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SITTING DAYS—2012

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- BRISBANE   936AM
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- PERTH      585AM
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FORTY-THIRD PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

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

Senate Office holders
President—Senator Hon. John Joseph Hogg
Deputy President and Chair of Committees—Senator Stephen Shane Parry
Temporary Chairs of Committees—Thomas Mark Bishop, Suzanne Kay Boyce, Douglas Niven Cameron, Patricia Margaret Crossin, Sean Edwards, David Julian Fawcett, Mark Lionel Furner, Scott Ludlam, Gavin Mark Marshall, Bridget McKenzie, Claire Mary Moore, Louise Clare Pratt, Arthur Sinodinos and Ursula Mary Stephens
Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy
Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate—Senator Hon. George Henry Brandis SC
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Mitchell Peter Fifield

Senate Party Leaders and Whips
Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC
Leader of The Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of The Nationals—Senator Fiona Nash
Leader of the Australian Greens—Senator Christine Anne Milne
Chief Government Whip—Senator Anne McEwen
Deputy Government Whips—Senators Carol Louise Brown and Helen Beatrice Polley
Chief Opposition Whip—Senator Helen Kroger
Deputy Opposition Whips—Senators David Christopher Bushby and Christopher John Back
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert

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

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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice H. Coonan, resigned 22.8.11), pursuant to section 15 of the Constitution.

(3) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice Hon. M. Arbib, resigned 5.3.12), pursuant to section 15 of the Constitution.

(4) Chosen by the Parliament of Western Australia to fill a casual vacancy (vice J. Adams, died in office 31.3.12), pursuant to section 15 of the Constitution.

(5) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. B. Brown, resigned 15.6.12), pursuant to section 15 of the Constitution.

(6) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. N. Sherry, resigned 1.6.12), pursuant to section 15 of the Constitution.

(7) Chosen by the Parliament of South Australia to fill a casual vacancy (vice M. J. Fisher, resigned 15.8.12), pursuant to section 15 of the Constitution.

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—C Mills
## GILLARD MINISTRY

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<tr>
<td>Minister for Social Inclusion</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister for Asian Century Policy</td>
<td>The Hon Warren Snowdon MP</td>
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<tr>
<td>Cabinet Secretary</td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td>Treasurer</td>
<td>The Hon Wayne Swan MP</td>
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<td>The Hon Bill Shorten MP</td>
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<td>The Hon Jason Clare MP</td>
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<tr>
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<td>Minister for Resources and Energy</td>
<td>The Hon Martin Ferguson AM MP</td>
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<tr>
<td>Minister for Climate Change and Energy Efficiency</td>
<td>The Hon Greg Combet AM MP</td>
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Each box represents a portfolio. *Cabinet Ministers are shown in bold type.* As a general rule, there is one department in each portfolio. However, there is a Department of Veterans’ Affairs in the Defence portfolio. The title of a department does not necessarily reflect the title of a minister in all cases.
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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 12:30, read prayers and made an acknowledgement of country.

BUSINESS

Days and Hours of Meeting

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (12:31): I move:

That—

(1) On Tuesday, 27 November, Wednesday, 28 November, and Thursday, 29 November 2012, any proposal pursuant to standing order 75 shall not be proceeded with.

(2) On Tuesday, 27 November 2012:

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

(b) the routine of business from not later than 7.30 pm to 8.15 pm shall be consideration of general business order of the day no. 83 (Low Aromatic Fuel Bill 2012);

(c) the bill listed in paragraph (b) be considered under a limitation of time, and that the time allotted be as follows:

from 7.30 pm to 7.45 pm—second reading
from 7.45 pm to 8.15 pm—all remaining stages,

and this paragraph shall operate as a limitation of debate under standing order 142;

(d) the routine of business from not later than 4 pm to 6.30 pm and 8.30 pm to 10 pm shall be government business only; and

(e) the question for the adjournment of the Senate shall be proposed at 10 pm.

(3) On Wednesday, 28 November 2012, the consideration of government documents shall not be proceeded with.

(4) On Thursday, 29 November 2012:

(a) the hours of meeting shall be 9.30 am to 7.10 pm;

(b) divisions may take place after 4.30 pm;

(c) consideration of general business and committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) shall not be proceeded with;

(d) the routine of business from not later than 12.45 pm to 2 pm and from not later than 3.45 pm shall be government business only; and

(e) the question for the adjournment of the Senate shall be proposed at 6.30 pm.

I move this motion in relation to hours but should highlight that this motion sits within a series of procedural motions to allow the Senate additional sitting time to consider a range of government legislation before the Senate rises for 2012. This series of motions is very similar to the motions I moved at the same time last week.

Like my comments to the motions last week, I again begin my few remarks in support of this motion by acknowledging that all senators have been remarkably cooperative—in fact in the last week perhaps more so—in allowing the Senate to consider government legislation effectively and efficiently. Through informal agreements last week the Senate debated 18 packages of legislation. This allowed many senators to speak on legislation with debate not excessively curtailed nor interrupted. I understand that this could not have occurred without the cooperation of all parties and Senator Xenophon, and I acknowledge and thank senators for this cooperation.

I will not be talking on the three government motions on exemptions. The reasons for the exempting of the bills identified in the motions have been circulated; there is little I can add to these reasons and I believe that by keeping my speaking time as brief as possible these procedural motions will allow more productive time on debate of the bills themselves.

This first motion allows additional time for the Senate for the three remaining sitting
days. The motion opens the opportunity for the Senate to be adaptable, as it was last week, in its approach to debating legislation for the remainder of this week. The government's aim in moving the motion is to allow additional time for debate of the government's legislation and for the sittings to be finalised by Thursday evening. Some time is allowed for the business of the Senate and for private senators bills to be debated. The timings are within the scope of the sitting pattern to minimise any disruption to arrangements senators may have made later this week. I am very aware that the end of the year usually requires senators to be finalising parliamentary duties with constituents and committees before Christmas.

I anticipate that the opposition will claim that motions such as these would not be necessary if the government scheduled more sitting days in a year and that this motion today is just a prelude to a time management motion to be moved later in the week, similar to arguments presented last week. But the reality is that it is quite difficult to schedule additional sitting days when senators are also required to attend to an increasingly heavy committee workload. It is also the case that additional regular sitting days would not guarantee significant additional time on government legislation—a matter which we are considering separately. In some respects this is an unresolved issue for the Senate, and one which I hope that the Procedure Committee may be able to pursue in the new year.

I also remind the Senate that debate of government legislation usually dominates Senate time at the end of sittings. This is not the first motion to extend debate time on government legislation at the end of sittings, and it is unlikely to be the last. As to the possibility of a time management motion for the last few sitting days, I would like to put on the record that I am open to one. For these last few days in 2012, I believe that such a motion might be the most effective way for the Senate to manage its time. It would set out clearly the chamber's expectation for debate on legislation; senators would understand the time available on the remainder of the government legislation program; and parties, and Senator Xenophon, would be able to manage the debate time so that decisions on bills could be placed on the record in available time frames.

I am prepared to take on board input from all parties and Senator Xenophon on a time management motion as I think we can probably accommodate most requirements in the next two sitting days, either through a motion or indeed by agreement. However, for the moment a time management motion is not before the chamber. With continued goodwill we can progress the government's legislative program through informal arrangements. This motion provides the chamber further scope to do just that. I commend the motion to the chamber.

**The ACTING DEPUTY PRESIDENT (Senator Fawcett):** Senator Ronaldson. Sorry—Senator Fifield.

**Senator FIFIELD** (Victoria—Manager of Opposition Business in the Senate) (12:35): That is okay, I can understand why you have that particular name on your mind at the moment, Mr Acting Deputy President!

Senator Collins is right that the opposition has displayed a great deal of cooperation and goodwill in relation to the legislative management in this chamber. In fact, many pieces of legislation have moved at a good pace through the parliament, with all colleagues having had the opportunity to debate, to contribute and to air their views, which is as it should be.

As an opposition, we have also agreed from time to time to additional hours. In fact,
in the Senate-only sitting week last week we agreed to commence proceedings an hour and a half earlier to facilitate additional consideration of government business.

