151DA for the purposes of subsection 51(1), the conduct is taken not to be discrimination for the purposes of this section.

(6) Schedule 1, item 50, page 24 (after line 15), after subsection 152AXD(5), insert:

(5A) If conduct is authorised under section 151DA for the purposes of subsection 51(1), the conduct is taken not to be discrimination for the purposes of this section.

(8) Schedule 1, item 60, page 27 (line 4), after “(3A)”, insert “,(3B),(3C)”.

(10) Schedule 1, item 66, page 28 (line 30), after “(3A)”, insert “,(3B),(3C)”.

These amendments authorise certain specified conduct by NBN Co. required to implement the government’s policy objectives of promoting structural reform of telecommunications and uniform national pricing. The conduct will be authorised for the purposes of section 51 of the Competition and Consumer Act, which has the effect of exempting conduct from the restrictive trade practices provisions of that act. The authorisations underpin NBN Co.’s ability to offer uniform national wholesale prices by permitting NBN Co. to refuse to permit interconnection outside listed points of interconnection, require an access seeker to purchase certain services as a bundle and cross-subsidise in charging for services to an extent no greater than is reasonably necessary to achieve uniform national pricing.

In a statement of expectations issued to NBN Co. Ltd and released publicly on 20 December 2010, the government advised NBN Co. that it will be required to charge access seekers uniformly for services across its network for all technologies and for its basic service offering. The government also advised NBN Co. that it would be able to cross-subsidise from its national revenue flows and offer a common entry-level broadband price structure for all Australian premises across all technologies used in the rollout of the NBN—which I think is very germane to the point you were making to the government, Senator Joyce. It is uniformity of services.

By providing a wholesale only platform with uniform national wholesale pricing, the government will further advance its objective of structural reform of the Australian telecommunications industry. Under the amendments, the ACCC will not be able to require NBN Co. to offer prices that are not uniform nationwide, but it can otherwise reset the terms and conditions of NBN Co. services. Consequential to these changes, the amendments provide a number of necessary definitions—for example, of ‘uniform national pricing’, ‘designated access service’ and ‘listed point of interconnection’.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.33 pm)—Now we have fleshed out the issue of the three different silos and where they provide unit pricing. There is a capacity within each silo—whether it is wireless, satellite or fibre—for them to adjust those prices and still be compliant with unit pricing within that silo, though the relationship between the silos is not there in the legislation. Therefore
there is a capacity for them to jack up the price in the satellite silo. It is unit pricing, yet we end up in a position where those using the satellite service cannot afford the service. We have been told that the remedy to this is to go to the ACCC and they, in their benevolence, will look after us—we hope. We always hope that third-party organisations can look after us better than the legislation can. But that is leaving us exposed.

What is truly the unit? Isn’t the unit we are talking about, regardless of where you are, the megabit of speed? So, if we are going to have true unit pricing, wouldn’t you make that unit pricing standard on a megabit of speed? Then you would have definitive, true and unarguable unit pricing. I pose that question to the chamber and the minister. To the country Independents I say: if you want to truly deliver back to your people real unit pricing then have it in the form of unit pricing on a megabit of speed. Then, regardless of where you are, it is unambiguous. You do not have to worry about the ACCC redefining it. That is the way that we can get around any price discrimination in the future.

I say to the minister: instead of having unit pricing determined by three different silos—fibre, wireless and satellite—in which they can change the pricing, have it as one form across the board—a megabit of speed at a unit price. This would truly enforce cross-subsidisation. It would truly deliver a comparable price across our nation regardless of where someone lives. It would be in a form that would be fair and decent and that people would be able to clearly understand. We would not have to be relying on the benevolence of a third party at a later stage under another government to interpret the fair price. If we could do that then we might actually achieve something that is quite worthwhile.

You say that the way we are going to deal with it instead is by entry-level pricing. We all know that technology advances and what might be entry-level pricing now has no mechanism of increasing its base in a comparable way we can understand in the legislation at this initial stage. So if we have entry-level pricing now it is like talking about the time you had a phone where you wound the handle and spoke to Mrs Bannigan as opposed to what we have now with a computer. We have to acknowledge that technology will advance very quickly, which will make the fact that we have legislated an entry-level pricing irrelevant or, at the very least, extremely clumsy. I say to the minister, if you want to really sell this to regional Australia and dispel what has been rightly put on the front page of the Australian today—and I imagine will be rightly put on the front page of the Australian and the Financial Review tomorrow—we must dispel the capacity for there to be discrimination between the silos of fibre, wireless and satellite and say that we will have true unit pricing across the board per megabit of speed.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (1.38 pm)—I appreciate that the National Party have decided to leap into this conversation after it is over.

Senator Joyce—It’s not over yet!

Senator CONROY—The NBN has issued its pricing. It is there for everybody to see. I have no idea if you have actually checked whether your colleagues agree with your assessment, but agrarian socialism is rearing its head over on the far end of the chamber.

Senator Ryan—We know you did not like the agrarian bit. The socialist bit is all right.
Senator CONROY—I have not been called a socialist in a long time, but thanks for trying.

Senator Ryan—I will do it.

Senator CONROY—I cannot remember the last time I got called a socialist, but I thank you for the attempt. The proposition that you are putting could potentially bankrupt the NBN. I do not think you have the remotest clue of what you are suggesting there. It is not possible to deliver the same product on all of the platforms. It is not possible.

You are now effectively seeking to set pricing principles in a piece of legislation. There has been some constitutional debate about the Commonwealth’s capacity to set pricing principles in legislation. You might want to revisit it. In 1974 I think Joh led the campaign to say that the federal parliament could not set prices in Australia. Maybe you have some new advice, Senator Joyce. If you want to have a debate about the pricing principles, that is fine, but unless you are proposing to put it in this legislation it is not germane to this debate.

I am keen at some stage, like every other colleague, to continue to debate this legislation. If you want to have a debate in another place, such as in Senate estimates, parliamentary committees, Sky TV or wherever you would like, let us do that, but let us not waste this chamber’s time while you decide to go down a rabbit burrow that has absolutely nothing to do with this legislation.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.40 pm)—No, you cannot get away with that. We are not talking about the different forms of technologies; we are talking about the standard unit which has been talked about throughout this chamber—that is, the megabit of speed. That is the standard unit. We are talking about the capacity for you to honour your promise of standard unit pricing. The unit is the megabit. If you want standard pricing on the unit then you must have standard pricing on the megabit, which would mean that a megabit in the satellite is the same price as a megabit in the wireless and is the same price as a megabit in the fibre.

Of course, that would involve cross-subsidisation, but it would be true, transparent and unequivocal. It would enable a benevolent third party, such as the ACCC, to become involved if there is a discrepancy in the future. It is disparaging to comment that any person who disagrees with you is somehow automatically an agrarian socialist. You were the one who talked about unit pricing at the start. We are trying to make sure that, if that is the case, we deliver on that promise.

I say very clearly to my colleagues in the chamber and in the other place: if you truly want unit pricing that looks after regional areas equally then you would have unit pricing on the megabit. You would not get sucked into the silo of saying you will give unit pricing but determine it on three specific outcomes: a unit price on fibre, which is almost exclusively in urban Australia; a unit price on wireless, which is inner regional; and a unit price on satellite, which is remote. That would leave them with the capacity to completely manipulate it and still be within the construct of the act. They could jack up the price on the satellite or the wireless and not be outside the scope of the act. If we want to tie them down, we could have it as unit pricing on the actual unit: the megabit of speed.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (1.42 pm)—If a megabit was a widget you might actually be able to make your argument, but a megabit is not a widget—a megabit is
something that goes down and up. What you are actually seeking to do is to take one definition to try to create a static widget, as I am describing it; whereas, in fact it is about the capacity to go both down and up. Are you saying that it has to be a megabit price for a download, for an upload or for both combined? A megabit is not a widget; it is not an individualised thing. It is the speed of transmission of a packet.

In a normal goods and services type of discussion some of what you are saying may have relevance. I do not know if I would agree with it in all circumstances but I could agree with it in others. But let us be clear: what you are attempting to turn into an inanimate object is actually a transmission speed. It is not a static thing; it is not something you can say, ‘There is a price for this thing’ because it does lots of different things. It is a packet that gets transferred at a speed. It is both sped up and down together. Those are the things that your analysis is short of.

Let me be very clear about this. I put it to you this way, Senator Joyce: there is only one way that you can guarantee that you will see constant benefits for regional and rural Australians, and that is to vote Labor. Vote for the Labor Party and the National Broadband Network. We are delivering more services to the bush in broadband then you have ever dreamed of. You make it sound like there are only a few people going to be on fibre. Something like 70-odd per cent of people in regional and rural Australia are going to get fibre. And you talk about ‘just a few people’ and that ‘it only in the city’. It is not predominantly in the city. The majority of people who live in regional and rural Australia are going to get fibre. And you talk about ‘just a few people’ and that ‘it only in the city’. It is not predominantly in the city. The majority of people who live in regional and rural Australia are going to get the world’s best broadband network to their homes. And your colleagues support a dodgy, leaky wireless network. To give you credit, you do not come in here like Senator Macdonald and cry after Opel, a dodgy wireless network. But let us be clear: your analysis is not based on a widget. The only way is through the Labor Party, which has given the ACCC real powers to deal with bad corporate behaviour, something that those on the other side opposed right to the end in December and which is committed to delivering cheap and affordable high-speed broadband to every Australian, no matter where they live.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.46 pm)—I always know that we have struck a nerve when the response to the question is ‘vote Labor’. That is an interesting answer to a question about the definition of a unit price. I take the minister’s point that it is not a widget. But every person who is involved with this technology talks about megabits of speed, download or upload. So it is the unit which people use to express the service in. So it makes abundant sense, in the delivery of that capacity, for that to be the unit for which you are charged—that is, if you believed in standard unit pricing. What he has done is said, ‘We know that there is this widget called megabits, but we’re going to have different prices for this widget in different silos.’ Some silos will price the widgets in a certain fashion—for example, the satellite pricing for the widget will be different. That is using his terminology. Then we will have the wireless pricing for the widget in a separate silo. Then we will have the fibre pricing of the widget in another silo.

What I am saying is that if you truly believed in standard unit pricing you would not do that. I believe that the general public even to this day are not fully aware that what you are actually doing is splitting the market into three and you will not have standard unit pricing but have three forms of standard unit pricing. You cannot have unit pricing, with ‘unit’ being singular, when you have three different outcomes. The minister is putting forward three pricing structures.
To deal with this confusion, he says that the ACCC will, in their benevolence, come in and devise a way to work out what is fair in looking at the prices in different silos. I have this distinct feeling that that may be a bit clumsy and that it will probably be unfair. Why should the person who is discriminated against have to go through all the bells and whistles of getting a case to the ACCC to prove the point that they are getting too much for their broadband? Why don’t you just make it completely static and understandable? You believe in cross-subsidisation; you have said so. You believe in looking after regional people; you have said so. But now you have ducked around it. And it is because during the construction of the legislation Telstra and the NBN Co. have been extremely smart and said: ‘What we’ll do is talk about unit pricing but set up three different pricing structures. We’ll have a structure for urban Australia, a structure for semi-urban Australia and a structure for regional Australia.’

Minister, you talked about fibre. We acknowledge that they will be taking fibre down streets in suburbs in regional Australia, even possibly my own. But if I go to the edge of my town, where the Moons and the Hills and the Lindores live, that is not in urban Australia. Those people will be in the wireless silo. The way in which we could provide authentic, fair dinkum unit pricing is on a megabit of speed. You ask, ‘Download or upload?’ In that question you acknowledge that the megabit is the unit. You are reinforcing the argument that that unit is the standard one to base pricing on.

In fact, I would suggest to you that when they advertise these products they will advertise them in megabits of download and upload speeds. That is the way they will advertise the product and that is the unit that they will advertise it as. So if you are going to have standard unit pricing you would have it on that, not on an amorphous concept of a possible product at an entry level. And even when talking about an entry level, it is talking about an entry level product at the start. We cannot determine into the future what these products are, and we know that technology will quickly leave these products behind. How to determine it is something that I think we could, if we wished to, quickly get our minds around.

I think there is an issue here that we need to delve into because there is the capacity here, most definitely. We always try to push legislation through, and to get the benevolent statement at the start. But the reality provides something entirely different. I say, again: I am sure with all the work you have done you could quickly come to a unit price for a megabit of speed. Whether you add the two together and divide by two is up to you; you could do it, but you choose not to. This is something that is extremely important for the country Independents in the other place to clearly understand, because it was their representations at the election which were fundamental to this promise.

I want to hear if the minister acknowledges that the megabit is the unit. Is there any other fundamental calibration of speed that is out there that we could use? Surely, if you want to use a unit price it would be the unit price on the calibration that is used in the marketplace right now, which is the megabit unit of speed? I have looked at some of the other legislation amendments on the table and they are extremely good; I note Senator Xenophon’s and Senator Ludlam’s. Every person is trying to get to the point where we make sure that there is fairness.

The capacity is there to deliver fairness, and we could do it very quickly. We can stay here today and we could stay here tomorrow. We have the capacity to do it: we have a clerk who is down in the room there, and all
we have to do is say that the unit which the standard unit pricing will be based on is a megabit of speed. In that, we would have truly delivered the surety of cross-subsidisation to regional areas in a real way. We would definitely have given the guarantee of fairness in pricing, and then if a product cannot deliver the bells and whistles that it does in an urban environment it should be made fair by reason that the product in a regional area will be substantially cheaper. It would have to be.

But where will we be if we do not? We will leave ourselves open in regional areas to manipulation, where they will jack up the price on the silo of pricing that is satellite and the silo of pricing that is wireless. They will be completely compliant with the act but completely unaffordable for the people who need to use it. What the minister’s legislation does not do is draw a line of comparability between these different pricing structures, and a pricing structure that deals with a megabit of speed would do that. The connection you have to show to this chamber and to the Australian people is how. What is the form? Take me to the place in the legislation that expresses how we are going to deliver parity and fairness to people in regional Australia, and the mechanism by which you would do it. It must be more definitive in the legislation than to say that if you suspect something is unfair that you will take it to the ACCC, because that is an amorphous statement about something which so many people would not have the capacity to do.

Senator PARRY (Tasmania) (1.55 pm)—I would like to reiterate Senator Joyce’s point and in that way overcome the standing order provisions so Senator Joyce can speak again, asking the minister if the minister will answer Senator Joyce’s question. The minister is not listening. I am prepared to pause for a moment to allow the minister to listen to the question.

Senator Conroy interjecting—

Senator PARRY—Sorry, Minister; I have not finished.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Senator Parry has the call.

Senator Conroy—Sorry, I thought you’d finished.

Senator PARRY—No, I—

Senator Conroy—I thought you’d finished. I wanted to give a response.

Senator PARRY—I just wanted to address the question that Senator Joyce has been asking. You failed to answer Senator Joyce, so I am asking: could you answer the question directly asked by Senator Joyce so we can all hear the answer. It is a very valid question.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (1.55 pm)—Senator Joyce has raised a whole range of issues across the whole gamut of the NBN, so let me be clear: very few of them have any relevance to the committee stage of this bill. If Senator Joyce would like to ask about, seek information on or debate the bill, I will happily do this. What Senator Joyce is seeking to do is bring a whole series of totally spurious issues into the chamber today. They are valid issues to have a debate about, Senator Joyce and Senator Parry—they are very valid issues—but we are debating some amendments before the chair, and these are clearly not relevant. If Senator Joyce wants to debate issues of substance on the bill, I welcome that, but I am not going to be drawn into a lengthy debate about what Senator Joyce wants to talk about even if it has nothing to do with the bill.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.56 pm)—It is
entirely relevant. We, in this process, are making up our mind as to whether we vote for something. We vote for something based on the principle of whether it is the best proposition or if there is a better one. What they are talking about now is the fairness and structure of pricing. In talking about the fairness and structure of pricing, what we have determined this morning in this process thus far is that there is not unit pricing as people would have understood even in reading the paper this morning; there are actually three forms of pricing structures.

When the government talked about unit pricing, everybody thought it meant one unit—one way of pricing across the whole market. But we have found out this morning through this investigation that we actually have three units. We have the fibre, which goes to urban areas—Sydney, Melbourne, Brisbane and other major capitals and big regional towns. Then we have wireless, which is for people who live on the peripheries. Then we have another pricing structure for people in the remote areas, with satellite; as a National Party representative, I am bound to try to look after them as best I can. Because we have three pricing structures, we do not have unit pricing.

So we have to go down to what the fundamental unit is. Any person who has internet—a computer—and teenage kids that send them broke knows what they are paying for: they are paying for the megabit of download or upload. That is it. When they sell the product to you, they sell it based on that. They sell it to you as this megabit of download or upload. What we are saying is that if we are going to have true unit pricing then we should not have it in this sort of amorphous silo concept. We should say: ‘You said there would be unit pricing, people believed you meant unit pricing and therefore unit pricing should be based on the megabit.’ It should not be a different price per megabit at Bowen, another price for exactly the same megabit at St George and another price again for a megabit in Sydney, because that is not unit pricing; that is three entirely different concepts.

The reason it is important that we deal with it now is that we have the amendments coming up. This is it. After this, we make the legislation, it goes through and the good people of Australia go out and borrow $27 billion and then another $10 billion on top of that, and that is it. You borrow it predominantly from the people in China, the Middle East and all around the world, and you have to pay them back. They are not giving you the money; you have to pay the money back.

What I am worried about is that, because we have that demand that is going to come in that we pay that money back, what they say at the start will not be what they say at the end. What they say at the end will be something completely different, because the boffins will come in and say, ‘We’ve got to pay this money back; therefore, we’re going to have to start really ripping into some people.’ They will go out to regional areas and say: ‘Oh, that service doesn’t really pay for itself, so we’ll just start jacking up the price. What we hope is that they’ll shut it down. If they shut it down, that’s good: we save money. If they turn off their phones, that’s good: we save money.’ But that is not how our nation works—it is not supposed to work that way, anyhow. We have to have cross-subsidisation so they get a service, so we must have the mechanisms in there that deliver that cross-subsidisation. The way we should do it is to get an authentic unit pricing. Authentic unit pricing would be based on a megabit of download speed, not on some sort of peculiar dividing-up of Australia into three different classes of people. ‘Unit’ is a term that means ‘one’, but you cannot have a unit when you have a depressing troika—that is, three. A troika is not a unit. A troika is a troika. If we
are going to have unit pricing, it must be based on a unit, not on three different silos of outcomes.

The minister is bending and weaving here, trying to get himself out of debating this issue, so he throws in things like, ‘We shouldn’t be talking about this now.’ Well, if we do not talk about it now, when do we talk about it? Do we talk about it after it is done? He said, ‘We’ll talk about it on Sky News.’ You heard him. What use is that to the Australian people? The bill is gone. I cannot talk about it on Sky News, not on 7.30, not on Lateline; we make them in this place. That is why it is so peculiar that the minister says: ‘I’ll debate you later on.’ Later on, it is gone; it is all over. We have to debate the issue here. That is why we have to try and get the minister to make a commitment. If he makes a commitment now, which he can do and he is totally entitled to do, saying, ‘The unit pricing will be based on a megabit of download speed,’ the problem is solved and we continue on. If he does not, it will just further increase the problems for people in regional areas. People in regional areas work on the division of labour theory. They do not have the time to sit down and study the legislation. That is our job—what we are paid for. So we have to go to their defence, which means that, having dug up this issue today, having discovered it, we now have to try and resolve it as best we can.

The minister is now in desperate conversation with Senator Xenophon and Senator Ludlam. We have been accused of being agrarian socialists. That is what they throw at you when they do not quite know what to say. I have always said, ‘What’s the problem with being an agrarian socialist? I’ve been one for a while.’ But it is a disparaging term that they throw out. We have one of Senator Xenophon’s amendments coming up which touches on this issue in a way, but we could take it to the next step and do it in a very clear and transparent manner. Now, while Minister Conroy is talking to Senator Xenophon and Senator Ludlam, he is obviously not listening to me, so I am going to have to keep on talking until such time as he stops talking to those two blokes at the end.

The issue is: how are we going to be able to leave this chamber and say to someone, honestly, that what we have delivered to a person in Coonamble is the same unit pricing, in the form of a megabit of speed, as we have delivered to a person in Sydney, which is the same as we have delivered to a person in Limbi? They might not have access to the fibre; we know that. They might have to work off a satellite; I understand that. I know it is not possible to provide fibre to all of Australia; we understand that. In fact, we were at the forefront in saying you should put in fibre trunks and then let the end part be delivered by wireless, because that would be vastly cheaper and something we would not have to borrow so much money to do.

How Labor hooked people in at election time, when they were negotiating who was going to run the country, was by saying it was all about the NBN—the NBN was a great outcome. Labor sold it to the people, but it has now become apparent, at this eleventh hour, that what they have sold people is not actually what people thought they were getting. What they have sold people is three different possible outcomes, and they are not willing to put the way to solve it in the legislation. If they were really fair dinkum about it and said, ‘We really do want unit pricing,’ then they would put it in the legislation and the minister would say, ‘I move an amendment to the legislation, and then it is yours, the Australian people; you’ve got it, locked in.’ But he will not do it.
So we have got these weasel words and this wriggle room. Everybody will think they have got unit pricing, but they will not. Then at a future time they will jack the price up and those who live without multiple hospitals and without multiple childcare centres and do not have the good roads and do not have the ports will just get another form of discrimination against them: they will not be able to afford broadband. All the arguments they put up about broadband advancing regional Australia may well be the truth, but it is not much good if you cannot afford it. The legislation that they have drawn up allowed a mechanism for it to discriminate against a certain group.

This legislation is discriminatory; it divides Australia into three different classes of people. If you want to break down that discrimination you would have true unit pricing across the nation, and the unit, as everybody understands, is the megabit speed. Megabit speed is exactly the same in definition in Bedourie as it is in Sydney. So why do we have different prices for it? And why, if we do have different prices for megabit speed, are we calling it unit pricing? It should be called something entirely different. The problem that we have is that the House of Representatives is going to come back on Monday and it is absolutely vital that they understand this. An amendment should be moved, no matter whether it is in here or the other place, to try to deal with this problem.

It is just as ridiculous to have three silos of pricing as it would to have three silos of voting. Even in this nation it is one man one vote no matter where you live. So why is it that we have got three different forms of pricing of megabit speed of broadband? We have to walk up to the mark, and we can do this, and make sure that the minister removes the discrimination against those in regional areas, in the future, by locking in what is the authentic definition of the unit, and the unit is megabit speed. If the minister does not do that you will have to wonder if you have been taken for a ride. You will have been taken for a ride and the result will be that you will get touched. At the end of the day they will come back and say, ‘Ah, we will take that to the ACCC.’ But it will go there and disappear down a rabbit hole and then someone will come out and say that someone has been naughty and you may get a little tweaking of the pricing. But the NBN and Telstra know that you have nowhere to go. It is their definition of how they do it.

This is how we could lock in fairness. If they vote for anything but this, they truly are voting for different parts of Australia having different rights—different rights, different price. It may be that that is what you want to do but you should say it upfront. You should say, ‘I have no desire whatsoever to provide unit pricing. I desire to provide a mechanism to delude the people around me that they are somehow going to get a unit price when in fact they are getting three different pricing structures.’

It will be interesting to see if the minister will explain why you would not have unit pricing on the actual unit, which is the megabit speed. If you do that then you will have honoured your promise. If you do not do that you are relying on us to hang around here for eternity fighting the cause for getting things to go to the ACCC or fighting the cause to try to bring about fairness. You will be doing it from a nebulous position of interpretation of the act, where something means all sorts of different things to different people. When I go to a fuel pump I buy a litre of petrol. I know what it is and I know what it costs—it is a unit cost. If I believe in unit pricing of petrol, I imagine it would be priced per litre no matter where it was. If you do not believe in that, that is fair enough. But that is not the promise they made. They promised unit pricing, and unit pricing
should mean exactly that. The minister has to explain why they have developed a troika of unit pricing—a unit price for the urban areas, a unit price for the regional areas and another unit price for remote areas—but they will all be sold products and dealing with issues that concern the true unit, which is the megabit speed.

Senator BUSHBY (Tasmania) (2.09 pm)—I have listened to Senator Joyce very closely over the last 15 minutes and I think he has made some excellent points about pricing. I am particularly interested in his comment that the current legislation pricing may well discriminate against some Australians vis-a-vis other Australians and in his suggestion that we should price by megabit instead. I would like to hear a little bit more about that and explore it a bit further, so I wonder if I could request that of Senator Joyce.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (2.10 pm)—It is great that Senator Bushby has said this. The minister, obviously, will not go to his feet, and when the minister does not go to his feet it is because he does not want to answer your question. What you have to do when the minister does not go to his feet to answer the question is just keep his hand on the hotplate. You keep him here until he looks like he is going to jump to his feet and answer you. You have to remember that our nation is $184.6 billion in debt. Our national debt last week went up by $1.8 billion. They did not build a hospital. They did not build a road. They did not build an aircraft carrier. They just could not make their revenues meet their expenses by $1.8 billion. And now, with this, they will go out and borrow another $27 billion and on top of that they will borrow another $10 billion. Someone has to repay it. All we do around here is administer it. The people who pay it are you people—you pay it back. We just work out how much we are going to charge you in tax; that is all that we do. That is why these things are vitally important.

If we are going down this path—to be honest, it looks as if, unless we get this thing fixed up, it will probably go through—surely the one thing we can provide to the people who are going to repay it is to honour our promise of unit pricing. But we are not getting that, so this is an issue that is so vitally important for us to try to get resolved. The minister knows that a megabit of speed is the speed—you do, minister, don’t you? You know that a megabit is what they talk about. They do not talk about it in widgets; they talk about it in megabits, kilobits and gigabits. You can take your choice, which unit it
is, but it is standard. A bit is the standard and
the megabit is the usual term. I imagine in
the future it will be gigabits, but megabit is
the term at the moment; that is the unit. What
we have discovered is that you are not pre-
pared in any way, shape or form to truly get
to the point of answering the question to the
Australian people. This is part of the process
you have followed for quite a period of time,
like the time we were on Sky News and you
did not know that NBN was actually in one
of the access regime’s pieces of legislation.

Senator Conroy interjecting—

Senator JOYCE—You said that NBN
was not in there, but it was actually in there
54 times. Now one of the serious problems is
that legislation, because Optus have gone off
their head. They feel that what we are setting
up is not only a monopoly but also a monop-
oloy that does not have to abide by the ACCC.
It exempted the ACCC from its oversight
process in key areas of how NBN works.

I would love to know what the views of
Mr Windsor, Mr Oakeshott and Mr Crook—
in fact, of all the Independents—are about
how they are going to sell the issue of unit
pricing when they do not actually have unit
pricing for their people. A large section of
their people will be put into two silos, which
will be priced entirely differently to the pric-
ing of urban Australia. The Independents
stood up for—and it is good that they did—
having no discrimination against regional
Australia. But if we pass this in its current
form that is exactly what will happen to them—they will be discriminated against.
And we can put it in big placards: ‘This is
the price of a megabit in Sydney; this is the
price of a megabit in Tamworth. This is the
price of a megabit in Attunga; this is the
price of a megabit in Guyra. This is the price
of a megabit in Bedourie; this is the price of
a megabit in Hastings.’ This is what you will
get when you have unit pricing: different
prices for different people, depending on
where they live. It is a form of telecommuni-
cations pricing discrimination. You might
say, ‘That’s what I want,’ but you should just
say it at the front. You should be upfront and
not try and work on the theory that no-one
will actually read the legislation and so they
will never actually know what you are up to,
because people do. They do read the legisla-
tion and they do find out what you are up to.
Why should we be cautious about this?

What happens now is that other people
come in and start talking to the minister. But
we will get the minister in the end. We might
have to keep him here all night, but we will
get him in the end. Then there will be a pa-
rade of people that will surround the minister
so he does not have to talk to the Australian
people. This is live theatre for you. He will
have a glinting, smiling look because he does
not really want to answer the question—but
he is hearing exactly what I say, and he feels
terribly uncomfortable. So we will just keep
driving it into him till he gets to his feet and
answers you people. He throws his hands
around, gesticulating: ‘I am not listening to
you, I support Chelsea’—all that sort of
stuff. But sooner or later the minister will
make the commitment to get to his feet and
answer the Australian people. We are not
going to let him off the hook. We are going
to keep him here all day and all night. We
will come back tomorrow. We will be here
till next Monday. I do not care.

But you will answer the Australian people,
Minister; otherwise, I think it would be
pretty much incumbent on other people not
to vote for your legislation. That would seem
like the fair thing to do. If you are not pre-
pared to answer the Australian people, I
think it would be pretty fair for the Austra-
lian people to presume that this chamber
would not support your legislation because
you chose not to answer their questions. All I
am doing is asking questions, on behalf of
the Australian people, about why you are going to discriminate against certain sections of Australia—or why there is the capacity for that in the future, even though your thoughts at the front end might be benevolent—and why you are allowing to go forward a piece of legislation that has the capacity to discriminate against sections of the Australian people in the future.

Why is that? Is it that Telstra, NBN or someone else has got in your ear and managed to get around you on this issue? Is it that they have said, 'The way we’ll get this business plan to work is to create the structure at the front end but give ourselves an out down the track, and the out down the track will be that we will cut the services to that final silo'? We will see soon if the minister is going to get to his feet. No, he is not. He is going to keep talking to other people. We can do this all day. I am quite prepared to stay here all day. I think everybody knows what we are doing here. This is about getting the minister to his feet to answer the Australian people.

Senator Polley interjecting—

Senator JOYCE—Senator Polley continues to interject because that is Senator Polley’s job. She has not got a clue about the legislation—not a clue. She has just been sent in here to scream across the chamber. One of the Labor tacticians has probably rung her and told her to come into the chamber to do that. That is how it works. It does not look like the minister is going to answer us. But we can keep doing this. After I sit down, Senator Bushby will stand up, and then I will stand up again. And, Minister, I will keep you here all night and all day, until you answer the question. You can bring this to an end by getting to your feet and answering the question.

You should get to your feet and answer the question as to why you have decided to have three forms of pricing and to allow future discrimination against sections of Australia, because the unit you use is not the unit that they believe it is. They actually have not got a unit pricing per megabit. They have got three silos of pricing. Some of them will be priced per the satellite silo; some of them will be priced by the wireless silos; and the vast majority will be priced by the fibre silo.

We have discrimination—for the price of $37 billion of borrowed money. That is $27 billion upfront and then another $10 billion later on. For what? For the largest borrowing that this nation will ever do for a project—bigger than the Snowy Mountains scheme. They are borrowing more money than for the Snowy Mountains scheme. So the Australian people have got a right to ask because it is the taxpayers who have got to pay it back
and they should get some sort of social benefit from it, in parity across the nation.

So we will see this: we will sit down, but the minister will not get to his feet, because he is not going to answer you. He believes he is better than you. That is how the Labor Party works. That is how they came up with the idea of telling you that there was not going to be a carbon tax. And then they had the election, which you all voted on, and then they told you there was going to be a carbon tax, because they think you are stupid. They treat you as fools. You watch—this is another example of how the Labor Party works: I will sit down and he will stay seated because he does not want to answer your question.

Senator BUSHBY (Tasmania) (2.21 pm)—Once again I thank Senator Joyce for his very worthwhile contribution, and one that is very much on the point. I am particularly interested in his comments about how the minister is avoiding actually answering the questions and about the need for proper scrutiny of these bills, because this really is a fundamental and major change that this government is looking to put forward. And it is trying to do it essentially in the dead of night—at the end of a sitting week, when they have extended the hours to rush something through of which we had no advance notice. We only received the amendments, I think, on Wednesday night. And here we are: being forced, with unplanned sitting days, to have to deal with those without a proper chance to have a look at them.

Malcolm Turnbull, the member for Wentworth and the shadow minister for communications and broadband, put out a media release yesterday which dealt with some of these things. He noted that, from the very beginning of this process, Senator Stephen Conroy had avoided all manner of public scrutiny on the project and yet had argued up to that point that he was not about to replace one vertically-integrated monopoly, in Telstra, with another in the NBN Co. Mr Turnbull said:

We were told that the NBN Co would be tightly regulated and act only in the public interest … And now, at the very last possible moment in this debate, in a matter showing complete disregard to the workings of parliament, he has sought to exempt the NBN Co from ACCC supervision of its most important operating decisions, such as price discrimination, bundling of services, and points of interconnection.

These are the matters on which the minister has delivered to us, at the last minute, amendments. These amendments have been put before parliament and parliament has been asked to consider them—without any prior notice and without any proper opportunity to scrutinise them.

That is why we are here today and why Senator Joyce has rightly called on the minister to stand up and address these matters—to deal with the concerns that we are uncovering as we look at these amendments. We have got all weekend if we need it. We are going to stay here and keep on asking you questions, Minister. We will keep on calling on you to actually address these concerns, because this legislation is going to have a huge impact on Australians and we want to make sure that those impacts are impacts that Australians should suffer, not ones that you impose without any knowledge of or care about what they might be.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (2.24 pm)—It is interesting—the minister mustn’t be able to hear us. Can you hear me up there? Well, he cannot hear us. His job is to sit here and not be able to hear you. For people who have just joined us, what we are trying to do is get the minister to answer a question. This can take a long while, apparently. It is a very simple question. It is a question of why, when they talk about unit pricing—as we all
know a unit price, Mr Temporary Chairman, is about a megabit of speed—they have divided Australia into three different groups. We have one price for a megabit of speed on fibre, which is generally in urban areas; we have another price for a megabit of speed for wireless, which is sort of in semi-urban rural areas; and we have another price for a megabit of speed in satellite areas. He has actually got three different pricing structures and he told us he would only have one. We are trying to get him to answer, but we are not having much luck. What he is doing is sitting there—and he can hear exactly what we are saying—but he refuses to answer us.

But he is not refusing to answer me; he is refusing to answer you. He is refusing to answer the wonderful people, about 60,000 a day, who listen to us on broadcasts. They are sitting back driving along the Gold Coast Motorway or driving up the Ipswich Motorway saying, ‘Why won’t the minister answer the question that has been put to him? Why do we have a unit pricing that doesn’t actually reflect the unit that every person buys?’ When everyone talks about downloads they are talking about a megabit of download and a megabit of upload—that is it, that is the unit. But the government are not doing it that way. They are doing it in three different forms in Australia. They are saying that people in the urban area on fibre will have one unit pricing structure, then the people on wireless will have another unit pricing structure and the people on satellite will have a different unit pricing structure.

What is dangerous about that is that in the future they will just jack up the unit price—it might not be the minister; it might be the person that comes after him—on satellite so that people cannot afford it. Even though they cannot afford it it will not be outside the act. It will still be completely and utterly legal. The act does not talk about the relationship between these different silos. So what we are trying to do here is to draw that relationship between those three silos into one and say that your real unit pricing is a megabit of speed. Why doesn’t the minister have a pricing on a megabit of speed? He is never going to answer you. This is where the Labor Party is taking the Australian people for an absolute ride. This is what we have to deal with in this place. This is the problem we have. We have to sit here and never get answers to these questions.

It would not matter so much except that you people have to borrow $37 billion for this privilege. You have to borrow $27 billion and you borrow the most money from, predominantly, the Chinese government, then via trusts in the Middle East and then a whole range of other places. But you have this big debt building up in Australia. You actually have $184.6 billion in gross debt and all this money sits on top of that. Then you have the money that the states owe and it just goes on and on. We have to be diligent, because all we are thinking about is that one day we will have to pay this money back.

In the meantime in setting up this process the Labor Party told the Australian people that they would be fair to everybody. Fair to everybody meant unit pricing and we agreed with that. But the problem is that they are not actually providing unit pricing. They are providing three forms of pricing which allows discrimination against areas in Australia. That works completely at odds with what the Independents negotiated when they put them in government. It is only really in the last hour or so that we have dug this out—and now we are trying to get the minister to reply to us, but he will not. That is a picture, ladies and gentlemen, of how the Labor Party works—complete and utter arrogance and complete and utter distain for getting the truth out and talking to the Australian people.
The minister has the capacity to get to his feet and answer the question but he chooses not to. He is just not going to do it. If he were courageous, he would. He would say, ‘No, I’ll take you on. Let’s go.’ But he is not going to do it. It is not that he is not answering me, because I am totally aware of how the political game works; he is not answering you. What choice do we have? Do we just sit down, capitulate and let him go on? Do we let him borrow the $37 billion, let people get discriminated against and let people in certain sections of Australia get done over in the future? Or do we hold him there and keep holding him there until he answers the question? This is the sort of situation that we are in. It is extremely important for the Australian people to understand exactly how this works. It is extremely important that people like Mr Windsor, Mr Oakeshott and Mr Crook clearly understand exactly what is going on and how this works. If they do not, we are not doing the job that we are paid to do on your behalf.

This is going to be a very interesting time. We had the capacity to defer this till Monday and come back and do it properly, but they would not even do that. They are trying to railroad this through. They do not want us to go home and come back on Monday and do this properly; they want us to stay here until they get their way, even though they will not answer us. So we have to keep their hand on the hotplate. This is the key issue that we can do it on. So we keep saying: Minister, why won’t you deliver unit pricing based on a megabit of speed rather than on your devised method of creating three silos and having the capacity in the future for people in different areas to be discriminated against because they can jack up the price on satellite or wireless and still be within the confines of the act? The only remedy for those people, because it is not definitive in the act, is for them to go to the ACCC. I do not know whether the people of Bedourie, Blackall or Cowra have the capacity in their own right to mount a case for the ACCC. It would be so much easier if you actually put this in the act, which I know you can. You can stand up now and do it. You can stand up now and at least answer the question.

The longer you stay there, the longer you refuse, in a fit of pique, to get to your feet and answer this question for the Australian people, the more ridiculous you look. We can keep you there all day and all night until you decide to answer this question. I know you can hear me, Minister. I know you have lots of affectations but deafness is not one of them. I know you can hear me perfectly. I know you are looking at that paper thinking, ‘I wish he would shut up.’ I bet you are thinking that. Yes, he can hear us, but he is not going to answer. He will stare blankly at the seat. He will do anything but catch my eye. He can hear us, but he cannot answer us. Now you see why we are fighting so hard to try to stop this. Now you know why we are fighting in such a torrid fashion to try to stop this legislation going through. That is the expertise we are up against.