So we have brought a very positive attitude to bear and we do not rule out of hand, as a matter of course, motions that seek to vary hours. We consider them on a case-by-case basis, but the motion which is before us today we cannot support—due to both what is within the motion and what is not in the motion.

To come, firstly, to what is in the motion that we cannot accept, that is the guillotine in relation to consideration of the Low Aromatic Fuel Bill 2012. This particular item in the motion indicates that the fix is in. The only reason the Australian Greens are agreeing to this motion is that the government has essentially adopted the Greens’ Low Aromatic Fuel Bill as a piece of government legislation. If this bill were not in this motion, with a guillotine attached, then the Australian Greens would not be supporting the motion that is before us.

The Low Aromatic Fuel Bill is one that I know many colleagues have an interest in. Senator Scullion, in particular, has a great interest in it. He and I were talking about this bill earlier and he was very keen for me to make the points that: this bill would exempt itself in large part from the Racial Discrimination Act, it would invoke the race powers of the Constitution and it would go against the recommendations of the committee set up to examine it. Given there are issues of great contention, how can this chamber consider gagging debate on this particular piece of legislation? The proposition for this particular bill is:

from 7.30 pm to 7.45 pm—second reading—
that is not a great deal of time—15 minutes—and then:

from 7.45 pm to 8.15 pm—all remaining stages.

We would have barely 45 minutes to consider this particular piece of legislation. The Australian Greens and the government are not embracing the spirit of this place, which is to ensure adequate and proper consideration of legislation. We cannot support this motion because that is in the motion, but we also cannot support the motion because of what is not in it.

What is not in the motion is what is euphemistically here called 'time management' but which is more widely known as 'the guillotine'. We know that the guillotine is coming. How do we know it is coming? We only need to look at item No. 2 in government business notices of motion, where we have a motion to exempt from the cut-off a number of bills. The purpose of the motion to exempt these bills from the cut-off is that they can subsequently be guillotined later this week. If for one second we thought that the government would allow full debate on these pieces of legislation, subject to the cut-off, we might entertain exempting them from the cut-off. But why would we exempt them from the cut-off when we know that they are only going to be guillotined later in the week? We know that is coming.

We cannot accept this motion because of the guillotine that is contained within it and we cannot accept this motion because it is predicated on the following motion being passed, which we know will lead to the guillotining. Again, it is the perversity of this government, where on the one hand they say, 'Look, we want to have extra hours to allow debate,' but on the other hand they are intending to guillotine to curtail debate. Those two things are in conflict, and the strangest thing of all, of course, is that this motion proposes that the Senate finishes its business earlier on Thursday.
The opposition are strongly of the view that we should follow the pattern of the week as it was scheduled and that there should not be a guillotine on the Low Aromatic Fuel Bill—or any other bill, for that matter. We should continue to work cooperatively, as we and other parties have shown that this chamber is well capable of doing, to ensure that those bills which do need to be passed in a particular time frame are indeed passed. We cannot support the motion.

Senator MILNE (Tasmania—Leader of the Australian Greens) (12:42): The Greens will be supporting this motion because we want to see an extension of the hours so that we can get the legislation through in a timely manner. I remind the coalition that with several pieces of legislation that have gone through this parliament recently there have been a whole lot of people added to the speakers list from the coalition who have never shown any particular interest in or expertise on a number of topics. One of those was the EU linkage bill on carbon pricing. People spoke from the same set of notes, said the same things and took up the time. If you want to gain respect in terms of engagement with the legislation and timely passage of legislation then that needs to be taken into account.

In terms of the Low Aromatic Fuel Bill, I would like to correct something that Senator Fifield has just said in relation to any of it being contrary to the committee report. That is not the case, and I would remind the Senate that the people who are asking for this bill to be passed to help young Aboriginal people are from Aboriginal communities. They are the people who have been asking for us to deal with this as quickly as possible so that young Aboriginal people can maximise their life opportunities. I would have thought that was something that every senator would be keen to facilitate. If we want to talk about appropriate time management, filibustering out debates does not help. We have some extended hours. Let's approach it in a reasonable manner and we should be able to get through the business of the Senate.

Senator CASH (Western Australia) (12:43): I too rise to speak to the motion in relation to the hours of meeting and routine of business for the remainder of the spring sittings, and to support the comments made by my colleague Senator Fifield in relation to why the opposition will not be supporting this motion. One of the comments that the Manager of Government Business in the Senate made was that the motion that is currently before the Senate will enable the Senate to spend more productive time on debating legislation. I have to say that that is a rather novel approach when you analyse the motion that is before the Senate, because when you go to part 2(c) of the motion, as Senator Fifield has outlined, in relation to the bill that is listed to be debated, from 7.30 pm to 7.45 pm, the second reading debate will occur on this bill.

The last time I checked, a senator had 20 minutes to give a second reading speech. This limits second readers to 15 minutes so I am not quite sure how many senators are going to get to participate in the second reading debate. Then from 7.45 to 8:15 pm all remaining stages of this particular bill will be debated. Again, if this bill were to go into committee, we would have all of 30 minutes to get through the committee stage, to report back to the Senate and to get to the third reading, and if anybody wanted to speak on the third reading there would be no speaking on the third reading. So when the Manager of Government Business says that this motion will enable the Senate to have more productive time, I am assuming that the Manager of Government Business was saying that with her tongue firmly implanted in her cheek.
Senator Jacinta Collins interjecting—

The ACTING DEPUTY PRESIDENT (Senator Fawcett): Order, Senator Cash! I remind you of standing order 193, imputation of improper motives is not parliamentary.

Senator CASH: I would then say that my interpretation of more productive time in which to analyse legislation and properly scrutinise it, and the government's definition of scrutinising legislation, are clearly two very, very different things. When one properly analyses the motion that is before the Senate, the clear implication of it is that it strikes at the very heart of the capacity of the Senate to fulfil its functions as a democratic house of review.

The motion provides for a meagre extension of time of hours today. But let us not forget that we are not just extending hours here. To give something we have got to take something away, so whilst, yes, we may be extending time in relation to the number of hours in which to debate legislation, something has actually got to give. What has got to give is clearly set out in the motion before the Senate:

(1) On Tuesday, 27 November, Wednesday, 28 November, and Thursday, 29 November 2012, any proposal pursuant to standing order 75 shall not be proceeded with.

The senators well know that that is the opposition's time, and occasionally the Greens' time, to raise in the Senate matters which are of extreme urgency and should be debated. We are going to wipe that clear, a full hour of scrutinising the policies of the government or important issues of the day, which the Manager of Opposition Business has just conveniently wiped from the next three days to ensure that we have more productive time to debate legislation.

The other interesting part of this motion which emphasises that the government is not serious is that everything that the Manager of Government Business said to justify why the government is bringing this motion forward is blatantly misleading to the Senate, because if they were genuinely interested in allowing the Senate to have more productive time in which to debate legislation, why would they set a finishing time on Thursday? I go to part 4(e) of the motion which says:

… the question for the adjournment of the Senate shall be proposed at 6.30 pm.

For those who are listening to the debate who might think that that is probably a good hour after most people knock off, let us be very clear about one thing: the Senate never adjourns until at least 6.50 or 7.20 pm on a Thursday, so in any event we are actually adjourning earlier than we otherwise would. But if one was to ensure, in practice, that senators had more productive time in relation to debating legislation, one would think that the government would happily say in relation to the finishing of the Senate on Thursday that they would run through until the Senate finishes. That means that if we are here at midnight, if we are here at 1 am on Friday or if we are here at 2 am on Friday, that is just the way it will be to ensure that, as the Manager of Government Business said, the Senate truly does have more time in which to debate legislation.

Like so much of what the government says, it means nothing. The reasoning for debating this motion today—and why the government is ganging together with their little friends the Greens to put this motion through, because another little deal is being done to the Greens' advantage—means nothing. It is mere rhetoric. I will take you back to what Mr Albanese said. Just after the election of the Rudd government Mr Anthony Albanese, the Leader of the House, said in relation to the federal parliament and sitting hours:
Federal Parliament will sit five days a week under the Rudd Government.

... ... ...

More sitting days not only improves accountability, it also means the Parliament better structures the consideration of legislation and minimises the need for all-night sittings where critical decisions are made late into the night.

... ... ...

The Rudd Government is committed to Parliamentary reform to ensure greater accountability and the Parliamentary timetable is a step in the right direction.

I think that most people would know that you can go onto the website and find this press release, but I do not know whether the parliament ever sat five days. In the last 4½ years that I have been here, I can tell you now that unless we move for an extension of sitting hours, the parliament has never sat five days a week. It was just a promise, just like the carbon tax, that the government made to the Australian people that they never ever had any intention at all of keeping.

In fact when you actually compare the number of sitting weeks under the former Howard government and the number of sitting weeks on the parliamentary sitting calendar under the former Rudd and current Gillard governments, that is when it becomes truly evident which government was not afraid of scrutiny and which government was not afraid of accountability. Under the Howard government, the parliament sat for an average of 22 sitting weeks per year. Under a 22-week sitting pattern there is more than ample time, to again quote the Manager of Government Business, for 'more productive time' for senators to debate legislation. The Rudd government and the Gillard government have reduced the number of sitting weeks per year to 18 weeks. So you had 22 weeks under the former Howard government and you have the time reduced to 18 weeks under the former Rudd and current Gillard governments. I am putting my money on the fact that the former Howard government was more interested in scrutiny and accountability than the former Rudd government and the current Gillard government are.

We will also not be supporting the motion that is before the Senate because of what is not in the motion, as Senator Fifield says. There is a clear implication in the motion because item (4)(e) provides that the question for the adjournment of the Senate shall be proposed at 6.30 pm on Thursday. I think we are going to have a rerun of what happened on the last Thursday last year. The way the government behaved was an absolute disgrace. It ensured that the only thing that a senator found out about a bill that was before the Senate was the name of the bill. The minute the name of the bill was read out by the Clerk the bill was then put to a vote.

I am going to go back to exactly where we were 12 months ago because I can almost guarantee that on Thursday, just as Senator Fifield said, the Senate will be in the exact same position where, rather than allowing senators more productive time in which to debate legislation, the government will get together with its alliance partner, the Greens, to gag debate in this place. On Thursday, 24 November 2011 Senator Macdonald said to the Senate:

But, Parliamentary Secretary, you are aware that tonight, in the 40 minutes left to us— before we rise for the year— we have to deal with the Corporations (Fees) Amendment Bill, the Auditor-General Amendment Bill, the Personal Property Securities Amendment (Registration Commencement) Bill, the Competition and Consumer Amendment Bill (No.1) and the Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill.
All in 40 minutes. Now I will take you to the point of order that Senator Macdonald quite rightly raised when the government and the Greens sought to impose the guillotine on debate. Senator Ian Macdonald said:

Mr President, I rise on a point of order. How can I possibly vote on that bill when I have not even seen the addendum? This is a ridiculous procedure where the Greens and the Labor Party have been guillotining the bill through and they are changing it as we go. We do not even have a chance to read what he has just tabled.

Well, that is allowing more productive debate on legislation if ever I saw it! Senator Fifield, in relation to the same point of time, said:

I recognise that we are in that twilight zone that is the government's guillotine. It is indeed a peculiar circumstance where senators have to indicate how they are going to vote before they have actually voted.

We had to do that because the name of the bill was just called out and the President had to work out whether to put the whole bill or part of the bill because we were not entitled to debate any of the legislation that was before the Senate.

When those on the other side come into this place and say that this motion will enable more productive time to be spent on debating legislation that is worth just as much as the promise they made to the people of Australia just before the 2010 election that, 'There will be no carbon tax under a government I lead.' We all know what the end result of that was. I notice that the Manager of Opposition Business in the Senate is clearly taking delight in my comments—

Senator Fifield: Government business.

Senator CASH: Manager of Government Business. That was slightly Freudian, but one can only hope. If the Manager of Government Business finds the comments that Senator Fifield and I have put on the record in relation to why the opposition will not be supporting this motion so amusing, would she please as part of her summing up speech give a guarantee to the Senate that the government, in bed with the Greens, will not over the next three days—Tuesday, Wednesday and Thursday—implement the gag or the guillotine?

Senator Jacinta Collins interjecting—

The ACTING DEPUTY PRESIDENT: Senator Collins, I remind you that under standing order 197 senators have the right to be heard in silence.

Senator CASH: Perhaps the Manager of Government Business would be kind enough to give a guarantee to the Senate that there is no intention to impose a gag or guillotine on senators over the next three days. Perhaps then we would have a little more comfort in relation to the motion and the reasons being given in asking the Senate to support the motion.

It is the government's obligation to manage their legislative program, and they do that with the sitting schedule that they publish. The sitting schedule is published at the end of each year for the coming year. This is the government's call. They have the timetable and they set the agenda. This is a government that does not like scrutiny. You cannot deny that. You cannot go from 22 weeks of sitting under the former Howard government to 18 weeks of sitting under a Labor government and say that you are all for scrutiny of our legislation. Add another four weeks to the sitting calendar—it is as simple as that! But they do not. So we reject the request for the extension of hours and the extra sitting week because the government should be able to manage within the hours that they have set themselves. The onus is on the government to make the case for a change to the sitting schedule and they have
not done so. On that basis, the opposition will be voting against this motion.

Senator XENOPHON (South Australia) (12:58): I will make a very short contribution—I aim to do it in less than three minutes. I indicate that I will support the government's motion for these reasons. Firstly, I see one of the primary purposes of this motion is to ensure that there is a resolution to the Greens' Low Aromatic Fuel Bill. Let us put that in perspective. That bill was introduced on 1 March this year and was referred to the Senate Community Affairs Legislation Committee for an inquiry on 10 May this year. A report was provided to the Senate on 26 September. There was debate on 22 November, but a resolution was not reached because there were a number of speakers on that bill.

I think it is important that the bill introduced by Senator Siewert be brought to a resolution. It is an important bill. It actually relates to the welfare of Indigenous kids in this country and I think that the social benefits of that bill are considerable and it ought to be brought to a resolution. Having said that, I note that is why we are primarily supporting this motion.

Secondly, Senator Cash makes a very good point that what happened on 24 November last year was nothing short of a disgrace. We had a number of bills that were guillotined and not debated, and Senator Macdonald's point of order was a quite relevant one at the time. I remember well that, in relation to some significant changes to the Family Law Act, there was not an appropriate opportunity to actually debate a bill or to have it considered in committee. So I hope that we do not go down that path again, but I see this as being an opportunity to extend the hours so that we do not get to that position.

I can foreshadow that I will not be supporting a gag or a guillotine on government bills, because I do not think that is the right thing to do. We are a house of review. We are meant to appropriately scrutinise legislation. But in terms of dealing with the Low Aromatic Fuel Bill, there actually has been a process so that it has been dealt with quite thoroughly and, because it is a private senator's bill, there needs to be a mechanism in order to bring that to a vote, to a resolution. So, for those reasons, I will be supporting this motion but I indicate to the government that I do not, under any circumstances, want a repeat of what occurred last year, because I thought that was not a good look for democracy in terms of gagging debate on a number of important bills.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:01): I will keep my remarks brief—much as I prefer not to be provoked by some of the hysteria that has been canvassed in this discussion. Unfortunately, Senator Cash, for instance, needed to listen to the comments I made when moving this motion. There were two aspects, acknowledged by Senator Fifield, that I raised. Firstly, she has mischaracterised the comments I made about allowing more productive time. What I indicated was that I was going to limit my comments, as I will now also in reply, so that more time can be spent in the Senate debating legislation rather than procedural motions. But perhaps the more critical issue that Senator Cash should have listened to was that I said very clearly in my remarks, as acknowledged by Senator Fifield, that I was indeed open to the question of time management. So why she is seeking an assurance directly contrary to what I gave in
my initial remarks is somewhat bizarre. I thank Senator Xenophon for adding some perspective to this discussion.