We have got a whole range of problems that are arising here. First of all, they never had anything organised before they came in. They have desperately been running around trying to get all their ducks in a row. Then we found out that we do not actually have unit pricing; we have a discriminatory pricing structure that was probably developed by NBN or Telstra under which they can deliver three different products with three different prices so that a megabit of download speed will be priced differently depending on where you live. Next, we know that we have a minister who has the capacity to fix that problem but decides not to and, in fact, feigns deafness. Finally, we have the issue that you are about to borrow an incredible amount of money for this. They never did a
cost-benefit analysis on this. This is the biggest investment our nation has ever made and they never even worked out whether it could pay for itself. That is how they deal with your money. They do not care that it will not pay for itself because you are going to pay for it for them. That is how it works. This is why we have to try to keep their hand on the hotplate. This is just dealing with the technicalities of the legislation. The promise they made is not the promise that has been delivered.

The minister is going to stare at the ground or burn a hole in that seat next to him—anything but answer this question. It is almost like modern art watching you, Minister. It is some sort of generic pose to say, ‘I can’t hear you,’ but you actually can. I know you are in there, Minister. Come out, come out wherever you are! Come talk to us, Minister. We just want you to answer the question as to why you are not providing unit pricing. I know you can hear us. Minister, are you there? No, he has gone back to sleep. We will keep you there. Soon I will sit down and Senator Macdonald will have another lap at you. We will have a lap at you all day because you are not answering the Australian people. Senator Macdonald has got lots of people who are going to be discriminated against. Senator Macdonald is also very fascinated at how we have three silos and three different pricing structures. As a good senator for North Queensland—in fact the best senator for North Queensland and, at times, I believe the only senator from North Queensland except for Nigel—he will have to go back to his people in North Queensland and explain to them that, if you are in the fibre silo, you will have one pricing structure, but if you are out at Richmond, you will probably be in the satellite silo so you will be on a different pricing structure.

Even though someone in Sydney is using a megabit of speed, that person’s megabit of speed will be vastly cheaper than your megabit of speed. They will be discriminating against you, but they told you they would not. There might be a member up there—maybe Bob Katter, the member for Kennedy—who would be very interested in how people are going to get discriminated against. I bet Bob Katter is watching this and thinking: ‘Hang on—my people are going to get discriminated against. They are not going to pay the same price per megabit of speed that someone in Brisbane pays; they are going to pay an entirely different price.’ And the people at Julia Creek are going to pay a different price. They will all have to work out which pricing silo they are in. Are they in the fibre pricing silo, are they in the wireless pricing silo or are they in the satellite pricing silo? When the satellite becomes redundant and they have to put up another one, they could set an absolutely incredible price for a megabit of speed, which means that nobody could afford it and they would still be within the act—they would still be allowed to do that. Then people say, ‘Well, if you have a problem, take it to the ACCC.’ And the ACCC will look earnestly and ponderously at the legislation and say: ‘Sorry, we cannot help you. It is within the act.’ They will say: ‘You have entry-level pricing, but that went out of date in 2011. The technology that was entry level then is completely and utterly useless in 2015.’ That issue has not been dealt with. I will sit down, and Senator Macdonald will stand up, and the minister will never answer you. It is as though, if he stays still any longer, he will end up in a front garden with a gnome’s hat on.

Senator IAN MACDONALD (Queensland) (2.36 pm)—I can just see Senator Conroy in the front garden as a garden gnome.

Senator Fisher—An NBN gnome!
Senator IAN MACDONALD—Fit for purpose—an NBN gnome! But, Minister, I am seriously concerned about these amendments. First of all, I would be fascinated to hear your answers to Senator Joyce’s questions. For anyone listening to this debate, this is what is called the committee stage of the debate. That is the time when senators, on behalf of the Australian public, can go through the bill clause by clause, look at exactly what the clause says, look at the understanding and make sure that it is in accordance with what the government thinks it wants. Also, as the opposition we want to scrutinise it as clearly and precisely as we can so that Australians know what this is all about. Australians do know that we all want a very fast broadband service.

I keep saying, of course, that had the coalition won the 2007 election—and we did not; we were beaten fair and square, although I cannot say the same about the 2010 election, but certainly in 2007 Labor won and they cancelled the then coalition government’s broadband proposal—it would have, about a year ago, provided fast broadband for everybody in Australia at a cost of about $5 billion. Rather than that, we have had Senator Conroy floundering around for the last three years. I think he has had about five different changes of approach to the National Broadband Network, and now we are left with something that will cost the Australian taxpayer upwards of $50 billion for a service we could have had for about $5 billion. That is why we on this side are concerned about it. We simply know that Labor cannot be trusted with managing the economy or the money.

I have looked at these amendments, and I specifically want to ask you this. As I understand these amendments, the ACCC will lose any power over cross-subsidisation services by NBN Co. I understand that at the moment the ACCC has to authorise such behaviour. As Senator Joyce has been pointing out, this is an issue that is of great significance and interest to the people of regional Australia, where I come from, where Senator Joyce comes from and where Senator Fisher comes from.

Those of us on this side represent all of Australia. I think I would be unchallenged in saying that every one of my Labor opponents in the Senate comes from a capital city area. On this side we have a clutch of senators, if not a dozen senators, who actually live in the bush and understand these issues.

Through you, Madam Chair, I ask the minister: is that correct; will the ACCC lose power over that cross-subsidisation of services? Minister, I am interested to hear your answer to that. I understand that you and Senator Xenophon have done a deal over lunch. This is great, isn’t it? This legislation has been going for three or four years now, and we are debating something that changes by the minute. How do we know quite what to debate?

I understand that over the lunch break Senator Xenophon and the minister have done a deal on some new amendments. Quite frankly, Minister, I have not had a chance to absorb them fully yet. I do not have 2,000 staff in the department, as you have, to assist me with these things. My one staff member and I are trying to work through these amendments that you have just done the deal with Senator Xenophon on. I think I am right in saying that these amendments have not been brought forward yet. They have been tabled but have they been discussed yet?

Senator Ludlam—That’s right.

Senator IAN MACDONALD—So perhaps I am being pre-emptive with my question. I do again thank Senator Ludlam for answering the question that one would have expected the minister to answer. As Senator Ludlam confirms, we have not actually gone
on to discuss what I might call the ‘Xenophon amendments’ yet. My preliminary reading of those amendments tells me that we are actually addressing the issue that I am raising now. But I am only dealing with the amendments put forward by the minister, which we are actually dealing with now. Minister, I do not want to delay the debate. We are very keen to have this properly debated and to bring it to a vote.

I know that those who followed the debate will appreciate that I did not take part in the debate this morning, although I have a very keen interest in this issue. I did not take part in the debate this morning because clearly Senator Conroy was filibustering. He was delaying the debate while his department and Senator Xenophon and his advisers and the Greens and their advisers scratched together yet another amendment to this very complicated series of bills that have been amended, after amended, after amended. For that reason Senator Conroy spent most of the morning babbling on, not saying anything but simply filibustering to give his department and the Independents and the Greens time to stitch together yet another amendment to this very complicated series of bills. I did not take part this morning for that reason. I knew it was just a filibuster by Senator Conroy. But I am very keen now, Senator Conroy, as we get on to your amendments which you are asking us to adopt. As I understand it, that is schedule 1, items (50), (60) and (66), amendments (1) to (11) on sheet BR282. Minister, is that correct: do your amendments take away from the ACCC the power over cross-subsidisation?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (2.44 pm)—Thank you, Senator Macdonald. Can I thank you particularly for asking a question about the bill. It is particularly pleasing after the last 45 minutes when not a word that has been uttered has been relevant to the bill. It has been excellent of you to come and actually ask about the bill. On the point that you asked about: yes, there is an amendment due to come forward from Senator Xenophon. I am sure he would like to have moved it by now, but he has not been able to get the call among all the excitement at your end of the chamber.

The TEMPORARY CHAIRMAN (Senator Kroger)—Minister, can you address your comments through the chair.

Senator CONROY—My apologies, Madam Temporary Chair. Through you: I am sure Senator Xenophon would like the call so that he could move his amendment. That would perhaps inform the chamber, and then we could have a fuller discussion on the point that Senator Macdonald has raised. So, if other senators are willing to allow Senator Xenophon to move his amendment, I am sure that we can then have a serious debate about it.

The TEMPORARY CHAIRMAN—Senator Macdonald, if I could just clarify: we are actually discussing amendments (1), (3) to (6) and (8) to (10) on sheet BR282. So it is (1), (3) to (6) and (8) to (10)—

Senator Ian Macdonald—Within the parameters of (1) to (11).

The TEMPORARY CHAIRMAN—Thanks, Senator Macdonald.

Senator CONROY—If I could just explain to Senator Macdonald: we have not moved the specific amendment that you are referring to at this stage. As soon as we have voted on this group of amendments, we will move the relevant ones, and Senator Xenophon will then move his amendments. But we cannot get to your very serious and specific question on the bill until after we have completed debating these amendments.
Senator IAN MACDONALD (Queensland) (2.45 pm)—I thank the minister for that answer. You will excuse me for being slightly confused. We have dealt with all the other amendments. On our running sheets, there are two pages of amendments. We have gone right through to the end, bar the last one, as I understand it, and now we are going back to the first group of amendments. So I thank the minister for enlightening me.

The government amendment dealing with the ACCC is not, as I understand it, going to be moved because the new deal with Senator Xenophon is going to override it anyhow. Is that a correct understanding?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (2.46 pm)—We will move our amendment, and then Senator Xenophon will move an amendment to our amendment. But we are not in a position to do either of those things yet, and I cannot speak to Senator Xenophon’s amendment until after it is moved. So we have a little bit of a conundrum, because you would like to ask a question on the bill. As soon as we have the final outcome on the previous amendments, we can move to the amendments which you have a great and genuine interest in.

Senator IAN MACDONALD (Queensland) (2.47 pm)—As I understand the minister, he can actually speak on his amendment, notwithstanding the fact that he has done a deal to change his amendment by an amendment that Senator Xenophon is putting up. I am saying to the minister: you have put this amendment forward and, with the 2,000 people in your department who assist you in these things, you must have given it a lot of thought. So I am asking you to tell us why you put this amendment forward. Then, when Senator Xenophon moves his amendment, you can say why you agree that your amendment is stupid and Senator Xenophon’s amendment is good and thereby explain to us the reason that you are now going to vote against your amendment and in favour of Senator Xenophon’s amendment. That is how I understand what you are saying.

I move to another of your amendments in this group of amendments we are dealing with. I do not want to take up too much of the Senate’s time, but, Minister, can you confirm for me that your amendments will take away from the ACCC any power over the bundling of services by NBN? Again, as in the other question I asked, which was about cross-subsidisation, it does seem to me that in the past the ACCC would have had to authorise that power over bundling of services. But your amendment, Minister, takes away from the ACCC that power over bundling of services. Is that correct; and, if so, on what basis do you argue that the Senate should adopt that amendment?

The TEMPORARY CHAIRMAN (Senator Kroger)—Minister?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (2.49 pm)—Sorry—

Senator Ian Macdonald—Perhaps I could sing a song while Senator Conroy—

Senator CONROY—No.

Senator Ian Macdonald—No? Not popular?

Senator CONROY—To clarify for you, again, Senator Macdonald: this is an amendment which has not yet been moved. It is waiting to be moved next. It is also an amendment which the Greens and Senator Xenophon and I have been discussing. Again, it is a little hard to discuss it because
we cannot get to the question you asked that is germane to its final resolution until after we have passed the existing amendments before the chair. I will happily have a discussion with you about that, but we have not moved the clause you are referring to and there is new information still to come.

Senator Ian Macdonald—I beg your pardon?

Senator CONROY—I cannot speak before the Greens' and Senator Xenophon's amendment is moved.

Senator IAN MACDONALD (Queensland) (2.50 pm)—Okay. I assume they are amendments that have been tabled?

Senator Conroy—They have not been circulated.

Senator IAN MACDONALD—The minister interjects and says they have not been circulated. The people who are circulating things tell me they have been circulated. Anyone listening to this debate will excuse my confusion. The minister tells me a new set of amendments that we have not yet seen are about to be circulated. One would hope the minister might understand where we are at in this debate. But those who are allegedly going to move these amendments, so the minister tells me, tell me that they have been moved. In this instance, as in most instances in this debate, I would far rather take the word of Senator Ludlam and Senator Xenophon, who seem to know something about this matter, rather than yours, with all due respect, Minister. I do not like to be nasty to you. I think you are a great fellow. I think you are great in this position—great, that is, from our political point of view, because this is all going to collapse. But you are not a bad fellow—

The TEMPORARY CHAIRMAN (Senator Kroger)—Senator Macdonald, could you address your comments through the chair.

Senator IAN MACDONALD—I apologise, Madam Temporary Chair. We are dealing with amendments that the minister tells me have not yet been moved. Minister, just to clarify: you say that the amendment relating to the ACCC losing its power over the bundling of services has not yet been moved, although when it is moved it will be countermoved by Senator Xenophon and the Greens. I understand the amendment relating to the ACCC losing power over cross-subsidisation is in a similar category. It has not yet been moved but, when it is moved, you will argue for it and then someone else will move an amendment to it which, as I understand it, you have agreed to. Just to clarify—and this is the last question in this series I want to put—does the same apply, Minister, to the NBN having the right of veto over the ACCC's decisions on the points of interconnect? Just for the benefit of those who do not have all the technical knowledge—and I do not for one moment suggest that I have—the points of interconnect are the locations where NBN hands over traffic to private retail services providers such as Telstra and Optus. I understand the minister's amendment gives NBN the right of veto over the ACCC's decision. I was going to ask whether that is correct.

Senator Conroy—Same category.

Senator IAN MACDONALD—The minister, by way of interjection, is saying: 'It's in the same category; these are the amendments we are dealing with, but we have not yet dealt with them; and, when we the Labor Party do put them forward, others will amend them with amendments—and we're not quite sure whether they have been circulated.'

Senator Xenophon—They have been circulated, not moved.

Senator IAN MACDONALD—I take your interjection, Senator Xenophon. You
Senator MacDonald, through the chair, please.

Senator IAN MACDONALD—Thank you, Madam Temporary Chairman. My point is that, if they have been circulated, I can at least have a look at them. If they have not been circulated—well, what a way to conduct a debate on a $55 billion enterprise!

Senator Conroy—It was 50 a moment ago; now it is 55.

Senator IAN MACDONALD—If you add it all together—and there is only one group of people who are going to pay this—it will reach almost $55 billion or be well in excess of $50 billion. Whichever form it takes, it is the taxpayer who will have to pay it. To any taxpayers who might be listening to this, thanks for your $55 billion. It is going to be well spent. It is going to be spent in accordance with this legislation that we are still trying to find. We are still trying to work out what the actual legislation is that your $55 billion is going to be spent on.

Minister, you have again diverted me and I have to direct myself to keep on the issue before us. You tell me that the issue of the NBN right of veto is in that category. Finally, I understood these amendments to almost entirely cut out the ACCC from supervising some of NBN Co.’s most important decisions, such as price discrimination, bundling of services and the points of interconnection. Minister, I guess you are saying that all of those very technical issues that your amendments deal with, and which are in the group that I thought we were dealing with now, have not yet been dealt with. Can you confirm that my three areas of concern fit into that category?

I will sit down and wait until you do get around to moving your amendments. It is going to be interesting to hear you argue for your amendments because I understand that you did a deal at lunchtime which will negate your amendments and bring in some other arrangements. In all of those areas I addressed, perhaps even by way of interjection, can you just indicate to me that it is correct that these form part of that first bundle of amendments that have not yet been put forward for discussion.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (2.57 pm)—You have raised some very legitimate questions and it is a very important debate to have, but you are asking about amendments we have not moved yet. As soon as we sit down and vote on them we can bring them forward and have the discussion. If there are no further interventions we will be able to move through this existing set of amendments. I am hoping Senator Fisher will be able to talk about the existing set of amendments. Then we can move to those amendments that Senator Macdonald has so eloquently been talking about, and hopefully Senator Fisher will join in.

Senator LUDLAM (Western Australia) (2.57 pm)—I will clarify for the benefit of Senator Macdonald and others because there is a certain amount of paperwork going around the chamber. When we get to it, Senator Xenophon and I will co-sponsor a number of amendments that directly address some of the issues that Senator Macdonald just raised in his remarks. Senator Xenophon has a couple as well, but I will let him speak to them when we get to that point on the Notice Paper.

I suppose all I would like to do is endorse what the minister has proposed. Let us de-
bate the amendments that we are on now because I am very interested to pick up on precisely the questions Senator Macdonald has been raising. I feel as though we do have a workable way forward and that is why we have taken the time to negotiate and circulate these ones. I am more than happy to debate the merits of the amendments themselves, but let us put the question we are dealing with at the moment, unless Senator Fisher has comments. It is my understanding that everything that is going to come into the chamber on these bills is already here. There is nothing to come through the door that we have not seen yet, if that gives Senator Macdonald any comfort.

Senator IAN MACDONALD (Queensland) (2.58 pm)—That is an assurance. It is an assurance we have not been able to get from the minister. I understand by Senator Ludlam’s comment that he is assuring us that as far as he knows—and after having had this debate for two or three days with a feeling around the building that more amendments will be coming—this is the end of this amendment on amendment on amendment, deal on deal on deal situation that we have been dealing with on this $55 billion plus taxpayer funded thing. Thank you, Senator Ludlam, for that assurance.

Senator LUDLAM (Western Australia) (2.59 pm)—Just briefly, in response to Senator Macdonald: the only guarantee I am giving you is that I am not planning on circulating anything further through this debate.

Senator BIRMINGHAM (South Australia) (2.59 pm)—I note very closely the very wise, sage comments that Senator Macdonald has made about amendment upon amendment upon amendment upon amendment. This legislative package has become a bit like the Sara Lee cake of laws—it is layer upon layer, amendment upon amendment. We just keep going, piling them up as we go through. We take a lunchbreak in the chamber and we come back to find that Senator Xenophon and Senator Ludlam, on behalf of the Greens, have nutted out another four sheets of amendments to the amendments of the government. We understand that at least there is some degree of cooperation—or agreement, if not cooperation—between the Greens and Senator Xenophon and the government as to what these will be. We see this ongoing process, which has been dragging on now for days, of the government trying to get its act together here on legislation which it has had months to get its act together on. We see this continuance, where at every juncture the government has had to fix up flaws, panic, do deals and put in place last-minute changes. As I have said before on numerous occasions during this debate, this is absolutely no way to make legislation. It may have a Sara Lee cake feel to it—layer upon layer, amendment upon amendment—but it also brings to mind that classic old saying that the making of laws is a little bit like the making of sausages: it is a sight best left unseen. That is quite clearly the case in this instance.

Anybody who is watching what is happening here, anybody who is listening to the debate, anybody who has been going through the bill, the amendments to the bill and the amendments to the amendments to the bill—and they would have to be very focused and diligent to be doing that—would be gobsmacked at the way that this government is allowing laws to be made in relation to such an important investment. They would be gobsmacked that, in relation to a project with an overall value exceeding $50 billion, the government is going down this path of allowing changes at the absolute last minute, changes that have had so little time for consideration, and that it is just ploughing on and on and on and at each juncture just allowing a new layer of changes to be piled on
top of the previous layer of changes. Lord only knows—to mix up the Sara Lee cake metaphor and the sausage-making metaphor once more—what type of dog’s breakfast we are going to get at the end of this process. Lord only knows what exactly what we are going to see and, more importantly, what the communications industry is going to have to live with and work with, what NBN Co. is going to have to work with, what the retail service providers are going to have to work with and what consumers in the future are going to face.

The amendments before us—amendments (1), (3), (4), (5), (6), (8) and (10)—are amendments that the government has separated out from the package that it brought forward. It separated them out because the missing amendments in this group—amendments (2), (7), (9) and (11)—are the ones that we have further amendments to. For anybody tuning in and trying to follow what is happening here, be under no illusion—

Senator Ian Macdonald—Don’t bother!

Senator BIRMINGHAM—It would be quite the challenge, I agree, Senator Macdonald. But for anybody who might be attempting it, amendments (2), (7), (9) and (11) are the subject of further negotiation, rewrite, debate and amendment between the government and the crossbenchers. So they are still a work in progress. We have before us government amendments (1), (3), (4), (5), (6), (8) and (10). These are amendments that we almost debated earlier today. We got to the point of the minister seeking leave to debate them earlier today, but then he changed his mind and did not want to debate them. He did not want to debate them because he was not ready at that stage, because of course he was still trying to work out which of these amendments he had problems with, which of these amendments were flawed and which of these amendments the crossbenchers needed to negotiate on.

The opposition believe that, frankly, this entire bundle of amendments—amendments (1) to (11) that the government has moved—are flawed. We think the whole lot of them should not have been proposed in the first place, because they go in a direction that will impede the effective operation of competition in the future. We look at the 23 pages of amendments pertaining to this bill that were tabled late on Wednesday by the government. We see that these are some of the most substantive ones. These are some of the most important ones, and they have some of the most profound effects.

Yes, some of the amendments that have not been moved just yet—amendments (2), (7), (9) and (11)—are perhaps the most offensive of the amendments. They are the most problematic of the amendments, and that, of course, is why the Greens and Senator Xenophon have been working to try to come up with some ways to reduce the impact of those amendments and to ensure that they at least work as best as one could hope them to. But, from the opposition’s perspective, if we look at this group of amendments—which relate overall to the workings of NBN Co. and the supervision that the ACCC has over NBN Co.—we think that this is a terrible approach that has been taken. It is a terrible approach because it has impacts on issues such as how price discrimination is undertaken, the bundling of services and the points of interconnection. It has major issues as to how the ACCC is going to address this and ensure that NBN Co. operates in a fair way that promotes competition and promotes equality of access amongst retail service providers in these very important areas. These are decisions that will define the structure of the industry, and not just for the next year or two; if the government gets its way, builds this whole network...
and spends all of this money, these are issues that will define the structure of the communications industry in Australia for decades to come.

We are very concerned that the government, in so many different ways through these packages of bills, has been trying to find opportunities to strengthen the hand of NBN Co. and to strengthen its capacity, whether this will be in the areas of mission creep and mission scope—the concern that NBN Co. will in some way extend its reach into the provision of retail services and extend its reach up the value chain, and all of those issues that we have debated and highlighted as concerns—or, in this instance, perhaps even more worryingly, whether NBN Co. will be able to curtail and avoid what should be the strong hand of the competition regulator over it, a guiding hand to make sure that, in as many areas as possible, NBN Co. is effectively guided and controlled towards operating in a fair, equal-access, competitive way.

If Senator Conroy’s last-minute amendments do become law then we will see quite significant potential for NBN Co. to defy the things the government proclaims that it wants, whether they be national wholesale pricing or, of course, proper regulatory supervision. We see this real issue of the government saying one thing about what it wants from NBN Co. but doing something completely different through these bills.

On the issue of points of interconnect, which of course has been such a critical issue during this debate already, we have seen NBN Co.’s hand in this. We have already seen the fact that Mr Quigley wanted to minimise the points of interconnect in the building of this National Broadband Network. We saw that the ACCC had to force a better, fairer, more open outcome. It was the hand of the competition watchdog that stopped Mr Quigley and, by default, the minister from getting their way and potentially limiting competition in this process.

We know that there is a track record that Mr Quigley, not unreasonably perhaps from his perspective, wants to make NBN Co. as profitable—if you can call it that—as he possibly can, or at least hopes to minimise the losses in the years to come. He is going to take every decision he possibly can to do that, even if some of those decisions are anti-competitive. And NBN Co., being a natural monopoly—sorry, not a natural monopoly but a constructed monopoly; a legislated monopoly—will of course have great scope and capacity to maximise its profit-making potential if it is not effectively regulated and if it does not have the strong hand of the competition watchdog placed over it.

It is disgraceful to look at the fact that Senator Conroy can commission the ACCC to conduct an inquiry into points of interconnect and to assess what architecture would best foster competition and economic efficiency—to do all of that as he did in the debate that has already been had publicly on the issue of these points of interconnect—and yet then decide to give Mr Quigley and NBN Co. power to override that.

I welcome the fact that we will come to the amendments moved by the crossbenchers that will try to do something to curtail this. I welcome that, and it is pleasing to see that is the case. But, honestly, this package of last-minute reforms that have been dropped on the industry, the parliament and the community do not deserve the support of the Senate. They certainly will not have the support of the opposition.

We have seen that major players—not just the big T, as Senator Conroy wants to keep saying, but major players, plural—have expressed their concern about the way these amendments are structured. They have ex-
pressed their concern that this provides far too much scope for NBN to almost entirely cut out the ACCC from supervising some of these most important decisions. We have had very little time to give them the proper public airing they deserve—far too little time.

We have given the minister ample opportunity on multiple occasions to say, ‘That is fine, we can take a few days and get this right then come back and give it proper consideration,’ but no; the minister has refused to take those opportunities provided to him. He has insisted, despite the chaos around him and the chaos in the drafting process, to plough on regardless of the consequences of these amendments. He is ploughing on regardless of the fact also that, because the opposition have said this is unacceptable and they will not vote for it, he has put the crossbenchers, who—mistakenly, but it is their decision—want to support these bills and the government building the NBN, in the position where they have had to come up with compromises and approaches that do not address wholeheartedly the concerns that we have, and the concerns that any reasonable commentator has, about the scope of these amendments. They go some way, and we welcome that—as I said, we look forward to debating it—but they do not give full and adequate consideration to doing so.

Minister, the opposition’s case on this is clear. It is clear just what a failure of management it has been for you not to have been able to incorporate these earlier, to distribute them earlier and actually to ensure that there was fair, effective and widespread consultation. But more significantly it is an issue of policy and substance, and, taken together, this package of amendments—this division 16 group of amendments—is a concern. It is a concern that it will hurt the potential for competition to be effective in this sector in the future, and we stand resolutely against them. We will be constructive when it comes to dealing with the amendments of the crossbenchers, but we believe that this is the wrong way to go.

Senator FISHER (South Australia) (3.14 pm)—I have a couple of questions about the amendments currently before the committee. In asking those questions, I am hopeful that you are able to answer them at this point in time, because there was not much point in asking questions of this nature much earlier than today—in fact, there was not much point asking any genuine questions prior to the lunch break, because prior to the lunch break things were a bit unusual. Your department was essentially conspicuous by its absence from the chamber. Without any disrespect to the very good bodies actually present in the advisory box on your side, they were but token in the scheme of things and in terms of the complexities underlying this bill. Where were the real mass, if I can put it that way, of your department, Minister? They were not even out in the lobbies, where they usually are for bills of this import—no. They were not gathered out in the lobby on hand and ready to help you, Minister. No, they were all back at HQ rewriting the legislation.

Your amendments—and you know it, Minister—are contrary in many aspects to the spirit of the bill before this chamber. Your amendments run contrary to the original spirit of the bill. Were you doing a proper job and not holding the stakeholders in this industry and to some extent the Australian people in contempt, you would have started the whole process over and presented this parliament with a new bill. But, as we know, you did not want to do that because you have a deadline involved that involves striking a deal with Telstra, because you need Telstra to deliver your NBN.

It is good that now, rather than being conspicuous by its absence, we have very nota-
ble personages from the department present. Not only do we have

Mr Charns, your top hog communications adviser; we also have Mr Harris, the top brass from the department; plus several others. Quite a bit must have been achieved during this morning and over the lunch break, although there are obviously a few bits and pieces still being mopped up with the ducking in and out of my good colleagues Senator Xenophon and, to some extent, Senator Ludlam and of members of some of your advisory staff, Minister. So you now have the cavalry here to you back up, Minister.

Senator Birmingham has done the government too much credit in saying that with amendment upon amendment, layer upon layer it is rather like a Sara Lee number. It is more like a tiramisu, in which the layers get a bit messy. In terms of the amendments now before the committee, the gist of those amendments is to recalibrate the balance between NBN Co. and its activities and the extent to which those activities are scrutinised by the competition watchdog, the ACCC. As I understand it, in essence the amendments before the committee recalibrate that balance and make it so that NBN Co. is subject to less ACCC scrutiny than it was to have been and certainly less scrutiny than others in the telecommunications market at the moment. There will be less scrutiny by the ACCC and the ACCC will have fewer powers than otherwise. Why not, Minister, when you have Mike Quigley at the helm of the NBN Co.—

Senator Conroy—Madam Temporary Chairman Kroger, on a point of order: Senator Fisher, despite promising to ask questions about the amendments before the chair, is speaking about amendments that have not yet come before the chair. So I was just wondering if you could ask her to direct her comments to the amendments that are currently before the chair. We live in hope that, even though none of the Liberal senators who have spoken in the last hour have done so, a Liberal senator might actually speak about the amendments before you, Madam Temporary Chairman.

The TEMPORARY CHAIRMAN (Senator Kroger)—There is no point of order, Minister. Senator Fisher.

Senator Fisher—As this is the first time since the lunch break that the minister has had his cavalry of advisers as part of his entourage, Minister, could you please explain why the government is moving the amendments currently before the committee?

Senator Conroy (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.20 pm)—Great. You did tempt the chamber with promises of a question that was relevant to these amendments in front of us. I am happy to discuss the amendments that you have asked questions about, but to do that we have to move on from the amendments that are currently before us. If you have a question about the amendments that are before us, please feel free—

Senator Fisher—I just asked you that.

Senator Conroy—Ask again.

Senator Fisher (South Australia) (3.20 pm)—Minister, would you care to explain why the government is moving the amendments currently before the committee?

Senator Conroy (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.21 pm)—To improve the legislation.

Senator Fisher (South Australia) (3.21 pm)—In what manner, Minister?

Senator Conroy (Victoria—Minister for Broadband, Communications and the
We believe that, where amendments will improve legislation, we should move them.

Senator FISHER (South Australia) (3.21 pm)—If so, how and when?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.21 pm)—I think the game that Senator Fisher is now engaged in means that she cannot actually ask any questions about the amendments, so she is asking me to explain the amendments to her. We have been debating this now for some hours. I am sorry Senator Fisher has not been here for the whole debate on this particular section, but I have no intention of repeating to her at length what is in these amendments. If you would like to ask a question about the amendments—rather than asking me to tell you what is in them—I will happily seek information for you. If your tactic for the next 15 minutes or so of your own time is going to be, ‘Tell me what’s in the amendments, Minister,’ I would invite you to read them. If you would like some clarification on a specific issue within an amendment, I am happy to provide you with the information.

Senator FISHER (South Australia) (3.22 pm)—Minister Conroy, I am sure you can do this in 60 seconds. Please explain why the government is moving the amendments that are currently before the committee.

Senator Conroy—I thought she had asked me a question. My apologies.

The TEMPORARY CHAIRMAN—I gave the call to Senator Macdonald.

Senator Conroy—I was too slow.

Senator IAN MACDONALD (Queensland) (3.22 pm)—I apologise to Senator Fisher. I did not think she was going to get an answer, anyhow, from the minister. Minister, you have said that you are moving the amendment in relation to uniform national pricing, which is amendment (5), as I understand it. I will read the amendment:

… uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation to service providers and utilities is achieved, if, and only if, the price-related terms and conditions on which the NBN corporation supplies, or offers to supply, the eligible service … are the same throughout Australia.

You told me before that amendment (5) is one of the amendments we are dealing with, and I thought some of the questions I asked previously related to that. But, just for a start, Minister, can you explain to me those words ‘uniform national pricing’? I hope you can hear me. I can hardly hear myself, because I can see the Manager of Government Business in the Senate down there trying to belittle Senator Xenophon over something. Do I feel a guillotine coming along here? No? Okay. I just wondered why you were being such good friends there!

Senator Conroy—Or possibly he’s chatting with Scott!

The TEMPORARY CHAIRMAN (Senator Kroger)—Senator Macdonald.

Senator Conroy—to promote the policy objectives of the government.

The TEMPORARY CHAIRMAN—Minister, you do not have the call.

Senator Conroy—It is just that, when Senator Ludwig as Manager of Government Business starts sitting very close to Independents, I feel the old union bullyboy tactics are coming on!
Senator Xenophon—Senator Macdonald suggested I was a good friend of Senator Ludwig. He may resent that! I can assure you that we were not in fact—

The TEMPORARY CHAIRMAN—Is this a point of order, Senator Xenophon?

Senator Xenophon—I just want to correct the record. It is a point of relevance. We were not in fact discussing the NBN.

The TEMPORARY CHAIRMAN—That is not a point of order. Senator Macdonald has the call.

Senator IAN MACDONALD—I was not suggesting that you were talking about the NBN. I thought you might have been talking about things like guillotines, but you assure me that is not the case. No doubt that funny football you play in South Australia—

Senator Xenophon—It is the only form of football!

Senator IAN MACDONALD—Rugby league is the only football, but we are not debating that. Minister, in amendment (5) you talk about services being offered by ‘an NBN corporation’. I know there is NBN Co. Ltd and I know there is NBN Co. Tasmania Limited—or something. But is there more than one NBN Co., when it says ‘an NBN corporation’?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.26 pm)—This essentially makes provisions if NBN Co. establishes any other organisations. I am not aware of any. If I can get any further information on that I will let you know. This just allows flexibility in the future in case it establishes another entity.

Senator IAN MACDONALD (Queensland) (3.26 pm)—So in all these pages of legislation and pages of amendments we are not talking about NBN Co. as we all know it; we are talking about NBN Co. that might be able to be set up in the future. This issue came up in the legislation committee’s inquiry into this. Does that mean that NBN Co. can set up another, subsidiary, company which might have the ability to, let’s just say, retail services to anyone? I appreciate that this is not the corporation’s bill but I must say that in all my precise reading of these amendments and all the paraphernalia I have never seen the words ‘an NBN corporation’ before. It just worries me that perhaps there is an ability to set up another company that may have powers, conditions and abilities that the NBN Co., which we have been dealing with for three or four days as well as before Christmas, is not required to abide by.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.28 pm)—This is to ensure specifically the opposite of what you are suggesting. This is to ensure that all the entities that NBN Co. may set up are captured by the same framework. To give a very specific answer, it will not be able to provide retail services.

Senator IAN MACDONALD (Queensland) (3.28 pm)—So the uniform national pricing of an eligible service supplied or offered by ‘an NBN corporation’ has to be uniform. What you are telling me is that the NBN Co. Ltd and any subsidiary corporation set up by it will be required to provide the same prices right throughout Australia. Is that what you are telling me?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.29 pm)—The NBN Co. and all its future, possible—and there may be none—entities will comply with the government’s rules and the company’s policy on uniform national pric-
ing. So all of the entities will be complying with all of the rules that are in the bills that we have been debating and are currently discussing.

Senator IAN MACDONALD (Queensland) (3.30 pm)—Thank you for that, Minister; that has clarified that aspect of the debate for me. I am anxious to move on to the clauses in this bundle that you have not yet moved.

Senator Conroy—It is in your hands.

Senator IAN MACDONALD—I am anxious to get on, so I do not want to delay the chamber, but I was curious as to subclause (3), which reads:

(3) If:

(a) an NBN corporation is a carrier or carriage service provider; and

(b) the NBN corporation:

(i) refuses to supply; or

(ii) refuses to offer to supply;

a designated access service to a service provider or utility unless the service provider or utility acquires, or agrees to acquire, one or more other designated access services from the NBN corporation;

the refusal is authorised for the purposes of subsection 51(1).

That means that the NBN has the power to pick and choose what services it supplies or supplies a service to someone who takes that service and other services that NBN requires. Minister, doesn’t that run foul of all of these pricing options? As I read this—and perhaps I have got it wrong and if so you will tell me—NBN Co. might say, ‘We’ll supply this service, but if we supply this you’ve also got to take these other services, even though you may not want them, and you’ll have to pay the price for them.’ Am I reading that correctly? If not, could you explain just what that clause actually means?

I do indicate to you that for me, and I of course cannot speak for my colleagues, my questions on this paragraph are the last questions I have on this first bundle of amendments that you are actually dealing with. So I would just like you to clarify whether my interpretation of this clause 151DA(3) is correct and, if not, what is the correct interpretation. I may have a follow-up question, but I do hope to conclude this and move on.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.33 pm)—I do note that unfortunately, Senator Macdonald, you appear to have run out of questions on the amendments before the chair. Like you, I am keen to move on and have a discussion about the points you have raised, but you are actually referring to amendments that are not yet before the chair. Again, because they are subject to other amendments I am not sure I can clarify the questions you are asking until we move on to the next section of the debate.

Senator IAN MACDONALD (Queensland) (3.33 pm)—Minister, you told me that we were dealing with amendments (1), (3), (4), (5), (6), (8) and (10). Is that correct?

Senator Conroy—Yes.

Senator IAN MACDONALD—Well, this is subclause (3) I am talking about.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.34 pm)—Senator Macdonald, you are referring to subclause (3) within amendment (2), which we have not yet got before the chair.

Senator IAN MACDONALD (Queensland) (3.34 pm)—I appreciate that, Minister, and I will retain that question until we deal with those matters.
Senator WILLIAMS (New South Wales) (3.34 pm)—I have a couple of questions in relation to pricing. I believe NBN Co. has released some rough forecasts on pricing and wholesale pricing.

Senator Conroy—It is not rough; it is the wholesale pricing list.

Senator WILLIAMS—Okay, wholesale pricing list, if you want to be pedantic. For the record, how much would a company purchasing 100 megs download wholesale off NBN Co. pay? How much a month would you expect that to be wholesaled for? Do you want me to word the question a bit more simply?

Senator Conroy interjecting—

Senator WILLIAMS—For the record, give us the details, and I will ask several questions as one in an effort to save time. Will NBN Co. wholesale pricing to the provider be roughly $80 a month, or $1,000 a year, for 100 megs? And how much will it be for the 12 megs if people choose to have a slower download? The same question applies to wireless and satellite. Could you give me roughly the download speeds and approximately what the wholesale costs will be to those providers.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.36 pm)—If I had the NBN price list handy I would read it out for you.

Senator Williams—Just roughly.

Senator CONROY—No, there are a range of products and I would not want to mislead you. It is available publicly on NBN Co.’s website. While I am always happy to entertain my good friend Senator Williams, these questions are entirely not relevant to the amendments that are before the chair. I am always happy to find information for the good senator. I invite you to ask questions about the amendments before the chair. The information you sought is available publicly on NBN’s website.