One issue I thought needed to be highlighted and which was not covered by Senators Cash or Fifield was that the Low Aromatic Fuel Bill had almost 2½ hours of debate last week. Suggestions that there will be no time for bills or that for the Low Aromatic Fuel Bill there will be only the time in the discussion of this motion are somewhat misleading. I would also encourage Senator Cash to perhaps have a broader history lesson on the conduct of this chamber or indeed the conduct of both this chamber and the House. Her perspective seems considerably narrow. The Senate itself has finished earlier than the current time frame on a Thursday on many occasions with cooperation amongst senators. I am an optimist. I hope that we might be able to return to our families at the end of the session somewhat sooner but, as I highlighted, I am still open to the situation where we may seek to time manage to ensure that we progress all legislation. Senator Cash also raised the issue of Fridays in the House and perhaps I will share with the senator a different perspective about why Mr Rudd's plan to extend sittings in the House did not work. That was more as a result of lack of cooperation from the opposition than the government's plan to try to extend the sittings in the House.

Finally, with respect to the perspective on debate on legislation at the end of a session, I think it should be highlighted, whether it is the current government or the Howard government or indeed other governments with 22 sitting weeks, that time management is not something new to the Senate. As for the issues around how much time is available for legislation, obviously with cooperation—as we have had in the last week or two as we have moved through legislation in a prompt fashion—that avoids some of that pressure at the end of the final week and avoids a situation where we are moving through the remainder of the legislation at a very fast pace. With cooperation sufficient time can be allowed but I would ask senators not to misrepresent the situation or seek to claim that it is one peculiar to one particular government.

Question agreed to.

**Consideration of Legislation**

**Senator JACINTA COLLINS**  
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:05): I move:

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

- Fair Work Amendment Bill 2012
- National Gambling Reform (Related Matters) Bill (No. 1) 2012
- National Gambling Reform (Related Matters) Bill (No. 2) 2012
- National Gambling Reform Bill 2012
- Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012
- Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012

Question agreed to.

**Senator JACINTA COLLINS**  
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:05): I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:
Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012

Customs Tariff Amendment (Malaysia-Australia Free Trade Agreement Implementation) Bill 2012.

Question agreed to.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:06): I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Law Enforcement Integrity Legislation Amendment Bill 2012, allowing it to be considered during this period of sittings.

Question agreed to.

BILLS

Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011

Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2012

Customs Tariff (Anti-Dumping) Amendment Bill (No. 1) 2012

Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012

Debate resumed.

The ACTING DEPUTY PRESIDENT (Senator Fawcett) (13:06): Before the Senate moves to the committee stage, and given Senator Xenophon's indication outside the chamber that he will not be proceeding with his amendments, can I ascertain whether the Senate still requires a committee stage on these bills?

Senator XENOPHON (South Australia) (13:07): Mr Acting Deputy President, I would like the opportunity to make a statement.

Senator JACINTA COLLINS: What's the document? We haven't seen it, Nick.

Senator XENOPHON: It is a letter from the minister.

Leave granted.

Senator XENOPHON: Thank you. I will make a short statement. Mr Acting Deputy President Fawcett, you are quite right, as a result of discussions I have had with the minister's office, I would like to inform my colleagues in this place that I will not be continuing with my amendments to these bills at this stage. I want to emphasise that this is not because I have altered my view on the need for these amendments; however, in deference to the fact that these bills need to pass this year I have reached agreement with the minister that I will move these amendments when the government introduces further anti-dumping legislation next year. I have a written agreement from Minister Clare that further debate on these amendments will be facilitated when the new bills are debated, which is likely to be in the first half of next year.

I would like to take this opportunity to thank the minister and his advisers for their time and assistance on these matters. These issues will not go away, but I also understand the imperative to deal with this legislation at this time. There is a raft of amendments that I will be moving with the next tranche of government bills relating to anti-dumping measures. I look forward to further debate on these issues and to further engagement with the minister's office, and indeed with the opposition and other key stakeholders, because this is a critical issue in terms of
dumping, countervailing measures and the impact on our manufacturing industry. I table the letter from Minister Clare that I referred to, dated 26 November 2012.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Fawcett) (13:09): As there are no amendments to these bills, I shall call on the minister to move the third reading unless any other senator requires that the bills be considered in the Committee of the Whole. There being none, I call the minister.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:09): I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

Aviation Legislation Amendment (Liability and Insurance) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator XENOPHON (South Australia) (13:10): I have some significant concerns with the Aviation Legislation Amendment (Liability and Insurance) Bill 2012. At the outset, I should disclose that I am still a lawyer and that I have a very small practice in suburban Adelaide that specialises in personal injury work, but aviation work is an area that I do not think my firm has done.

Whilst I support the increase in liability that carriers are required to hold, from $500,000 to $750,000, I am concerned that there is no mechanism in the bill to provide for further indexation. I also have significant and serious concerns about the ‘pure mental injury’ provisions in this bill. These provisions will mean that a person who suffers from mental injury when it is not in conjunction with physical injury or property damage will not be able to claim under the Civil Aviation (Carriers Liability) Act. I acknowledge that these measures are already in place for international flights and that this change will bring the domestic sector in line with that.

I also note that these requirements are consistent with Australia’s responsibilities under the Montreal convention, but that does not mean that they are right. My view is that we should not lower the level of protection we offer domestic travellers because we can or because that is what everybody else is doing. We should not have a race to the bottom when it comes to compensation for people who are injured in aircraft accidents or who are injured and suffer genuine trauma as a result of an aircraft accident. I understand the reasons behind this change and the need for checks and balances to ensure that insurers are not required to pay out on false or misleading claims, but the courts are there to provide that safeguard in relation to ensuring that the claim is genuine.

But these new requirements in relation to ‘pure mental injury’ do not seem to address the fact that, like cars, aircraft are getting safer and safer. We are no longer looking at mental injury claims confined to instances such as turbulence, which could be considered as an acceptable risk and one that travellers need to take into account as a typical occurrence and part of air travel. Instead, in recent years, we have seen examples of aircraft that have suffered significant damage but have landed, thankfully, safely with no injuries on board. For instance, in July 2008, an oxygen tank exploded on board QF30 while it was en route from Hong Kong to Melbourne. The explosion blew a two-metre hole in the plane’s fuselage, resulting in depressurisation and the deployment of oxygen masks. Some
passengers later reported that some masks did not deploy or had deteriorated elastic. These passengers remained oxygen deprived until the plane descended to a lower altitude. QF30 made a safe emergency landing in the Philippines and no passengers were injured.

More recently, in 2010, QF32 suffered an uncontained engine failure a few minutes after taking off from Changi Airport in Singapore. The explosion in the Rolls Royce engine punctured the wing, damaged fuel lines and hydraulics, degraded to other engines and affected the landing flaps and control over the No. 1 engine. The crew circled for over an hour until they could determine the plane’s status and whether they could land safely. Captain de Crespigny, who has written a book about it, set out well the circumstances in which he and the crew heroically saved that plane. Eventually, they were able to make an emergency landing in Singapore, but the damage meant that the No. 1 engine could not be shut down, passengers remained on board for another three hours while fire crews doused the engine and aircraft with foam. Again, no-one was physically injured.

Thanks to the remarkable skills of the crews on QF30 and QF32, and to the integrity of the aircraft they were flying, both damaged planes were able to make it to the ground safely. Whilst none of the passengers were physically injured, it is hard to believe that people would go through such an experience without some people suffering some form of mental injury. I know that in both of these cases the flights were international and, as such, passengers were not able to claim under the mental injury provisions. But that does not make it right and it does not mean that we should have the same provision for domestic flights. Ultimately, the advances in aircraft technology and crew training mean that it is no longer reasonable to assume that a passenger who is involved in an accident serious enough to cause mental injury would also have some form of physical injury.

As these two examples show, this is simply not the case. Should passengers in this situation be disadvantaged just because they were lucky enough not to be physically injured, whereas they may suffer in some cases a genuine psychiatric injury?

I also want to briefly touch on the indexation of the monetary cap on compensation. The last changes to this cap occurred in 1994—some 18 years ago. In my view, 18 years is too long a period between adjustments and there should be a specific provision in the bill to address this and to allow for future increases. I am grateful to the government for the discussions they have had with me on this issue. It is unfortunate they could not support such a provision.