Senator WILLIAMS (New South Wales) (3.37 pm)—We are talking about amendments to do with universal quality and price et cetera. If I had fibre to my home five kilometres out of Inverell and wished to go to 100 megs download—the maximum speed provided by this new whiz-bang facility you are providing—approximately how much a month will I have to pay? Given that there may be a 40 or 50 per cent mark-up by the provider on top of the wholesale price from NBN, how much would I be looking at paying? People are very interested to know what it is going to cost them, because we have seen in many areas, like Japan and South Korea, that people have opted for the lower 12 meg download instead of the maximum 100 megs because it is cheaper.

Minister, you have a lot of advisers there beside you. I am asking what the price brackets are in relation to the levels of download speed, likewise for the new proposed wireless service to cover those areas where fibre is not being run to the home and likewise for the satellite service. I anticipate you would be looking at 12 megs download speed for the satellite and perhaps similar for the wireless. With fibre to the home or to the business you can maximise at 100 megs and perhaps take one at 20 megs. I am trying to get some idea of the expectation that you, Minister, have for the cost to the general public and to businesses. Do you have an answer for that? I am not asking you to be specific to the exact number of dollars and cents, but just to give a rough idea of the cost to the public, because that is one of the very interesting things the public is concerned about. I am sure your advisers have some answers on that.
Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.39 pm)—I think you are now beginning to take advantage of my good nature.

Senator Williams—You don’t have a good nature.

Senator CONROY—Senator Williams, I know you don’t mean that.

Senator Williams—You used to have before you became a minister.

Senator CONROY—You did not say that when I came driving around for the day with you in your car, Senator Williams. You are welcome to access NBN’s website. I have here pages that were taken from NBN’s website where it is specified. I am happy to table them for you. But I would, again, stress that your questions are not relevant. I thought in the last three hours you might have broken the duck of the opposition senators and asked a question relevant to the amendments before us.

Senator Ian Macdonald—You told me I had.

Senator CONROY—Possibly one of yours might have. I may have been unkind to you there. I apologise if I was. But I am happy to table the pages taken from the NBN website which detail all of the pricing of the NBN for you to examine at your leisure.

Senator WILLIAMS (New South Wales) (3.40 pm)—That answer was as clear as mud. There has been a lot of time spent here, Minister. You are wasting time. It is a simple question: does it take you an hour and a half to watch 60 Minutes?

The TEMPORARY CHAIRMAN—Order! Senators, the questions should be relevant to the question before the chamber. Minister, would you like to table that document?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.41 pm)—I will table that.

The TEMPORARY CHAIRMAN—The question is that government amendments (1), (3) to (6), (8) and (10) on sheet BR282 be agreed to.

Question put.

The committee divided. [3.45 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes………… 34
Noes………… 32
Majority……… 2

AYES
Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Carr, K.J. Collins, J.
Conroy, S.M. Crossin, P.M.
Farrell, D.E. Faulkner, J.P.
Feneey, D. Fielding, S.
Forshaw, M.G. Furner, M.L.
Hanson-Young, S.C. Hogg, J.J.
Hurley, A. Ludlam, S.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A. *
McLucas, J.E. Milne, C.
Polley, H. Pratt, L.C.
Sherry, N.J. Siewert, R.
Stephens, U. Wong, P.
Wortley, D. Xenophon, N.

NOES
Abetz, E. Adams, J.
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Fifield, M.P. Fisher, M.J.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
Question agreed to.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (3.48 pm)—I move government amendment (2) on sheet BR282:

(2) Schedule 1, page 13 (after line 6), after item 29, insert:

29A At the end of Part XIB

Add:

Division 16—NBN corporations

151DA Authorised conduct—subsection 51(1)

Objects

(1) The objects of this section are:

(a) to promote the national interest in structural reform of the telecommunications industry; and

(b) to promote uniform national pricing of eligible services supplied by NBN corporations by authorising, for the purposes of subsection 51(1), certain conduct engaged in by NBN corporations.

Note 1: If conduct is authorised for the purposes of subsection 51(1), the conduct is disregarded in deciding whether a person has contravened Part IV.

Note 2: See also subsection 151AJ(10).

Authorised conduct—points of interconnection

(2) If:

(a) an NBN corporation is a carrier or carriage service provider; and

(b) the NBN corporation:

(i) owns or controls one or more facilities; or

(ii) is a nominated carrier in relation to one or more facilities; and

(c) the NBN corporation refuses to permit interconnection of those facilities at a particular location with one or more facilities of:

(i) a service provider; or

(ii) a utility; and

(d) the location is not a listed point of interconnection;

the refusal is authorised for the purposes of subsection 51(1).

Note: For listed point of interconnection, see section 151DB.

Authorised conduct—bundling of designated access services

(3) If:

(a) an NBN corporation is a carrier or carriage service provider; and

(b) the NBN corporation:

(i) refuses to supply; or

(ii) refuses to offer to supply;

a designated access service to a service provider or utility unless the service provider or utility acquires, or agrees to acquire, one or more other designated access services from the NBN corporation;

the refusal is authorised for the purposes of subsection 51(1).

Authorised conduct—cross-subsidisation

(4) If:

(a) the price-related terms and conditions on which an NBN corporation supplies, or offers to supply, eligible
services to one or more service providers or utilities are, to any extent, attributable to cross-subsidisation; and

(b) either:

(i) the extent of that cross-subsidisation is no greater than is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities; or

(ii) if a special access undertaking given by the NBN corporation is in operation—that cross-subsidisation is consistent with the special access undertaking;

that cross-subsidisation is authorised for the purposes of subsection 51(1).

Uniform national pricing

(5) For the purposes of this section, uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation to service providers and utilities is achieved, if, and only if, the price-related terms and conditions on which the NBN corporation supplies, or offers to supply, the eligible service to service providers and utilities are the same throughout Australia.

(6) For the purposes of this section, in determining whether there is uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation, disregard any lawful discrimination that involves a discount, allowance, rebate or credit that is:

(a) given or allowed; or

(b) offered to be given or allowed.

(7) For the purposes of this section, in determining whether eligible services are characterised as:

(a) the same eligible service; or

(b) different eligible services;

it is immaterial whether the services are supplied, or offered to be supplied, using:

(c) the same facilities or kinds of facilities; or

(d) different facilities or kinds of facilities.

(8) For example, the same eligible service could be supplied, or offered to be supplied, using:

(a) an optical fibre line; or

(b) terrestrial radiocommunications equipment; or

(c) a satellite.

Definitions

(9) In this section:

access virtual circuit service means an eligible service that is known as:

(a) an access virtual circuit service; or

(b) the access virtual circuit component of a fibre access service.

connectivity virtual circuit service means an eligible service that is known as:

(a) a connectivity virtual circuit service; or

(b) the connectivity virtual circuit component of a fibre access service.

cross-subsidisation means either or both of the following:

(a) cross-subsidisation in relation to the supply of an eligible service to service providers and utilities in different parts of Australia;

(b) cross-subsidisation in relation to the supply of different eligible services to service providers and utilities.

designated access service means:

(a) an access virtual circuit service; or

(b) a connectivity virtual circuit service; or

(c) a network-network interface service; or

(d) a user network interface service; or
(e) a voice telephony facilitation service.

*eligible service* has the same meaning as in section 152AL.

*listed point of interconnection* has the meaning given by section 151DB.

*network-network interface service* means an eligible service that is known as:

(a) a network-network interface service; or

(b) the network-network interface component of a fibre access service.

*nominated carrier* has the same meaning as in the *Telecommunications Act 1997*.

*point of interconnection* means a location for the interconnection of facilities.

*price-related terms and conditions* means terms and conditions relating to price or a method of ascertaining price.

*service provider* has the same meaning as in the *Telecommunications Act 1997*.

*special access undertaking* has the same meaning as in Part XIC.

*telecommunications industry* has the same meaning as in the *Telecommunications Act 1997*.

*uniform national pricing* has the meaning given by subsections (5) and (6).

*use*, in relation to a facility, means use:

(a) in isolation; or

(b) in conjunction with one or more other things.

*user network interface service* means an eligible service that is known as:

(a) a user network interface service; or

(b) the user network interface service component of a fibre access service.

*utility* means:

(a) Airservices Australia; or

(b) a State or Territory transport authority; or

(c) a rail corporation (within the meaning of the *National Broadband Network Companies Act 2011*); or

(d) an electricity supply body (within the meaning of that Act); or

(e) a gas supply body (within the meaning of that Act); or

(f) a water supply body (within the meaning of that Act); or

(g) a sewerage services body (within the meaning of that Act); or

(h) a storm water drainage services body (within the meaning of that Act); or

(i) a State or Territory road authority (within the meaning of that Act).

*voice telephony facilitation service* means a service that facilitates the supply of a carriage service that is a carriage service for the purpose of voice telephony.

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**151DB  Listed points of interconnection**

(1) The Commission:

(a) must prepare a written list setting out points of interconnection; and

(b) may, by writing, vary that list with the agreement of an NBN corporation.

(2) For the purposes of this Division, a point of interconnection specified in a list in force under subsection (1) is a *listed point of interconnection*.

(3) The Commission must publish on its website a copy of a list in force under subsection (1).

(4) A list under subsection (1) is not a legislative instrument.

(5) A variation of a list under subsection (1) is not a legislative instrument.

This amendment inserts provisions in part XIB of the Competition and Consumer Act that set out the proposed authorisations for the purposes of uniform national wholesale pricing. I understand Senator Ludlam will be
moving several amendments to the provisions of amendment (2).

Senator Williams—What are the prices?

Senator CONROY—I tabled them.

Senator BIRMINGHAM (South Australia) (3.48 pm)—I love how the minister has provided so little notice or time for consideration of these amendments! And this one is a good example: amendment (2) on the government’s running sheet. How long would anybody think amendment (2) might be? Amendment (2) is nearly 3½ pages long. That is one amendment. This is a substantial amendment. And the minister, in moving his substantial amendment, spoke for less than 60 seconds. This is how much he wants to sell this; this is how much he is aware of what he is doing and knows what is going on in this regard. He spent less than 60 seconds trying to explain to the chamber an amendment of 3½ pages in length and of great consequence and impact that has only been around for a couple of days. Whilst we have had a bill that has gone through a full cycle of consultation with all of the relevant stakeholders and has been out there for many months, around 48 hours ago the minister released his 23 pages of amendments to this bill, of which this amendment is one. This is a substantial amendment of 3½ pages in length and has substantial public policy impact.

When it came to actually debating this amendment and doing anything in this place, he then rose in his place, moved it and said, ‘There it is.’ He flagged that there were changes to try to fix up his problems and he sat down again without offering one iota of evidence for why this amendment was necessary, without offering any explanation of what this amendment may do and without providing any detail whatsoever.

Senator Conroy—Why don’t you try talking about it?

Senator BIRMINGHAM—It is not my amendment. You may have missed that fact. It is not mine; it is yours—or so you claim. You are the one who moved it. You are the one who drafted it, or you had your department draft it. You are the one who brought it to this place. You are the one who dumped it on the public, on the industry and on the parliament around 48 hours ago, and you are one who wants us all to debate it now. Do not ask me to start explaining your amendments. It is your job to explain and sell your amendments.

I have looked at some of the consequences of this amendment. We have been discussing some of those already in the debate to date and in the debate leading up to you moving this amendment. What we see is that there are very serious consequences from this amendment and serious questions about the impact it will have on ACCC oversight over a whole raft of things, such as over points of interconnection and how retail service providers can connect to the network. It is pretty fundamental. It is so fundamental that it was the source of the first major dispute between NBN Co. and the ACCC. It was the first primary dispute between those two bodies.

We saw the ACCC needing to step in and put a firm hand upon the shoulder of NBN Co. and say: ‘It is not good enough. Your proposal for the number of points of interconnection is just not good enough and there needs to be more.’ We have seen the colours of NBN Co. already. We have seen the colours of the government. They are to provide for NBN Co. to maximise its reach and scope, to maximise its control of the sector and to maximise its profitability at the expense of competition or the retail sector. That is what the fight over points of interconnection was about.

After having that fight and having the independent consumer and competition regula-
tor say to Mr Quigley and the government, ‘Your proposal is not good enough, your proposal will harm competition and your proposal will not do what is necessary for the industry,’ what happened? What did we find? The minister came along with this tranche of amendments that provides the capacity for NBN Co. to override the ACCC’s determination and it gives NBN Co. extra powers in this regard. In doing so, it will give NBN Co. the capacity to change what the competition regulator believes is reasonable. Where do we see that? We see that in 151DB under the heading, ‘Listed points of interconnection’: (1) The Commission: (a) must prepare a written list setting out points of interconnection; and (b) may, by writing, vary that list with the agreement of an NBN corporation.

‘With the agreement of an NBN corporation’—that is right. You are mandating and requiring, Minister, that NBN Co. have the opportunity to dictate the terms to the competition regulator. It is meant to be the other way around. This is the way it is meant to work; the competition regulator is the one who is meant to be dictating terms—not NBN Co., your giant new government owned monopoly.

**Senator Williams**—Where is he?

**Senator BIRMINGHAM**—Senator Williams asked where the minister is. The minister, of course, is doing what the minister has done perpetually throughout today’s debate, and that is run around in circles in the chamber, rewriting his amendments again, redrafting things with the crossbenchers and trying to get his own very untidy house in order. That is where the minister is, Senator Williams. Here he comes again.

It is not just in relation to the points of interconnection that we see issues here; it is in relation to the bundling of services and what type of oversight the ACCC has in how services are bundled, cross-subsidisation issues and a range of key factors that all have very serious impacts on the operation of NBN Co. The opposition believes these changes, dropped in at the last minute in this debate, are a total outrage. These changes will impact genuinely on the way the market operates. They will have serious ramifications for all parties who have an interest in seeing fast, effective and efficient broadband services provided to Australians well into the future. They will have serious impacts for those who want to see those services provided in the most competitive way possible, and who want to see the system established in the way that Senator Conroy has long argued for but is now failing to do. He has long argued for it to be a wholesale only network and he has long argued for it to operate under strict equal access provisions. He has long argued for that, and yet when it comes to the crunch and the detail of this legislation he is willing to put forward amendments that will not achieve those equal access outcomes that provide reasonable approaches for all concerned.

To get his bills through he has to negotiate with the crossbenchers, because the opposition has stated its clear and principled objection to the entire NBN, and particularly to these flawed bills. But in negotiating with the crossbenchers they have to try to do at least some of the hard work that he is unwilling to do. They had to try to fix up some of these clauses, so we have amendments that Senator Ludlam, on behalf of the Greens, and Senator Xenophon have thoughtfully tried to develop. Their amendments in this space do go some way to helping, and I look forward to seeing them moved and debated.

But it should not come to that; we should not have come to the situation today where we are in this chamber having this debate about these amendments and, in the umpteenth hour of debate in the committee stage,
Senator Conroy—Yet another substantive speech!

Senator BIRMINGHAM—Minister, I have been to the bill and I have touched quite carefully on aspects of the amendments, and I have spoken about the amendments a damn sight more than you did when you moved them. I have said far more about them in my contribution than you went to in your contribution of less than 60 seconds, when you did nothing to explain or justify why this amendment is necessary at all. You offered no substance in your contribution—

Senator Williams—You’re eating Easter eggs! He is!

Senator Conroy—There is an Easter egg hunt on.

Senator BIRMINGHAM—The blood sugar level could probably do with it. You can share, Senator Conroy, if that is the case.

Senator Conroy—Guilty, as charged.

Senator BIRMINGHAM—Let us have a look at what the explanatory memorandum says about these issues; what it says, in part, about amendment (2) on the government list:

...the prices for higher-speed services only need to be uniform within a specified technology, and not across all technologies.

This is an issue that my friend and colleague Senator Joyce has been championing in the debate during the course of this afternoon, and it is a very important issue and a very fine issue. The government wants to pretend, and to present this argument to regional Australia and to the rural Independents upon whom it relies in the lower House, that somehow the Broadband Network is going to provide equal services at equal prices to people across Australia. This puts paid to that suggestion. This demonstrates, in the words that the minister tabled as the explanatory memorandum to this amendment, that this will not be the case. It says:

...the price for NBN Co’s entry level service must be the same across Australia and across NBN Co’s fibre, wireless and satellite networks.

That is fine; that is welcome. That sounds fair and equitable. People in regional Australia are the people who should be getting the priority in this debate, who should be getting the first services and whom we should have been focusing on rather than trying to build this gargantuan behemoth of a broadband network that rolls fibre up and down every street of Australia regardless of whether current markets are already providing fast, efficient and affordable broadband to some people. We should have gone and focused on the areas of market failure, and—as Senator Williams behind me, Senator Macdonald and those senators who hail from regional Australia know more than anybody else—it is the regional areas of Australia that face particular market failure and that need government incentives to ensure that fast broadband services are provided. Instead, you think you need to create this giant monopoly for everyone rather than focusing on the problem—focusing on the black spots in the cities, on fixing up the backhaul and on getting into the regions and giving them solutions. No, you have to create this giant new National Broadband Network, a giant new government monopoly.

Senator Williams—Did you raid a nest? Did you? You must have pinched all the eggs out of the nest!

Senator BIRMINGHAM—I will be around there in a moment, Senator Conroy; do not eat them all! The people in the gallery
would probably like you to share as well! Madam Temporary Chairman, I have been distracted, and I apologise. I come back to the EM and the point that I was making about the importance of services for regional Australia in this equation. The government’s promise is seriously limited, and this limited promise will, of course, be eroded over time as well. The government’s promise is simply and clearly that entry-level service will be provided across Australia and across the NBN Co.’s fibre, wireless and satellite networks at the same prices. However, the prices for higher speed services need to be uniform only within a specified technology and not across all technologies.

Minister, you can explain to the chamber why it is reasonable that the people in the seven per cent—the people who will not be getting the fibre technology—will, to get a higher speed, have to pay more. Why is that the case? Why will you not be guaranteeing that for equal speeds there will be equal prices across the technologies? Why is it reasonable to do that for the minimum offering and for nothing else? Why does it work for the minimum offering but not when you move up in what is available? Why is it that you are going to dud those regional people? Why is it that in this whole raft of amendments you want to strip the competition regulator of decent powers and jeopardise thorough and decent competition in this sector? Why is that you want to dud regional people? There are many questions to these amendments—amendments that we have seen for such a short period of time and that we will shortly now debate amendments to in the farce that you have turned this debate into. But tell us simply: why? Why strip competition? Why jeopardise or punish regional Australia?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.03 pm)—Very briefly, I have spoken on this extensively in an earlier contribution in response to Senator Joyce—in fact, before lunch—on this very issue. You are continuing to seriously mislead Australians who are listening here and who will read this in the future. It is based on a fabricated story in the *Australian* that has no truth to it whatsoever. All Australians, no matter where they live, will receive the same price for the same product on fibre; the same price for the same product on wireless; and the same price for the same product on satellite. It is impossible to deliver the higher speed services on satellite or wireless; it is a technological impossibility, and you know that, Senator Birmingham.

Senator BIRMINGHAM (South Australia) (4.04 pm)—Minister, are you saying that you think that the technology will remain static, that there will be no opportunity to upgrade that technology in years to come and that this is the best that regional Australians are ever going to get under your deal? Is that what you are saying? Is that why you say that the minimum service offering is the best they are ever going to get and therefore there is no need for price equity if you move above that minimum service offering? Do I understand you correctly?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.05 pm)—As has been debated extensively in this chamber, fibre has unlimited potential. Satellites are static birds in the sky, so to speak. Once you have launched them, they are up there and it is very hard to change the technology without changing the entire satellite. They have a lifespan of about 15 years. There are software tweaks that you can put in satellites, and we have indicated that we
will be upgrading technology where it is possible.

Fundamentally, on satellites you are not going to get a service that begins to compare to the higher speed on fibre—they are the laws of physics. On wireless it is true, and we will welcome the upgrades as they come along for wireless. The technology of download speeds is not matched by the upload speeds with wireless, so you are trying to claim that some fictional service in the future that may match a fibre service isn't committing to a pricing policy. We have a very straightforward, consistent pricing policy, and that is that no matter where you live you get the same price on fibre for the same product. To claim that you believe that there is some new technology advance coming along that will be able to deliver something equivalent to fibre is just a nonsense and you know it.

Senator BIRMINGHAM (South Australia) (4.06 pm)—I thank the minister for telling me what I know, what I do not know, what may be nonsense and what may not be nonsense. I draw the minister's attention back to page 6 of the supplementary explanatory memorandum that was circulated with his 23 pages of amendments the other day. There is a 30-page explanatory memorandum to go with the 23 pages of amendments. I draw his attention to page 6 and this statement I have quoted before:

... the prices for higher-speed services only need to be uniform within a specified technology, and not across all technologies.

Minister, if, as you say, nothing above the basic offering is actually possible in those higher technologies then why do you need the caveat? If you are going to stand in here and say time and time again that our position is clear, 'The same price for the same service for all Australians,' why is that not what it says in black and white that prices for higher speed services could be higher across different technologies? Why is that acceptable?

Senator Conroy—They are higher.

Senator BIRMINGHAM—So they are higher?

Senator Conroy interjecting—

Senator BIRMINGHAM—Minister, you know full well. Humour me, Minister, because you are the one who has tabled the EM, which says:

... the prices for higher-speed services only need to be uniform within a specified technology, and not across all technologies.

We know that that means in practice—and the minister can shake his head if I get this wrong—that the prices for higher speed services provided on fibre need to be uniform, should there be prices for higher speed services on wireless they would need to be uniform and should there be prices for higher speed services on satellite they would need to be uniform. It does not mean that, if you have a higher speed service on any one of those three platforms or on all of those three platforms, they all need to be uniform. If you can have a 15 meg service operating on satellite or operating on wireless as well as operating on fibre, why is that not going to be uniform? Why won't you allow that to be the case? It is in your EM. It is in your bill. Why do we have this statement here if you are going to continue to proclaim equal prices for all Australians for an equal service? Why?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.09 pm)—I think the senator is, possibly wilfully—though I could be doing him a disservice; it may be inadvertently—completely misconstruing this. I suspect it follows on from the fabrication in the Australian. It has
never been the stated policy that all services across all technologies will be priced the same. What we quite extraordinarily achieved was that the maximum services available on wireless and fibre matched the minimum service in price. It was actually quite a significant engineering achievement. So what you are trying to allude to as some sort of change is not. It has never been the policy. It is fantastic we were able to achieve it, and we would seek to achieve it. That is exactly what we were able to do. But you are now asking me to tell you what the pricing of a mythical product is, should be or can be in the future. It is a hypothetical question about a product that does not exist and you are trying to run a scare campaign. It is completely fraudulent.

You have taken the opportunity to take advantage of my good nature and resorted to Senator Barnaby Joyce’s stream of questions, which, like this stream of questions, is not relevant to the amendment in front of us. I appreciate you do not want to talk about the amendment in front of us—

Senator Birmingham—They’re under the heading of amendment (2).

Senator CONROY—You are reading from the EM. We are talking about the amendment in front of us, so how about we have a conversation—

Senator Birmingham interjecting—

Senator CONROY—You have done an excellent job of explaining them. How about we have a conversation about the amendment specifically, rather than just a chat about the national pricing, which you want to have a chat about? Come to estimates and debate it. Come and take it up in estimates. Ask me a question in question time. Go to the committee and discuss it.

Senator BIRMINGHAM (South Australia) (4.11 pm)—That is potentially one of the most extraordinary things a minister has ever said in a debate at the committee stage on a piece of legislation: ‘Don’t refer to the EM; ask us questions about what might be in the EM during estimates.’ The EM is a critical document tabled alongside the amendments to provide some context and some explanation of how the amendments work. Not unusually, amendments—or especially amendments but even whole bills—do not make sense in isolation. The EM is there to provide clear evidence as to what the case may be. The minister appears to be trying to redefine his promise or to define what his promise is—and that is okay. If we can get clarity as to what the minister’s promise is or what the government’s commitment is, then that is fine. I want to know that what is in the EM is accurate and does accurately reflect the government’s commitment. Then we can deal with the reality of that situation.

It sounds to me like the minister is making it clear that the government’s commitment is that there is equal price across the basic service offering—the 12 megs offering. There will be an equal price across the three different service platforms. That is the government’s offering. That is where the equality of that offering across service platforms stops. Should there be anything above that, as the EM says, the prices for higher speed services only need to be uniform within a specified technology and not across all technologies.

If I understood the minister correctly, he argued that uniformity of that basic service offering was because he had managed to get the engineering costs of the technologies to match at that point. I will stand corrected if I misunderstood the minister’s logic or argument there, but am I correct in understanding that you do not expect there to be cross-subsidisation across platforms but that the 12-meg service offering across wireless, satellite and fibre will somehow miraculously come out at the same cost?
Senator **CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.14 pm)—To be fair to Senator Birmingham, he has at least asked me a question, unlike Senator Joyce, who asserted that this was unleashing a reverse cross-subsidy from the bush to the city. We are bordering on tedious repetition, which is in breach of standing orders, because I have already said this, I have already answered these questions, and at some point if Senator Birmingham has fresh questions rather than exactly the same questions that have already been answered, then I will look forward to his questions of substance on other aspects he has not asked already. Let me be very clear, and this is exactly what I said. There is a massive cross-subsidy to deliver the price and the product that we are doing from a satellite and a wireless and a fibre. The definition is that the majority of Australians who live in cities—in fact, pretty close to most of them live in cities—are paying more to allow us to provide these services to the people in the seven per cent. That is the way we have unashamedly structured this company. It is why it cannot be done by the marketplace. It is why no private company—Telstra or any other—would devise a business case in this way. The seven per cent is the expensive group to deliver the products to.

And when I say ‘engineering feat’, to actually get a satellite that has the potential to do 12 meg down and four or six up ultimately is a significant engineering feat. It requires dimensioning; it requires a whole range of engineering specifications to deliver the product. It does not happen just because you click your fingers. There are few if any satellite customers in the world who will get a service of this quality. But that is because we set the minimum benchmark that we expected Australians to be able to get. And the NBN Co., to their credit, have worked hard and have achieved the objectives that we set for them. And because of that we are able to offer the equivalent pricing on the same product at that level. It is not the base level—it is the base level of the fibre—but it is the maximum capacity of those other two products.

Again, I stress Senator Birmingham has taken advantage of my good nature, but as he asked a question rather than made a ridiculous assertion I thought it was worthwhile giving him an answer to that question. Perhaps now he will be able to return to, more directly, the amendments and not bother asking me questions I have already answered. I have just given this exact answer for the second time.

Senator **BIRMINGHAM** (South Australia) (4.17 pm)—I will be brief on this matter. I thank the minister for his answer. It at least sets it in context far better than the answer he gave immediately previously and ensures that the context of the decisions are understood. The minister has not satisfactorily addressed the statement in the EM, but I see we could go around in circles on that. I have some other questions related to amendment (2), but if other colleagues have issues relating to this matter, as I suspect they do, I shall return to those other questions shortly.

Senator **IAN MACDONALD** (Queensland) (4.18 pm)—I thank Senator Birmingham for allowing me to return to the question that I asked the minister earlier and he indicated he had not yet moved this amendment. Minister, I refer to amendment (2), which we are dealing with, and its item (3) ‘Authorised conduct—bundling of designated access services’. Perhaps by way of interjection, could the minister confirm this is in this bundle of amendments that he is moving?

Senator Conroy—Yes.
Senator IAN MACDONALD—Minister, I did ask you this before. The clause says:

(3) If:

(a) an NBN corporation is a carrier or carriage service provider; and

(b) the NBN corporation:

(i) refuses to supply; or

(ii) refuses to offer to supply;

a designated access service to a service provider or utility unless the service provider or utility acquires, or agrees to acquire, one or more other designated access services from the NBN corporation;

the refusal is authorised for the purposes of subsection 51(1).

Minister, does that mean that if NBN refuses to offer to supply a service without the recipient also acquiring other services, then the refusal to do that is justified by another section of the act? Putting that in more simple terms, as I understand it, this means that NBN can say to people they are offering services to: ‘You take this service, but we are only going to give it to you if you take several other services as well that you may not want. We will insist you take them and you will pay for them. If you do not take these other services, you will not get anything.’ I may have oversimplified, Minister, I may have got that completely wrong, but my reading of your amendment suggests that that is the case. If I am right in the way I have read that, I want to know how you can possibly justify that in a policy sense. Minister, I would appreciate your explanation of that particular provision.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.20 pm)—This is finally the place that we can discuss this. I think that Senator Ludlam and Senator Xenophon have some amendments that they intend to move that tighten up some of the issues you have mentioned and ameliorate some of the concerns that you have. We welcome them. We look forward to the amendments being accepted by the chamber. In general, some of what you are describing is correct, but, as I said, with the amendments coming from Senators Ludlam and Xenophon, I think some of the issues that you are alluding to are ameliorated.

Senator IAN MACDONALD (Queensland) (4.21 pm)—I thank the minister for the answer. This must be a filibuster by the minister, because here we have an amendment which we ask about, and the minister said, ‘Yes, you’re probably right, but there’s another amendment that Senator Xenophon and the Greens are putting forward,’ which we all know means that at lunchtime the minister and the crossbenchers got together and determined these new amendments to overcome the amendments that have been on the table for three or four days. It makes a farce of the whole process. We cannot lament now, I guess—it has all gone too far, and we will be here until Tuesday at this rate, with the minister proposing these amendments that I suspect he is not even going to vote for himself. He is going to vote for the amendment to his amendment. It shows the whole farce of this sorry exercise. This is a rhetorical question: why on earth couldn’t the government have gone away for three or four weeks and gone through this? This is clearly a breach. I have read it—I do not claim any expertise; I am not terribly bright—but I can see there are problems with this. Clearly, Senator Ludlam and Senator Xenophon saw problems with this, and clearly those in the industry saw problems with this, and there will be a belated attempt to try and fix this thing. But how much that is not being fixed will stand real scrutiny? We could find that most of this legislation is in the same category. It seemed like a good idea a few days
ago when the minister and his department of 3,000 advisers put this all together.

*Senator Conroy interjecting—*

**Senator IAN MACDONALD**—How many are in the department? Not 3,000?

**Senator Conroy**—Six hundred.

**Senator IAN MACDONALD**—Only 600? All right. That is 600 more advisers than I have, Minister. If I can find it, why couldn’t your highly qualified advisers—out of the 600 who work for you—have worked this out? It is left to me with effectively no advisers. Senator Ludlam probably has a handful of advisers and Senator Xenophon would have some qualified advisers. We could work it out. Why couldn’t you? As I said, it is a rhetorical question, but it would have been so much better if we had gone away and got a bill. We do not agree with the bill—**Senator Conroy** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.25 pm)—You are correct. We will be supporting the amendments to amend some of the provisions that you, I think, and others have raised concerns about. After having consulted, we accept the amendments that are coming forward. I will give you an overarching view of it. This covers a couple of the points that you have raised and alluded to in two or three different areas—it is the authorisations process. I will give you the overarching thoughts. The government is seeking to provide certainty for NBN Co. so that it can deliver the government’s uniform wholesale pricing objective. That is at the heart of these amendments. In considering the amendments, there were some concerns that NBN Co. might have to engage in conduct that could be a technical breach of the Competition and Consumer Act 2010 in order to give effect to the uniform national pricing principle. In relation to points of interconnection, the concern was that by not offering interconnection outside listed points of interconnection NBN Co. could potentially be subject to action under section 46. In relation to bundling—

**Senator Ian Macdonald**—Section 46 of? **Senator CONROY**—Misuse of market power.

**Senator Ian Macdonald**—Of the Trade Practices Act?

**Senator CONROY**—Yes, the misuse of market power section. In relation to bundling, which is clearly required to ensure that the price from the POI to the end user is uniform, there could be concerns under sections 46 and 47—that is, misuse of market power, exclusive dealing, bundling and possibly third line forcing. In relation to cross-subsidisation, NBN Co. would need to charge a price for particular services that is
below the cost of providing the service—for example, for its satellite and wireless services this could lead to a breach of section 46. Conduct that could breach of section 46 cannot simply be authorised by the regulator, the ACCC. Under the normal processes in the Competition and Consumer Act it needs to be authorised in statute by parliament. I hope that gives you a sense of what we are seeking to achieve. Some in the industry argued there were some unintended consequences of that. We have listened to those concerns and Senator Xenophon and Senator Ludlam have listened to those concerns, and we have agreed on an amendment to overcome those. That is why we are doing that. If you believe in uniform national pricing, then there are some things that could potentially be challenged legally. To support national uniform pricing we need to give protection to the NBN. As I said, some believed there were some unintended consequences. The government did not necessarily agree, but we were happy to accept the argument and to reassure people that we were not intending to go down a particular path. That is why we have agreed to some amendments. I hope that gives you some comfort as to what we are seeking to achieve.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (4.29 pm)—The minister has been talking about the uniform wholesale pricing objective. He has talked about uniform national pricing. He has just talked about satellite and wireless services, which, as we are all aware, are two silos that work in the pricing structure in a different realm to that of the fibre silo. Therefore, there is this disjunction between how the ACCC, or anybody else, would determine whether there really is a uniform pricing structure across the nation. He said ‘across the nation’ and one would presume the nation also includes the outback and inner regional areas.

We have clearly spelt out here today that it is not the case that we have a uniform national pricing structure. We have three pricing structures throughout the nation. We have clearly spelt out that it is absolutely within the capacity to increase the price of the satellite service, in that satellite silo, and it then would be up to the ACCC, on a very nebulous form, to determine whether that was fair or unfair. We acknowledge that there is 12-down one-up in terms of entry-level pricing, but we know that technology races ahead and very soon that would be superseded. What we are very interested in—and it seems that around Australia there are other people becoming very interested in this as we speak—is how you would determine the comparative analysis between those three silos.

So we have heard the good words, but we need the mechanism to lock those good words into legislation. If the minister and others around him who advise him do not acknowledge that the unit of determination of pricing is actually the megabit and not the situation, then uniform national pricing means nought. We acknowledge that if we can get a capacity that deals with the megabit, which is the predominant item of analysis for this technology, then, yes, as it advances in urban areas the regional service would become vastly cheaper, in fact incredibly cheap. And that itself would become a market mechanism—well, not a market mechanism because it is a monopoly, but a pricing mechanism—to force this legislated monopoly to force new services out into regional areas so that they could actually get a return because their pricing structure would be assessed by the ACCC on megabit compatibility—between the price of the megabit via a satellite service, via a wireless service and via a fibre service.

As we are discussing in these amendments, in the minister’s own words, the uniform wholesale pricing objective and uni-
form national pricing and we have already talked about the ACCC assessment; and as the minister himself has referred to satellite and wireless services and the effects of section 46 and 47 of what was the Trade Practices Act and how they have been amended in such a way as to deal with the peculiarities of a government monopoly now being the sole provider in the marketplace; and as we are dealing with a government monopoly in the market place, a legislated monopoly, which is actually a monopsony, which means it has incredible market power; then we must have an equally vigilant assessment mechanism to make sure that the promise that was given to regional people and to the country Independents is delivered on. Therefore, it is absolutely imperative that this legislation—and I put this to the minister—discusses the capacity for the ACCC to determine a link between the mechanisms of pricing by fibre, by wireless and by satellite, and the way it must do that is in megabit download and upload speed.

This has got nothing to do with the nefarious argument where he talks about widgets and technologies. It is talking about pricing. If you deliver an outcome by an inferior technology it will have an inferior download and upload speed. So, likewise, it should be vastly cheaper than an alternative technology that has a multiple maximum download and upload speed. That itself becomes a mechanism to drive investment into regional areas. They will never catch up but at least they would be within sight of where urban Australia will go. It is imperative that this happens because they are removing the market structure and putting in place a monopoly to do this. And when a monopoly or a monopsony is in place it is the role of the government to make sure that that organisation acts fairly in a way that keeps sight of all the people throughout our nation.

So the minister at the start has given wonderful words. He has given verbal bouquets of empathy to regional people. But we know that those bouquets are worth nothing unless the words are in the legislation, because, while the minister may be a person of eminent character and may diligently go in there to bat, I have seen this before—what people say and what they deliver become vastly different things over time, especially when the ministers change. We want to make sure that we have looked after regional people in the only way we can—that is, when the legislation is afoot in its initial stage.

Minister, can you read out to us where precisely in this legislation it says that the ACCC will determine the relationship between these different pricing silos—fibre, wireless and satellite? I note that the country Independents, whom your government is based on, have given notice that they are going forward with this legislation because it is a great outcome for regional Australia. Show me exactly where this current legislation says, ‘If in Sydney the fibre price per megabit is X and in a regional area the price per megabit is 20X, we will use the legislation as a mechanism to bring a sense of parity, equivalence and fairness.’ It is not there. So it is your responsibility, this chamber’s responsibility or the other chamber’s responsibility—and it is most certainly the responsibility of the country Independents and, I imagine, of the Greens, Senator Xenophon, Senator Fielding and everybody here—to make sure that what is promised is what is actually delivered.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.37 pm)—Ninety-three per cent of Australians will receive a uniform price on the fibre, ongoing into the future. The only danger to that is the election of an Abbott government.
Four per cent will receive a uniform price on a wireless product and three per cent will receive a uniform price on a satellite product.

Senator Ian Macdonald—But a different one on a different price.

Senator CONROY—You still have not got a clue. You just still do not have a clue. You cannot deliver the same products from satellite across to fibre.

Senator Ian Macdonald—But you can charge the same.

Senator CONROY—You cannot deliver the product. You are actually saying that in three to four years time, in 2014-15, we will put two satellites in the sky. We have already put the price out for it—the price is available. But 15 years later, in the year 2030, you want some guarantee on a price that might exist for a product that might exist.

Senator Ian Macdonald—No, that people will be charged what city people are charged.

Senator CONROY—You will pay exactly the same no matter where you live and receive the satellite service, and there may be some people in and near the suburbs. So let us be clear, Senator Macdonald: you have been sold a pup on this one. You are asking for a pricing guarantee in the year 2030. Once the satellite is in the sky it can only deliver X product. You might be able to tweak the software. You might be able to get a better throughput because of the software improvements that take place—and you will be able to upload and download them into your modem, so that is possible. You will see what I would describe as incremental improvements in the satellite service once the satellite is in the sky. There will be incremental improvements for the three per cent who are using the satellite. For the four per cent who are using the wireless, wireless will improve. But it cannot improve to the extent that it will deliver the ubiquity and asymmetry of up-and-down.

This goes to the heart of your ignorance around the wireless debate. You are ignorant of the laws of physics if you keep claiming, as you have been doing, that wireless can replace fibre. That is what your party has been arguing for a considerable period, Senator Macdonald. Let me be clear: the four per cent using the wireless network cannot receive the same products, but they will be getting improvements as new technologies come along. You can change the boxes on the towers, but you cannot change the equipment in a satellite once you have put it up. Beyond that furphy, you are asking for a price guarantee in the year 2030, which is, frankly, a little embarrassing. You want a promise about a price in the year 2030.

Senator Ian Macdonald—Without verballing me, let me ask the question that I want to ask.

Senator CONROY—I am sorry. I am actually responding to questions that you have been asking and that Senator Joyce has been asking. There will be improvements in wireless, and not incremental improvements. There will be new prices. But, as the NBN is structured today, the cross-subsidy is not, as Senator Joyce has tried to claim, going to be a reverse cross-subsidy, with people in the country all of a sudden paying higher prices than people in the cities.

Senator Joyce interjecting—

Senator CONROY—I am sorry. I am actually responding to questions that you have been asking and that Senator Joyce has been asking. There will be improvements in wireless, and not incremental improvements. There will be new prices. But, as the NBN is structured today, the cross-subsidy is not, as Senator Joyce has tried to claim, going to be a reverse cross-subsidy, with people in the country all of a sudden paying higher prices than people in the cities.

Senator Joyce interjecting—

Senator CONROY—Senator Joyce, ask someone who knows something about the laws of physics to explain the technologies to you. To suggest that the NBN is going to reverse discriminate against the country is just a fantasy, a fabrication, but that is essentially your claim—that a reverse cross-subsidy is going to take place. It is a joke, and the chamber should treat it as a joke.
Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (4.41 pm)—I will respond to that. We will, in a short period of time, circulate an amendment precisely to deal with this issue, because that is the only way we are ever going to get an answer out of this person. It is quite obvious that over time the disparity in price between a megabit provided by a satellite service, provided by a wireless service and provided by a fibre service under the legislation as it is currently drafted will grow and grow and grow. And there is nothing that this legislation can do about it.

Senator Conroy—It’s called technology.

Senator JOYCE—Ah! I will take that interjection. He said, ‘It’s called technology,’ and I agree with him. It is how we force that technology out to regional areas. There is nothing in this that says that over the course of time, with the disparity in that pricing structure, the technology will drift out to regional areas. We need that process of assessment to draw the comparison between the price of the megabit of service delivered by fibre and the megabit of service delivered by satellite and to show what that pricing structure is. There is no way, as the legislation is currently drafted, that Mr Windsor, Mr Oakeshott, Mr Crook and others can get a guarantee that their people will not be disadvantaged unless we have the capacity in the legislation for the assessment to be done on the download and upload speeds across the nation, not only in part of the nation.

That is what he is saying when he talks about cross-subsidisation. Let us talk about the fact that the disparity will grow. Let us acknowledge that there has to be the capacity for the delivery of funds to take regional people ahead. He said that 93 per cent will be covered by fibre. If that is the case, we have quite a substantial base to ensure the investment of equivalences across the nation.

The coalition is the party that is going to be looking after this and making sure that we do the homework that, obviously, Senator Conroy and the Labor Party and their 600 advisers have not done.

There is no mechanism in this legislation as it currently stands for someone to take it to the ACCC and to have the ACCC clearly state, in an evident and unambiguous way, that what you are looking at is across the nation, the pricing across the nation to fill the recommendation, as the minister himself said: the uniform wholesale price, the uniform national—not just uniform urban—pricing scheme. The minister is obviously desperately hoping that Mr Windsor and Mr Oakeshott have the television turned off at this point in time, because if they have it on, if they are following the debate, they will realise that there is a tick in this that must be fixed. And possibly you might decide that Telstra and the NBN do not want it fixed, that they are quite happy because they have led the minister up the garden path just as they did when they released to him that the ducts and the pipes were $11 billion—that this was their ticket out. Their ticket out was the fact that they could break the connection between urban, semiregional and regional customers, and they could do it with weasel words such as the minister himself used at the start of this debate when he said, ‘A person using a satellite service in Sydney will pay the same price as a person using a satellite service in Bedourie.’ Well, of course they would, but who in their right mind in Sydney is going to be using a satellite service when there is fibre in his house?

The issue is that you have made this nation borrow the $37 billion to do this, so the nation has a right to expect with this investment that you deliver on your promise. The Labor Party have the guile and the cunning of a reptilian wriggling animal. The only way we could get you on the sticky paper on this
one is to bring you in here and drag you through the prickles, and now we are finally going to get somewhere—and we are going to make you vote for it. And I know which way you are going to vote. Because you are going to be flushed out, you are going to vote against this, but that is truly going to be a sign to those in the other place as to exactly what is going to happen next and what is going to happen to them. I foreshadow an amendment which will be circulated soon where we will deal with this.

Senator Conroy interjecting—

Senator Joyce—It is amazing, Chair. Before, the gentleman was almost mute. He was catatonic. He was frozen in time. And now he is abundant with life. He has come back to life. He is with us. He has ascended the pearly vale from the choir invisible and is back in the land of the living.

But now we are going to get this and we are going to have to draw this out. It is very important that Senator Fielding and Senator Xenophon and the Greens acknowledge getting this comparability between the silos. It is not there. It is not there in the current amendments, and we must deal with it in a form so that we can truly deliver on the promise that I think everybody has made. The difference is that we make the promise and put it in legislation; the Labor Party makes a promise and puts it in verbal bouquets and words. And some Labor Party people make the promise and just plain break it—such as the Prime Minister.

We will be putting this issue that has been clearly fleshed out, because the minister has the opportunity to clearly spell out the section as I have asked him. The question is, Minister: take me to the section of the act that shows the capacity to deliver comparability between the silos of costing. Take me to the distinct recommendation that spells out how great the disparity can be before it is actually in breach between those silos. It does not exist. It is not unit pricing across the nation; it is unit pricing within the silo of costing. And what the Australian—as you deridingly call them, the ‘grand architect of evil’, the Australian newspaper—said was right; in fact, they were probably letting you off a little. They could have gone a lot harder, but they will probably go a lot harder tomorrow, I think.

I am interested to see—now that you have broken out of your catatonic state and are back with us; now that you are once more a livewire of energy and knowledge—you direct us to the legislation which you are such an illuminato on and take us to the section of the legislation which shows how we can deliver a parity of pricing between these silos so as to provide a mechanism so that people in regional areas, over the long term, will have a dispute resolution process.

Senator Conroy (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.50 pm)—It is called the ACCC, and we have given it real powers which you never gave it.

Senator Joyce (Queensland—Leader of the Nationals in the Senate) (4.50 pm)—That is a non-answer. That is a complete and utter non-answer. ‘It is called the ACCC’! That is his knowledge of it. ‘It is called the ACCC.’ Well may it be! We are lucky it is not called something else! ‘It is called the ACCC’, and that is how we are going to resolve this! ‘It is called the ACCC’! I hope the people in Tamworth feel comfortable with that answer. I hope the people in Hastings and Port Macquarie feel comfortable with that answer. I hope the people in Gloucester, Gwyra and Tingha feel comfortable with that answer. I hope the people in Glen Innes and Julia Creek all feel comfortable with that answer. When, in a few years time, they are paying
an exponentially increased price per megabit of speed over what people are paying in urban areas, we will be able to direct them back to the *Hansard*, and the answer will be, ‘It’s called the ACCC.’

But the trouble is not just that it is called the ACCC; it is what the ACCC refers to in assessing the disparity in pricing. You have not given it that capacity to assess the disparity in pricing; you have just given them a benevolent statement. What we are going to give them is the mechanism for the assessment of that disparity in pricing, and we are going to do it with a mechanism that they clearly understand, which is the download and upload speeds. What you will have to explain to the country Independents, to Senator Xenophon, to Senator Fielding and to the Greens, including Senator Ludlam, is how your process is going to direct the ACCC to a proper mechanism which they can rely on so that in the future, as the technology grows, we have the capacity to force the technology out to these regional areas. Minister, this is the time when you can really make some headway or, I imagine, if people are vigilant in watching this, you can really do some damage.

**Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.52 pm)**—Senator Joyce, it is fascinating that you are moving an amendment to a bill that you are about to do something that is totally and utterly—$37 billion worth—absurd does not mean that it is not incumbent upon us to do our very best to hold you to the promises you have made, the caveats and warrants you have given to other people, and to provide a mechanism at least looking after the interests of those whom you are going to spend the $37 billion on. We want to make sure we look after all of Australia. We want to make sure that the Independents clearly understand that, to get what they ask for, this is what they need. That is just another non-argument. There is nothing within this chamber that says that, if we disagree with something because it is $37 billion worth of total and utter absurdity, it is not a responsibility of ours to try to make sure that we do whatever is within our power to bring fairness and some sense of sanity back into the debate and to provide a mechanism where, in the future, the people that you made the promise to and that, in general, we represent are looked after. What we are going to do with this is look after them, and you are not. You are just going to go into a tirade. You have gone from a catatonic state to a tirade.

**The TEMPORARY CHAIRMAN (Senator McGauran)**—Order! Minister, I think you should withdraw the word ‘hypocrite’.

**Senator CONROY**—I apologise; I withdraw. But, Senator Joyce, you are going to vote this bill down. You are moving an amendment to a bill you are going to try to defeat. You are not serious. You are trying to defeat it. You are not serious, you should not be taken seriously and you are running a thoroughly misleading campaign.

**Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (4.53 pm)**—I think he doth protest too much. I think that it is quite obvious that just because you are about to do something that is totally and utterly—$37 billion worth—absurd does not mean that it is not incumbent upon us to do our very best to hold you to the promises you have made, the caveats and warrants you have given to other people, and to provide a mechanism at least looking after the interests of those whom you are going to spend the $37 billion on. We want to make sure we look after all of Australia. We want to make sure that the Independents clearly understand that, to get what they ask for, this is what they need. That is just another non-argument. There is nothing within this chamber that says that, if we disagree with something because it is $37 billion worth of total and utter absurdity, it is not a responsibility of ours to try to make sure that we do whatever is within our power to bring fairness and some sense of sanity back into the debate and to provide a mechanism where, in the future, the people that you made the promise to and that, in general, we represent are looked after. What we are going to do with this is look after them, and you are not. You are just going to go into a tirade. You have gone from a catatonic state to a tirade.

**Senator IAN MACDONALD (Queensland) (4.54 pm)**—I would like to hear the minister’s answer to Senator Joyce’s ques-
tion. This is where I offer to do a song and dance routine while the minister chats—

Senator Conroy—My apologies, Senator Macdonald. I was just consulting the officials.

Senator IAN MACDONALD—I have a question to ask, but were you going to answer Senator Joyce’s question first?

Senator Conroy—I think he made a speech; he did not ask a question.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (4.55 pm)—Yes, I did. I can ask the question again. I will make it really succinct: can the minister please direct us now to the precise section of the act which brings about the mechanism that assesses the costs of the different silos—those being fibre, wireless and satellite—so that, in the future, where dispute resolutions come before the ACCC, parity and fairness are delivered whereby people in regional and remote areas pay a price that is comparable to the price people in urban areas pay, as determined by the megabit of speed?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (4.56 pm)—The ACCC have powers to deal with outrageous pricing and overpricing, and we gave them real powers and real teeth. So the ACCC are the people to go to to deal with questions of pricing, and they have had real powers given to them for the first time. But let me repeat this once again: 93 per cent of Australians will get a uniform price for whatever product is offered on fibre; and four per cent will get a uniform price, wherever they live, for what is offered on wireless. As for satellite—I think I have explained it a couple of times now but maybe I need to again—no matter where people live, they will get a uniform price. It is as simple and straightforward as that. There is no backflip, no change in policy. These are simply attempts to misread, misinterpret and misrepresent statements.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (4.57 pm)—I do not know whether to help Minister Conroy with his mathematics or with his own legislation. Obviously, in summary, it goes like this: ‘If you’re in the 93 per cent, we’ll look after you; in the four per cent, you’ll be in a different pricing structure and good luck to you.’ As for the rest, which he did not even mention, we do not know what happens to them. The magical three per cent? God bless them, I suppose! That is all you can say about them.

Minister, the ACCC is not actually in a section of your act. You have not read out a section. Rather, it is a case of: ‘Look over here, Australia. This body here is going to look after you. We don’t quite know how, or what direction to give them, but they will look after you—and, if they don’t look after you, maybe the CWA or the Salvation Army might look after you.’ So what is your mechanism to compare the costs of the different silos? Where is it in the legislation? Please direct me to it. You are the minister. You are not even a minister representing the minister. You are it. You are the big kahuna. You are supposed to know the legislation. The reason I ask is that you are the same minister that I sat in the Sky studio with and, after you saying the NBN was not in a section of your act, upon reading it in front of you I found it about five times. Later, I think we counted up to 54 times. Remember this one? It is like a plane taking off and then crashing back to the ground.

Senator Fifield—It was a great show!

Senator JOYCE—But it is happening again here today. It is like Airport 2011: it is the sequel! You cannot direct me to the section in the act, can you? Because it does not
exist. It does not exist. It is just this sort of verbal bouquet, these wondrous statements. But, Minister, where is it? Tell the people. They want to know where it is.

Senator IAN MACDONALD (Queensland) (4.59 pm)—Like Senator Joyce, I just want to get the minister’s assurance that the seven per cent will not pay more than the 93 per cent for the comparative service. The minister was verballing me earlier and saying that I did not understand the technology. I could have told him that. I do not understand the technology. But I understand enough to appreciate that what you can get from fibre is not exactly the same as what you can get from satellite and perhaps not the same as what you get from wireless. But for a comparative service, Minister, will people in remote Australia pay the same amount as the 93 per cent in the city? Or perhaps they will be cross-subsidised to even pay a lesser price? Perhaps I will go into my song and dance routine again now, while—

Senator Conroy interjecting—

Senator IAN MACDONALD—Actually, every time I promise to sing, I get some action. There is nothing wrong with my singing voice!

Senator Conroy—Try the Nutbush. It’s more modern than the hokey-pokey.

Senator IAN MACDONALD—Okay. Minister, I am just concerned that the pricing for the majority of Australians and for those in remote Australia currently, because the OPEL contract is not in place, costs people in regional Australia a bit more. The Howard government was renowned for the way it subsidised services to the bush, but broadly. I am just trying to get this from you, following on the very good points that Senator Joyce was making: can you guarantee that people in the country in remote areas, no matter how they receive their services, are not going to be paying more than the 93 per cent of Australians for a similar service? This is quoting you: ‘You’re saying you want me to guarantee pricing into 30 years time.’ Yes, I do. Not the actual dollar amount—

Senator Conroy—No, that’s exactly what you want.

Senator IAN MACDONALD—No, I do not want the dollar amount. I want you to guarantee that people in the remote parts of Australia will not be paying more than the rest of Australians for a comparative service.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.02 pm)—Ninety-three per cent of Australians will receive a uniform price no matter where they live, on fibre. Four per cent will receive a uniform price on wireless no matter where they live. And three per cent—

Senator Williams—Let’s compare the prices!

Senator CONROY—But you cannot compare prices when there are not products to compare. And three per cent will receive the same price, no matter where they live, on the satellite service.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (5.03 pm)—This is the crux of the issue. His statement is just so conniving it is hilarious. ‘Australians will receive a uniform price no matter where they are,’ and he said, ‘That sounds good—on fibre.’ The little caveat at the end there is just the little bit that everybody has a problem with. It is like another promise: no child will be living in poverty by the end of the century. It is one of those incredible promises. Nobody was really taking you up on it, but they have got you on it now. All Australians will receive unit pricing—on fibre. It is the sotto voce addendum which has all the problems in it.
I will now move an amendment to government amendment (2), as circulated on sheet 7066, pertaining to getting you to keep your promises. This is an amendment to get you to keep your promises, so the sotto voce addendums are relinquished and you actually deliver a uniform price across Australia, full stop. I move:

(2) Omit subsection 151DA(6), substitute:

(6) For the purposes of this section, in determining whether there is uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation, the mechanism of that pricing is to be determined so as that, regardless of the technology over which a broadband service is offered, the pricing of that particular service, calculated as the cost of the average of the upload and download speeds of the particular service referred to, shall be uniform.

(6A) In any dispute in relation to uniform national pricing, the ACCC must use the mechanism specified in subsection (6) in dispute resolution regardless of the delivery mechanism.

Senator IAN MACDONALD (Queensland) (5.05 pm)—Let me put it this way, Minister. Let me delve into technicalities, which I am not competent, really, to do. For someone to get broadband, telephone systems, perhaps Skype and perhaps reasonable TV, will they pay the same wherever they are?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.06 pm)—Your question is so nonsensical; it is so ill-defined that it is impossible to answer. It is so ill-defined because of a lack of understanding, and I am not trying to be pejorative when I say this. You acknowledge that you are not an expert in the technology field. But it is such an ill-defined question that it is impossible to answer, Senator Macdonald, which is why Senator Joyce’s line of questioning is such a fabrication. You are asking for products that do not exist to be compared and calculated and guaranteed on pricing outcomes. You are taking a can of baked beans, and you are trying to pretend that a can of baked beans is the same as delivering a megabit of service, when it is not. But you are applying a can-of-baked-beans pricing principle—which no-one else really accepts, but that is a whole different argument—and you are simply trying to apply a can-of-baked-beans analysis to a megabit analysis. And you just blithely wave it away as if it does not matter that they are not the same. It is not possible to answer the question you have asked, because it is so ill-defined.

Senator IAN MACDONALD (Queensland) (5.07 pm)—Minister, what I am saying—and I should not have gone into the specifics—is: a comparatively similar service. What you are confirming is that not all Australians are going to benefit the same way from the NBN.

Senator Conroy interjecting—
Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.08 pm)—I am happy to respond. It is not possible economically to deliver fibre and the products that fibre will make available to 100 per cent of Australians. It is not possible to deliver fibre or wireless to 100 per cent of Australians in an economical way. Therefore, the products that will be received by people on wireless and satellite will not be of the same quality in terms of the actual products that are able to be delivered over a piece of fibre. We have said that from day one—from the first day we announced our policy, whether it was the 90-10 policy or the 93-7 policy. It is not possible to guarantee that every single Australian can benefit the same from the National Broadband Network projects, because it is not possible to deliver fibre to 100 per cent of Australians without destroying the economics of the NBN.

Senator IAN MACDONALD (Queensland) (5.09 pm)—I then despair for remote Australians. I was hoping that I would never hear that answer from the minister. He can be tricky and cute about what services you can get. What I am trying to ask the minister he is clearly avoiding, which, as I say, fills me with despair, because the normal services that a household would expect, as I understand it, can be delivered by any means. I want the minister to assure me that the normal services that any household would expect in the future and expect today will be delivered to them by whatever means at no differing price. So people in remote Australia—which I always thought was the Labor Party’s promise—would get the same services delivered for an average household. Do not talk to me about the super hi-fi products—but the normal services that any household would expect will be delivered at a uniform price across Australia. That is what I was hoping the minister could say to us. I do not want him to say again, ‘Wireless is not the same as satellite or as fibre.’ I know that. What I want him to tell me is that the average household with the ordinary sorts of services they expect will get those services at a uniform price or that country people, remote people, will not pay a hell of a lot more to get these basic services that any household expects.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.11 pm)—Senator Macdonald, again, I know you are genuinely trying to describe your question in a way that you think assists me in answering you. But you have asked me to guarantee that an Australian who is using fibre will receive the same level of product as an Australian who is receiving wireless or satellite. That is exactly what you are saying.

Senator Ian Macdonald—You choose not to understand what I am saying because you don’t want to answer the question.

Senator CONROY—I am actually trying to understand your question. If I have misunderstood your question, please feel free to explain it to me again. I am more than happy to continue the discussion. But it is not possible to define a suite of products that can successfully be guaranteed on wireless or satellite as against fibre. It is not possible, because the thing about fibre, as we have discussed at length, is that because it is a dedicated point-to-point service you can get no interruptions, no matter how far away you are from the central transmission point, and there are no interruptions if anybody else in the street turns on the fibre next door. With wireless and satellite, it is not possible to guarantee the delivery of the product suite, even—to borrow your phrase, I think—the ordinary product suite.
Senator Ian Macdonald—What households expect.

Senator CONROY—The point is that you cannot. That is what households expect today and, more importantly, into the future. The reason we are future proofing 93 per cent of Australians’ homes is so that, in the future—

Senator Ian Macdonald—And saying the other seven per cent can get lost?

Senator CONROY—Unless you are advocating, as the Farmers Federation and some newspapers seem to be advocating now, that we extend fibre to 100 per cent, it is impossible to deliver ubiquitous fibre. But, if you want to make that argument, please do. Then you could have a sensible discussion about the product range available. It is not a matter of ‘get lost’; it is that the technology of satellite is captured by the laws of physics, the technology of wireless is captured by the laws of physics and the technology of fibre is free of some of the constraints that are in those other two technologies. So the product suite, even when you try and suggest just the ordinary product suite—even that simple statement, when it comes to baked beans or a leg of ham or a gardener coming in, knocking on your door and doing your gardening—does not equate in this particular discussion.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (5.14 pm)—There is something we need to get clearly on the record here: the conflated argument the minister is using is a total misrepresentation. There is nothing more certain than what a megabit is. A million bits is a megabit. A thousand kilobits is a megabit. The electrical impulse through a static switch at a static voltage or current is one bit, being the two sides of the impulse. A million bits is a megabit, Minister. We are not talking about a can of beans. If you go to the surface of Mars a megabit would still be a million bits. In Chile, a megabit is still a million bits. A megabit is one of the most constant things that you could possibly get. What you are trying to conflate in that rambling dissertation is that there is somehow a variant of it. A megabit is a million bits. It is a thousand kilobits and it is absolutely constant.

What we are relating here is the price of that megabit, which is an absolute constant, to the dollar. A hundred cents is a dollar and a million bits is a megabit. We are talking about the relationship between those two static properties and how it relates to different sections of Australia. It has nothing to do with legs of ham. It has nothing to do with cans of baked beans, although I do admit that cans of baked beans seem to be what are emanating from that corner. It is about two completely and utterly reliable static properties and their pricing structure through separate sections of Australia and the communities which we represent. You say that this is about technology, but we are not mentioning technology. We are saying that what you download and what you upload should be priced on the quantum amount. That should be the item for comparison that the ACCC uses if there is a dispute, because it is not in the legislation.

You cannot fool all the people all the time and you cannot work on the premise that people do not research what you say. Because you have a very bad habit of not knowing your own legislation it makes other people extremely vigilant about what you do. The Australian people should understand that what we are doing here is making sure that when the minister says, ‘I will bring in unit pricing and I will look after all of you’—that is, just 93 per cent of Australians—we will actually make him say, ‘I will look after all of you, full stop.’ We are not going to have three classes of Australians under a Labor
government. We are going to try to make sure that we look after all Australians. We are going to say to our colleagues in other places that this rule of assessment should be taken as a mechanism because if we do not we will leave the legislation lacking.

I have to pull you up on that, Minister. I just do not understand how you start comparing computers with baked beans. That one has got me fascinated. I know that somewhere in there is a relationship between baked beans and computers—I do not know. Maybe it is to do with fibre. Got it! More fibre in your diet makes you feel better and that is how the baked beans come into it. It is a very long bow, but we got there in the end.

If you eat too much pork and if you eat too many legs of ham, you need to eat baked beans to look after your fibre content.

On a more serious note, we know exactly what we are talking about: we are talking about the pricing of a megabit. The price is determined by dollars and cents. There are a hundred cents in the dollar and it is static, no matter where you are. A megabit is a megabit. It is a million bits whether you are here in Canberra, out in Danglemar, over in Chile, on the face of the moon or in the outer solar system. A megabit is one of the most constant things that you will ever come across. The relationship between two constants is a very applicable measure for the ACCC to use in determining, in a diligent way, whether people are getting touched or not.

Senator EGGLESTON (Western Australia) (5.19 pm)—Minister, one of our features of our telecommunications system at the moment is that it overcomes the tyranny of distance so that people in remote and rural areas pay much the same price for their telecommunication services as do people in the cities. As you know, that has been paid for and managed under something called the universal service obligation, under which Telstra and other telcos subsidise the cost of providing telecommunication services to remote and rural areas. I think that what Senator Joyce is talking about is the same thing as the principle embodied in the universal service obligation—and that is that there should be an equality of cost for telecommunication services wherever you live in this country.

It seems rather curious to me that you are proposing, in the national broadband network, a total communications system which is going to cover the whole of this country and will become the highway by which communications are achieved but you are abandoning this principle of the equality of cost of service regardless of where you live. I accept that there are different technologies involved but the overwhelming issue is this equality of service wherever you live around this vast country. I am just curious as to why the government has not considered it appropriate to expand the USO—the universal service obligation—to this legislation to ensure that people, wherever they live in Australia and by whatever means they receive their telecommunication services under the NBN, pay the same price for it. I would be grateful if you would be good enough to answer that question and explain the policy reasons underlying it.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.21 pm)—We will not be supporting the opposition’s amendment.

Senator Eggleston—I rise on a point of order. I asked a question then and I would be grateful if the minister would answer it.

The TEMPORARY CHAIRMAN (Senator McGauran)—That is not a point of order.
Senator LUDLAM (Western Australia) (5.22 pm)—I will be brief. I just wanted to indicate for the benefit of Senator Joyce that the Australian Greens will not be supporting this audacious amendment.

Senator FISHER (South Australia) (5.22 pm)—Minister, I have heard you guarantee uniform pricing for the 93 per cent who receive fibre to the home. I have heard you guarantee uniform pricing for the four per cent who receive broadband via wireless. I have heard you guarantee uniform pricing for the three per cent who receive broadband via satellite. Will you guarantee that a person accessing broadband via fibre to the home at 12 megabits per second will pay the same price as a person accessing broadband via wireless at a speed of 12 megabits per second and the same price as a person accessing broadband via satellite at a speed of 12 megabits per second?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.23 pm)—As I have already indicated, we have tabled NBN Co.’s pricing. The product ‘12 down and one up’, which is the only product across the pricing range that is a consistent product because of technology, is being offered at the same price. It is the only product that is consistent and it is being offered at the same price.

Senator FISHER (South Australia) (5.24 pm)—So, Minister, is the—

Senator Conroy interjecting—

The TEMPORARY CHAIRMAN (Senator McGauran)—Order! I have called Senator Fisher.

Senator FISHER—So, Minister, is the answer to my question yes? If so, can you please say so.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.25 pm)—‘Twelve down, one up’ sounds to the Australian people more like a game of two-up than anything else. Can you please put it in English, Minister? Does that mean that a person accessing broadband via fibre to the home at a speed of 12 megabits per second will pay the same price as a person accessing broadband via wireless at a speed of 12 megabits per second and that they will pay the same price as a person accessing broadband via satellite at a speed of 12 megabits per second—yes or no?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.25 pm)—I invite you to look at the pricing table that was tabled—I think Senator Macdonald has just asked for a copy of it; hopefully some copies will be circulated to you—which shows exactly that. When you say ‘12 down’, it is not just 12 down, because 12 down comes with a variety of options of up.

Senator Fisher—On a point of order, Mr Temporary Chairman, on a point of order: ‘12 down’ was not a term I used, other than in the introduction to my second question—

The TEMPORARY CHAIRMAN (Senator McGauran)—Senator Fisher, what is your point of order?

Senator Fisher—to say that ‘12 down, one up’ is more like two-up.

The TEMPORARY CHAIRMAN—There is no TEMPORARY CHAIRMAN
Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (5.26 pm)—I think it is really important to understand that you have to watch the minister very closely because he is so shrewd. He said it would be 12 down and one up across all three services, which sounds good—at the start. You see, as things progress, 12 down and one up will become antiquated, redundant and in the past. Then we will move on to another product, and requirements, that is not entry-level product. As we move down the path—we know the exponential growth in technology—what they will say to you if you have a problem is, ‘Oh, you get the same price for 12 down and one up,’ and you will say, ‘Yes, but what I need now is 40 down and 20 up.’ They will say, ‘Uh-uh, it’s not covering that.’ Then you will say, ‘Well, I feel I’ve been discriminated against in my pricing, because I live out where I have to use satellite or wireless and my price has gone through the roof.’ So you will trot off to the ACCC and they will say, ‘Oh, well, it’s 12 down and one up that’s entry-level pricing, and they can’t discriminate against you.’ You will say, ‘Well, that’s no use to me.’ How are you going to assess where you are being discriminated against?

That is why it is so important to get this through, because this gives you the mechanism to assess. You can say, ‘I’m going to assess it on the calibration of the delivery of information, which is the megabit, against the mechanism by which I pay for it, which is the dollars and cents. That has to be given to the ACCC in a definitive form for their assessment process. Otherwise all we will be legislating for is a very slight section in history: right now. That is all we are legislating for. We are not looking after Senator Eggleston’s patch, Mary-Jo Fisher’s patch or Senator Macdonald’s patch. We are not looking after them into the future, because we have not defined the mechanism of assessment, and that is what this does. So watch what the minister says. When he says ‘12 down and one up at the start’, it means that you will start to have real problems in the future.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.28 pm)—I am hoping that Senator Fisher has now received a copy, but in case she has not let me read it out for her from the NBN business plan, which is publicly available and has been for three or four months: ‘Downstream 12, upstream one: fibre, $24; wireless, $24; satellite, $24.’ Fibre then has the capacity to have 25 down and five up; 25 down and 10 up; 50 down and 20 up; 100 down and 40 up; 250 down and 100 up; 500 down and 200 up; or 1,000 down and 400 up. There are no products available to match those products on wireless and satellite.

On the point about satellite, which I accept is a technical and possibly complex one, I accept your argument is trying to grapple with satellite technology. Once the satellite is up it is very hard to substantively improve on the 12 down. We are moving to a 12 down and two up and a 12 down and four up. That is the wireless and satellite roadmap at this stage, but none of that is matching the next tier of fibre. It is a technology question, Senator Joyce. You are creating all this noise not because of anything to do with this chamber but because you think you have an argument to prosecute against some members in the other place. If you take the time to read this—I know you are studious but you may not have had time to read it—you will see the pricing. The other thing is that pricing is forecast by NBN Co. to come down—not go up, but come down.

Once the satellite is up there you can get an incremental upgrade, which is why we
talk about the 12-2 and 12-4 rather than the 12-1. So for the people who can only access the satellite there will not be a huge jump until a new satellite gets put up. Our satellite, which encompasses these future upgrades, will go up in 2014-15, but the next time for a major jump will be when we put up the next satellite. Satellites usually last for 10 to 15 years, so there is limited capacity for a jump rather than an incremental tweak of software.

So we have a product pathway and it clearly says that the pricing is under review, but none of those products will match the next tier of fibre. It may be possible that a wireless product becomes available that could perhaps be a 25-5. No-one knows when that will be; no-one knows if that will be the case. Wireless is developing in such a way that that is possible in the future, but by then fibre may have moved to a different stage and there may not be a fibre 25-5. I doubt that, but that is the way technology works. It is not that a megabit is a megabit—to borrow Senator Macdonald’s phrase. The product suite being developed and delivered via that megabit is different because the way a megabit works on one technological platform is different to the way a megabit works on other platforms. So the baked beans/widget argument, which we have already had, is not possible in this case. The pricing plans are all here, Senator Fisher. I hope you have had a chance to glance at them. You have been on the committee for a while. You have examined all of these issues and here is a refresher for you to go through again.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (5.33 pm)—Once more, I have to direct the chamber and inform Australia that this convulsion from the minister was not an actual answer. We all know ‘12 down, one up for $24’—we understand that. We have known that from the start. What we are asking about are your future assessments. You keep on saying, ‘Different technologies have different platforms and different uses’—that may be the case and we acknowledge that. We are not arguing about technologies; we are arguing about the assessment process for the megabit download-upload and the price that is paid between different areas.

You are saying, ‘Oh, there are different technologies they can use on fibre that use substantially more megabits and we won’t be able to deliver it through satellite.’ That in itself is an admission. Therefore, we are saying the ACCC or any other assessing body needs the capacity to assess whether people are being discriminated against. It is not a nefarious argument about different technological platforms but about the capacity for download and upload.

So the person who gets 100-megabit download speed in Sydney is obviously receiving a great price. They are driving the agenda, they are making the market, they are getting the return—and we have all acknowledged there is cross-subsidisation. How does a person out in a remote area work out whether he is paying a reasonable price or getting touched? We want a comparison of capacity and availability to technology and to know what drives it. Any time you assess a platform you assess it on its megabit download and upload capacity. That should be what the ACCC is able to use. Why are we having the ACCC isolating them and saying, ‘No, you can’t’—you cannot use the bleeding obvious to work out whether a person is getting touched or not?

Our argument is about the relationship between the megabit download and upload and the price. Your way to try and confuse the issue is to bring in certain platforms and certain different technologies. We know that. If there is only a certain capacity, you should pay a proportionally lesser price. That would
make abundant sense. If a water pipe is only bringing you a certain amount of water, you would pay for the water by the litre—wouldn’t you? If another pipe was giving you a substantially greater amount of water you would say, ‘Well, that is more water at approximately the same price.’ The price of the water should not change by reason of the pipe that brings it to you.

Senator Xenophon interjecting—

Senator JOYCE—Yes. And you get the bigger water price out because you now have a monopoly—I take the interjection, Senator Xenophon. We do not have a market; we have a monopoly. In fact, we have a monopsonist. It is incumbent upon that monopsonist to drive the technology to those regional areas so they get the bigger water pipe delivering more water—or, in this case, delivering more megabits. We are not being unfair to anybody—this is a monopoly, a monopsonist. We have to drive this monopsonist to drive that technology out, because no-one else is going to do it for us. If we do not do it now, they just will not do it; it is just not in their interest to do it.

The way they have structured this—as you would understand, Senator Xenophon—is that they have separate silos so they can leave one silo alone, they can just leave the satellite silo all on its own. He has even admitted technology is up there for 10 to 15, it is not even about replacement. There is nothing in here saying they have to even replace it.

Senator Xenophon—‘Monopsony’ is a Greek word, actually.

Senator JOYCE—They are Greek words: ‘monopsony’ and ‘monopsonist’. So they do not even have to replace it. I presume there would be a public outcry if they did not, but they do not have to.

This amendment forces them to do that. It makes this monopsonist drive this technology out into regional areas continually. If it were a market, you would not have to worry about it, I suppose, but it is not a market. The legislation has created this giant monopoly. Therefore, it is incumbent upon us to put in place the mechanisms to drive this technology out. Otherwise, we will have this initial bouquet at the front, 12 down and one up for 24 bucks. In the future, God help you, because there is no assessment process and no mechanism to go to the ACCC. That is why they are so caustic about this whole process. I plead with you: if you are going to give the ACCC the capacity of assessment, you have to pass this amendment.

Senator XENOPHON (South Australia) (5.38 pm)—I want to pay tribute to Senator Joyce for his concern about telecommunications for the bush, something that he has championed for many years. As I see it, one of the problems we have with the privatisation of Telstra—and this is not in any way a criticism of Senator Joyce—is that the bush has not had the deal that it deserves in terms of telecommunications services. As I understand it, at the moment the universal service obligation indicates that the download speed is about 526 kilobytes—I think that is right—

Senator Joyce—About that.

Senator XENOPHON—It is about that, so it is pretty slow.

The drafting refers to:

For the purposes of this section, in determining whether there is uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation, the mechanism of that pricing is to be determined so as that, regardless of the technology over which a broadband service is offered, the pricing of that particular service, calculated as the cost of the average of the upload and download speeds of the particular service referred to, shall be uniform.
the cost of super fast wireless in the bush, for anything other than the basic entry service. Again, this is not a criticism, but that is how I read the particular effect of this. By requiring that, you need to have an extensive form of cross-subsidisation, which would be an exponential increase in the level of cross-subsidisation in relation to that. That is what I am concerned about.

I am not questioning Senator Joyce’s intent in relation to this, but I think the effect might be to push up the price of services overall. Senator Joyce used the example of water, something we are both very passionate about. But this is not about delivering water—to use the water analogy, and I will probably mangle this up—

**Senator Williams**—You want it all in South Australia!

**Senator XENOPHON**—No, we just want a fair share of water in South Australia, Senator Williams. But it is not as though we are talking about the same source of water, and whether it is from a river system; we are talking about getting water through reverse osmosis or compared with getting it from a bore or from a river system, and how you actually deliver it there. I think of this as an analogy to wireless or a satellite service. So my reading of the amendment in its current form is that the unintended consequence of it would be that it would actually drive up the price of fibre to the cities dramatically in relation to that. Again, it is not a criticism; that is my concern.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.42 pm)—I acknowledge what Senator Xenophon said there. What I would say is that the whole chamber acknowledges that we have cross-subsidisation. Even the Labor Party acknowledge we have cross-subsidisation. That is the only way you can provide a service out to regional areas.

Let us go through the process. As the minister has pointed out, 93 per cent will be on fibre—the vast majority of Australia. And yes, there is the mechanism, there is the impetus for this monopsonist to reinvest in regional Australia; otherwise, it might not be so much that you put the price up in urban areas but the price in regional areas will go ‘down, down, down’ until—

**Senator Xenophon**—You sound like a Coles ad!

**Senator JOYCE**—Yes, but this is serious! Obviously, the monopsonist role would be to go out to regional areas and make sure they get a better service so that they can get a better return from that section—to motivate them in making sure the technology is there, Senator Xenophon. You see, if we do not, there is nothing to stop them over the long run, apart from 12-down, one-up, 24 bucks at the start, to just leave that area alone and do nothing to it, never touch it, never invest in it—because they don’t have to. But what this does is involve the comparison of what people will do, because they will buy a product off the shelf in Chatswood and say, ‘I can’t use it in regional areas,’ but this drives that mechanism. Otherwise, there will be a price disparity, where for people in the country it will be very cheap, but this is to drive that investment into those regional areas.

There is no mechanism of comparison—the most logical mechanism that applies is the megabit to the dollar, in the regional area situation. It is monopsonist; it is not a market. We are not being unfair to anybody: we are dealing with a government legislated monopoly. We acknowledge there is cross-subsidisation. That is all part of the process of what we are doing here. That is why at the start we have three silos at the same price—at the start. But what we are trying to deal with now is the future, and the process of assessment. And what we are doing with this
is giving the ACCC the mechanism, and a real guide, to the process of assessment so that when people feel that they are being swindled or left behind or ignored, they have something to hold onto—because, at the moment, they have not.