I will be moving an amendment to this bill in the committee stage that will attempt to find some middle ground. My amendment requires the minister to commission an independent review of these provisions three years after their commencement. The review must consider the issue of indexation and also the effect the change to the mental injury provisions has had on the travelling public. The amendment also includes requirements in relation to releasing and tabling the report from such a review. I hope the government will recognise this amendment as a necessary safeguard in relation to this bill, and I look forward to discussing these matters further in the committee stage. While I support the second reading stage of the bill, ultimately I would find it very difficult to support the third reading stage of this bill because it takes away people's rights to compensation.

Finally, I would like to acknowledge the work over many years that Peter Carter, a lawyer in Brisbane, has done in relation to
aviation law. He specialises in this field, and I am grateful for his advice in relation to this and also his concerns about the issue of indexation. I am grateful to Peter Carter for his advice and for his expertise in this field. I look forward to the committee stage of this bill, but I think it is important that there is an appropriate review mechanism for something that effectively is taking away people's rights. If we have to wait another 18 years for indexation or to upgrade levels of compensation, that clearly is not acceptable to the travelling public who may have the misfortune to be injured in an aviation accident.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (13:17): On consideration of Senator Xenophon's amendment, we acknowledge the issues pertaining to the indexation and how Senator Xenophon is desirous of liabilities that he spelt out, such as the issue of, I think, Captain de Crespigny—

Senator Xenophon: Crespigny, yes.

Senator JOYCE: and the trauma that certain people on a plane may have had by reason of being involved with that event. However, we do not wish to expand the liability for the airlines. The bill as the government has proposed already spells out an expansion of a carrier's liability—from $500,000 to $725,000. We think that the issues pertaining to any liability matters are already carried in that. A future increment or a review of an increment in an airline industry which we can already see is under pressure—we have seen it with Qantas, we have seen it with other domestic airlines—will just exacerbate the issue. We will be supporting the bill but not supporting the amendment.

Senator KIM CARR (Victoria—Minister for Human Services) (13:18): I would like to commend the bill to the chamber. I thank senators for their contributions. This is a bill that modernises Australia's arrangements for air carriers' liability by increasing various outdated caps on carriers' liability for domestic travel. The $500,000 cap was last increased in 1994. Under this bill it will be increased to $725,000 to account for inflation.

Importantly, the bill will also increase the level of mandatory insurance for airlines. The bill will incorporate the principles of contributory negligence so that compensation payments may be reduced where the victim was partially responsible for damage. The bill will also include a right of contribution so that defendants to a claim under the Damages by Aircraft Act 1999 can seek contribution from other parties who may have contributed to the damage suffered by a person bringing a claim. This bill will ensure that victims are adequately compensated in the circumstances where there is an unfortunate event of a domestic aircraft accident. The government will not be supporting Senator Xenophon's amendment.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator XENOPHON (South Australia) (13:20): Before I move the amendment standing in my name, I would like to ask the minister a question. Given that both the opposition and the government have indicated they will not be supporting the amendment I intend to move, what mechanism will there be to ensure a regular review of indexation in relation to compensation payments? Will we be waiting another 18 years, or some other indeterminate time, in order to upgrade or to make sure those payments are at least in line with the CPI?
Senator KIM CARR (Victoria—Minister for Human Services) (13:21): I am advised that the minister is happy to commit to a review in three years time, but not in the form that has been indicated in your proposed amendment.

Senator XENOPHON (South Australia) (13:21): I am tantalised by what Minister Kim Carr has said. I am very pleased that the minister has said he will commit to a review. But not in that form? In what form will the minister commit to a review in three years time?

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (13:21): The Hon. Warren Truss, who has passage of this, has indicated that, on the indication of a triennial review by the government, though its specific form is yet to be determined, the coalition is favourable to its support.

Senator KIM CARR (Victoria—Minister for Human Services) (13:22): The advice I have is that a review will be undertaken into the operations of this legislation.

Senator XENOPHON (South Australia) (13:23): At least that is something. We do not know what the form and terms of reference will be. We do not know what the funding will be. We do not know who will be doing it. We do not know when it will necessarily report, but there will be a review in three years time. I guess that is better than a kick in the head—

Senator Joyce interjecting—

Senator XENOPHON: 'Not much better', says Senator Joyce. Look, I think it is pleasing that the minister acknowledges that there is a need to review this. I will look forward to that review, if I am around the place in three years time—I may not be. But, wherever I will be, I will look forward with interest to see what the references will be. I think at this stage I should put myself out of my misery and move the amendments standing in my name. I have already explained the terms of those amendments in the second reading stage of this bill. I seek leave to move the amendments together, given that I know which way the weight of numbers is, but I am looking forward to the Greens at least announcing their position in relation to this.

Leave granted.

Senator XENOPHON: I move amendments Nos (1) and (2) on sheet 7234 together:

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

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

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CHAMBER
4 Review of amendments

(1) At the end of the period of 3 years after Schedule 1 to this Act commences, the Minister must cause an independent review to be undertaken of the amendments made by that Schedule.

(2) The review must, at a minimum, consider the following:

(a) whether the amounts mentioned in sections 31 and 41C of the Civil Aviation (Carriers' Liability) Act 1959, as amended by Schedule 1 to this Act, should be indexed;

(b) what effects subsection 10(1A) of the Damage by Aircraft Act 1999, as inserted by Schedule 1 to this Act, has had on the travelling public.

(3) The persons undertaking the review must give the Minister a written report of the review within 6 months after the end of the 3-year period.

(4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after he or she receives the report.

(5) In this section:

independent review means a review undertaken by at least 3 persons who:

(a) in the Minister's opinion possess appropriate qualifications to undertake the review; and

(b) include a person who has substantial experience or knowledge in insurance matters.

Question negative
d.

Senator XENOPHON (South Australia) (13:25): For the record, can I indicate that the Australian Greens did support these amendments. Finally, can I indicate that I will not be supporting this bill because this bill actually takes away common law rights to domestic passengers for any claims of mental injury. The promises of a review in three years time, while they ameliorate some concerns, I think are simply too vague at this stage to give me comfort in terms of what I was trying to achieve. But having said that, I am grateful for the discussions I have had with staff from the minister's office and from the department in relation to this bill.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator KIM CARR (Victoria—Minister for Human Services) (13:27): I move: That this bill be now read a third time. Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator KIM CARR (Victoria—Minister for Human Services) (13:28): I move:

That intervening business be postponed until after consideration of the government business order of the day relating to the Law Enforcement Integrity Legislation Amendment Bill 2012. Question agreed to.

BILLS

Law Enforcement Integrity Legislation Amendment Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator HUMPHRIES (Australian Capital Territory) (13:29): I rise to speak on the Law Enforcement Integrity Legislation Amendment Bill 2012. The purpose of the bill is to amend the Crimes Act 1914, the Australian Crime Commission Act 2002, the Telecommunications Interception and Access Act 1979, the Surveillance Devices Act 2004, the Customs Administration Act 1985 and, for good measure, the Law Enforcement Integrity Commissioner Act 2006. On behalf of Senator Brandis, the shadow Attorney-General, I wish to note that the majority of Commonwealth law
enforcement officers, whose behaviour and conduct is in a sense affected by this legislation, need to be recognised as honest, hardworking, good people who are dedicated to protecting their communities. However, it is a fact that criminals do target law enforcement officers due to the nature of their work as they have often obtained or have access to sensitive information, which makes them potential targets. Corrupt conduct can take many forms including improper association, conflict of interest, abuse of power or office, fabrication or destruction of evidence, inappropriate disclosure of information, theft and fraud. Some kinds of corrupt behaviour involve committing a criminal offence; however, other kinds of corruption, while not criminal, may still undermine the integrity of the Commonwealth law enforcement agency they work for. The coalition firmly believes that there should be zero tolerance for corruption in the public sector. We urge the government to take steps towards eradicating corruption which undermines the integrity of our agencies and their ability to achieve their mission to protect our communities and our borders.