Senator XENOPHON (South Australia) (5.44 pm)—I do not want to engage in a lengthy debate with Senator Joyce on this. I cannot support this amendment, because I think that the inevitable consequence of it would be to cause an exponential increase in the real-world cross-subsidisation. If regional Australia is current getting—through part of Australia—a standard of about 526 kilobits per second, we will be looking at 12 megabits, about 19 to 20 times faster. That is an improvement. I think that, ultimately, what will occur is that that is the benchmark; there will always be an entry-level service where there is uniform pricing.

Senator Joyce interjecting—

Senator XENOPHON—Twelve down, one up, as Senator Joyce points out. It is anticipated in the legislation, I think, that there is a basic entry-level service where there is universal pricing—and that is obviously desirable. If you want to achieve what Senator Joyce wants to achieve—and this is not a criticism at all—as suggested, you will end up having a huge level of cross-subsidisation where the price of fibre in the cities will go through the roof, because, at the moment—

Senator Williams—They’ve got 93 per cent of it.

Senator XENOPHON—But the technology is not there to deliver satellites beyond about 12 megabits a second. In years to come, I would like to think the technology will inevitably improve. But you are seeking a level of cross-subsidisation here that is just extraordinary. I cannot support it. I understand the intent of it, but I think the unintended consequence could be quite severe on the cost of fibre throughout most of the country.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (5.46 pm)—If the technology is not there, they will not be able to provide for it—which means the people won’t have to pay for it, because it just won’t be there. You do not have to pay for something that is not there. What we are saying is that, without this, we lose the capacity to inspire it to be there. That is simply it. With the cross-subsidisation argument, what we are saying is that for that to hold water—using the water analogy—you have to say that we are somehow inspiring the concept that people in regional areas will get exactly the equivalent service in fibre. We acknowledge that is not the case. We just do not want them to be paying a price which is exponentially greater for the delivery of a megabit service than they get in the city. If they cannot get the service, what we plead with you is that they don’t have to pay a price per megabyte which is exponentially ahead of what they would pay in an urban area. We have to, in trying to deal with this government monopoly, use some mechanism where there is not the disparity between these three sides—some mechanism of assessment, so if a person in a regional area is getting a vastly inferior service in the capacity to download data, they are paying a vastly less price than what the person in an urban area on fibre is paying. In the most brutal form, if they run ahead with fibre in urban areas, and never touch regional areas, at least in regional areas they have the solace of having extremely cheap service—because there is nothing in the legislation to force them to drive that technology. But this, in a way, does inspire them, because if they want to get a service out there they have to inspire the technology to increase. There is nothing here, Senator Xenophon, that says, ‘We demand parity of
delivery of service’. We are talking about fairness in price.

Senator FISHER (South Australia) (5.48 pm)—Let’s try skinning this rabbit another way. Minister, will a person, using the extract from NBN Co.’s corporate plan of December 2010, accessing the same product combination—the words used in NBN Co.’s corporate report—from the same retailer, pay the same price for that product, whether they are receiving it via fibre, satellite, wireless and/or a combination thereof?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.49 pm)—As you would know, Senator Fisher, the NBN is a wholesale only provider and the NBN supplies—

Senator Fisher—Aha!

Senator CONROY—I am sorry if that is a revelation to you, after all this time chairing so many committees looking into it. The NBN is only guaranteeing the wholesale prices, and the government is only guaranteeing the wholesale prices. I did not know that is a revelation, but I can confirm that the wholesale prices for the same product suite are as I have already outlined. But we do not and the NBN does not mandate a retail service price. I am not sure if I can be more helpful than that.

Senator FISHER (South Australia) (5.50 pm)—Do you agree with the claim quoted from NBN Co’s Corporate Plan:
Wholesale access is overwhelmingly the largest single component influencing retail pricing.

If you agree with that statement, what is the most that the government can say to reassure Australians that a person receiving the same product combination from the same retailer will pay the same price irrespective of whether they are receiving that product via fibre, satellite or wireless?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (5.51 pm)—As I—

The TEMPORARY CHAIRMAN (Senator Forshaw)—Excuse me, Minister, can senators just wait till they get the call. It is important for the broadcasting and the recording of Hansard.

Senator CONROY—I am sorry; it was my eagerness to respond.

The TEMPORARY CHAIRMAN—That is fine; I understand that. It is just that I need to give the people the call.

Senator CONROY—I can repeat what the government has said from the first day we announced this initiative, which is that we will deliver a uniform wholesale price and that the retail price is a matter for RSPs.

The TEMPORARY CHAIRMAN—The question is that the amendment moved by Senator Joyce, which is on sheet 7066 and is an amendment to government amendment (2) on sheet BR282, be agreed to.

Question put.

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

The committee divided. [5.56 pm]

(The Chairman—Senator the Hon. AB Ferguson)

| Ayes | 32 |
| Noes | 34 |
| Majority | 2 |

AYES

Abetz, E. Adams, J. *
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Fifield, M.P. Fisher, M.J.
Question negatived.

Senator XENOPHON (South Australia) (6.00 pm)—by leave—I, and also on behalf of Senator Ludlam, move amendments (1) to (5) on sheet 7061:

(1) At the end of paragraph 151DA(2)(d), add “and”.

(2) After paragraph 151DA(2)(d), insert:

(e) the refusal is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;

(3) Paragraph 151DA(3)(b), after “one or more other designated access services”, insert “(other than voice telephony facilitation services)’’.

(4) At the end of paragraph 151DA(3)(b), add “and”.

(5) After paragraph 151DA(3)(b), insert:

(c) the refusal is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;

These amendments relate to authorisation bundling. The concern in relation to authorisation bundling is that it refers to voice telephony facilitation services. The point has been made by some of the carriers, particularly Optus, that this could prejudice competition in the marketplace and that it would unnecessarily constrain those carriers seeking to obtain services from the NBN. This relates to the authorisation that the ACCC needs to give. There are three aspects of authorisation in the recent amendments moved by the government. The concern I and Senator Ludlam have in relation to those amendments is that they would unnecessarily constrain competition and be unfair to the smaller carriers. Qualifying the basis upon which the authorisation is given significantly improves the position for the smaller carriers and for carriers such as Optus. I am very happy to take questions in relation to the amendments. I understand Senator Ludlam wishes to speak to them as well. The issue of authorisation was a concern of the Competitive Carriers’ Coalition and of Optus, which is not a member of the Competitive Carriers’ Coalition. The amendments provide circumstances to constrain the process so that it is clear that the authorisation process will not provide a disadvantage to the smaller carriers and for carriers such as Optus. I am very happy to take questions in relation to the amendments. I understand Senator Ludlam wishes to speak to them as well. The issue of authorisation was a concern of the Competitive Carriers’ Coalition and of Optus, which is not a member of the Competitive Carriers’ Coalition. The amendments provide circumstances to constrain the process so that it is clear that the authorisation process will not provide a disadvantage to the smaller carriers.

The TEMPORARY CHAIRMAN (Senator Forshaw)—So that we are clear:
Senator Xenophon, you have been granted leave to move amendments (1) to (5). You have not sought leave to move the other amendments in this group.

Senator XENOPHON—I am happy to if that will facilitate the committee stage. I am in the hands of Senator Birmingham as to whether he has a difficulty with me moving all the amendments.

The TEMPORARY CHAIRMAN—It is possible. I am just trying to ensure that we know whether you were wishing to do that.

Senator XENOPHON—They are separate concepts; they are distinct concepts. I will be guided by Senator Birmingham. I want to ensure that there is appropriate scrutiny of each of the amendments.

Senator BIRMINGHAM (South Australia) (6.03 pm)—At this stage, I prefer that we deal with the amendments of Senator Xenophon. We will reserve our position as to what we may do with our amendments as we proceed.

Senator XENOPHON (South Australia) (6.04 pm)—To clarify: there are four sets of amendments. Senator Ludlam will be moving two of those sets of amendments that are in our names. He has the carriage of those amendments. I have the carriage of this set of amendments and the next amendment that relates to uniform national pricing. So I think this would be the most appropriate way to do it.

The TEMPORARY CHAIRMAN—Thank you. That is all in order.

Senator LUDLAM (Western Australia) (6.04 pm)—I thank Senator Birmingham and Senator Xenophon. I think this is the right way to go because substantially different issues are being debated in these different batches of amendments. I will confine my remarks very briefly to amendments (1) to (5) that Senator Xenophon sought leave to move. You will see in a couple of the clauses that the operative wording is ‘reasonably necessary to achieve uniform national pricing’. That wording has been hammered out after an extraordinarily long debate with a large number of stakeholders. I think it is something that people can live with. Senator Xenophon has outlined, probably much more articulately than I could at this time of the evening, why these amendments are important. Perhaps the context of the first series of concerns will become clearer as we move through each batch of amendments. I will leave my comments there. We support these amendments.

Senator BIRMINGHAM (South Australia) (6.05 pm)—I thank Senator Xenophon and Senator Ludlam for moving these amendments. The opposition has considered these amendments. As I indicated when we were having a more general discussion about the broad range of amendments the government had proposed and especially the broad range of amendments encompassed within government amendment (2), we are sympathetic to some of the amendments being pursued by Senator Xenophon and Senator Ludlam. These amendments fall within that category. With that, I am pleased in this instance to be brief. There will be other amendments that we will debate a little more substantially but I indicate our support for these amendments.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (6.06 pm)—I indicate, as I think I already have, that amendments (1) to (5) will link the authorisation provided in relation to bundling and the points of interconnection for the outcome of uniform national pricing. This provides further certainty for industry while providing appropriate authorisation for NBN
Co. So the government will be supporting these amendments.

Senator XENOPHON (South Australia) (6.07 pm)—Very briefly, can I indicate that the policy objective of these amendments is quite straightforward and I think it is reflected in the concerns of Optus and others. When it comes to the bundling of services, the concern of Optus and other providers is that it might be used in its current form by NBN Co. to insist that access seekers take a voice service as part of the bundle with a broadband service. I think that would be a bad thing in terms of giving authorisation for that sort of conduct, because it is a policy that Telstra has long pursued on its wholesale broadband service, which raises costs and reduces innovation. These amendments are clearly about ensuring that costs and innovation are not constrained by insisting on a provider being required to take a voice service as well, because that is clearly not necessary in all instances.

Senator BIRMINGHAM (South Australia) (6.08 pm)—I thank Senator Xenophon for making sure that we all understood that; it is an important element. As I indicated, the opposition will support these amendments. We recognise that enhancing innovation and thereby ensuring that there is a broad product offering at the retail level is important. It is an important aim out of the NBN, and we think this is an appropriate amendment and that it goes some way to achieving that. Notwithstanding that, as I have said, there are overall concerns about government amendment (2), which we have voiced already and will voice again, about some of the issues that pertain to other amendments that are under consideration. In regard to ensuring that the bundling of services is done in a way that does not force upon consumers more services and higher costs than need be, we think that is a worthwhile objective.

Senator IAN MACDONALD (Queensland) (6.09 pm)—I want to confirm, as Senator Birmingham has, that this is far better than the original. It makes me wonder why the government did not pick this up because I am concerned about what the government has been telling us. For example, someone who has been watching this debate and who has some expertise because they worked with the telecommunications industry in Japan has emailed me to confirm that what Senator Conroy has been telling us about satellites—is completely wrong. I will read out, for the benefit of the Senate, this information given to me which compares Japan with the United States:

Japan is unique to the U.S. in that it suffers a significantly larger amount of earthquakes. Therefore, it is very important for the country to have a communication infrastructure that can withstand such major natural disasters. Also unlike the United States the Japanese Government directly funds their satellite internet networks. A couple years ago Japan launched what was known as the KIZUNA satellite, with the primary intent of creating a backup high-speed internet networking system that would replace its ground network during natural disasters. As it turns out this satellite is quite capable of facilitating a stand-alone high-speed internet network. This satellite contains two antennas …

I will not go into that, but it goes on to say:
Dividing the satellite into two multibeam antennas allows it to efficiently divide up the satellite’s signal so that the limited frequencies can be made available and reused by many different areas. This new satellite will provide high-speed internet with download speeds of—

Senator Conroy, I hope you are listening— … 155mbps and upload speeds of 6mbps. The satellite will be able to provide download speeds of up to 1.2gbps to commercial customers. These types of speeds are significantly faster than what even today’s fiber optics internet networks can provide and are unheard of speeds for the satellite
internet industry. In addition to functioning as a communication network backup system this new satellite internet service will also target Japan’s rural citizens that do not have access to the country’s fiber optic network and have been forced to receive internet service via DSL.

I only raised that to show that all of Senator Conroy’s bluff and bluster throughout this NBN debate is predicated on him having all the knowledge and no-one else being able to challenge him. And yet here is an email from someone—I do not know the person but I accept that he has some expertise in this—who tells us that what Senator Conroy was telling us just quarter of an hour ago about satellites and their limitations is simply wrong. That demonstrates the whole farce of Senator Conroy’s NBN proposal. Technology is moving so quickly that who knows where it will end up tomorrow, in a week’s time, in a month’s time or in a year’s time.

According to this information, which I accept as being accurate, the new satellite provides download speeds of 150 megabits and upload speeds of six, and it provides high-speed internet of 1.2 gigabits to commercial customers. I think this is probably accurate and whether it is precise does not really matter. What does matter is that Senator Conroy has just spent half an hour telling me, Senator Joyce and Senator Fisher that you cannot get these fast speeds and services from the satellite. However, from the information sent to me it appears that you can. The information seems genuine. The guy has actually rung my office and indicated that he has worked in the industry in Japan. I take him at his word. Whether or not the precise details are right, it demonstrates that a lot of what Senator Conroy tells us is not as accurate as he would have us believe. Going back to the amendment before the chair at the moment, I certainly support the position that Senator Birmingham has indicated.

Question agreed to.

Senator XENOPHON (South Australia)

(6.15 pm)—by leave—I, and also on behalf of Senator Ludlam, move amendments (1) to (4) on sheet 7064.

(1) Omit subsection 151DA(4), substitute:

authorised conduct—uniform national pricing

(4) If an NBN corporation engages in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities, that conduct is authorised for the purposes of subsection 51(1).

(2) Omit subsection 151DA(6), substitute:

(6) For the purposes of this section, in determining whether there is uniform national pricing of an eligible service supplied, or offered to be supplied, by an NBN corporation, disregard any discrimination by the NBN corporation against another person on the grounds that the NBN corporation has reasonable grounds to believe that the other person would fail, to a material extent, to comply with the terms and conditions on which the NBN corporation supplies, or on which the NBN corporation is reasonably likely to supply, the eligible service.

(6A) Examples of grounds for believing as mentioned in subsection (6) include:

(a) evidence that the other person is not creditworthy; and

(b) repeated failures by the other person to comply with the terms and conditions on which the same or a similar eligible service has been supplied (whether or not by the NBN corporation).

(3) Subsection 151DA(9), omit the definition of cross-subsidisation.

(4) At the end of Division 16, add:

151DD Review of operation of this Division
(1) After the end of the 2-year period that began at the commencement of this Division, the Minister must cause to be conducted an independent review of the operation of this Division during that period.

(2) Without limiting subsection (1), a review under that subsection must consider:

(a) the conduct that was authorised under subsection 151DA(2) for the purposes of subsection 51(1); and

(b) the conduct that was authorised under subsection 151DA(3) for the purposes of subsection 51(1); and

(c) the conduct that was authorised under subsection 151DA(4) for the purposes of subsection 51(1).

(3) A review under subsection (1) is to be conducted by a person who has expertise in:

(a) competition law; and

(b) economics.

(4) A review under subsection (1) must make provision for public consultation.

(5) The Minister must cause to be prepared a report of a review under subsection (1).

(6) The Minister must ensure that the report is completed within 6 months after the end of the 2-year period mentioned in subsection (1).

(7) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Amendments (1) to (3) are very important amendments in relation to the issue of cross-subsidisation and I am grateful for the advice that Associate Professor Frank Zumbo has given in relation to this because quite an elegant solution has been found to deal with this problem.

I will outline briefly what the problem was. For conduct that could be in breach of competition and consumer laws you need to get an authority from the ACCC. The authority proposed under the government’s amendment was that if the ‘price related terms and conditions under which an NBN corporation supplies, or offers to supply, eligible services to one or more service providers or utilities’ are, to any extent, attributable to cross subsidisation—and there were some other qualifications—that cross-subsidisation could be authorised for the purposes of subsection (51)(1). That means, basically, that anticompetitive conduct could be authorised in circumstances that could, unintentionally, have authorised, by the way it was worded, backdoor price discrimination to be used via this authorisation. I am not suggesting in any way that the government was intending that but to be sure that that does not occur these amendments that I am moving in my name—and in the name of Senator Ludlam on behalf of the Australian Greens—allows for authorised conduct for uniform national pricing in terms where, if an NBN incorporation engages in conduct that is reasonably necessary to achieve uniform national pricing of eligible services, that conduct is authorised for the purposes of section (51)(1).

Basically it means that if you are going to have cross-subsidisation and to authorise that conduct in case there is a potential breach of competition and consumer laws, you are constrained that the purpose of the cross-subsidisation is to deliver a uniform national price. It should not be used and cannot be used for the purpose of providing price discrimination for other services that may be slipped in by virtue of the NBN’s conduct. I am not suggesting that it would happen but this would ensure that it does not happen.

Sub-paragraph (2) says that in relation to any discrimination by the NBN corporation, it needs to look at credit worthiness. The
section is a bit cumbersome but it is something that has been used in other pieces of legislation so that the NBN can say, ‘If you are not creditworthy, we can withhold services.’ That is not unusual in other pieces of legislation, as I understand it.

The other amendment in relation to subparagraph (4) relates to a review of operation of this division so that at the end of a two-year period, insofar as there are some authorisations that are anticipated for the ACCC to allow this sort of conduct there must be a review tabled in parliament and it must be conducted by an independent person who has expertise in competition law and economics. I think that is an additional safeguard as to the way these provisions are intended to operate. It is significantly different to the amendments filed by the government and I think it will provide significant comfort to those smaller telcos that are very important in driving innovation and competition in the market place.

Senator LUDLAM (Western Australia) (6.19 pm)—I will just speak fairly briefly. I am going to confine most of my remarks on these amendments to the ones that we have foreshadowed, which relate more to the point of interconnect. The Australian Greens are co-sponsoring the amendments that Senator Xenophon has just moved. We have done quite a good deal of work over the last couple of days to make sure that there is no possibility for discrimination in prices or conditions and that we are genuinely creating a level competitive playing field. If we are setting up a state owned monopoly in the wholesale sphere, we want the retail sphere to be fair and diverse. As far as customers are concerned, that is where the innovation will occur, and the state will look after the physical poles and wires.

When discussing Senator Xenophon’s amendments earlier in the day we simply knocked out the clauses that could lead directly to discrimination on price or terms of service and conditions. These amendments go one step further and eliminate the possibility, as reasonably as could be done, according to the advice of the drafters, of backdoor price discrimination as a result of bundling services. We did not propose to eliminate the possibility of bundling services, because we recognise in some instances the provision of services to retail service providers will be quite important, but we did not want to see those clauses abused.

We will wait until we hear Senator Birmingham’s contribution on these amendments, but I think we have struck a fair balance here. We did not see fit to simply strike those clauses out; we do want some checks and balances in there. I thank Senator Xenophon, in particular, for the amount of work and time he has put into making sure that these clauses were watertight. We very much hope they will not be tested in anger, but I think many of us would be pleased that they are there.

Senator BIRMINGHAM (South Australia) (6.21 pm)—I thank Senator Xenophon and Senator Ludlam for their comments and for moving these amendments. Once again, I emphasise that these amendments are amendments to government amendment (2), which is an amendment we have indicated a strenuous objection to overall and we have concerns about numerous aspects of it. To borrow a phrase that is sometimes used by Senator Ludlam, I think that these amendments are amendments to government amendment (2), which is an amendment we have indicated a strenuous objection to overall and we have concerns about numerous aspects of it. To borrow a phrase that is sometimes used by Senator Ludlam, I think that these amendments are certainly moved with the best of intentions from Senators Xenophon and Ludlam.

The opposition can see where the crossbenchers are going and we are not totally averse to the direction they are trying to take, but we do have some questions about the proposed amendments and the way in which
they will work. We have concerns that relate to amendment (1) of this sheet and with amendment (6) of the sheet that will be moved at a later time. Our concerns are about the application of the phrase ‘reasonably necessary’ and how it applies. I understand that it applies equally in some places within the actual legislation, so the minister may wish to comment on that.

I invite Senator Xenophon to set me right here if this is not the case, but it appears that by eliminating some of the specifics in the government’s amendments you have left it so that it could go in either direction. This is perhaps even more so in amendment (6) than it is here in amendment (1). I guess I am looking for comfort that the use of the words ‘reasonably necessary’ does not potentially take it in the opposite direction to what I think is your intention in moving these amendments. You may have discussed that in negotiations with the government or they may have a view about the effectiveness of it, but that is one area. As I said, it is a little stronger in the later amendment, which I will raise when we come to it, but it does apply to these amendments as well.

Senator XENOPHON (South Australia) (6.24 pm)—I just want to respond to that, and if Senator Birmingham is not satisfied with that response then I am more than happy to elaborate on it. I think the appropriate thing to do is to go to the government’s amendments, which would have allowed authorised conduct for cross-subsidisation. Cross-subsidisation is important. For whoever is out there listening, this is about providing uniform pricing for an entry-level service, which is 12 megabits for download and one megabit for upload. It is important that, to achieve that, you have to have some level of cross-subsidisation, effectively, between the city and the country, and I think that is appropriate so that all Australians get that basic service at a reasonable price. But in the wording of the initial amendments that this amendment is seeking to change—again, I am not suggesting there was anything intentional about this; in fact, there was a concern about an unintended consequence—the government’s position was to say:

(a) the price-related terms and conditions on which an NBN corporation supplies, or offers to supply, eligible services to one or more service providers or utilities are, to any extent—

that is the key word—

attributable to cross-subsidisation; and

(b) either:

(i) the extent of that cross-subsidisation is no greater than is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities; or

(ii) if a special access undertaking given by the NBN corporation is in operation—that cross-subsidisation is consistent with the special access undertaking;

that cross-subsidisation is authorised for the purposes of subsection 51(1).

If there was anyone listening on ABC NewsRadio before I started speaking, I am sure they would be gone!

Senator Conroy—Come on, get a life!

Senator XENOPHON—Senator Conroy says I should get a life. This is an important piece of legislation, and it is very important that we get this right. The problem with having the words ‘to any extent attributable to cross-subsidisation’ is that they could potentially leave it open to NBN Co. to give preferential terms and conditions to one supplier and not another, which is contrary to the intent of the amendments that the coalition was broadly supportive of to get rid of price discrimination, which is key to this to ensure
that there is a level playing field as much as possible.

These amendments make it clear that NBN needs to get conduct authorised not for cross-subsidisation but for uniform national pricing, and I think that is an elegant and smart way to resolve this, as Associate Professor Zumbo suggested. I think that is a very good way of dealing with it and resolving this impasse, and I think the government has agreed. It says:

If an NBN corporation engages in conduct that is reasonably necessary to achieve uniform national pricing of eligible services—

and it goes on to say that conduct can be authorised by the ACCC. ‘Reasonably necessary’ is much more precise, much narrower and much more specific than ‘to any extent attributable to cross-subsidisation’. That is, I fear, incredibly broad. The government has acknowledged that in relation to the amendment I have moved with Senator Ludlam. So this would make it clear that, if there is going to be authorised conduct, it has to be for the purpose of uniform national pricing, which implicitly, of course, involves cross-subsidisation. It is narrower, it is doing what I believe it was intended to do all along, and I think it protects those smaller carriers—other than Telstra—in order for them to be able to compete fairly. I am very happy to elaborate on that for Senator Birmingham should he wish me to do so.

**Sitting suspended from 6.30 pm to 7.30 pm**

**Senator XENOPHON**—To assist Senator Birmingham, the reason that the phrase ‘reasonably necessary’ is in the amendments I moved jointly with Senator Ludlam is that it is an objective standard requiring that the conduct needs to be undertaken so as to bring about uniform national pricing. There must be a necessary connection between the conduct and uniform national pricing.

**Senator BIRMINGHAM** (South Australia) (7.31 pm)—I thank Senator Xenophon for the explanation he provided just then and in more detail prior to the dinner break. I note what Senator Xenophon has said and I appreciate where he has gone in this and, hopefully, where the legislation has gone. I will have some further questions in relation to the other amendments on this sheet that partly use the same wording, but in relation to this amendment I am happy to accept Senator Xenophon’s explanation.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.31 pm)—These amendments will provide greater certainty for industry with respect to the operation of the authorisation relating to uniform national pricing. The provision as amended will continue to provide NBN Co. with the necessary authorisations for it to provide uniform national wholesale pricing for the benefit of regional and rural Australians. The government supports these amendments.

**The TEMPORARY CHAIRMAN** (Senator Crossin)—The question is that Senator Xenophon’s amendments (1) to (4) on sheet 7064 moved to government amendment (2), as amended, be agreed to.

Question agreed to.

**Senator LUDLAM** (Western Australia) (7.32 pm)—by leave—I, and also on behalf of Senator Xenophon, move amendments (1) and (2) on sheet 7060 and amendment (1) on sheet 7063:

1. Paragraph 151DB(1)(b), omit “with the agreement of an NBN corporation”.

2. After subsection 151DB(2), insert:

   2A The Commission must not vary a list under subsection (1) except with the agreement of an NBN corporation.
(2B) Subsection (2A) ceases to have effect when the Communications Minister makes a declaration under section 48 of the National Broadband Network Companies Act 2011 that, in the Communications Minister’s opinion, the national broadband network should be treated as built and fully operational.

(2C) For the purposes of subsection (2B), Communications Minister has the same meaning as in the National Broadband Network Companies Act 2011.

(1) After section 151DB, insert:

151DC Review of policies and procedures relating to the identification of listed points of interconnection

(1) Before 30 June 2013, the Commission must cause to be conducted a review of the policies and procedures relating to the identification of listed points of interconnection.

(2) Without limiting subsection (1), a review under that subsection must consider:

(a) the Commission’s requests to NBN corporations to agree to the variation of the list in force under subsection 151DB(1); and

(b) the responses of NBN corporations to such requests; and

(c) the extent to which facilities are interconnected at listed points of interconnection.

(3) A review under subsection (1) must make provision for public consultation.

(4) The Commission must cause to be prepared a report of a review under subsection (1).

(5) The Commission must give the report to the Minister.

(6) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

I am moving these amendments together as they relate substantially to the same clauses around points of interconnect and they do not really make sense in isolation.

I will just speak briefly to these. I think everybody in the chamber has had time to get an idea of what these amendments propose. They go directly to the issue that I think has concerned a number of stakeholders greatly over the last couple of days, which is the apparent sidelining of the ACCC when it comes to the connection of points of interconnect. People quite rightly have been concerned, myself included, that the points of interconnect issue was one that we thought had been settled. There was originally a proposal—the minister will correct me if I am wrong—in which NBN Co. was seeking overall 14 points of interconnect, or something of that order. That information came about I think at about the same time as the exposure draft to this legislation was circulated.

We are treading a very fine line here. There is a real balancing act. My understanding of the point of interconnect—and I am happy for any of the more tech-literate senators in this place to correct me if I am wrong—is that it is a telephone exchange in the NBN world. It is where these networks are welded together. NBN Co. has an interest in carrying out the government’s policy of a very low uniform national price. The industry on the other hand has an interest in not stranding fibre assets that already exist, which is incredibly important. Rolling out an NBN not only overbuilds assets that are already in the ground, but actually strands them and leaves the managers of those networks with no way of connecting to the NBN. Equally, it may put off other providers who at some time in the future might want to build a compatible network—fibre, backhaul fibre and laying new cable—and will find themselves unable to do so. If we are in a
world where there are only 14 points of interconnect, they are really only going to be in Australia's capital cities and large urban centres. That is where that will happen.

So we have a tension here because for Mr Quigley, for the purpose of his own network, the fewer the points of interconnect there are the easier he is going to find it to create a wholesale market with national uniform low pricing. The further out into the tree that we extend this thing more people come into play and the more complex it gets. We thought that the government had fixed this one. This shares the coalition’s concerns that, in moving a raft of new amendments the day before yesterday in attempting to solve an issue, a number of other issues were created. What eventually happened was that somewhat over 100 points of interconnect were agreed to. I understand that NBN Co. were not particularly happy about it, but they agreed to move forward that way and the issue was put to rest.

The amendments that were circulated the day before yesterday introduced this new snarl—that is, the NBN Co. effectively would have what I think has been slightly misdescribed as the right of veto over any proposal for a new one. If the NBN did not want a new point of interconnect then it was not going to happen. Similarly—and I do not know how hypothetical this case is—if Mr Quigley wanted to remove one of the agreed points of interconnect the ACCC in that instance would have the right of veto.

In this case we needed both entities to agree for there to be any variation on what we are setting in stone today. We have proposed amendments and these run on two sheets with two slightly different intents. I will speak firstly to amendments (1) and (2) on sheet 7060. Amendment (2) is really the one of consequence here. What we will do is grandfather in the points of interconnect that have already been agreed to. The status quo will prevail until 2020—formerly 2018, but we pushed that deadline out earlier today by two years—after which this agreement will lapse and we will roll back on what we had before. The second amendment—these amendments work together—on sheet 7063 causes the commission, before 30 June 2013, to conduct a review of the policies and procedures relating to the identification of listed points of interconnection.

I feel that I have jumped up in here more times than I can count now to propose reviews of various things occurring, and there is a similar line of logic running here. Let us test this against reality. Mr Quigley will know that if every time somebody in the industry proposes to add a new point of interconnection to the network he is going to need very good reasons for a veto, because every time NBN Co. exercises that right of veto it is going to be recorded. The year 2013 is not that far away. Senators familiar with the business plan will know that we are not even midway through the rollout, so it will be in the middle stages of the ramp-up. I think, and I hope Senator Birmingham agrees, that this is an early enough stage in the rollout to catch the issue, if we have got it wrong, where these things are just being knocked over one after another or where the veto power is being exercised unreasonably—in other words, the policies and procedures relating to the identification of POIs, as well as the effective final decision.

You will see that subclause 2 outlines that the NBN Co’s responses will in fact be made public and they will be part of this review. It is probably not perfect, but we think this gets it about right. After extensive consultation with industry we understand that everybody is happy with this way of moving forward. I understand that the government will be supporting these amendments. I thank Senator Xenophon in particular for working with us
over a considerable period of time to ensure that this hung together as far as the industry is concerned. People are now no longer concerned (a) that they are going to be locked out if there is a future proposal for a build-out that relies on connecting to an NBN POI and (b) that we are not going to be stranding valuable and useful assets that could make a contribution to broadband in this country. I look forward to the contributions on this—I am not sure whether Senator Xenophon wants to add some remarks—

Senator Xenophon—I cannot top what you have just said.

Senator LUDLAM—I will take that interjection. Hopefully we can move ahead after other contributions.

Senator BIRMINGHAM (South Australia) (7.39 pm)—I am disappointed that we did not get the full flight of mutual admiration occurring there. Senator Xenophon, you may not have been able to top Senator Ludlam, but I am sure you would have done a superb job in the comments you would have made were you to speak to these amendments.

These are of course very, very important amendments. They go to an issue that I and other coalition senators have spoken to on numerous occasions during the debate. Quite some time ago we started talking about government amendment (2) in particular. They go to the issue of the points of interconnection. Senator Ludlam is correct to say that a week ago there was not necessarily a feeling that there was a problem in this space. At 10 o’clock on Monday morning when the chamber sat and we all gave our speeches and highlighted the concerns that we had about the bill or the areas in which we thought action needed to be taken, these were not areas that we were highlighting. They were not areas that had been brought to the attention of the Senate committee when it tabled its report last week. That was the case because the offending amendments and proposals of the government did not exist at that stage. It was only 48 hours or so ago that we all learned of these new amendments proposed by the government. They are amendments that the opposition has expressed its steadfast opposition to. We have done that because we think these amendments provide too much scope for NBN Co. to be able to influence where the points of interconnect are and how many there are, in particular, without appropriate oversight and regulatory control by the competition watchdog in the ACCC.

I have noted before in this debate that this has already been a flashpoint between NBN Co. and the ACCC. NBN Co. had an initial proposal for points of interconnect and that initial proposal was found by the ACCC to be severely wanting. They found that there were an inadequate number of points of interconnect and that that inadequacy would lead to a stifling of the opportunity for decent competition as an outcome through fair and equal access for different retail service providers.

There is a challenge there for seeking, as Senator Ludlam argued, in a sense an optimal balance in points of interconnect: too few can curtail the competition and give NBN Co. too much power, in a sense; too many can cause excessive costs and issues for NBN Co. That is why the appropriate arbiter to look at what NBN Co. proposes and make sure that it gets that right is of course the ACCC.

The amendments to the amendment proposed by Senators Ludlam and Xenophon do not adequately address all of the problems that the opposition sees in what the government has proposed, but they go some way and they are positive steps in that regard. Looking at the amendments on sheet 7060,
they take some steps to at least limit the capacity of NBN Co. to knock out new points of interconnect or, if they do do that, to ensure that they have to report that and there is a clear record of such actions being undertaken. That is important. The government has proposed that the ACCC’s list of points of interconnection may be varied only with the agreement of an NBN corporation. That requirement is such that it provides too much power for the NBN Co.

The amendments listed on sheet 7060 by the crossbenchers take out the words ‘with the agreement of an NBN corporation’ in that paragraph and provide at least a process for how it may be undertaken and for the reporting thereof. Of course, it also provides that it ceases to have effect when the National Broadband Network is treated as built and fully operational according to the minister’s opinion. That, at least, is something, although we have our own opinion that we have expressed here as to if and when we will ever see that declaration and how long it may take for us to see it. Certainly, given amendments that we have already had from the government that shifted the date out from 2018 to 2020, we are quite some distance away from getting that declaration, and possibly—as Mr Turnbull and others have argued—a very, very long way away from ever seeing it. Still, having some element of some of the horizon that sunset may be—is better than none at all, and we accept those changes on sheet 7060.

The changes and amendments proposed on sheet 7063 to have the review and to have it take effect before 30 June 2013 are welcome. They are amendments that we also think will strengthen this bill. As Senator Ludlam said, given the requirements for reporting of any variances that are required, this will shine a light on such rejections should they occur and then shine a light on whether a problem has happened. It is relatively early in the process of the build of the NBN, so we would hope that that will adequately pick up problems. There is perhaps a risk, though not so much in the period before 2013 as in the period beyond 2013 until whenever we get the declaration of completion. That is perhaps the danger window in some ways, and it is the window in which much of the build will take place. But the fact that there is a risk is not a reason to vote against the amendments of the crossbenchers. It is part of the reason that we will ultimately vote against the government’s overall amendments, but, as already indicated, insofar as these two parcels of amendments taken together improve what the government has, the coalition will be supporting them.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (7.48 pm)—The government supports this amendment. The proposed paragraph 151DB(1)(b) provides for changes to the list of points of interconnection to be varied with the agreement of the ACCC and NBN Co. This is to provide certainty for NBN Co. in designing and building its network and for ACCC scrutiny. There is a second amendment. Noting the industry feedback on these arrangements, it is proposed that NBN Co.’s agreement ceased to be required once the NBN is built and fully operational. At this time, NBN Co. will not need this level of input into the process.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that amendments (1) and (2) on a sheet 7060 and amendment (1) on sheet 7063 be agreed to.

Question agreed to.
The TEMPOARY CHAIRMAN—The question, therefore, is that government amendment (2), as amended, be agreed to.

Senator BIRMINGHAM (South Australia) (7.49 pm)—This is purely in relation to government amendment (2). Can I just clarify that we have dealt with—I may have just failed to tick it off—(1) to (4) on sheet 7064? I remember having quite a prolonged discussion about that. As we progress to the conclusion of debating amendment (2) of the government’s, can I restate the concerns of the opposition with regard to the amendment? We note the small improvements and worthy changes that the crossbenchers have managed to make to these amendments, and we have been pleased to offer our support where appropriate to those. But it does not take away, in our view, the overriding concern that these amendments with regard to a sweep of concerns about price discrimination, bundling and points of interconnection are unsatisfactory. These amendments will put a further impediment in the way of this legislation.

That is very disappointing from the opposition’s perspective. It is disappointing also, as I have said before, that it was brought about late in the process. It is disappointing that we have had to have this scramble throughout the session today for the government to try to get its house in order, to get agreement with the crossbenchers to approve amendments to its own amendments in this regard. It has been unseemly and I fear it has resulted in inadequate scrutiny of these proposals. I fear that it will result in mistakes and poor legislation in the future. For that reason and for the substantive flaws that we have spent some time discussing as we have gone through for a good number of hours, the opposition will be opposing amendment (2) of the government’s.

Question put:

That the amendment (Senator Conroy’s), as amended, be agreed to.

The committee divided. [7.56 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes………… 34
Noes………… 32
Majority……… 2

AYES
Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Carr, K.J. Collins, J.
Conroy, S.M. Crossin, P.M.
Farrell, D.E. Faulkner, J.P.
Feeney, D. Fielding, S.
Forshaw, M.G. Furner, M.L.
Hanson-Young, S.C. Hogg, I.J.
Hurley, A. Ludlam, S.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A. *
McLucas, J.E. Milne, C.
Polley, H. Pratt, L.C.
Sherry, N.J. Siewert, R.
Stephens, U. Wong, P.
Wortley, D. Xenophon, N.

NOES
Abetz, E. Adams, J. *
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. Cash, M.C.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Fifield, M.P. Fisher, M.J.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Troid, R.B. Williams, J.R.

PAIRS
Hutchins, S.P. Fierravanti-Wells, C.
Moore, C. Boswell, R.L.D.
Sterle, G. Payne, M.A.
Schedule 1, page 26 (after line 7), after item 58, insert:

58A After subsection 152BCB(3A)

Insert:

(3B) The Commission must not make an access determination that would have the effect of:

(a) requiring an NBN corporation to engage in conduct that is inconsistent with conduct authorised under subsection 151DA(2) or (3) for the purposes of subsection 51(1); or

(b) preventing an NBN corporation from giving a refusal that is authorised under subsection 151DA(3) for the purposes of subsection 51(1).

(3C) The Commission must not make an access determination that would have the effect of preventing an NBN corporation from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities.

(3D) In subsection (3C), eligible services, uniform national pricing and utilities have the same meaning as in section 151DA.

This amendment is consequential to government amendment (2) and amends part 11C of the Competition and Consumer Act to ensure that the authorisation is taken into account when the ACCC makes an access determination dealing with a declared service supplied by an NBN corporation. I understand Senator Ludlam or Senator Xenophon will be moving a further amendment to government amendment (7).

Senator XENOPHON (South Australia) (8.00 pm)—I, and also on behalf of Senator Ludlam, move amendment (5) on sheet 7064 to government amendment (7). This amendment relates to consequential amendments relating to uniform national pricing:

(5) Omit subsections 152BCB(3C) and (3D), substitute:

(3C) The Commission must not make an access determination that would have the effect of preventing an NBN corporation from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities.

(3D) In subsection (3C), eligible services, uniform national pricing and utilities have the same meaning as in section 151DA.

This amendment is effectively consequential to the previous amendments that have been moved. I am happy to answer Senator Birmingham’s questions about this, but it is effectively doing the same thing—it is constraining the circumstances of the authorisation so that there are no unintended consequences, such as allowing backdoor preferential pricing deals to be struck. It constrains things by the use of the words ‘reasonably necessary.’

Senator BIRMINGHAM (South Australia) (8.01 pm)—The opposition does have some questions and concerns about both the government’s amendment and Senator
Xenophon’s amendment. This flows into other amendments yet to be discussed, but we are concerned that in both instances we appear to be tying the hands of the ACCC in relation to access determinations, to an extent. That may not be such a problem when we come to issues around binding rules of conduct. I guess this is a question more for the minister than for Senator Xenophon because I can see in their amendment that Senators Xenophon and Ludlam are simply trying to provide greater flexibility for how these provisions may be applied.

Obviously we accept the imperative of NBN Co. to operate in a way such that it can apply uniform national pricing of eligible services—and whether it does that is something we have debated at some length today. These are quite late additions, as we have canvassed, to the legislation. Why is it that the government now feels it is necessary to provide these specific limitations on the ACCC? Was this simply an oversight or is there something that the government has seen to be a new or unforeseen problem?

Why is it that these changes are necessary, compared with what was in the initial bill, given that these changes are prescriptive in prohibiting the ACCC from making an access determination in a particular way—whether that particular way is the government’s chosen amendment or Senator Xenophon’s chosen amendment?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.04 pm)—I think I said earlier that the overarching reason behind these individual amendments was to ensure that the government’s goal, the parliament’s goal and the NBN’s goal of uniform national pricing could be achieved. Giving the ACCC the capacity to undermine that objective is not the objective of the legislation and I am happy to answer further questions.

Senator XENOPHON (South Australia) (8.05 pm)—I assume that Senator Birmingham wants me to answer the questions that were put to the government and to Senator Ludlam and myself in relation to those amendments. There are three areas where authorisations need to be sought from the ACCC, because not to do so might mean that it would fall foul of the Competition and Consumer Act.

I will clarify this as it is late and it has been a long week. I think Senator Birmingham knows that as well as most, since he has the carriage of this for the opposition. This is about ensuring that when the ACCC provides an authorisation that authorisation must take into account that whatever things were being done had to be reasonably necessary in order to achieve uniform national pricing for that basic service. In the government’s earlier incarnation of this—the government’s own amendments—the concern was expressed by some, such as Associate Professor Zumbo and others, that it could have had the effect of giving an opportunity for preferential pricing to take place, which would be entirely inconsistent with the fact that those preferential pricing provisions that were previously in the legislation have now been knocked out, which I think is unambiguously good for the smaller carriers and unambiguously good for consumers.

I hope that that explains, Senator Birmingham, that this is about the authorisation process so that in order to provide an authorisation you need to show that those acts that could be, arguably, in breach of the Competition and Consumer Act had to be reasonably necessary for the achievement of uniform national pricing. That is a much safer way of not allowing backdoor price
discrimination, which would be bad for consumers.

Senator BIRMINGHAM (South Australia) (8.07 pm)—I thank Senator Xenophon and the minister for their explanations. In particular, Senator Xenophon, I thank you. I understand the variance between the government’s proposed amendment and your proposed amendment, that variance being an opportunity to close the door for a potential re-entry of price related discrimination practices within NBN Co.’s activities. From the minister I am trying to seek a little bit of clarity about whether this was simply an inadequacy in the initial bill. I am not trying to ask that question for the sake of political point-scoring per se; I am seeking to ask that question because uniform national pricing has, as we have discussed quite a bit today, been a longstanding objective of the government’s. The need for NBN Co. to be able to operate in a way that could allow it to provide that uniform national pricing has been something that has been well known for a considerable period of time, yet we have these late amendments that appear to have been presented to try to facilitate that and to ensure that NBN Co. does not run foul of the ACCC in relation to binding rules of conduct or access to terminations or the like. If it is purely the fact that the bill was inadequate and that these were necessary then that at least answers the question.

I guess the concern of the opposition, and the concern that has been expressed to us to some degree since these amendments saw the light of day, is that it does tend to jump off the page a little bit when you have new, late amendments to a bill that limits what the ACCC can or cannot do. That creates all sorts of concern. It creates concern, of course, for most telcos—including the ‘Big T’, as you might mention, Minister—

Senator Conroy interjecting—

Senator BIRMINGHAM—It is nice to bring you back to life, Minister. Speaking of glowing brightly, Minister, I have mused—I think I mused to you before as well—that I heard some Labor senators during a division earlier wondering what happens if we are still here tomorrow. Those senators from New South Wales were wondering how they will get to vote—I think we have an understanding that the Comcar shuttle can run down to Queanbeyan during the lunch break and they can all cast absentee votes. But the minister’s words ‘glowing brightly’ just brought me to thinking of the challenge of Earth Hour tomorrow night. Should you miss the Collingwood game tomorrow afternoon and should we still be here tomorrow night, the clerks may need to ascertain whether we can be debating at this time tomorrow night by candlelight or something to keep happy the Greens and others who would like to honour Earth Hour.

However, Minister, you caused me to stray. I was making the point that, of course, major telcos and many others have to operate within ACCC rules in relation to access determinations, binding rules of conduct and the like. The concern—and it is a concern that is heightened because these are last-minute amendments from the government—is: what was the inadequacy? Was it an oversight? Is there a reason that without these amendments—

Senator Conroy—If you sit down, I’ll tell you.

Senator BIRMINGHAM—I am about to, Minister. Without these amendments, would the government or NBN Co. have been at risk of running foul of the ACCC?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.12 pm)—These amendments are a direct conse-
quence of the need to bring the bill into line following the agreement that was reached with the Greens and Senator Xenophon on their amendment to amendment (2). Once that was amended, these amendments were consequential and required. It is no secret and no surprise. Once the Greens and Senator Xenophon decided to press this issue on behalf of others, and we believed we could improve the certainty, we were required to make sure the bill was consistent.

I also have some information for Senator Macdonald.

Senator Ian Macdonald—I was waiting for this, Minister.

Senator CONROY—I have some information for you from some very, very industrious member of my department; whoever that was, I give them my thanks for still being at work at six o’clock at night when they did not have to be, unlike the officers here, who are doing a fabulous job. You mentioned a satellite in Japan; I think it was the Kizuna you mentioned. While I note that in 2008 the Japan Aerospace Exploration Agency successfully launched the experimental Kizuna satellite—which was designed to offer high-speed data communications of up to 1.2 gigabits per second, with the aim of providing up to 155 megabits per second downlink and six megabits per second uplink—I would stress that this is an experimental satellite which, as far as we are aware, is not providing services that are commercially available to end users at this stage.

The implementation study—the McKinsey study, which I think you have looked through yourselves—looked at satellites in depth, and it found that the highest speed satellites commercially available are in the Ka band, which is the band that NBN Co. will use. The satellite service proposed by NBN Co. is based on services which are currently commercially deployable, with existing spacecraft design and supporting ground equipment available for deployment to the number of users required for three per cent coverage. The high speeds achieved by the Japanese experimental satellite are just that—experimental. If the system is able to be developed to commercial standards and available for deployment on a commercial basis then clearly this will be examined as part of the future upgrade path. So the point that I was making was not that satellite technology is not going to improve; it was just that at this point in time, when you make a decision to purchase a satellite, you take the best available that is commercially deployable. I think NBN described it to me as: ‘We are not going to take any bleeding-edge technology’—it is a term that is often kicked around—‘that is not commercially deployable at this stage.’

So no-one is suggesting, and I certainly was not intending to suggest, that satellite technology is not improving. The point I was making is that once the satellite that is purchased is in the sky, unless you are planning on just wiping it out and giving it away after the first few years because a new satellite has come along, you have that satellite in the sky to use.

Senator Ian Macdonald—Why don’t you hook into this one?

Senator CONROY—It is experimental. It is also in a different band. I think that is the advice that I am getting. McKinsey has looked at this and said, ‘No, you should be in the Ka band.’ I do not think anything that I have said, either previously or currently, is inconsistent with the information you have received from the gentleman you have been speaking with.

As I was saying, this was provided very quickly—late on a Friday afternoon—and I am sure that if your friend is listening he will update us on any further information. But, as
I said, the key here is that once a satellite is chosen it is up there for the life of the satellite. People tend not to dispose of them just because a new satellite has come along and you can purchase it. So once it is up there that is what you use.

Senator IAN MACDONALD (Queensland) (8.16 pm)—Senator Conroy has opened up this thing. You say this is a friend of mine, Senator Conroy. I have never heard of the guy before. But I am going to read the whole email that he sent me. The subject is: ‘There is a satellite that has speeds of 12 gigabits. Mr Conroy is wrong.’

Dear Sir

I have worked in Japan for a long time in the IT trade. Mr Conroy is dead wrong about the whole NBN anyway.

Then he gives a website which I will pass on to the department. He suggests that the department should look at it.

This has been around for a while and this type would be much better for outback Aussie. This page is in Japanese but Google may be able to translate it for you, but it gives you a good overview of what this technology can do. The technology that I have worked with in Japan makes the Australian NBN seem backward. I would also hope that someone from Mr Conroy’s department would be going here. For Senator Conroy’s department can I give the website address? It is http://www.kaconf.org/. To be honest, most of the people I have spoken to in related internet technology around the world seem to think that the NBN is not the best way forward for Australia. Anyway, I hope this finds its way to you and you are able to show Mr Conroy that his numbers for upload and download speeds of his great high-tech satellite is a joke in today’s world. If I can be of assistance to you in any way please email me any time.

And he signs his name. I have given the department the website address that he has provided. I do not know this guy from Adam.

Senator Conroy—I wasn’t implying that.

Senator IAN MACDONALD—But he sounds like he is a genuine person working in IT. I appreciate what you say, Minister. I do not know much about satellites, but I have been around in this parliament since they were trying to build a satellite base on Cape York, and then I was Minister for Regional Services, Territories and Local Government when they were trying to build a satellite base on Christmas Island. That was when you could do something else on Christmas Island besides putting in boat people that have now overcrowded the island. Luckily, we did not build the satellite base there. There would not have been any room for the detention centre. So I do not know much about it, Minister, but I do know that they are always putting up satellites, right around the world. You can have an old satellite, which I think you are talking about, but if you pay the money then you can get on board one of the new satellites. What this person is saying to me, and what Senator Joyce and I and others from country Australia are saying to you and NBN, is that people in remote Australia—there are not many of them—could have the latest technology from satellites. It would be costly but it is doable.

If we believe in equity and fairness in Australia then I think you could buy a spot either on one of these satellites or on one of the new ones going off from Colombia or somewhere else—I used to know where they are all sent from—and it would be the very latest. I agree with you: they do have a life, and if the NBN is using something that is 15 to 20 years old then that is the technology you are going to get. But I guess you could buy one that is being launched tomorrow and give people in remote Australia superfast satellite speeds.

This person, in the attachment—which I can easily make available to you, though I do not have it in front of me—said, I think, that the speed for commercial players is 1.3 giga-
bits, meaning that, if you are prepared to pay for it, it is there. I am just saying to you that, if we believe in equity and fairness—which I know you do, and certainly we believe in it here—we might have to pay a bit more to give people in remote Australia that very fast satellite speed which, contrary to what you are saying, is available.

I acknowledge that the language of your response to me five minutes ago was much more muted. You, like me and like all of us, can learn these things, and I am assuming this advice to me is appropriate. Minister, I suggest to you and perhaps to the crossbenchers—who I am sure believe in equity and fairness, as I do and as I suspect you do—that there is a satellite technology available to give remote Australians the same sorts of services as you would get in Sydney. I agree that it would cost a packet, but it is an issue of equity and fairness; we are all Australians, and your government—and, I think, everybody—believes that all Australians should be treated equally. Your party is very keen on redistributing wealth through mining taxes and flood taxes and everything, but here is a way that you could seriously look after people who are disadvantaged in remote Australia—that is, by paying a bit more and getting a decent satellite service for them.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.21 pm)—I will certainly pass that on to both the NBN Co. and the department. The secretary is still here, and I am sure he will look forward to reading that website. The issue around commerciality is probably most critical. The NBN is in the middle of a satellite tender at the moment and if the technology that has been described there has been put forward by the company that is building it then I am sure from the sound of it that it will do very well in that tender process given the sort of services it has the potential to provide, as has been described. I will also draw it to the attention of Hugh Bradlow, David Thodey and Catherine Livingstone at Telstra to explain to them that the deployment of their 4G network is a bit of a waste of time because this satellite has already surpassed the potential of 4G. That will probably come as a bit of a surprise to them, but I am sure that Hugh Bradlow, the Chief Technology Officer of Telstra, will be absolutely rapt to read that website.

Senator BIRMINGHAM (South Australia) (8.23 pm)—I return to the amendments after that brief segue. It was a good segue indeed, and, Minister, I appreciate your coming back to the chamber with the information for Senator Macdonald. That it was good of you, and I am sure we all appreciate that. We are still on the government’s amendments and the amendments of Senator Xenophon and the Greens amending the government’s amendment. The minister in his last contribution on these amendments did make it sound as if they were consequential upon the amendments of Senators Xenophon and Ludlam. I am not sure that is quite the case. They are consequential upon, I imagine, your amendment (2). That is right—these are still government amendments, notwithstanding the fact that Senators Xenophon and Ludlam did ultimately support them with some variations.

I will deal with the principle of the amendments first and then with the detail of the amendments of the crossbenchers. The coalition remains concerned, as we have expressed emphatically, about this whole suite of amendments with the restrictions they appear to place on the ACCC. We still believe that to be a concern and, as a result of that, they will not be enjoying our support.
We also have some concerns in relation to the amendments moved by the crossbenchers. The government’s amendments place a restriction on the ACCC, allegedly in order to facilitate uniform national pricing. It places that restriction in a defined area. The crossbenchers’ amendment attempts to make no such definition. Senator Xenophon has argued that the government’s definition would potentially allow a reintroduction of price discrimination. The concern is with the approach applied in the wording by the crossbenchers because it leaves it open for NBN Co. to effectively argue that any activity is reasonably necessary to achieve uniform national pricing. From what we can see, the absence of some form of definition leaves it quite open-ended. It may be able to be corrected but from our perspective we will be opposing both the amendment to the amendment and the amendment to the bill when it progresses to a vote.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that Senator Xenophon’s amendment (5) on sheet 7064 to government amendment (7) on sheet BR282 be agreed to.

The committee divided. [8.31 pm]
(The Chairman—Senator the Hon. AB Ferguson)

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

AYES

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

NOES

Abetz, E. Adams, J.
Back, C.J. Barnett, G.
Bernardi, C. Birmingham, S.
Boyce, S. Brandis, G.H.
Bushby, D.C. * Cash, M.C.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Fifield, M.P. Fisher, M.J.
Humphries, G. Johnston, D.
Joyce, B. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J.J. Minchin, N.H.
Nash, F. Parry, S.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Williams, J.R.

PAIRS

Evans, C.V. Boswell, R.L.D.
Hutchins, S.P. Cormann, M.H.P.
Moore, C. Fierravanti-Wells, C.
O’Brien, K.W.K. Heffernan, W.
Sterle, G. Payne, M.A.

* denotes teller

Question agreed to.

THE CHAIRMAN—I now put the question that government amendment (7), as amended, be agreed to.

The committee divided. [8.35 pm]
(The Chairman—Senator the Hon. AB Ferguson)

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

AYES

Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Carr, K.J. Collins, J.

CHAMBER
Question agreed to.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.38 pm)—Amendment (9), on sheet BR282, is also consequential to amendment (2) and amends part XIC of the Competition and Consumer Act to ensure that the authorisation is taken into account when the ACCC makes binding rules of conduct in dealing with the declared service supplied by an NBN corporation. I understand that Senators Ludlam and Xenophon will be moving an amendment to this amendment to reflect the changes made by their amendment to government amendment (2). I move:

(9) Schedule 1, page 27 (after line 31), after item 64, insert:

64A After subsection 152BDA(3A)

Insert:

(3B) The Commission must not make binding rules of conduct that would have the effect of:

(a) requiring an NBN corporation to engage in conduct that is inconsistent with conduct authorised under subsection 151DA(2) or (3) for the purposes of subsection 51(1); or

(b) preventing an NBN corporation from giving a refusal that is authorised under subsection 151DA(3) for the purposes of subsection 51(1).

(3C) The Commission must not make binding rules of conduct that would have the effect of preventing an NBN corporation from having cross-subsidisation in relation to the price-related terms and conditions on which an NBN corporation supplies, or offers to supply, eligible services to one or more service providers or utilities, so long as the extent of that cross-subsidisation is no greater than is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities.

(3D) In subsection (3C), cross-subsidisation, eligible services, price-related terms and conditions, uniform national pricing and utilities have the same meaning as in section 151DA.

Senator XENOPHON (South Australia) (8.38 pm)—I could not possibly top what Senator Conroy said then about moving
amendments to amendments to amendments. I, and also on behalf of Senator Ludlam, move amendment (6) on sheet 7064:

(6) Omit subsections 152BDA(3C) and (3D), substitute:

(3C) The Commission must not make binding rules of conduct that would have the effect of preventing an NBN corporation from engaging in conduct that is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities.

(3D) In subsection (3C), eligible services, uniform national pricing and utilities have the same meaning as in section 151DA.

This amendment relates to consequential amendments with respect to uniform national pricing. I am very happy to explain this to Senator Birmingham or to anyone who wishes to ask questions. This amendment is in the same vein as the previous amendments that have been moved in relation to that. It is about the use of the ‘reasonably necessary’ test. As advised by Associate Professor Zumbo, this test gives some certainty to the scope in which the ACCC will act and consider.

Senator BIRMINGHAM (South Australia) (8.39 pm)—I thank Senator Xenophon and Senator Conroy for their comments. Both have indicated that this amendment and the amendment to the amendment are in a similar vein to the last couple of amendments that we have debated. The coalition’s position on these amendments is identical to our position on the previous one, and I am not going to go through the arguments again.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Troeth)—The question now is that government amendment’, as amended, be agreed to.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.40 pm)—I move:

(11) Schedule 1, page 39 (after line 17), after item 76, insert:

76A After subsection 152CBD(5)

Insert:

(5A) If:

(a) the undertaking contains price-related terms and conditions relating to the supply of a service; and

(b) the price-related terms and conditions are, to any extent, attributable to cross-subsidisation; and

(c) the extent of that cross-subsidisation is no greater than is reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;

then:

(d) the Commission must not reject the undertaking for a reason that concerns that cross-subsidisation; and

(e) paragraph (2)(b) does not apply to that cross-subsidisation.

(5B) In subsection (5A), cross-subsidisation, eligible services, price-related terms and conditions, uniform national pricing and utilities have the same meaning as in section 151DA.

(5C) If a refusal is authorised under subsection 151DA(2) or (3) for the purposes of subsection 51(1):

(a) the Commission must not reject the undertaking for a reason that concerns that refusal; and

(b) paragraph (2)(b) of this section does not apply to that refusal.

This amendment is also consequential to government amendment (2) and amends part
of the Competition and Consumer Act to ensure that the authorisation is taken into account when the ACCC is considering whether to accept a special access given to it by an NBN corporation. I understand Senator Ludlam or Senator Xenophon will move an amendment to this amendment to bring it into line with the modified amendment (2).

 Senator XENOPHON (South Australia) (8.41 pm)—I, and also on behalf of Senator Ludlam, move amendment (7) on sheet 7064:

(7) Omit subsections 152CBD(5A) and (5B), substitute:

(5A) If:

(a) the undertaking contains price-related terms and conditions relating to the supply of a service; and

(b) the price-related terms and conditions are reasonably necessary to achieve uniform national pricing of eligible services supplied by the NBN corporation to service providers and utilities;

then:

(c) the Commission must not reject the undertaking for a reason that concerns the price-related terms and conditions; and

(d) paragraph (2)(b) does not apply to the price-related terms and conditions.

(5B) In subsection (5A), eligible services, price-related terms and conditions, uniform national pricing and utilities have the same meaning as in section 151DA.

Again, this is a consequential amendment to the issue of uniform national pricing and relates to the reasonable necessity test. I have outlined previously that this is to ensure that we do not have a backdoor form of price discrimination being allowed. This approach, I believe, assures that.

 Senator BIRMINGHAM (South Australia) (8.41 pm)—If I can be ever so brief, noting the continuance of similar amendments and amendments to amendments, the opposition’s contribution is in regard to what we have said previously: ditto.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Troeth)—The question now is that the government amendment, as amended, be agreed to.

Question agreed to.

 Senator XENOPHON (South Australia) (8.42 pm)—I understand we are waiting for Senator Ludlam to move the next amendments. I thought in the meantime, given the discussions I have had with Senator Conroy along with Senator Ludlam, we might discuss that there has been a real issue in respect of the whole matter of equivalence. That relates to concerns that complaints have been raised with the ACCC in the last week, and in information I have received, by competitors to Telstra that Telstra has been deliberately degrading wholesale services compared to their own retail services. That is an area that has been of significant concern.

I note briefly John Durie’s article in the Australian on 23 March, just a couple of days ago. Unlike Senator Conroy, I do not mind the Australian—I think it is useful.

 Senator Birmingham—the things you’ll do to get a good run, Nick!

 Senator XENOPHON—I think it is very cruel of Senator Birmingham to say that! While we are talking about the media, I think it is appropriate that I apologise to Mark Scott, Managing Director of the ABC, for what must be some of the lowest ratings that ABC NewsRadio has ever had on a Friday night! John Durie pointed out concerns that reported:
... Telstra is attempting to exert its market power before its NBN deal comes into effect, by enforcing its contracted prices over those set by the ACCC.

There is a long and good discussion by John Durie in relation to this. But this is a very real concern. It has been put to me by the CCC. The minister is aware of these concerns, as I understand it. Given that the minister has an important role—and this is a common concern that I have shared with Senator Ludlam in relation to Senator Ludlam’s equivalent amendments that were not successful last year and that we co-sponsored—I wonder whether the minister is prepared to make an undertaking, prior to issuing the structural separation undertaking guidelines instrument to the ACCC as to the matters that the ACCC must have regard to, on what sort of consultations he will have with stakeholders about this issue as to what may have occurred to date.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.45 pm)—I am happy to indicate that I will consult widely with interested stakeholders to determine how the access arrangements have operated to date.

Senator Xenophon—Prior to the issuing of the—

Senator CONROY—Yes, prior to the issuing of the determinations.

Senator Xenophon—to the ACCC?

Senator CONROY—Yes, to the ACCC.

Senator LUDLAM (Western Australia) (8.45 pm)—I thank the minister for that. Senator Xenophon again has excelled himself and, I think, set out quite clearly the reasons for expressing his concerns. There is an interim period here. I might have overcooked it a little bit when I said it could be as long as eight years; I guess I have stood corrected since then. But there is an interim here in which there is the potential for smaller providers to have their arms twisted up behind their backs—which would be behaviour utterly unlike what Telstra has shown in the past!—and they are very, very concerned that until—

Senator Xenophon interjecting—

Senator LUDLAM—I do not know whether Hansard notes irony or not. Until we finally get this agreement in place, there is an interim here that will last until the SSU is actually in place in which people can be taken advantage of. I will note for the minister’s benefit that I do not share Senator Xenophon’s views about the Australian, but I will point out that I did find an article about NBN Co. on the Australian’s website that was not absolutely grotesquely unbalanced. It occurred on 24 November 2010 and was by Stuart Kennedy on the points of interconnect issue. It is a reasonably balanced and factual article. So there is one that I have found, just so that we set the record straight there.

I thank the minister for making that undertaking. I think it is going to be a very important issue during this interim period. We hope that once the SSU has been signed off we can set these sorts of issues to rest and that they will not have to be revisited.

Senator XENOPHON (South Australia) (8.47 pm)—May I say that I have discussed this with Senator Ludlam and of course I will discuss it with my colleagues in the coalition. Given the complaints that we have had from the CCC about some of this conduct which has been referred to the ACCC—the CCC being the Competitive Carriers’ Coalition—I would like to have discussions with the government, the coalition and my crossbench colleagues shortly with a view to having, perhaps, a Senate economics committee inquiry into this conduct, because I think
that—Senator Bushby’s face lit up there, or was it a look of despair?—this is a very important issue. If Telstra is doing the wrong thing and abusing its market power then there ought to be appropriate scrutiny of that and, if necessary, appropriate reform.

Senator BIRMINGHAM (South Australia) (8.48 pm)—I can be very brief on this and indicate that we will support the amendment proposed by Senator Ludlam. He has already commented earlier tonight that the Greens are regular movers of review provisions; he has moved a few review provisions in his time.

Senator Ludlam—I haven’t moved this one yet, Simon.

The TEMPORARY CHAIRMAN (Senator Troeth)—No.

Senator BIRMINGHAM—You have not moved it yet?

Senator Ludlam—No.

Senator BIRMINGHAM—Oh. There we go. I was busily reading, Senator Ludlam. I heard some of your wise words but not all of your wise words. In that case I shall allow you to do what you need to do.

The TEMPORARY CHAIRMAN—Senator Ludlam, you need to move the amendment.

Senator LUDLAM (Western Australia) (8.48 pm)—Thank you, Madam Temporary Chairman. Through you, I would like to thank Evelyn Ek for getting me out of the foyer so that I could get this amendment moved. I move amendment (1) on sheet 7065, relating to the reviews that I have been hinting at for the last 48 hours:

(1) Schedule 1, page 44 (after line 24), after item 81, insert:

81A At the end of subsection 152EOA(1)

Add:

; and (c) Division 2 of Part 2 of the National Broadband Network Companies Act 2011; and

(d) the remaining provisions of the National Broadband Network Companies Act 2011 so far as they relate to Division 2 of Part 2 of that Act.

(1A) Without limiting subsection (1), a review under that subsection must consider the following matters:

(a) the supply by NBN corporations of eligible services covered by section 10, 11, 12, 13, 14, 15 or 16 of the National Broadband Network Companies Act 2011;

(b) the types of eligible services that have been, are being, or are proposed to be, supplied by NBN corporations.

(1B) For the purposes of subsection (1A), eligible service has the same meaning as in section 152AL.

Note: The heading to section 152EOA is altered by adding at the end “etc.”.

What these amendments do is broaden the statutory review of the operation of part XIC of the Competition and Consumer Act 2010 to include division 2 of part 2 of the future National Broadband Network Companies Act. Senators might recall that during that debate last November we moved a set of review amendments to provide for the kind of reviews that I have speaking about in the last couple of days so that, when we are no longer debating a hypothetical network but debating a real one that has been built, we will actually have some decent intelligence on how it is operating—not just the technical aspects of the build-out but the competition impacts and so on.

Of course, we were negotiating those review amendments in the absence of these bills—we had seen the exposure draft but we had not seen the bills themselves, which we all know have been substantively amended—
so what we are doing here is going back and making sure that the issues that have arisen since then, consequent on the amendments we have been debating on the last few days, will be included and will be reported on so that we will know many of the issues that people have been concerned about around scope creep, the kind of entity that NBN Co.

Division 2 covers the supply of services by NBN corporations for the avoidance of doubt. The amendments we are proposing also make clear in subclause (1A)(a) that the review must consider the supply of services by NBN Co. to utilities and the various types of services that are supplied—and these, of course, are consistent with the ones that have been set out in bit of detail. The amendment also covers proposed section 151DB, which is inserted by this bill and which means that the process for changing the listed point of interconnection by the NBN will also be considered.

Given the importance of the NBN and of its operating according to the principles that the government set out for it, we think it is entirely sensible to review new provisions to ensure that they are operating efficiently and effectively. I think we have succeeded, with the support of the chamber, in the objective of documenting in quite a degree of detail—would not have had access to it before without these amendments—the actual process of the build out and the structure of the market that evolves as we go. We will find out whether some of the darker predictions have actually been borne out—the point being that, if they have and if this market goes wrong and does not operate as intended, this parliament will have the opportunity, well and truly before it is too late and before these things are set in concrete, to come back and review these provisions and set things straight. I thank the government for the way in which they have approached this amendment, and I commend it to the chamber.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Troeth)—We will now move to schedule 1, part 3, amendment No. 15.

Senator BIRMINGHAM (South Australia) (8.52 pm)—The opposition opposes schedule 1, part 3, as amended, in the following terms:

(15) Schedule 1, part 3, page 47 (line 1) to page 69 (line 4), Part 3 TO BE OPPOSED.

This amendment goes to the so-called ‘cherry picking’ provisions contained within the access bill. This amendment seeks quite simply to oppose part 3 of the bill. It seeks to oppose it for a couple of reasons. In the overarching sense, it seeks to oppose it because we think that part 3 provides an inappropriate restraint on competition in the way that it has defined these cherry picking provisions and places inappropriate constraint on some existing operators in the market.

We heard in the committee inquiry evidence from a number of different players. Internode appeared before the committee arguing and being concerned that these principles in this section of the bill would create a new monopoly in the emerging broadband market in areas beyond that basic level in which the minister has sought to claim that NBN Co. will operate. Of course, throughout this debate we have highlighted the fact that we are concerned that the government is not operating within the remit that it allegedly set for NBN Co. and is providing too much opportunity for NBN Co. to expand its scope.

In this case, we are concerned not so much about the expansion of scope of NBN Co. as about the limitation of the scope and potential of some of those who may in certain areas be in a position to compete with NBN Co. Perhaps the most prominent of
these players is TransACT, which is very close to this place if not to home—though at this time of this week this place is probably starting to feel a little bit like home for everybody!

TransACT gave quite compelling evidence to the Senate committee and provided a detailed submission that outlined its real concerns about how these proposals in the government’s legislation would impact upon the operation of their business model. TransACT is an important player, not just in the provision of broadband services or communication services but in the provision of fibre-to-the-premise services—the very thing that the NBN is seeking to deliver. TransACT provides those services to around 15,000 premises across the ACT. Its submission stated that it is concerned that the addition of the wholesale only requirement, announced on 20 December 2010, will make it even more difficult for TransACT to continue deploying new fibre networks and competitively competing against NBN Co. The cost to TransACT to separate its wholesale and retail arms would be significant, while also creating a major disruption to TransACT’s normal business operations.

There are numerous concerns highlighted in the Senate committee report about this section of the legislation. I am not going to go through all of them; suffice it to say that we are concerned that these provisions are not only potentially anticompetitive but also quite hypocritical, because they seem to put boundaries around potential competitors for NBN, which the government in many instances has been reluctant to put around NBN Co. itself. I am referring to boundaries around defining exactly what is ‘wholesale only’ and boundaries around defining ‘layer 2 bit-stream services’.

Far earlier in this debate we went through whether we should have more detailed and more clear-cut circumstances in which to draw that line around NBN Co. and the product offering they have. The government did not want to do that then, yet they are quite happy to do it in this place. That is of concern to the opposition. That is why we think that if you are really fair dinkum about having innovation, competition and advancement in this sector you would not have this part 3 of the access bill. That is why we are opposed to it and are moving our opposition to that section.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.57 pm)—The government does not support this amendment. Under the proposed new upgraded rules, significantly extended fibre line access networks offering speeds in excess of 25 megabits per second and servicing residential and small business customers will need to offer a wholesale layer 2 service on an open-access basis. The provisions do not prevent firms entering the market; they simply require them to comply with supply and access requirements comparable to those applying to NBN Co. when they do. The provisions do not require competitors to match NBN Co.’s actual terms and conditions; they simply subject them to comparable layer 2 and open-access requirements. The object of these requirements is to ensure that end users have access to the same kinds of service outcomes available on the NBN, regardless of the network provider. Moreover, the rules will mean that NBN Co. is not hindered in delivering its objective, particularly uniform national wholesale pricing, by strict regulatory requirements while competing against other, less regulated providers of superfast broadband.

Question put:
That schedule 1, part 3, as amended, stand as printed.

The committee divided. [9.03 pm]
(The Chairman—Senator the Hon. AB Ferguson)

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

AYES
Arbib, M.V.  Bilyk, C.L.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Cameron, D.N.
Carr, K.J.  Collins, J.
Conroy, S.M.  Crossin, P.M.
Farrell, D.E.  Faulkner, J.P.
Feeney, D.  Fielding, S.
Forshaw, M.G.  Furner, M.L.
Hanson-Young, S.C.  Hogg, J.J.
Hurley, A.  Ludlam, S.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McGavin, A. *
McLucas, J.E.  Milne, C.
Polley, H.  Pratt, L.C.
Sherry, N.J.  Siewert, R.
Stephens, U.  Xenophon, N.
Wortley, D.

NOES
Abetz, E.  Adams, J.
Back, C.J.  Barnett, G.
Bernardi, C.  Birmingham, S.
Boyce, S.  Brandis, G.H.
Bushby, D.C. *  Cash, M.C.
Colbeck, R.  Coonan, H.L.
Eggleston, A.  Ferguson, A.B.
Fifield, M.P.  Fisher, M.J.
Humphries, G.  Johnston, D.
Joyce, B.  Kroger, H.
Macdonald, I.  Mason, B.J.
McGauran, J.J.  Minchin, N.H.
Nash, F.  Parry, S.
Ronaldson, M.  Ryan, S.M.
Scullion, N.G.  Troeth, J.M.
Trood, R.B.

PAIRS
Evans, C.V.  Boswell, R.L.D.
Hutchins, S.P.  Cormann, M.H.P.
Moore, C.  Fierravanti-Wells, C.

* denotes teller

Question agreed to.
Bill, as amended, agreed to.
Bills reported with amendments.
Report adopted.

Third Reading

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.06 pm)—I move:

That these bills be now read a third time.

Senator BIRMINGHAM (South Australia) (9.07 pm)—I do not intend to delay the Senate with some remarks on this third reading for terribly long. This has been a long process. We have reached the end of something of a marathon process—truly a marathon process. It was not a marathon process of hours, days or weeks but, for those who have been involved in these bills, a marathon process of months—months that date back to late last year, when exposure drafts were released, when these bills first went through consultation with industry and when they first went into the House of Representatives in December last year. That is why, of course, it is so utterly, utterly disappointing to have been here these last couple of days and to have gone through this absolutely chaotic and shambolic process to which the government has subjected not only the Senate but also Australia’s communications industry and all who care to see a decent, fair, competitive communications sector into the future.

This has been the epitome of legislation on the run—legislation made on the run by the minister and by this government. Though the minister’s colleagues file out of here at present, they need to pause and consider.
There is only one reason that they have had to be here until this time on this Friday night—

Senator Bernardi—Stephen Conroy!

Senator BIRMINGHAM—and that is indeed the Minister for Broadband, Communications and the Digital Economy—who is, as Senator Bernardi rightly points out, Senator Conroy. It is Senator Conroy who has failed miserably in this place to come in here with his house in order and present a coherent legislative agenda. He knew coming into this week, having had months before this to get these bills in order, that this was a critical week for the passage of his bills. He stood here and argued that they had to be passed this week because, of course, the government’s multibillion-dollar deal with Telstra hinges upon these bills passing. The government’s entire $50 billion broadband network hinges upon these bills passing.

With $50 billion of investment and taxpayer debt at stake, what did the minister do? He botched it. He came in here on Monday and allowed the debate to start. Then, because he did not have his own house in order, the debate had to be adjourned. The debate was adjourned on Monday at around lunchtime and nothing else happened on Monday, Tuesday and Wednesday. It was not until 4 pm on Thursday that this Senate—

Honourable senators interjecting—

Senator Ludlam—On a point of order, Acting Deputy President, Senator Birmingham is giving a rousing speech and nobody at this end of the chamber can hear him because of the noise.

The ACTING DEPUTY PRESIDENT (Senator Troeth)—Order! Before you resume, Senator Birmingham—

Senator Forshaw interjecting—

The ACTING DEPUTY PRESIDENT—Order, Senator Forshaw! I ask honourable senators to observe the proper decorum of this chamber. Senator Birmingham is to be heard in silence, just as any other senator who rises to speak should be.

Senator BIRMINGHAM—it was only at 4 pm yesterday that the Senate finally got to come back to these bills that the minister says are so critical to the advancement of his broadband network. After knowing for all these months that they had to pass these bills by the end of this session, it was not until 4 pm on the last day of sitting in this session of the parliament that he finally came in here and presented his bills in a manner that he thought he was happy to proceed with.

Even then it was not the final equation—far from it. Despite having presented 28 pages of amendments to the bills that contained hundreds of amendments in only the last 48 hours or so, the minister came in here proclaiming to be ready to debate, but then we discovered that he was far from ready to debate them. We saw the unedifying spectacle of amendment layered upon amendment as the minister desperately sought to fix his own mistakes. These were mistakes he had made in an attempt to fix mistakes he had made previously. It was bungle upon bungle and amendment upon amendment.

We saw the minister, his departmental secretary, officials and advisors huddling with the crossbenchers in every possible corner of this chamber as they tried to stitch together a deal. This is absolutely no way to make legislation at the best of times. It is certainly no way to make legislation when you are talking about a $50 billion project. It is certainly no way to make legislation when you are talking about the biggest public infrastructure project in Australia’s history. It is certainly no way to make legislation when you are talking about the future competitiveness of the communications sector.
I have said before, Minister, and I will say again: you seem to have come in here thinking that the communications sector is your little plaything and that as minister you can just fix it up, make it up and doctor it up as you go. That is far from the case. This is a multibillion dollar industry that employs tens of thousands of Australians. It is vital to our future competitiveness as a country that we get these sorts of things right. You have given no opportunity whatsoever for the Senate, for the public, for the stakeholders and for those interested to get this right. That is the disappointment of this situation.