Integrity tests are operations designed to test whether a public official will respond to a simulated or controlled situation in a manner that is illegal or would contravene an agency's standard of integrity. Examples of integrity testing include leaving valuable goods or money at a simulated crime scene to test whether an officer steals the item or, often, putting false information into a database to catch an officer suspected of unlawfully disclosing information. It is important to note that integrity testing is not entrapment or inducement. Entrapment is where an officer is induced to commit an offence they would not otherwise have committed, whereas the aim of integrity testing is to give an individual clear and equal opportunities to pass a test or to fail a test. It has been reassuring to the coalition that the tests encompassed in this legislation will be carefully designed and carried out in a way which upholds this important distinction. The introduction of integrity testing at the Commonwealth level was recommended by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity on 21 November 2011. In evidence provided to the Parliamentary Joint Committee on the ACLEI inquiry, a number of issues associated with integrity testing were raised including cost, impact on morale, legal issues such as inducement and the effectiveness of integrity testing as an integrity measure.

The bill also makes significant changes to ACLEI's jurisdiction. Consequently, increased powers need to be thoroughly examined to ensure any privacy or use and disclosure of information issues are addressed appropriately. The Australian Federal Police Association, in their submission to the Senate Legal and Constitutional Affairs Committee inquiry, noted:

It is commendable that the AFP executive is considering the implementation of an integrity testing regime at a time where there is no known widespread corruption in the organisation. This provides a stark contrast to the often cited example of wide-spread corruption in New York City during the 1980s and 1990s which lead Mayor Rudolph Giuliani to commission the Mollen report. The results of that report lead to targeted testing being adopted and soon thereafter it was consequently in every Australian state jurisdiction, including the Northern Territory. The coalition is of the firm view that, for the most part, our agencies are not plagued with widespread corruption. However, it is important to ensure Australia never approaches anything like the level of
The amendments contained in schedule 1 will firstly introduce targeted integrity testing for staff members of the Australian Federal Police, the Australian Crime Commission and the Australian Customs and Border Protection Service suspected of corrupt conduct. Secondly, it will increase the jurisdiction of the Australian Commission for Law Enforcement Integrity, ACLEI, to include CrimTrac, Austrac and prescribed staff at the Department of Agriculture, Fisheries and Forestry.

The purpose of schedule 2 is to enhance the powers of the CEO of the Customs Service to deal with suspected corrupt conduct and to bring those powers in line with powers currently available to the AFP Commissioner and the Australian Crime Commission CEO.

I want to expand upon the amendment in schedule 1, which is to introduce integrity testing for the Customs Service. In their submission to the Senate inquiry, the Customs Service said:

Having regard to the significant increase of Customs and Border Protection’s role at the border, in controlling the import of prohibited items including weapons and drugs, access to highly sensitive and classified information and working closely with other law enforcement agencies. The consequences of corruption or misconduct in connection with the service’s law enforcement role are very serious.

I have to say that it is a shame that this Labor government has not seen fit to couple this legislation with an increase in funding for our Customs Service to help them perform these integral duties such as controlling the import of illicit drugs. In the 2008-09 budget Labor cut $58.1 million in funding for customs cargo inspections. As a result, customs has been placed under great pressure and have been asked to do more with less—putting customs officers at risk of being vulnerable to being used by organised criminal syndicates.

In March this year, Customs were unable to detect 220 guns which were smuggled into Sydney through the Sylvania Waters post office, which is in the electorate of the shadow minister for immigration, Mr Morrison. New South Wales Police Commissioner Andrew Scipione called this alleged smuggling operation ‘perhaps the biggest illegal syndicate doing this type of illegal gun trafficking that Australia has seen’. However, this Labor government refused to refer this incident to a specific inquiry into either Customs or Australia Post. Labor refused to ask themselves the hard questions about the effects that their damaging budget cuts have had on our border and law enforcement agencies. I ask the question: how can the Minister for Home Affairs, Mr Jason Clare, continually deny that the $58.1 million cut in funding that Labor implemented, stripping air and sea cargo screening of valuable resources, has contributed to illegal weapons being smuggled across our border and into our communities.

Air cargo inspections have dropped from 60 per cent under the former Howard government to a dismal 8.3 per cent under this Labor government. With these kinds of drastic cuts to cargo screening, illicit drugs and weapons are flowing through with ease onto our streets and into the hands of organised criminal syndicates. Customs, in their submission to the Senate committee, also noted:

This measure was formerly referred to as ‘loss of confidence’. This terminology has been changed to better reflect the intent of the legislation and provide assurance to workers and the community as to how this power will be implemented.
If Labor were serious about the integrity of our borders, they would stop the spin and look to reinstate the damaging funding cuts which they have made to the Customs Service and which are damaging the integrity of our borders. That would be an appropriate response to the present situation.

Let me conclude by saying that the coalition takes the issue of corruption very seriously and supports efforts to prevent corruption in Commonwealth law enforcement agencies. Corruption and abuse of power not only are threats to Australia's national security but also compromise the trust the community has in the role of those vital agencies. The coalition supports the bill in principle and supports measures to eradicate corruption in the public sector but recognises that more than simply passing a bill of this kind needs to occur to make our fight against those things more tangible and more effective. It is with those reservations that I commend this bill to the Senate.

**Senator WRIGHT** (South Australia) (13:39): I rise to make some brief remarks in support of the Law Enforcement Integrity Legislation Amendment Bill 2012. Last year, I was privileged to sit as a member of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity that considered the possible introduction of a law enforcement integrity testing framework. Many of the submissions to that inquiry supported the introduction of integrity testing within certain Commonwealth law enforcement agencies such as the Australian Commission for Law Enforcement and Integrity, the Australian Federal Police and the Australian Crime Commission. They were all supportive of the concept of introducing integrity testing. That committee inquiry and report considered integrity testing as an important investigative tool and one of the many measures that may be in place to combat infiltration by organised crime groups and corrupt conduct in law enforcement agencies.

Integrity testing provides another tool for combating corruption. As one stakeholder said:

It will not be a panacea and it will not be the right method for every agency or in every instance; however, for the right situations, it will be useful to have the ability to conduct integrity testing.

This bill seeks to implement the recommendations of that committee, which investigated this concept thoroughly—namely, that targeted integrity testing be applied to Commonwealth law enforcement agencies to increase resistance and respond to corruption. The bill does this in a way that maintains oversight and accountability for such integrity testing, which is extremely important. For example, agencies will be required to notify the Integrity Commissioner as soon as practicable after the authorisation of each integrity test. In addition, the Ombudsman maintains powers under relevant legislation to inspect records of controlled operations, surveillance device warrants and authorisations and occasions where information obtained through covert powers is used or communicated. This will include records made in relation to integrity tests. For these reasons, the Australian Greens support the passage of this bill this year.

**Senator BOB CARR** (New South Wales—Minister for Foreign Affairs) (13:42): I thank honourable senators for their contributions to this debate. I would like to thank as well the Senate Standing Committee on Legal and Constitutional Affairs for its inquiry into the bill and its recommendation that it be passed by the Senate.
The Law Enforcement Integrity Legislation Amendment Bill 2012 will ensure that our law enforcement agencies have the powers they need to prevent, detect and investigate corruption. It will allow for officers of the Australian Federal Police, Australian Crime Commission and Customs suspected of corruption to be subject to targeted integrity testing. I am familiar with this principle, having introduced it into the New South Wales Police Force after the Wood royal commission. It was a big step, back in the mid-nineties, and of course raises the question of entrapment or provocation, but properly oversighted it is an indispensable weapon in detecting and eliminating corruption.

The bill expands the jurisdiction of ACLEI to include all staff in the Australian Transaction Reports and Analysis Centre and CrimTrac and prescribed staff in the Department of Agriculture, Fisheries and Forestry. It increases the power of the CEO of the Australian Customs and Border Protection Service. We know that most of our law enforcement officers are honest, hardworking individuals, but it is an unfortunate fact that all systems can be penetrated by officers not so motivated or not so characterised. Therefore, we need to ensure that we have the right legislation and the right frameworks in place to identify corruption where it occurs, to weed it out and to prevent it in the first place. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Fawcett) (13:44): As no amendments to this bill have been circulated, I will call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole. There being no such request, I call the minister.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (13:44): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator HUMPHRIES (Australian Capital Territory) (13:45): I want to indicate that the coalition will be supporting the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, but I indicate that it does so with a sense that this parliament will be putting through legislation which is, frankly, far from satisfactory at this point in time. When this legislation was introduced into the other place by the Attorney-General, Ms Roxon, the language used to describe what the government was trying to achieve was little short of hyperbolic. It was extravagant language about further protecting the privacy of Australians. It described this as being about advancing Labor's agenda—language that would make one think that a major reform was being engineered into Australian law. At some levels, with several very significant changes to the way in which privacy is protected and enforced in Australia, that is what might be said to be happening. But it was also very clear in the course of the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into this legislation that this legislation does not represent a carefully worked-through piece of law-making which addresses the needs of stakeholders and which addresses concerns raised by critics in
the course of the consultation process, which went on over a period of some four years between the report of the Australian Law Reform Commission, which triggered this legislation, and the presenting of the legislation itself in the federal parliament this year. Many stakeholders, in fact, were dismissive to the point of contempt of what the government was attempting to do with this piece of legislation.

I want to quote a few examples of some things that have been said about the legislation by some of the stakeholders, some of whom appeared before the Senate inquiry. Dr Anthony Bendall, the acting Victorian Privacy Commissioner, in his submission to the Joint Parliamentary Committee on Intelligence and Security inquiry responding to proposals within the Attorney-General's discussion paper on national security reforms, had this to say:

Not only does this completely remove the presumption of innocence which all persons are afforded, it goes against one of the essential dimensions of human rights and privacy law: freedom from surveillance and arbitrary intrusions into a person's life.

Ms Katherine Lane, the principal solicitor from the Consumer Credit Legal Centre in New South Wales, said of the bill's readability and how well people were being prepared for their new rights and obligations:

No, there has not been anything. Nothing at all. It is alarming … every time I mention it to a client, they go white. They have no idea that any of this is coming. It will have a profound impact on the way they manage their household budget and their lives and their loans. Australia spends a huge amount of money on financial literacy, but we have not got anything happening on this.

This comes from an organisation designed to explain to people their rights—an organisation which you might expect would be very supportive of attempts by the federal government to improve the regime and the clarity of the regime with respect to privacy. But no. They are extremely concerned about the way in which this information and this new regime will be transmitted to people who are supposed to be the beneficiaries of it.

The Law Council of Australia added to this general tone with this quote:

… a number of large penalties contained in the legislation are out of proportion to the gravity of the contraventions involved … The Committee regrets the availability of such significant penalties for events that may be trivial and may happen very quickly if an error arises.

Mr Simon Remington, Managing Director of Remington Direct, an organisation involved in direct marketing—which is very heavily affected by this legislation—said:

… the inclusion of a "prohibition on direct marketing" will cause considerable confusion with our clients as to whether direct marketing is permitted or not. This will have a direct, financial and reputation effect on our business.

This decision would unquestionably cost many jobs within our industry plus within companies who use direct marketing to grow their business.

That was the direct marketing industry. Perhaps they have a vested interest. On the other hand, we have the banking industry. The Australian Bankers' Association noted in respect of this legislation:

… as far as the general privacy provisions are concerned, the proposed implementation timeframe in the Bill will be insufficient for our members to implement those reforms effectively.

This is simply a small dip in the water with respect to these sorts of comments.

To come back to Dr Anthony Bendall, the acting Victorian Privacy Commissioner, in his submission on national security reforms, he said further:

… this is concerning given the breadth of the term 'operational flexibility' … the level of variation required needs to be carefully
considered and should be extremely limited. Courts are (rightly) vested with authority to grant warrants; allowing 'operational flexibility' to vary a warrant could potentially allow extension of a warrant beyond what was authorised by the court.

These are fundamental protections available in the law to people who might be caught by changed provisions in the law and they are clearly not properly addressed in the bill. Nigel Waters, from the Australian Privacy Foundation, had this to say:

Our overall conclusion is that, while there are some improvements, there are also many ways in which the bill would significantly weaken privacy protection for Australians—the direct opposite of the bill's title.

This is in the face of Labor announcing when its legislation was introduced that 'Labor is protecting the privacy of working families'. Well, not according to the Australian Privacy Foundation.

Some of these stakeholders went to the point of saying that this legislation is so bad that it should not pass. It is particularly reprehensible to hear those sorts of comments when this legislation has had four years in gestation—four years since it was recommended that this legislation be put together; four years of some sort of consultation. I do not know who conducted the consultation, or how, but it was obviously not very good consultation because it has left us with the situation, when the legislation is actually introduced, where stakeholders are lining up, one after the other, to tell us how bad it is.

The second reading speech by the Attorney-General announced that 'Labor is tightening up the rules around how companies and organisations can collect, use and disclose personal information'. The Australian Privacy Foundation said about that concept that in Australian Privacy Principle 3.4(a) it was:

… without any justification for why the deliberately more protective wording has been abandoned in this specific concept. We reject the wholesale implication of the very vague and subjective term 'authorised'.

Michael Holcroft, from the Law Institute of Victoria, said:

The phrase 'reasonably necessary for … one or more of the entity's functions or activities' is too broad.

Professor Graham Greenleaf from the Privacy Foundation said:

… what we have ended up with with the APPs is in fact a serious step backwards. On our detailed analysis in this paper, eight of the 13 principles are weaker than the NPPs or IPPs, so we have no advance. A number of them are very seriously defective.

I could spend the rest of my available time in this debate simply reading what stakeholders have had to say about their concerns about this legislation.

Having put that on the record, I have to indicate that, on balance, the views of stakeholders, particularly those in the financial sector—the credit providing sector, which is perhaps most directly affected by these changes—was to the effect that the legislation ought to pass, with a substantial lead-in time before it actually becomes operational to allow the important financial mechanisms around this legislation to be bedded down and implemented because such a large investment has been made by particularly the credit providing sector in Australia that it would be inappropriate to further delay the implementation of this bill while these kinks were ironed out.

So, with some reluctance, the coalition indicates that it will support this legislation while welcoming the amendments which the government has drafted, and which I understand it will be putting before the chamber shortly, to reflect in part the recommendations made by the Senate.
Constitutional and Legal Affairs Legislation Committee majority and also by coalition senators when reporting on this legislation. But I want to make it very clear that these amendments do not completely fix the problems with this bill. We have a very substantial set of issues which are not properly addressed here and which even officers of the Attorney-General's Department admitted to the Senate committee would have to be dealt with by some process which was not at this point determined. There will have to be further work done to resolve questions which, unless properly addressed, could lead to some conduct being criminalised, or at least made unlawful, by the legislation and the means by which those issues could be resolved have not yet been determined.

It gives me no joy to say that this legislation will pass the Senate today. I believe we have not served the Australian community well by putting forward legislation in this form at this time. It would be more appropriate for the government to have done the kind of homework which it obviously has not been able to do before bringing this forward. Witnesses before the committee reported that the legislation had certainly taken a very long time to come forward and were disappointed that, despite the elapsing of such a long period of time and there being so many attempts at consultation, we still ended up with a quite unsatisfactory piece of legislation in the eyes of many of the stakeholders.

The consistent complaint of many of the parties was that the provisions of the legislation were difficult to understand, that they were vague, that the Australian Privacy Principles were such that they could mean one thing to one person and a quite different thing to another person. That, of course, is not a sound basis on which to enact major sweeping changes to the state of the law.

There was also concern that some behaviour which is presently lawful within the community and which is business practice for a number of entities in the marketplace, including particularly with respect to online marketing, would henceforth be illegal or potentially unlawful by virtue of the application of this legislation. I am thinking particularly of provisions which potentially make it impossible for online entities such as Yahoo!, Google and Facebook to provide advertising to their customers because the provisions dealing with direct marketing might be said to make those sorts of practices, which are common not just in Australia but around the world, unlawful in the future.