We have come to the end of this debate. It is clear that these bills will pass, but it is equally clear that this parliament will be asked to revisit these bills. It is clear that the process you have undertaken has left flaws in these bills. There are anticompetitive aspects to them. You are allowing NBN Co. to stray well beyond the scope that you outlined for it. We will see NBN Co. providing services, even though you say it will be a wholesale only network. We will see NBN Co. providing services that move up the value chain into a far more competitive sphere than should be allowed, despite your promises. We will see price discrimination in regional areas, as my colleagues have highlighted along the way. All of these facts demonstrate that your word, like the word of your Prime Minister and the word of your government on these matters, is worthless.

We will see the amendments that have been cobbled together here in the corner fall apart over the weeks, months and years ahead, no doubt, along with those amendments that you rushed in here yourself. We will see hundreds of millions of dollars in lawyers’ fees defending it all, as Senator Brandis said. We will see the situation where inevitably the parliament is asked to come back and fix up mistakes that have occurred in the last couple of days. It is little wonder those mistakes will have occurred, because you just could not get this right.

Senator Conroy, whilst we are vehemently opposed to your $50 billion pipe dream, we would at least rather see that, if you are going to do it, you get it right. It is disappointing in the extreme and sad to see the fact that you are not going to get it right. We will see funds clearly wasted, we will see the repeated mistakes of the past, and it will all be on your head—as is the fact that the Senate has had to sit for the hours it has had to and we have had this chaotic process. It all lies upon your head, Senator Conroy. That is the shame of this outcome. As Paul O’Sullivan, Optus CEO, said:

It’s hard to screw up the NBN. Getting the competition settings wrong is a good way to screw it up …

It is hard to put it any better than that, Senator Conroy, when we look at the last couple of days. It is hard to screw up the NBN, but if anybody can do it, you can.

Senator LUDLAM (Western Australia) (9.16 pm)—We are closing something of a marathon debate and I suppose people listening in to the broadcast or on the web will be surprised to hear me thank all parties in this place for a remarkably respectful debate. I was dreading this one. I have very bad memories of last November, when we were debating the CCS bill. It has been a real clash of views. Mostly, with a couple of notable and utterly random exceptions, people have stayed more or less on topic and we have actually had a contest of ideas, which is what we are paid to do. I would like to thank the staff, who have worked extraordinarily hard for our side: Christian, Chantelle and Giovanni, and also Evelyn, who I think has spent more time in here than most.

Senator Xenophon interjecting—

Senator LUDLAM—From Senator Xenophon’s office, yes. It is on the record. I
would also like to thank the minister’s staff, who have worked very hard behind the scenes. I probably should not single out too many people, but Jonathan Chowns in particular. There is nothing at all wrong with that tie, Jonathan! And I would like to thank my colleagues, who were sure that these extended sittings were my fault. Regarding the people listening in or tracking the debate on Twitter, I know people in here pay careful attention to whether those broadcast lights are on or not. I think people tend to believe that we are only broadcasting when that light above the Speaker’s chair is on. I would just like to remind senators that that is actually not the case. This building broadcasts to the internet all the time. When the lights are on and the Senate is in session, every word, every interjection and every brawl is broadcast already. It is broadcast not just to the electors who put us here but to everybody on the planet with a decent internet connection. With every cable that the NBN Co. lays and with every house that gets stitched into the network, this fact becomes more and more important, and I am not sure that that has completely sunk in. This project is going to change how we communicate and, consequently, it will also change how politics is done.

It is a really great shame that the opposition has fought this project in here. You have put up a brave fight. You have fought it line by line and clause by clause and you have thrown at it absolutely everything that you have had. I would like to pay my respects to Senator Birmingham, who I think has led a very respectful charge against this bill. As far as we disagree with many of his ideas, he has put them with grace and he has put them quite respectfully. He did have us over the line on one of them, but Senator Xenophon got there first. It is worth looking back a little bit to characterise the opposition’s approach. In my brief time here I have been through Senator Minchin’s charge on this project, and he certainly took it up to the communications minister. Then there was Mr Smith, and now Mr Turnbull. The opposition have done everything they can to attempt the destruction of this project, in my view to precipitate a political crisis in order to change the government. If they win government, the opposition propose—as we established in some detail in here—to immediately sell the network, whether it is built or not, for whatever they can get. When people read back over these debates in the future—heaven help them—I wonder what people will think about some of the contributions that were made in here over the last couple of days.

Briefly, I would also like to thank and acknowledge the vast number of people who make this building run, several thousand of them on a sitting day. They thought they were getting rid of us last night but of course we are all still here. Thank you to all of you. We sometimes forget that without you this building would quickly grind to a standstill.

I commend these bills to the Senate. I look forward to moving past the debate around the clash of commercial self-interest that we have heard thus far and get on with the debate about what Australians will use this network for.

Senator XENOPHON (South Australia) (9.20 pm)—I endorse the comments of Senator Ludlam in particular. This has been a long and difficult debate. I felt that I had a stark choice here. It was important to bring about some fundamental reforms and some improvements to the legislation. Now that preferential pricing has been removed—and I note the minister’s undertaking that the government is committed to this—it will make a real difference. It will mean that telcos big and small will be treated equally, which is fundamental to competition, fundamental to
a level playing field and, ultimately, good for consumers.

This has been a difficult journey. I think it is fair to say, without being overtly political, notwithstanding where we are, that the privatisation of Telstra carried with it some real difficulties in terms of its vertical integration, and these are matters that needed to be addressed. If the implementation of the NBN is not carried out properly, if it is in any way blundered, the government knows that it will be cactus. I think they are acutely aware of that. I want the NBN to work because I think it will have significant benefits.

Senator Conroy does deserve credit for his vision for telecommunications in this country. That vision needs to be acknowledged. Now it is a question of implementation, because the key to this is for it to be implemented and rolled out well. I believe there are sufficient levels of scrutiny.

I want to echo Senator Ludlam’s comments in relation to the role of Senator Birmingham. He has carried out his duties on behalf of the coalition with considerable aplomb and skill. He has done a magnificent job for the coalition. I think his colleagues would justifiably be proud of the way he has conducted himself and the way he has argued the case tenaciously for the opposition. I thank my crossbench colleagues: Senator Ludlam, with whom I have worked closely; and Senator Fielding, with whom I have had many discussions. I also thank the staff here, who have been very diligent. Finally I need to thank Evelyn Ek, who has advised me on this. She has been absolutely diligent. Evelyn has assured me that she is so sick of broadband she wants to sign up for a dial-up service. That shows how sick of this debate she is. Thank you Evelyn for your heroic efforts on this.

I am looking forward to the next stage of this. Let’s do this and get it right and let’s see the benefits of an NBN with these significantly improved positions and amendments that will make a very real difference in competition and scrutiny.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.23 pm)—I join with the previous speakers by firstly thanking all of the staff who support this building for being here for the last few days, when, as Senator Ludlam said, we were not expecting to be. I thank the Senate staff, the dining room staff and the staff in the cafe, which stayed open tonight so that we could get some food.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Troeth)—Order! I earlier called for order for Senator Birmingham to speak and I think it is only fair that we hear Senator Conroy in relative silence.

Senator CONROY—I thank all of those in my department who have worked so diligently for so long on this, from the secretary to all the staff who have been with me for the last few days. But it is not just these few days. As has been pointed out, the first draft of this bill was put out last November or December—I have lost track. Thank you to the very dedicated staff in my department who have persevered on this bill. I thank those who have supported the passage of this legislation, such as organisations like ATUG, the CCC, the staff at the ACCC, who have also worked closely on these bills, Communications Alliance and many, many others—I am sure I have left some off—who have been so strongly supporting reforming the telecommunications sector in this country, which it has so desperately needed. I also congratulate Senators Ludlam and Xenophon for their contributions. As individuals they have done an incredible job in getting themselves
across all of the details of an extraordinarily complex piece of legislation and reform process. I also thank all of their staff, who have also had to persevere and get across this. I thank Senator Birmingham, who has performed magnificently on behalf of those opposite. Even though we have disagreed on many things, he has always maintained grace under fire, especially when I slipped him a couple of chocolate Easter eggs during the day!

Finally, I would like to thank my own staff, who have been working on this and have dedicated many, many hours late into the night and early mornings. In fact they became so disorientated that, I am sorry, Jonathan, I cannot agree with Senator Xenophon, the tie is a shocker! But I am sure that when you picked it out it was pitch black this morning and you could not see what you were picking as you came into work again at a very early time!

Thank you again to all of those who have participated in the debate. We have not always agreed, but all of them have been important contributions.

Question put:
That these bills be now read a third time.

The Senate divided. [9.31 pm]

(The President—Senator the Hon. JJ Hogg)

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

AYES

NOES

PAIRS

* denotes teller

Question agreed to.

Bills read a third time.

Senator Bernardi—Mr President, it was drawn to my attention that someone in the advisers’ box was taking photos during that division. If that is true, it is entirely inappropriate and I would request that those photos be deleted and the adviser and the minister responsible for that adviser be disciplined.

Senator McGauran—There is a standing order about that!

The PRESIDENT—I do not need reminding of that, thank you.
Senator McGauran—Sometimes you do.

The PRESIDENT—Will you withdraw that? Withdraw! That is a reflection on the chair.

Senator McGauran—I withdraw.

The PRESIDENT—Senator Bernardi, I was about to say that I was not looking in that direction, so I do not know what took place to the right of me. I will make an inquiry. If any such thing happened it should not have happened, and we will take remedial action.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.34 pm)—I seek leave to make a brief statement.

Leave granted.

Senator CONROY—I failed to mention two other things. I wanted to say hello to Senator Polley’s grandkids, who have—believe it or not—been watching this the whole way through. Also, I am sure the whole chamber would like to join me in congratulating Senator Gavin Marshall on spending his birthday with us all today.

APPROPRIATION BILL (No. 3) 2010-2011
APPROPRIATION BILL (No. 4) 2010-2011
Second Reading

Debate resumed from 3 March, on motion by Senator McLucas:

That these bills be now read a second time.

Senator FIFIELD (Victoria)—Manager of Opposition Business in the Senate) (9.35 pm)—It will not come as a surprise to the chamber that the opposition will not be opposing the Appropriation Bill (No. 3) 2010-2011 and the Appropriation Bill (No. 4) 2010-2011, but we certainly do object to specific funding in some areas under these bills.

These bills are yet further examples of what is wrong with this government’s economic management. They are further evidence of wasteful spending and poor management that have lead to a structural deficit—all of which have led to hitting families with higher cost of living expenses.

This, like any appropriation, has to be seen within the general context of government spending and management, which as we know includes borrowing over $100 million each and every day. They are spending $1.5 trillion in the next four years. I know that figure rolls easily off the tongue, so I think it bears repeating: we are talking about spending $1.5 trillion over the next four years. What I always find particularly scary when we look at deficit budgeting is the interest bill that is accrued to service the debt and we are looking at $45 billion in interest over the next four years.

I think all senators would know that this government inherited a multibillion dollar surplus. It was a surplus which was not achieved easily. It was a surplus which the previous government had to fight for every step of the way. I remember, having worked on the staff of the former Treasurer, that each and every savings measure presented by the then government was opposed by the then Labor opposition. We sometimes found ourselves in the situation where two and three budgets after a particular savings measure had been proposed we would be still fighting to render those savings. We had no help from those opposite. We had to fight at every step of the way, but we got there. In the end, we paid off the $96 billion debt which was bequeathed to us by the Keating Labor government.

But in barely the space of one parliamentary term that multibillion dollar surplus was turned into a multibillion dollar deficit. It is often said, and I think it is true, that for each
year of bad government it takes three years of good government to undo it. It is not just a case of having one bad year of government being wiped out by one good year of government. I think the rule of thumb is that it takes three years of good government to undo the damage of one year of bad government.

Those of us on this side almost get a little bored when we remind people about the pink batts fiasco. Even though we get bored, I think we still have a duty to the Australian public in our opposition role of scrutinising the government to keep talking about the incredible waste involved in the pink batts scheme and also the wasted billions in the school halls program. Again, these figures roll so easily off the tongue. I think it was $14 billion but it might have kicked up to $16 billion.

Senator Joyce—$16.8 billion.

Senator FIFIELD—Senator Joyce helpfully interposes that $16.8 billion has been spent on school halls. Each and every one of us loves school halls. We love school libraries. We love school gymnasiums. But there are so many things wrong with that scheme. First and foremost is that you should—though they have not—let school communities decide what they need and, once a school community has decided what they need, allow them to manage the project. If you do that, you see a lot of money saved.

Senator Jacinta Collins interjecting—

Senator FIFIELD—Do you want to keep interjecting, Senator Collins? I thought I saw your name following mine, so you will have the opportunity to contribute shortly.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Senator Fifield, you can ignore those interjections, I am sure. But they are disorderly; I will remind senators that interjections are disorderly.

Senator FIFIELD—I find Senator Collins irresistible. I cannot help but respond to her sparkling contributions.

Senator Jacinta Collins—I made one!

Senator FIFIELD—They always seem so much more than one, Senator Collins! I say that that $16.8 billion is a massive amount of money and that it is yet another example of the gross mismanagement of this current government. But there are further instances in the current appropriations, and I will take the time to go through a few of them.

In the Department of Immigration and Citizenship there is supplementary funding of $290 million for operational costs associated with the management of offshore asylum seekers. This cost has been incurred as a result of this government’s failure to stop the boats. It is direct result of this government’s removal of our policies, which were effective in stopping the boats. We know how to stop the boats—we did it before. This government has created a product which people smugglers love to sell, and we have seen the tragic results of that over recent days.

Another example is in the Department of Prime Minister and Cabinet, where there is $35.9 million to address a shortfall in funding for expenses related to the transfer of the Office of the Arts from the Department of Sustainability, Environment, Water, Population and Communities. The shortfall arose from amounts being incorrectly appropriated to the wrong outcome in the Department of Sustainability, Environment, Water, Population and Communities during the 2010-11 budget. This is just bad management and poor process, and this is what we see time and time again. To some, these are relatively small amounts—but add $35.9 million to $16.8 billion to a couple of billion dollars for pink batts, and pretty soon you are starting to talk about real money.
A further example is in the Department of Climate Change and Energy Efficiency, where there is $15.1 million to support functions that were transferred from the former Department of the Environment, Water, Heritage and the Arts. That is $15 million just to transfer something from one department to another.

My final example is in the Department of Broadband, Communications and the Digital Economy, where there is $17.1 million for additional work to support the finalisation of definitive agreements between Telstra and NBN Co. That is not the complete cost of that negotiation; that is $17.1 million just to finalise. What is the full cost of that process?

The bad management that I have been talking about has led to a structural deficit, and there is a simple truth here: we are in boom times, but we all know that boom times do not last forever. As it is, we know that the flood disaster has highlighted the fact that the 2012-13 budget forecast had no contingency whatsoever for any unforeseen events, and that is just an example of a failure to provide. As a consequence of this government’s failing to bank windfall gains and of its making spending commitments that require boom time income to be continued indefinitely, whoever is in government will spend the remainder of this decade not only repaying debt but also addressing the structural deficit.

Senator Brandis—Why do we always have to end up fixing up the Labor Party’s mess?

Senator FIFIELD—We always do, Senator Brandis—it is our job. As, I think, the former Treasurer said, ‘Labor get in, they make whoopee, they leave the house a disaster, they trash it.’ It is like when someone has a party and the next morning someone else has to come in and clean up the mess while the others, who caused the mess, are stumbling around groggy, wondering what happened. But they do not have to worry, because there is someone to come and claim out the mess, and that is always our job.

Both Treasury and Finance have warned that the spending of all the proceeds of the mining boom will overheat the economy, create a serious skills shortage and, as I have said, exacerbate the structural deficit problem. This government’s style of management is leading to increased cost-of-living pressures. I want to go through a few newspaper headlines which tell the tale: ‘Get set for power bills to double’—the Courier Mail; ‘Power prices to double’—the Daily Telegraph; ‘Carbon vacuum fuels cost of power’—the Australian; ‘Industry fears doubled carbon price’—the Australian; and ‘Electricity bills to increase yet again’—the Australian. We now know that we are going to have a carbon tax. The Prime Minister put her hand on her heart and solemnly swore that, ‘Under the government that I lead there will be no carbon tax.’ There will be. Her word is worth nothing.

The Labor Party went to the 2007 election talking about how they were going to ‘ease the squeeze’. You might remember their GroceryWatch program, where they thought that, by simply setting up a website, grocery prices were magically going to fall; and Fuelwatch, where they thought that, by setting up a fuel watch website and a petrol commissioner, petrol prices were also magically going to fall. Of course they did not. Those particular measures were never going to work and, sure enough, they were abandoned.

That then takes us to the last election, when the Prime Minister again, apparently
concerned about cost-of-living pressures, said there would be no carbon tax. We know that the current government is currently working on doing just that. We know that, just in the first year, the increase in prices for electricity will be about $300. We know that petrol prices will go up by 6.5c a litre in the first year of operation of a carbon tax. This is in addition to whatever natural price increases there may be. I know in my own shadow portfolio of disabilities that there will be Australians who will face particular challenges and who will find that, as their cost-of-living increases, their dollar does not go as far.

The bills that we have before us today are really symptoms of a bigger problem. What we are talking about is really a malignant disease which is eating at Australian prosperity. We need to address the causes of these symptoms, otherwise Australia will suffer for decades to come. These appropriation bills are in part a manifestation of that. They contain more waste. They contain more evidence of maladministration. They contain further instances of poor process and poor policy. On this side of the chamber we know that ultimately it is going to fall to us, the coalition parties, to again step in and clean up the mess created by this government. We hope that that day will come sooner rather than later, but chances are we will have to wait until after the next election to do that. But, on this side of the chamber, we stand ready and willing to perform that task. These appropriations add further to the debt.

In closing, it is worth noting that the two appropriation bills that we are talking about are more than $2 billion. That is more, just in passing, than what has been raised by the flood levy, which we apparently so desperately had to have and which has now passed this parliament. The waste will continue. The mismanagement will continue. The debt will continue to increase. This government will continue to deliver budget deficits. This government has in fact never delivered a budget surplus—not one in a single budget, not ever. We are in the fourth year of this government and they have never delivered a budget surplus. I make this prediction: this government will never produce a budget surplus. It is a pipedream for this government. They lack the capacity. It will take the re-election of a coalition government to see a budget surplus delivered and this government’s debt repaid.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (9.49 pm)—I realise that if we are not finished here soon we will be back here tomorrow—I understand that perfectly—but I have to briefly say how disgusting is this government’s absolute lack of respect for money. If there is one thing I have always had a concern with in this place it is our debt, so it was with some chagrin that I read in the Financial Review that people are only now starting to agree with me.

The last time we had $105 billion in gross debt—it was a $96 billion net debt—it took us 10 years to pay it off, and about $45 billion of that debt repayment came, whether you like it or not, from the sale of a company called Telstra. Yet in its first 10 months in office this government spent all the money we had put away, and now we have $183 billion to $184 billion in gross debt. They always try to talk to you about net debt, but they can never explain how they get to it. If they did, they would have to explain to you that the way they get to it is to net it off against figures such as the savings of the public service superannuants, as if the government is going to use that money to pay back the debt. They net it off against things they have no idea about—I remember putting a question to the Treasury,
and it took something like five or six months for them to come back with a non-answer about how they got to their net debt figure.

The reality is that the Australian people have to go to work for this. That is what is going to happen. It is beyond irresponsibility for this government to charge into this without even a cost-benefit analysis and to borrow another $27 billion and think they can hide behind a corporate structure. There is another $10 million on top of that and, if the whole structure falls over, you are responsible for the debts of that structure. They sit on the Australian people’s heads—they have to be repaid—and your masters become the people who lent you the money. And every day you borrow more money from more people.

It is absolutely criminal. What you are doing to the finances of this nation is beyond contempt. It is like the people you see in an accountancy practice—these poor foolish people whom I have seen in my own office crying, ‘How did it all go wrong?’ Then you take them back through their own accounts and show them the absolute folly and lunacy which led them to the state they are in, and they lose their house and are declared bankrupt. This is the path that appears. But you are doing that to our nation, and it is beyond contempt. People are going to have to work so hard to pay for your almost criminal neglect of the finances of this nation.

Senator BRANDIS (Queensland) (9.53 pm)—I associate myself with the words that have come from my colleague Senator Joyce. It is indeed a scandal what this government has done to this country. It has ruined our financial position.

(Quorum formed)

Senator JACINTA COLLINS (Victoria)—Parliamentary Secretary for School Education and Workplace Relations (9.55 pm)—I rise to bring the debate on the Appropriation Bill (No. 3) 2010-2011 and the Appropriation Bill (No. 4) 2010-2011 to a close and thank those senators who have made a contribution. The additional estimates bills seek appropriation authority from parliament for the additional expenditure of money from the consolidated revenue fund in order to meet requirements that have arisen since the last budget. The total additional appropriations being sought this year through additional estimates bills 3 and 4 are a little over $2.3 billion.

I would like to take this opportunity to clarify some measures proposed in these bills. The opposition has claimed that the $152.8 million in capital funding for immigration detention facilities is a new measure. This is not the case. These funds were previously announced—namely, $97.8 million in the 2010-11 economic statement and $54.9 million in the 2010-11 Mid-Year Economic and Fiscal Outlook.

While the government has made a decision to retain the Federal Magistrates Court, other plans to restructure the federal courts will proceed as announced in the 2009-10 budget. Funding of $22.1 million will be provided to the Federal Magistrates Court in bill No. 3 and will be offset by reductions in funding for the Federal Court and the Family Court.

The Department of Broadband, Communications and the Digital economy will be provided with $12.7 million for the digital switchover viewer access satellite television service and the digital switchover communications campaign. The $11.8 million referred to in the second reading speech was one component of this reappropriation.

In conclusion, these bills support the government’s budget initiatives, including a number of election commitments, and deserve widespread support.

Question agreed to.
Bills read a second time.

Third Reading
Bills passed through their remaining stages without amendment or debate.

ADVANCE TO THE FINANCE MINISTER
In Committee
Consideration resumed from 10 February.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (9.58 pm)—I move:

That the committee approves the statement of Issues from the advances under the annual Appropriations Acts as a final charge for the year ended 30 June 2010.

Question agreed to.
Resolution reported; report adopted.

CIVIL DISPUTE RESOLUTION BILL 2010
Returned from the House of Representatives
Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.

BROADCASTING LEGISLATION AMENDMENT (DIGITAL DIVIDEND AND OTHER MEASURES) BILL 2011
CUSTOMS AMENDMENT (SERIOUS DRUGS DETECTION) BILL 2011
ELECTRONIC TRANSACTIONS AMENDMENT BILL 2011
MILITARY REHABILITATION AND COMPENSATION AMENDMENT (MRCA SUPPLEMENT) BILL 2011
REMUNERATION AND OTHER LEGISLATION AMENDMENT BILL 2011
TAX LAWS AMENDMENT (2011 MEASURES No. 1) BILL 2011

THERAPEUTIC GOODS LEGISLATION AMENDMENT (COPYRIGHT) BILL 2011
First Reading
Bills received from the House of Representatives.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (10.00 pm)—These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

On a point of order, Mr President, I draw your attention to the time and the resolution of the Senate.

The PRESIDENT—There is no closing time in the resolution of the Senate. I can only say what I know.

Second Reading
Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (10.01 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011

The Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011 introduces amendments to the Broadcasting Services Act 1992, the Radiocommunications Act 1992, the Australian Communications and Media
Authority Act 2005 and the Copyright Act 1968. These amendments introduce measures to effectively implement a reorganisation of digital television channels to realise the digital dividend, and to improve the regulatory framework for free-to-air digital television services provided on the VAST satellite service and the switchover to digital-only television.

On 24 June 2010, the Government announced that 126 Megahertz of broadcasting spectrum would be released as a digital dividend. The digital dividend will be released as a contiguous block of spectrum in the upper ultra-high frequency, or UHF band, in the frequency range 694 to 820 Megahertz inclusive.

This spectrum will become available as a result of the switch to digital-only television and the release of spectrum currently used for analog television. Digital switchover will be completed in Australia by 31 December 2013.

UHF spectrum currently used for broadcasting services is highly valued for delivering wireless communications services, including super-fast mobile broadband. The Government aims to auction the digital dividend spectrum in the second half of 2012, allowing successful bidders ample time to plan and deploy the next generation networks that are likely to use the spectrum.

In order to release this highly valued spectrum, broadcasting services will need to be relocated out of the identified digital dividend spectrum and organised more efficiently within the remaining broadcasting spectrum. This process is known as ‘restacking’.

On 9 July 2010, the Minister for Broadband, Communications and the Digital Economy made the Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010. The purpose of the Direction was to provide the Australian Communications and Media Authority (ACMA) with policy guidance on the Australian Government’s digital dividend objectives.

To assist the ACMA to plan and implement the restack of broadcasting services as efficiently as possible, the Government proposes amendments to the Broadcasting Services Act and the Radiocommunications Act to modify the existing planning process for television broadcasting services. The amendments will provide the ACMA with greater regulatory flexibility during the restack process and also enhance the ACMA’s enforcement powers in relation to television broadcasting planning.

The ACMA will also be given the power to make new planning instruments, called Television Licence Area Plans, for television broadcasting services. During the restack process, the flexible planning powers in these new instruments will allow the ACMA to plan a sequential restack timetable in a licence area. They will also allow temporary digital simulcasts, which may be necessary in metropolitan and larger population centres where a significant number of television antennas may need to be reconfigured over a period of time.

There will be a legislated deadline of 31 December 2014, to be known as the ‘designated restack day’, for restack to be implemented in a licence area. This is one year after the completion of digital television switchover nationally. Provision will be made for the Minister to extend the designated restack day in a particular licence area beyond 31 December 2014, but only where this is necessary for unavoidable technical or engineering reasons.

From the date of the commencement of these amendments and until the designated restack day, the amount of consultation the ACMA has to undertake in respect of television broadcasting services will be reduced. This will allow the ACMA to focus its consultations on the criteria relevant to the restack and with those stakeholders directly affected by it. After the restack is complete, the broad planning and consultation requirements that apply in relation to all other services operating in the broadcasting services bands would apply again to the planning of television services.

The amendments would also give the Minister the power to direct the ACMA by legislative instrument about the exercise of its powers to make or vary a Television Licence Area Plan. This power would enable the Minister to give further policy direction and clarification to the ACMA in relation to restack, if required. This specific Directions’ power will cease to have effect on the designated restack day for a licence area.
The Bill also introduces a number of amendments to the legislative framework for the new VAST satellite services licensed under section 38C of the Broadcasting Services Act.

Proposed amendments to the conditional access scheme governing access to the VAST service in remote Western Australia will mean that viewers who reside in the larger television markets can only apply to access the VAST service if their reception of local terrestrial commercial digital television services, once provided, is inadequate. This provides the remote commercial broadcasters in Western Australia with the opportunity to rollout their terrestrial digital television infrastructure and means that viewers in these areas would not need to purchase satellite reception equipment unnecessarily. But at the same time, the VAST service remains available for people in digital television blackspots, ensuring they are able to receive the full suite of digital television channels.

The Bill also inserts provisions for determining whether digital terrestrial television services in a particular area of Australia are deficient. The ACMA will be able to declare an area ‘service deficient’ if, after a specified time after switch-over, the number of terrestrial commercial digital television services, including digital multi-channels, is less than those required to be provided on the VAST service. Viewers in declared service-deficient areas will then be able to access the VAST service to receive the full suite of digital television channels if they choose to do so.

The Bill would also introduce measures to make sure that viewers who have already purchased and installed satellite reception equipment and legitimately obtained access to the VAST service in a particular location because of digital television signal deficiency cannot subsequently lose that access at a later date if terrestrial digital television reception is extended to their location. The Bill also introduces other minor amendments intended to improve the ACMA’s oversight and administration of the conditional access scheme.

The Bill makes a minor amendment to the Copyright Act to clarify that, where a section 38C licensee re-transmits a broadcasting service other than the services the licensee is required to provide, that re-transmission would be subject to the general broadcast re-transmission provisions of Part VC of the Copyright Act.

The Bill makes a number of minor amendments in relation to the provision of digital television services and the digital switchover process.

These new measures include assisting remote commercial broadcasters to provide the full range of free-to-air digital television services, including digital multi-channels such as GO!, GEM, 7TWO, 7MATE, ONE and ELEVEN.

In recognition of the significant costs of terrestrial transmission in remote markets, the new measures are intended to allow remote broadcasters to provide all of their digital multi-channels in standard definition before the end of switchover, although they may still elect to provide high definition services. After digital switchover, commercial television broadcasters in these markets, like all other commercial television broadcasters, will have the option of providing any combination of standard and high definition channels within their allocated spectrum.

There may be circumstances where it is not feasible for some broadcaster transmission sites to be converted to digital. This will especially be the case where sites only serve very small communities or do not, or will not, transmit all of the commercial and national broadcasters’ services in digital. The Bill proposes amendments to the Broadcasting Services Act under which commercial or national broadcasters may apply to the Minister for Broadband, Communications and the Digital Economy for exemption from converting these transmission sites to digital. Before granting the exemption, the Minister would consult with the ACMA and would need to be satisfied that viewers currently served by these analog transmission sites would have access to alternative digital television options, such as the VAST satellite service. Broadcasters would not be permitted to make an application in relation to digital terrestrial services that have already commenced transmission.

In addition to these exemption provisions, the Bill inserts new criteria the Minister must consider when deciding to approve or reject an implementation plan to establish a new digital television service, when a plan is submitted by a national broadcaster. The Minister would be required to
consider whether there are other means by which people in the area can view an adequate and extensive range of national broadcasting services, including by satellite, and whether other broadcasters operating in the area have or will be converting their terrestrial services to digital.

The Government notes the recommendation from Senator Ludlum in the Senate Committee report on the provisions of the Bill that the Government should conduct a review of the impact of switch-over on regional and remote communities two years after passage of this legislation. The Government believes this idea has merit, and will conduct such a review following the switch off of analog television in remote Australia at the end of 2013.

The Bill would make amendments to address regulatory issues that may arise where, for broadcast planning or other technical reasons, specific analog transmitters may need to be switched off earlier than the switchover date in a licence area. The current power that enables the Minister to determine digital-only local market areas does not have the flexibility to allow a commercial or national broadcaster to stop analog transmissions in small geographical areas without technically breaching its digital conversion obligations under the Broadcasting Services Act.

The Bill would repeal provisions in the Broadcasting Services Act and the Radiocommunications Act that require the commercial television conversion scheme to deal with the regulation of digital transmissions by commercial television broadcasting licensees from former analog self-help re-transmission sites. The issuing of licences for the transmission of digital services from former analog self-help re-transmission sites can be achieved through other regulatory mechanisms available to the ACMA, making these provisions redundant.

Finally, the amendments in the Bill would address an inconsistency between the Radiocommunications Act and the Broadcasting Services Act in relation to licences for the transmission of commercial and national television broadcasting services after the end of the simulcast period in a licence area.

The amendments to the broadcasting legislation introduced by this Bill will progress the Government’s digital television switchover program and the restack of digital television channels to realise the digital dividend.

The amendments will give further scope for the roll-out of all digital television multi-channels services to all Australians – bringing truly equal television services to viewers in regional and remote areas for the first time - and will give the ACMA the tools necessary to successfully plan and implement the digital channel restack in cooperation with the broadcasting industry.

Customs Amendment (Serious Drugs Detection) Bill 2011

This Bill will allow Customs and Border Protection to conduct a twelve month trial of x-ray scan technology. The equipment will be licensed for the internal search of a person suspected on reasonable grounds to be internally concealing a suspicious substance.

Currently, an internal x-ray scan of a person can only be carried out by a medical practitioner at a place specified in regulations, for example a hospital or surgery.

The Bill will allow, with the consent of the detainee, an initial non-medical internal x-ray scan of a person to be carried out by Customs and Border Protection officers using new body scan technology that produces a computer image of a person’s internal cavities within a skeletal structure. Where the body scan image supports a suspicion of internal concealment, the existing regime governing an internal search by a medical practitioner will then apply.

The use, by consent, of body scan technology as an initial non-medical internal scan will reduce the number of people referred to hospital for an internal search thereby reducing the impact on the resources of the Australian Federal Police, hospital emergency units and Customs and Border Protection. In the 2009/10 financial year there were 205 detainees referred to the AFP to be taken to hospital for an internal search, of which 48 were confirmed to be internally concealing an illicit substance.

The Bill will extend the existing safety and training safeguards applying to the conduct of an external search of a detainee using prescribed...
equipment to the use of body scan equipment to carry out a non-medical internal scan.

The Office of the Australian Information Commissioner has provided input to the privacy impact assessment and all comments have been incorporated. The Office of International Law in the Attorney-General’s Department has advised that the amendments would not breach the right to privacy as set out in the International Covenant on Civil and Political Rights or the Convention on the Rights of the Child.

The Privacy and FOI Policy Branch of the Department of Prime Minister and Cabinet and the Office of the Australian Information Commissioner will be consulted prior to the prescription of body scan technology.

Electronic Transactions Amendment Bill 2011

The Electronic Transactions Amendment Bill 2011 will update the Electronic Transactions Act 1999 to reflect internationally recognised standards on e-commerce and bring Australia’s electronic transactions legislation into the 21st century.

The Bill contains minor amendments addressing the challenges of existing, new and emerging technologies in e-commerce. These amendments are an important step in ensuring Australia’s legal regime is up to date to support and promote firms and business operating in the digital economy.

The Bill will provide increased legal certainty in trade by electronic means, and encourage further growth of electronic contracting both domestically and internationally.

The amendments align Australia’s legislation with the UN Convention on the Use of Electronic Communications in International Contracts adopted by the General Assembly in 2005. The Convention was developed by the United Nations Commission on International Trade Law and is the first UN Convention addressing legal issues arising from the digital economy.

Accession to the Convention requires amendments to the domestic electronic transactions regime. Each Australian jurisdiction has implemented legislation based on the Model Law on Electronic Commerce 1996, also developed by the United Nations Commission on International Trade Law. The Convention updates the Model Law based on a better understanding of the use of electronic communications since the Model Law was finalised.

Following support during public consultation for Australia’s accession to the Convention, the Bill was drafted by the Parliamentary Counsels’ Committee and approved by the Standing Committee of Attorneys-General in May 2010. NSW and Tasmania have already passed the amendments and I understand that the remaining jurisdictions intend to introduce the provisions within the first half of 2011.

Implementation of the Convention will facilitate international trade by offering practical solutions for issues arising from the use of electronic communications in the formation or performance of contracts between parties located in different countries. It aims to commercial predictability when using electronic communications in international contracts, but does not otherwise purport to vary or create contract law.

Accession to the Convention will also improve the efficiency of commercial activities and promote economic development both domestically and internationally.

Eighteen countries have signed the Convention, including significant trading partners such as the Republic of Korea and Singapore.

Key amendments of the Bill include:

- clarifying uncertainties in using electronic communications in the formation and performance of contracts
- clarifying that a contract can still be legally effective despite being formed by an automated message systems
- refining default rules for determining whether the method used for an electronic signature is reliable
- providing default rules to ascertain the place of business of the parties to a transaction, taking into account modern business practices such as the use of automated message systems. Importantly, this will assist
to determine the jurisdiction in which the contract was formed.

CONCLUSION
The Bill modernises the law to reflect developments in technology and align the Commonwealth legislation with internationally recognised standards on e-commerce.

While the amendments do not significantly change the Commonwealth’s law, they provide a more certain legal environment to meet the needs of present day business practices in the digital environment.

I would like to thank the Parliamentary Counsels’ Committee for the significant time and effort that went into preparing this Bill. I would also like to thank the individuals and organisations who participated in the consultation process.

Military Rehabilitation and Compensation Amendment (MRCA Supplement) Bill 2011

I am pleased to present legislation that will make a number of minor changes to the Military Rehabilitation and Compensation Act.

The changes will clarify the eligibility criteria for MRCA supplement to ensure that members, former members and their dependants continue to receive their correct entitlements.

The MRCA supplement was introduced as part of the Secure and Sustainable Pension Reform package on 20 September 2009 as a result of the consolidation of a number of different allowances across portfolios into a new supplement regime.

Prior to the introduction of MRCA supplement, pharmaceutical allowance was paid under the Military Rehabilitation and Compensation Act as a separate ongoing entitlement to the wholly dependent partner of a deceased member or former member.

Since 20 September 2009, the provisions relating to the payment of the former pharmaceutical allowance component of the MRCA supplement have not adequately dealt with certain wholly dependent partners.

Amendments in the Bill will make it clear that the wholly dependent partner of a deceased member who died before 20 September 2009, is entitled to the former pharmaceutical allowance component of the MRCA supplement where the wholly dependent partner has chosen the lump sum payment option.

The other amendments in the Bill will ensure that the MRCA supplement multiple entitlement exclusion provisions in the Military Rehabilitation and Compensation Act operate as intended.

These provisions operate to prevent dual entitlement to payments under the Veterans’ Entitlements Act, the Social Security Act and the Military Rehabilitation and Compensation Act that are the equivalent of the MRCA supplement.

Amendments in this Bill will ensure that persons eligible for MRCA supplement under the Military Rehabilitation and Compensation Act may not receive additional equivalent payments under the Veterans’ Entitlements Act or the Social Security Act.

The Bill demonstrates the Government’s commitment to continually review, update and refine our operations to provide the optimum level of services and support to our current and former military personnel and their dependants.

Remuneration and Other Legislation Amendment Bill 2011

Mr President, the problems with the current parliamentary entitlements framework have been clearly documented.

The Australian National Audit Office in its 2009-10 report, Administration of Parliamentarians’ Entitlements by the Department of Finance and Deregulation noted that the entitlements framework is “difficult to understand and manage for both Parliamentarians and Finance”.

The Report of the committee for the Review of Parliamentary Entitlements, known as the Belcher Review, established in response to the ANAO’s report, similarly noted that the “existing arrangements are an extraordinarily complex plethora of entitlements containing myriad ambiguities”.

The Department of Finance and Deregulation recently engaged Ms Helen Williams AO, a former secretary of a number of Commonwealth Departments, and former Public Service Commissioner, to review the administration of entitlements by the Ministerial and Parliamentary Ser-
Ms Williams reported to the Department in February 2011. Her review found that greater client focus and more effective administration by the Department would be facilitated by a clearer and more integrated entitlements framework.

The administration, clarification and streamlining of parliamentary entitlements is an ongoing task that occupies a substantial part of my working life in this place, and I will continue to seek to improve - and make more transparent - both the framework and service delivery in this area.

It is important work, because it is critical to the enabling of members and senators – how we do our work representing our constituents in our system of representative democracy.

Parliamentarians that are supported by an effective, efficient and transparent system of remuneration and entitlements will do their jobs better. I am pleased today to announce an important initiative in the reform of the framework.

The bill I am introducing today will restore the Remuneration Tribunal’s power to determine the base salary of parliamentarians. It will also allow the Tribunal to determine the remuneration and other terms and conditions of Departmental Secretaries and the remuneration and recreation leave entitlements of other offices established under the Public Service Act 1999.

In restoring the Tribunal’s power to determine the base salary of parliamentarians, the Bill will implement the cornerstone recommendation in the report of the Committee for the Review of Parliamentary Entitlements.

The independent review committee was chaired by Ms Barbara Belcher AM, and comprised the current President of the Remuneration Tribunal, Mr John Conde AO, the current Dean of the Australia and New Zealand School of Government and former Commissioner of the Australian Competition and Consumer Commission, Professor Allan Fels AO, and Deputy Secretary of the Department of Finance and Deregulation, Ms Jan Mason. I thank them for their work.

The Committee made a range of recommendations around parliamentary entitlements. The Government has agreed to the cornerstone recommendation of the Review. This Bill implements this recommendation and by doing so will provide more transparency and - importantly - independence in the determination of parliamentarians’ base salary.

I now table a copy of the Committee’s report for the information of members, and the public. As I have indicated, the Government has agreed to the first recommendation of the report and is implementing it in this bill. I trust that the release of the report will be an important contribution to the broader task of reform of parliamentary entitlements.

Parliamentarians have been remunerated for their service to the Commonwealth Parliament since Federation. Pay was initially set by the Constitution and then by the Parliament itself, under the auspices of the Constitution.

With the enactment of the Remuneration Tribunal Act in 1973, the Remuneration Tribunal became responsible for setting parliamentarians’ base salary. However, the Tribunal’s authority to determine parliamentarians’ base salary was removed by the Remuneration and Allowances Act 1990.

The Bill restores the Remuneration Tribunal’s role of conclusively determining parliamentary base salary. This change will enable parliamentary base salary to be determined in its own right, rather than the current arrangement where it is set by reference to a figure determined for another purpose, and a matter for decision by the government of the day.

The current situation has resulted in outcomes on parliamentarian’s salaries being determined by political considerations, to the detriment of considered and informed decision-making on appropriate remuneration.

Mr President, the Government notes that Remuneration Tribunal determinations on parliamentarians’ remuneration were disallowed or varied by legislation in 1975, 1979, 1981, 1982, 1986 and 1990, prior to the passage of the Remuneration and Allowances Act 1990. Since this enactment, parliamentary base salaries have been determined by the executive arm of government.
The pre-1990 situation – where determinations were subject to regular disallowance – was also unsatisfactory. It was also inconsistent with the independent nature of the Tribunal.

Accordingly, the Government has decided that – in addition to the restoration of the Remuneration Tribunal’s power to determine parliamentarian’s base salaries - the Tribunal’s determinations of parliamentary remuneration will, in future, not be disallowable.

This will reinforce the independence of the Tribunal and ensure the integrity of the scheme for determining the remuneration of parliamentarians by removing - to the greatest extent possible - opportunities for intervention in the implementation of the Tribunal’s determinations by the beneficiaries of those determinations.

The Remuneration Tribunal will continue to determine the additional salaries of parliamentary office holders, such as the President of the Senate and the Speaker of the House of Representatives, and provide advice to the Government on the additional salaries of Ministers.

To ensure openness and transparency of the Remuneration Tribunal’s decision making, the Tribunal will be required to make its decisions public and publish reasons for them.

Mr President, the Bill also contains amendments to the Remuneration Tribunal Act 1973 - and consequential amendments to the Public Service Act 1999 - to make the Remuneration Tribunal responsible for determining the classification structure for Departmental Secretaries and related matters, which may include pay points and guidelines on the operation of the structure.

Those amendments implement the Government’s 2007 election commitment to make the Remuneration Tribunal responsible for determining the remuneration of Departmental Secretaries and other public office holders under the Public Service Act 1999.

The Remuneration Tribunal will also be responsible for determining the classification to which each office of Departmental Secretary will be assigned and for determining the full range of Departmental Secretaries’ terms and conditions.

The Remuneration Tribunal would determine the amount of remuneration that is to be paid to the Secretary of the Department of the Prime Minister and Cabinet and the Secretary of the Treasury.

The Secretary of the Department of the Prime Minister and Cabinet would, in consultation with the President of the Tribunal and the Public Service Commissioner, assign all other Departmental Secretaries to an amount of remuneration consistent with the classification structure determined by the Remuneration Tribunal.

As is the case currently with determinations made by the Prime Minister, the Remuneration Tribunal’s determinations of the remuneration and other conditions of Departmental Secretaries would not be subject to disallowance.

Consistent with these changes and the 2007 election commitment referred to above, the Bill will also give the Remuneration Tribunal responsibility for determining the remuneration and recreation leave entitlements of the Public Service Commissioner, the Merit Protection Commissioner and the heads of Executive Agencies created under the Public Service Act.

Mr President, the measures contained in this Bill restore independence and transparency to the remuneration of parliamentarians, Departmental Secretaries, and the other office holders I have mentioned.

I commend the Bill to the Senate.

Tax Laws Amendment (2011 Measures No.1) Bill 2011

This bill amends various taxation laws to implement recent disaster related initiatives and improvements to Australia’s tax laws.

Schedule 1 makes exempt from income tax, the disaster income recovery subsidy payments made to victims of the recent floods and Cyclone Yasi.

The payments provided much needed financial assistance to employees, small business owners and farmers who experienced a loss of income as a direct consequence of the flooding that commenced on or after 29 November 2010 and which affected Queensland, New South Wales, Western Australia, Victoria and South Australia, as well as Cyclone Yasi which recently devastated Queensland.
Schedule 1 also exempts from income tax the ex-gratia payments to New Zealand Special Category Visa holders who were affected by a disaster in 2010-11, but due to their Visa status were ineligible for a tax-exempt Australian Government Disaster Recovery Payment. These ex-gratia payments are made for disasters where the Australian Government Disaster Recovery Payment has been activated, and are of an equivalent amount.

By exempting these disaster relief payments from income tax, the maximum amount of assistance is provided to affected individuals. A tax exemption for these payments is also consistent with the exemption provided for equivalent payments made in response to other disasters, such as the devastating Black Saturday Victorian bushfires.

Schedule 2 provides an exemption from income tax for Category C payments made to flood-affected small businesses and primary producers under the Natural Disaster Relief and Recovery Arrangements. This measure recognises the hardship suffered by small businesses and primary producers in affected areas, and provides certainty for recipients in terms of tax treatment at a time when they should not need to worry about tax matters.

Schedule 3 increases the flexibility of First Home Saver Accounts. Money in a First Home Saver Account will be able to be paid into a genuine mortgage after the end of a minimum qualifying period, should the account holder purchase a home prior to the release conditions being satisfied.

Currently, if a first home is purchased before certain minimum release conditions are met, the First Home Saver Account must be closed, and the money in the account must be paid to the individual account holder’s superannuation or retirement savings account.

First Home Saver Accounts are designed to encourage individuals, through tax concessions and Government contributions, to save for their first home over the medium to long term, and have been available since October 2008.

The new law will allow the money in a First Home Saver Account to be paid to a genuine mortgage after the end of a minimum qualifying period, should the account holder purchase a dwelling in the interim.

This change will further assist aspiring home buyers by increasing flexibility through allowing people to purchase a home earlier than planned and still be able to put the money towards their new home, should their circumstances change.

This measure will apply for houses purchased after Royal Assent.

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

Therapeutic Goods Legislation Amendment (Copyright) Bill 2011

When prescription and other higher risk medicines are approved for marketing in Australia by the Therapeutic Goods Administration, a document known as “product information” is approved for the use of health professionals. This Bill amends the Copyright Act 1968 to ensure the long-standing practice of the Therapeutic Goods Administration of approving product information that is in a similar form for all brands of a registered medicine can continue.

These amendments reflect the Government’s concern that the important public health objectives of accurate, consistent information for prescribers and consumers might be jeopardised if some pharmaceutical companies claim infringement of copyright in the approved product information of their registered medicines in an attempt to delay market entry of their competitors’ generic versions of those medicines.

While this is only a recently emerging phenomenon, the use of copyright for this purpose has been identified as an issue that needs to be addressed.

Product information contains technical information about the medicine such as the characteristics of the active ingredient, its indications and contraindications, a description of clinical trials that support the indications, precautions, possible adverse reactions, dosages and storage, and other information relating to the medicine’s safe and effective use. Its purpose is to assist medical practitioners, pharmacists and other health professionals to prescribe or dispense the medicine ap-
appropriately and safely, and to assist them to pro-
vide patient education about the medicine in sup-
port of high quality and safe clinical care.

It is critical that doctors and pharmacists receive
the same information when prescribing and dis-
pening all brands of the same medicine. It is,
therefore, the Therapeutic Goods Administration’s
practice to approve a text for the product informa-
tion of a generic medicine that is in a similar form
to that approved for the product information of
the original medicine. This avoids any perception
that differences in the text of the approved prod-
uct information for the different brands of a
medicine reflect clinical or pharmacological
variations in the medicine itself.

Brand substitution policy was introduced in Aus-
tralia in 1994 to encourage the use of generic
medicines. The policy makes it possible to sub-
stitute, where appropriate, the prescribed drug
brand at the time of dispensing in the pharmacy.
This practice is a vital component of pharmaceu-
tical policy in Australia as it contributes directly
to improved access and affordability of pharma-
ceuticals to both the Government and health con-
sumers. Timely availability of generic medicines
is an essential feature of this policy.

Any barriers that have the effect of preventing or
delaying market entry of new brands of medicines
will have significant financial implications for
both Government and consumers by reducing the
effectiveness of the Further Reforms to the Phar-
aceutical Benefits Scheme implemented under
the National Health Amendment (Pharmaceutical
Benefits Scheme) Act 2010. Members will be
aware that under these reforms the first listing of
a generic version of a medicine now triggers a 16
per cent reduction in the price the Commonwealth
pays for the medicine. The reforms will provide
an estimated $1.9 billion in savings to Govern-
ment and an average savings over 10 years to
consumers of $3 per general PBS prescription.
These savings will contribute to the sustainability
of the Scheme and maintain access to quality
medicines at a lower cost to the taxpayer.

Action by pharmaceutical companies based on a
claim of copyright in product information can
substantially delay savings to the Government
and Australian consumers because the price re-
duction trigger of the first listing of a generic
version of a listed medicine on the PBS is absent.
It can also artificially prolong any market exclu-
sivity that the company may have had under pat-
ent law.

Recently a number of pharmaceutical companies
have taken, or threatened to take, legal action
alleging that the use by another company of prod-
uct information approved by the Therapeutic
Goods Administration for a generic version of a
medicine is an infringement of copyright. In
2008 an interlocutory injunction was granted by
the Federal Court to a pharmaceutical company
sponsor of a registered medicine partly on the
basis of an argument that copyright in the ap-
proved product information for that medicine
would be infringed by a competitor’s use of the
approved product information for a generic ver-
sion. The Federal Court hearing on this matter,
scheduled for early March 2011, will consider the
issue of copyright in the approved product infor-
mation of a registered medicine will be consid-
ered for the first time by an Australian court.

In December 2010, in an apparent attempt to
avoid the risk of similar litigation, the first ge-
neric version of a medicine was marketed without
its approved product information being made
available. While this is not in breach of any exist-
ning requirements under the Therapeutic Goods
Act, it is not conducive to the quality use of
medicines and is not a desirable outcome for pub-
lic health. If the marketing of this medicine had
been prevented by an injunction, the PBS statu-
tory price reduction would not have been trig-
gered.

Pharmaceutical companies currently receive ap-
propriate patent protection for their medicines
under Australian law. Apart from the market
exclusivity conferred under the Patents Act, the
Therapeutic Goods Act includes measures that
require a person applying to register a generic
medicine to certify either that they believe on
reasonable grounds that a patent will not be in-
fringed by the marketing of the medicine, or that
the relevant patent holder has been notified of the
application. Data protection provisions also pre-
vent information provided to the Therapeutic
Goods Administration in relation to a medicine
containing a new chemical entity from being used
to evaluate a generic product for a period of 5
years from the day on which that medicine was registered. The Government believes these measures safeguard a fair return for the efforts of companies bringing medicines to market. The use of copyright injunctions to prevent generic medicines being marketed has the potential to provide the patent owners with a substantial additional period of market exclusivity after the patent has expired as copyright has a duration of at least 70 years from publication.

This issue is not unique to Australia. Similar issues have arisen in the United States in relation to Federal Drug Administration’s “same labelling” requirements for medicines under the HatchWaxman Amendments to the Federal Food, Drug and Cosmetic Act. These amendments were designed to facilitate the introduction of generic competitors once the originator’s drug patent term and exclusivity periods ended by allowing the generic producers to “piggyback” upon the originator’s successful FDA application. The same labelling requirement was upheld by the Second Circuit, United States Court of Appeal in 2000 in the SmithKline Beecham Consumer Healthcare case in which the Court commented that the purpose of the HatchWaxman Amendments would be severely undermined if copyright concerns were to shape the FDA’s application of the requirements. The Court found as a consequence that the same-labelling requirements prevailed over copyright laws.

I now turn to the amendments.

The Bill will insert a new section 44BA into the Copyright Act 1968. The effect will be that actions under the Therapeutic Goods Act for the purposes of approving product information for prescription and other higher risk medicines, or of approving variations to approved product information will not be an infringement of any copyright subsisting in any product information previously approved by the Therapeutic Goods Administration. This will ensure, for instance, that an applicant for the registration of a generic version of a registered medicine will not infringe copyright if it provides a draft product information document that contains text similar to the product information already approved for that medicine. This exemption would apply irrespective of when the product information was approved, that is, whether it was approved before or after the amendments come into effect.

Secondly, the supply, reproduction, publication, communication or adaptation of any approved product information of a registered medicine will not be an infringement of copyright in any other approved product information where such an act is done for a purpose related to the safe and effective use of the medicine concerned. This exemption would apply to such acts irrespective of when the product information was approved. It would cover, for instance, acts of the Commonwealth (including by the Therapeutic Goods Administration), pharmaceutical companies and health care professionals and all those involved in making product information available to health professionals.

The infringement exemption will only apply to acts done after the commencement of the amendments.

The Bill includes a so-called “historic shipwrecks clause” which ensures that if the amendments would result in the acquisition of property from a person otherwise than on “just terms”, the Commonwealth must pay “reasonable compensation” to the person. This provision has been included as a precautionary measure to ensure constitutional validity and does not indicate that such a result is likely.

Exempting particular acts from infringement action under the Copyright Act is not done lightly. The proposed amendments reflect the importance the Government places on ensuring the highest levels of health consumer safety through the provision of accurate information to prescribers and other health professionals about higher risk medicines. The only other exemption of this kind in the Copyright Act relates to the use of approved labels on containers for agricultural and veterinary chemical products.

The amendments go no further than is necessary to ensure that the Therapeutic Goods Administration can continue to approve product information that is in a similar form for all versions of the same registered medicine.

The Government believes that these amendments will restore the appropriate balance between ensuring safe and timely access to medicines for all
Australians and encouraging research and development in the pharmaceutical industry through appropriate protection of intellectual property.

I commend the Bill.

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

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

DOCUMENTS
Return to Order

The Clerk—Documents are tabled relating to the appointment of the disabilities ambassador for the International Day of People with Disability.

ADJOURNMENT

Senator JACINTA COLLINS (Victoria)—Parliamentary Secretary for School Education and Workplace Relations (10.03 pm)—I move:

That the Senate, at its rising, adjourn till Tuesday, 10 May 2011 at 12.30 pm, or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President, and that the time of meeting so determined shall be notified to each senator.

Question agreed to.

Senate adjourned at 10.04 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 added with an instrument unless otherwise indicated by an asterisk.]


Australian Research Council Act—Linkage Projects Funding Rules for funding commencing in 2012 [F2011L00461].

Broadcasting Services Act—Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 2 of 2011) [F2011L00460].

Civil Aviation Act—Civil Aviation Safety Regulations—Instruments Nos CASA—

EX36/11—Exemption — CASR Part 99 DAMP requirements for CAR 30 organisations overseas [F2011L00464].

EX37/11—Exemption — CASR Part 99 DAMP requirements for foreign aircraft AOC holders [F2011L00463].

Commonwealth Authorities and Companies Act—Notice under section 45—NBN Co Limited.

Fisheries Management Act—NPF Direction No. 147 [F2011L00459].


National Consumer Credit Protection Act—Select Legislative Instrument 2011 No. 40—National Consumer Credit Protection Amendment Regulations 2011 (No. 2) [F2011L00465].

Indexed Lists of Files

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2010—Statement of compliance—Office of the Australian Information Commissioner.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Electronic Gaming Machines

(Question No. 16)

Senator Humphries asked the Minister representing the Minister for Regional Australia, Regional Development and Local Government, upon notice, on 28 September 2010:
Are there any electronic gaming machines located on Commonwealth land; if so:
(a) what are these locations; and
(b) how many are at each location.

Senator Sherry—The Minister for Regional Australia, Regional Development and Local Government has provided the following answer to the honourable senator’s question:
I am advised that, in relation to Commonwealth land within the control of the Territories Division of the Department of Regional Australia, Regional Development and Local Government, forty eight (48) machines are understood to be located in the Christmas Island Resort complex and owned by the Resort’s owner, Softstar Pty Ltd. Until 1998, the Resort housed the Christmas Island Casino. I am advised the machines have not been operated since the closure of the casino in 1998 and that it is unlikely that they remain in a functional condition. I understand that Softstar does not have a licence to operate the machines.
I understand that there are no gaming machines located on Norfolk Island and the Department does not control any land within the Australian Capital Territory.

Attorney-General, Home Affairs, Justice, Privacy and Freedom of Information: Stationery

(Question Nos 242 and 250 to 252)

Senator Humphries asked the Minister representing the Attorney-General, the Minister for Home Affairs, the Minister for Justice and the Minister for Privacy and Freedom of Information, upon notice, on 29 November 2010:
(1) What has been the total amount spent on stationery and publications, including a breakdown of all spending.
(2) What has been the total amount spent on printing ministerial letterhead.
(3) What is the grams per square metre [GSM] of the ministerial letterhead.
(4) Is the letterhead carbon neutral.

Senator Ludwig—The Attorney-General has provided the following answer to the honourable senator’s question:
Please refer to the table below.

<table>
<thead>
<tr>
<th>Product</th>
<th>The Office of the Attorney General</th>
<th>The Office of the Minister for Home Affairs, the Minister for Justice and the Minister for Privacy and Freedom of Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publications</td>
<td>$1,789.03</td>
<td>$3,328.85</td>
</tr>
<tr>
<td>Letterhead paper</td>
<td>$44.94 per ream (500 sheets per ream)</td>
<td></td>
</tr>
<tr>
<td>C5 Envelopes</td>
<td>$79.75 per box of 500</td>
<td></td>
</tr>
<tr>
<td>C4 Envelopes</td>
<td>$50.33 per box of 250</td>
<td></td>
</tr>
</tbody>
</table>
(2) The Attorney-General’s Department does not use pre-printed letterhead.
(3) 100gsm.
(4) Yes.

**Broadband, Communications and the Digital Economy**

*(Question No. 271)*

**Senator Humphries** asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 29 November 2010:

Since 14 September 2010, for each Minister and any Parliamentary Secretaries within their portfolio:

(1) Do the Minister and Parliamentary Secretaries have access to a departmental credit card; if so, can a copy be provided of all bank statements.

(2) (a) How many mobile devices are provided to the Minister’s office; and (b) what is the total spend on mobile devices for each office to date.

(3) At what level is each staff member employed in the office.

(4) What has been the total cost of travel for the Minister and Parliamentary Secretaries.

(5) What has been the total travel for all staff, by office.

**Senator Conroy**—The answer to the honourable senator’s question is as follows:

(1) No.


(3) The employment of staff under the Members of Parliament (Staff) Act 1984 is administered by the Department of Finance and Deregulation. On 19 October 2010, the Department of Finance and Deregulation tabled with the Senate F&PA Committee, Government Personal Positions as at 1 October 2010.

(4) The costs of official travel by Ministers, Parliamentary Secretaries and accompanying staff employed under the Members of Parliament (Staff) Act 1984 are largely paid by the Department of Finance and Deregulation. As such, with the exception of those costs listed below, the information sought will be tabled by the Special Minister of State in the last sitting week of June 2011 in his six-monthly report on Parliamentarians Travel Paid by the Department of Finance and Deregulation. As at 29 November 2010, the total travel costs for the Minister (including short-term car transport, passports and visas) was $15 007.77 (GST inclusive).

(5) The costs of official travel by Ministers, Parliamentary Secretaries and accompanying staff employed under the Members of Parliament (Staff) Act 1984 are largely paid by the Department of Finance and Deregulation. As such, with the exception of those costs listed below, the information sought will be tabled by the Special Minister of State in the last sitting week of June 2011 in his six-monthly report on Parliamentarians Travel Paid by the Department of Finance and Deregulation. As at 29 November 2010, the total travel costs for all office staff (including taxis, passports and visas) paid by the Department of Broadband, Communications and the Digital Economy was $2008.56 (GST inclusive).
Attorney-General, Home Affairs, Justice, and Privacy and Freedom of Information (Question Nos 284 and 292 to 294)

Senator Humphries asked the Minister representing the Attorney-General, the Minister for Home Affairs, the Minister for Justice and the Minister for Privacy and Freedom of Information, upon notice, on 29 November 2010:

Since 14 September 2010, for each Minister and any Parliamentary Secretaries in their portfolio:

1. Do the Minister and Parliamentary Secretaries have access to a departmental credit card; if so, can a copy be provided of all bank statements.

2. (a) How many mobile devices are provided to the Minister’s office; and (b) what is the total spend on mobile devices for each office to date.

3. At what level is each staff member employed in the office.

4. What has been the total cost of travel for the Minister and Parliamentary Secretaries.

5. What has been the total travel for all staff, by office.

Senator Ludwig—The Attorney-General has provided the following answers to the honourable senator’s question:

1. Neither the Attorney-General nor the Minister for Home Affairs (also the Minister for Justice and the Minister for Privacy and Freedom of Information) are provided with a Departmental credit card.

2. (a) 35 mobile devices are provided to the Attorney-General’s Office comprising 15 Blackberrys, 3 mobile phones, and 17 wireless internet devices (Telstra wireless USB dongles). 29 mobile devices are provided to the Minister for Home Affairs’ (and Minister for Justice’s) Office comprising 15 Blackberrys, 4 mobile phones, and 10 wireless internet devices (Telstra wireless USB dongles). (b) The total spend on mobile devices (including purchase costs and usage charges) for the Attorney-General’s Office was approximately $11,082 for the period. The total spend on mobile devices (including purchase costs and usage charges) for the Minister for Home Affairs’ (also the Minister for Justice and the Minister for Privacy and Freedom of Information) Office was approximately $11,084 for the period.

3. The employment of staff under the Members of Parliament (Staff) Act 1984 is administered by the Department of Finance and Deregulation. On 19 October 2010, the Department of Finance and Deregulation tabled with the Senate F&PA Committee, Government Personal Positions as at 1 October 2010.

4. The costs of official travel by Ministers, Parliamentary Secretaries and accompanying staff employed under the Members of Parliament (Staff) Act 1984 are largely paid by the Department of Finance and Deregulation. As such, with the exception of those costs listed below, the information sought will be tabled by the Special Minister of State in the last sitting week of June 2011 in his six-monthly report on Parliamentarians Travel Paid by the Department of Finance and Deregulation. (a) The Attorney-General spent approximately $8,953 on short-term transport (such as hire cars and taxis) costs during the period. (b) The Minister for Home Affairs (also the Minister for Justice and the Minister for Privacy and Freedom of Information) spent approximately $12,408 on short-term transport (such as hire cars and taxis) costs during the period.

5. The Special Minister of State will respond on behalf of other Ministers.
**Resources and Energy, and Tourism**  
*(Question Nos 286 and 287)*

Senator Humphries asked the Minister representing the Minister for Resources and Energy and the Minister for Tourism, upon notice, on 29 November 2010:

(1) Do the Minister and Parliamentary Secretaries have access to a departmental credit card; if so, can a copy be provided of all bank statements.

(2) (a) How many mobile devices are provided to the Minister’s office; and (b) what is the total spend on mobile devices for each office to date.

(3) At what level is each staff member employed in the office.

(4) What has been the total cost of travel for the Minister and Parliamentary Secretaries.

(5) What has been the total travel for all staff, by office.

**Senator Sherry**—The Minister for Resources and Energy and Minister for Tourism has provided the following answer to the honourable member’s question:

(1) I do not have access to a departmental credit card.

(2) (a) My office has 8 Blackberries and 5 mobile phones issued by the Department. (b) My office costs on mobile devices to the Department for the period 14 September 2010 to 30 November 2010 were $4,313.45

(3) The employment of staff under the Members of Parliament (Staff) Act 1984 is administered by the Department of Finance and Deregulation. On 19 October 2010, the Department of Finance and Deregulation tabled with the Senate Finance and Public Administration Committee, Government Personnel Positions as at 1 October 2010. My Department employs an Executive Level 1 and an Executive Level 2 Departmental Liaison Officer in my office.

(4) and (5) The cost of official travel by Minister, Parliamentary Secretaries and accompanying staff employed under the Members of Parliament (Staff) Act 1984 are largely paid by the Department of Finance and Deregulation. As such, the information sought will be tabled by the Special Minister of State in the last sitting week of June 2011 in his six-monthly report on Parliamentarians Travel Paid by the Department of Finance and Deregulation. As at 29 November, the total cost to my Department for short term transport for travel for me for the period 14 September 2010 to 30 November was $226.27. The total cost to the Department of travel for my staff for the period 14 September 2010 to 30 November was $128.73.

**Automotive Market Access Program**  
*(Question No. 381)*

Senator Colbeck asked the Minister for Innovation, Industry, Science and Research, upon notice, on 3 February 2011:

(1) What amount of funding has been spent and/or committed under the Automotive Market Access Program (AMAP).

(2) How much funding remains uncommitted under the AMAP for each of the financial years 2010-11 and 2011-12 and for any future years.

(3) (a) What is the total amount of remuneration that has been paid to Mr Steve Bracks and Mr John Conomos respectively in their roles as automotive industry envoys; and (b) how many days of work have they each undertaken in these roles.
Senator Carr—The answer to the honourable senator’s question is as follows:

As at 25 January 2011:

1. $1,336,892 has been spent and/or committed under the Automotive Market Access Program (AMAP).
2. $98,286 of funding remains uncommitted under the AMAP for financial year 2010-2011. $750,000 of funding remains uncommitted under the AMAP for financial year 2011-12.
3. (a) The total amount of remuneration paid to the Hon Steve Bracks AC and Mr John Conomos AO in their roles as Automotive Industry Envoys is $20,500 and $115,500 respectively; and (b) Mr Bracks has undertaken 20 ½ days work and Mr Conomos has undertaken 115 ½ days work in these roles.

Automotive Supply Chain Development Program
(Question No. 382)

Senator Colbeck asked the Minister for Innovation, Industry, Science and Research, upon notice, on 3 February 2011:

As at 25 January 2011:

1. What amount of funding has been spent and/or committed under the Automotive Supply Chain Development Program (ASCDP).
2. Can a list be provided of recipients and their respective grant amounts under the program.
3. When is it expected that Round 2 grants (for Element 3) will be announced.
4. When is the next application round scheduled to open.
5. How much funding remains uncommitted under the ASCDP for each of the financial years 2010-11, 2011-12 and 2012-13 and for each (if any) subsequent year.

Senator Carr—The answer to the honourable senator’s question is as follows

1. $9,307,400
2. See table below:

<table>
<thead>
<tr>
<th>Element 1</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>AutoCRC</td>
<td>$4,750,000</td>
</tr>
<tr>
<td>Element 2</td>
<td></td>
</tr>
<tr>
<td>Ford</td>
<td>$1,009,758</td>
</tr>
<tr>
<td>Holden</td>
<td>$1,009,758</td>
</tr>
<tr>
<td>Toyota</td>
<td>$1,800,000</td>
</tr>
<tr>
<td>Element 3 (Round 1)</td>
<td></td>
</tr>
<tr>
<td>Frontline</td>
<td>$76,000</td>
</tr>
<tr>
<td>Futuris</td>
<td>$100,000</td>
</tr>
<tr>
<td>Toyota Boshoku</td>
<td>$75,000</td>
</tr>
<tr>
<td>ZF Lemforder</td>
<td>$76,484</td>
</tr>
<tr>
<td>Element 3 (Round 2)</td>
<td></td>
</tr>
<tr>
<td>Continental</td>
<td>$75,500</td>
</tr>
<tr>
<td>Futuris</td>
<td>$150,000</td>
</tr>
<tr>
<td>SMR Automotive</td>
<td>$34,900</td>
</tr>
<tr>
<td>Toyoda Gosei</td>
<td>$50,000</td>
</tr>
<tr>
<td>Toyota Boshoku</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

(3) A second application round for Element 3 funding was announced on 7 July 2010.
(4) The next application round opened on 23 February 2011.
(5) See table below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010–11</td>
<td>$25,100</td>
</tr>
<tr>
<td>2011–12</td>
<td>$5,400,000</td>
</tr>
<tr>
<td>2012–13</td>
<td>$4,668,000</td>
</tr>
</tbody>
</table>

**Green Car Innovation Fund**

(Quick No. 383)

Senator Colbeck asked the Minister for Innovation, Industry, Science and Research, upon notice, on 3 February 2011:

As at 25 January 2011:

1. What amount of funding has been committed under the Green Car Innovation Fund (GCIF) for the 2010-11 financial year and for each (if any) subsequent year.
2. How much funding remains uncommitted under the GCIF for the 2010-11 financial year and for each (if any) subsequent year of the program.

Senator Carr—The answer to the honourable senator’s question is as follows:

1. As at 25 January 2011 the amount of funding that had been committed under the GCIF for the 2010-11 financial year and for each subsequent financial year was as follows:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committed Funds</td>
<td>$68.8</td>
<td>$126.1</td>
<td>$4.5</td>
<td>$0.3</td>
</tr>
</tbody>
</table>

2. As at 25 January 2011 the amount of funding that remained uncommitted under the GCIF for the 2010-11 financial year and for each subsequent financial year was as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncommitted Funds</td>
<td>$35.2</td>
<td>$46.9</td>
<td>$52.4</td>
<td>$21.4</td>
<td>$177.5</td>
<td>$105.5</td>
<td>$38.2</td>
<td>$10.6</td>
<td>$3.9</td>
</tr>
</tbody>
</table>

**Christmas Island**

(Quick No. 387)

Senator Hanson-Young asked the Minister representing the Minister for Immigration and Citizenship, upon notice, on 7 February 2011:

With reference to accommodation for departmental staff and other staff associated with the Christmas Island detention centres:

1. How many properties on Christmas Island are currently owned by the Federal Government for the provision of accommodation for departmental staff and other staff associated with the Christmas Island detention centres?
2. From where was this accommodation provided: general Christmas Island housing stock, newly built housing, or properties formerly owned by APSC/Soft Star Pty Ltd or Mr David Kwon?
3. (a) How many properties on Christmas Island are currently leased by the Federal Government for the provision of accommodation for departmental staff and other staff associated with the Christmas Island detention centres; and (b) With whom are these lease arrangements made?
4. What accommodation funding arrangements or conditions have been established with either APSC/Soft Star Pty Ltd or Mr David Kwon for properties on Christmas Island other than direct purchase or lease arrangements?

Senator Carr—The Minister for Immigration and Citizenship has provided the following answer to the honourable senator’s question:
(1) The Government owns and operates 385 staff beds on Christmas Island consisting of:
   - 160 bed-sit style units in 11 two storey blocks at Poon Saan and Silver City;
   - five 3-bedroom duplex units and two 3-bedroom houses at Drumsite; and
   - 204 individual bedroom accommodation units that have shared facilities in 12 two storey blocks at Poon Saan Grove.

(2) The 11 two storey bed-sit accommodation blocks at Poon Saan and Silver City, the five duplexes and the two houses at Drumsite were built by the Federal Government in 2003 in conjunction with the construction of the North West Point Immigration Detention Centre. The 12 individual bedroom accommodation blocks with shared facilities at Poon Saan Grove were acquired by the Federal Government in late 2009 from Soft Star Pty Ltd.

(3) (a) There are currently no leases in place for staff accommodation. (b) Not applicable.

(4) There is a commercial agreement in the form of a block booking with Soft Star Pty Ltd for 92 rooms at the Christmas Island Resort providing a total of 124 staff beds.

**Immigration and Citizenship: Migration**

(Question No. 409)

Senator Cash asked the representing the Minister for Immigration and Citizenship, upon notice, on 28 February 2011:

(1) What are the regional impacts of current migration targets and levels of net overseas migration.

(2) Does the department map or monitor the location of migrants (permanent or temporary) according to Australian Bureau of Statistics Collection Districts; if so, can a copy of these findings be provided; if not, why not.

(3) Does the department assess or review the effectiveness and impact of migration targets on Australian labour markets.

(4) How did the resource boom from 2006 to 2008 and the subsequent global financial crisis affect migration level targeting.

(5) Why did the department study the impacts of long term migration on the environment and was this paper made available to the Sustainable Population Strategy advisory panels.

(6) What are the department’s future forecasts of the demand for labour in Australia and are these projections consistent with Skills Australia; if not, why not.

(7) Has the department discussed, influenced or provided information to the sustainable population inquiry; if so, what information has been provided.

Senator Carr—The Minister for Immigration and Citizenship has provided the following answer to the honourable senator’s question:

(1) Research undertaken by the Department using Departmental and Australian Bureau of Statistics data suggests that most migrants first settle in cities, due to availability of resources and opportunities. Over time there has been an outward drift of established migrants from cities to regions with more migrants choosing to initially settle in regional areas - around one in six new permanent arrivals are settling in regional Australia. An outline of this research can be found at: http://www.segra.com.au/segra10CD/presentations/tuesday/plenary/MarkCullypwt.pdf.

However, there has been a growing trend of new skilled migrants settling in regional Australia. In 2000 around 3 000 new skilled migrants settled in regional Australia. By 2009, the figure had increased to around 12 000 – a fourfold increase.

(2) The Department maintains a Settlement Database which brings together data from various internal and external sources to assist government and community agencies involved in the planning and
provision of services to migrants. The database can be accessed through the Settlement Reporting Facility on the Department’s website at:

The Department also collects data on temporary migrants and is working with other agencies including the Australian Bureau of Statistics to improve data capability. An example of existing reporting on temporary migrants, such as students and subclass 457 visa holders can be found on the Department’s website at: http://www.immi.gov.au/media/statistics/.

(3) The size and composition of the Skill Stream of the Permanent Migration Program is reviewed on an annual basis, taking into account demand for skilled labour from Australian employers who cannot source those skills locally, and extensive community consultations.

The Department monitors the labour outcomes of migrants over time using the Continuous Survey of Australia’s Migrants and the Longitudinal Survey of Immigrants to Australia. These surveys allow the Department to assess the effectiveness of different migration visa streams. The surveys are available on the Department’s website at: http://www.immi.gov.au/media/research/.

(4) During the resource boom the migration program increased with a greater emphasis on skilled migrants. For example between 2005-06 and 2007-08 the migration program increased by almost 16 000 places with more than 70 per cent of that increase in the Skilled stream. With the onset of the global financial crisis, the Government cut the permanent skilled migrant intake by around 20 per cent compared to previous planning levels. As the economy has recovered since the global financial crisis places in the permanent, demand-driven, employer sponsored category were increased to 44 150 in the 2010-11 Migration Program from 35 000 places in 2009-10. These data can be accessed on the Department’s website at: http://www.immi.gov.au/media/statistics/statistical-info/visa-grants/migrant.htm.

In addition to changes in the permanent program, the temporary business (long stay) subclass 457 visa program provides a fast and responsive route for entry of skilled workers to approved business sponsors who nominate overseas workers to fill skilled positions in Australia. The program is highly responsive to labour market demand, as demonstrated when visa applications fell as the global economic crisis unfolded, but has picked up since October 2009 as the labour market has recovered. Further information on these issues can be found on the Department’s website at: http://www.immi.gov.au/about/speeches-pres/_pdf/2011-02-08-cci-speech.pdf.

(5) In June 2009, the department commissioned research from a team of cross-disciplinary experts from National Institute of Labour Studies to study the long-term impact of various net overseas migration levels (NOM) on Australia’s natural and built environment. This research was commissioned to complement the research on the impact of migration on future economic and labour force growth which was commissioned by the department from Australian Demographic & Social Research Institute, Australian National University in 2008.

The aim of the research was to inform Australia’s future immigration planning and policies to achieve managed and sustainable migration over the long term.

The research was completed in July 2010. The Department organized a colloquium on 14 October 2010 for a peer review of both research projects. The Department of Sustainability, Environment, Water and Communities which provides the secretariat support to the Sustainable Population advisory panels was represented at the Colloquium. Subsequent to that, a copy of the research report was made available to the Sustainable Population Strategy advisory panels in late 2010. This report is available on the Department’s Website on:
(6) The department is enhancing its analysis of the magnitude of migration consistent with the demand for labour in Australia. This research will be undertaken in consultation with the Department of Education, Employment and Workplace Relations and with the Treasury. This will allow the Department to better estimate the genuine economic need for migrants and help inform migration planning.

(7) The Department is working closely with the Department of Sustainability, Environment, Population and Communities (DSEWPaC) to support the Sustainable Population Strategy Taskforce. The department has provided data, analysis and briefing information on migration trends and Australia’s net overseas migration levels to the DSEWPaC.