We are faced with a quite difficult set of circumstances confronting the Senate. We either leave this situation unresolved or we pass a piece of legislation which, on the admission of most stakeholders, is flawed and in some people's view is quite seriously flawed. It is the view of the coalition that this should be done on the basis that we proceed to make these changes but come back, hopefully with a sense of urgency in the lead-in time prior to the beginning of the legislation, to make the remedies that are necessary in this situation.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Asylum Seekers

Senator CASH (Western Australia) (14:00): My question is to the Minister representing the Minister for Immigration and Citizenship, Senator Lundy. Can the minister confirm that five years ago, when the Howard government left office, the arrival of people on illegal boats had effectively been stopped and that there were only four people in detention who had arrived illegally by boat? Can the minister also confirm that now more than 2,000
illegal entrants are arriving on boats each month and that there are more than 12,000 illegal entrants in detention? Can the minister also advise the Senate about what policies the government pursued to achieve this outcome and whether, upon sober reflection, it now considers those policies to have been a complete failure?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:00): I cannot confirm anything that Senator Cash is saying because, of course, people are seeking asylum. She continues to refer to them as 'illegal entrants' in some way. They are irregular maritime arrivals, they are seeking asylum and they are subject to a processing system that has been recommended to us by an expert working panel.

And, no, I cannot confirm Senator Cash's proposition, and I reject completely what is inherent in her question. In fact, there have been ebbs and flows of people coming on boats over a long period of time, dating right back to 1996. If you look at when the former government was in power, some 13,609 came into Australia by this method. We are obviously facing a number more since then; in fact, in 2012 we have had 15,827. Over time, of course, we expect our processing arrangements to start to impact on these numbers and to draw them down.

Over time, with the implementation of the expert working panel recommendations, we do expect these numbers to drop. We have, of course, implemented those recommendations and we are continuing to. Recently, Minister Bowen made an announcement about reopening some additional detention facilities to cope with the load on the Australian mainland and also to introduce bridging visas to sustain the no-advantage principle that is embedded in our regional processing.

The coalition could, of course, support the Malaysian arrangement, which we feel would make this approach far more successful and have—(Time expired)

Senator CASH (Western Australia) (14:02): Mr President, I ask a supplementary question. Will the minister now admit that the government made monumental policy mistakes when it reversed the Howard government's policies by closing offshore detention, refusing to turn back boats when it was safe and possible to do so and sending clear signals to people smugglers that Australia was open for their business once again?

Senator Wong: It's not safe and it's not possible!

Senator Abetz: It is not what Houston said, Penny, nor what Kevin Rudd said.

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence we will proceed. I will call the minister when there is silence.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:03): Once again I am able to reject completely Senator Cash's proposition in her question. The fact of the matter is that the federal Labor government is implementing the expert panel recommendations. We have a plan.

The coalition maintain that somehow they had a perfect solution. This is completely incorrect, because there was nothing about the temporary protection visa approach that was worthy, and that is why we got rid of it. The temporary protection visas and the other measures that the coalition had in place did not work. They continually stand up in this
place and claim that they did, but if you look at the numbers—the numbers of boat arrivals and, indeed, the numbers of people on Nauru—under the coalition who were eventually processed and became permanent residents in Australia you see that their claim that they had a system that worked is a complete fallacy.

The fact is that times change; we have a challenge that we are addressing and taking independent advice on, and Senator Cash—(Time expired)

Senator CASH (Western Australia) (14:04): Mr President, I ask a further supplementary question. Given that prior to the 2007 election former Prime Minister Kevin Rudd promised to turn boats around and send them back, and that in 2002 Ms Gillard said that turning boats around disrupted people-smuggling operations tremendously, what logical reason does the government have for now refusing to turn around illegal boats if it is safe and possible to do so? Further, can the minister confirm that in the financial year 2002-03 the number of boats that arrived was zero and that the number of people who arrived was zero?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:05): It is really incumbent upon me to take Senator Cash to task with the ridiculous claims that she is putting forward about the coalition's record on this matter. There is no substance to her proposition that somehow the coalition government had a solution to this problem. They did not—and they stood across this chamber and supported us in the implementation of the legislation that gave effect to the expert panel's advice. We are putting that in place.

With regard to turning back the boats: the coalition knows full well that it is not possible. For that to be possible Indonesia would have to agree, and they do not. For that to be possible, it would have to be safe to do so. We know because of the advice we have received from the ADF that it is not safe to do so. And yet the coalition continue to walk in here and promote this claptrap as some kind of policy solution; it is just not true.

Mental Health

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (14:06): My question is to the Minister representing the Minister for Mental Health, Senator Ludwig. Today the National Mental Health Commission report card was released. Can the minister provide details to the Senate about the first-ever National Mental Health Commission report card, and why it is important?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:06): I thank Senator Carol Brown for her continued interest in these important issues. The government welcomes the National Mental Health Commission's first annual report card. The Gillard government committed to producing this report card at the 2010 election and today we have delivered on that commitment. The report card is a key output for the new and independent national commission headed by Professor Allan Fels. It is an important step in increasing transparency across all mental health services and programs nationally.

The report card is called A contributing life, which refers to the many ways mental illness can affect an individual's quality of life. The report card makes recommendations for governments and the broader community across areas like physical health, housing, employment, seclusion and restraint. The
Gillard government commissioned this first-ever report card to drive and guide ongoing improvement and performance in our mental health system, and there are also recommendations on other services used by those living with a mental illness, such as housing and employment. The government will look carefully at this report card and its recommendations. We continue to implement our ongoing reforms in each of these areas and we call on the states and territories to do the same.

The government and the commission realise that services for those with mental health difficulties must be far broader than simply clinical care. That is why the report card has identified six key priority areas, including physical health; connection with family, friends, culture and community; effective support, care and treatment; access to timely and quality intervention, work participation and employment; access to safe, stable housing; and suicide prevention. The report card highlights the fact that, together, these priority areas can give those with mental—

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (14:08): Mr President, I ask a supplementary question. Can the minister explain to the Senate why the independence of the commission is important and how it will contribute to ongoing improvement across the mental health system?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:09): I thank Senator Carol Brown for her supplementary question. Earlier this year, the Gillard government took the historic step of establishing the Mental Health Commission as an independent agency in the Prime Minister’s portfolio. The government directed the commission to compile its report and further report cards annually. Today’s report card has highlighted important areas for further reform to support better outcomes for people with mental illness. It reminds us of the significant need of an estimated 3.2 million Australians each year who live with a mental health issue. It highlights the importance of the government’s investment to grow and improve the mental health system. Meaningful and strategic progress will require partnership between consumers, carers, all governments, NGOs and mental health professionals. The government agrees with the commission when it says that there is a long way to go and there may be many challenges ahead. (Time expired)

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (14:10): Mr President, I ask a further supplementary question. Can the minister outline how the Gillard government is providing support for Australians suffering from a mental illness? How will the mental health reform package improve access, accountability and transparency across the mental health system and support carers, families and the wider community?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:10): I thank Senator Carol Brown for her second supplementary question. Labor are delivering reform over five years through better detection, better targeting and better coordination of mental health services. The Gillard government’s mental health package recognises that mental health is a national priority. Supporting a person suffering from mental illness can take its toll, not only on the person but on families, friends and communities. That is why this government are investing $2.2 billion in a mental health reform package. Our mental health reform
package is the largest in Australia’s history and is being implemented by the government as planned across a range of areas. This is an ongoing task, but we are in this for the long haul. We are committed to ongoing and continuous improvement that gives those with mental illness opportunities to be able to truly contribute and have contributing lives. *(Time expired)*

**Corruption**

Senator FIERRAVANTI-WELLS (New South Wales) (14:13): My question is to the Minister for Foreign Affairs, Senator Bob Carr. I refer to the United Nations Agreement for the Establishment of the International Anti-Corruption Academy as an international organisation, which came into force into Australia in August this year. Does the minister recall that the stated aims of this academy are to promote effective—

_Honourable senators interjecting—*

**The PRESIDENT:** Order! When there is silence on both sides, I will ask Senator Fierravanti-Wells to continue.

**Senator FIERRAVANTI-WELLS:** Does the minister recall that the stated aims of this academy are to promote effective and efficient prevention and combating of corruption? Given the evidence of serious corruption by Mr Eddie Obeid and Mr Ian Macdonald, both of whom the minister included and retained in his ministry when he was Premier of New South Wales and both of whom he defended and protected, does the minister consider that the recent history of the New South Wales Labor Party would make a good case study for those attending the new anti-corruption academy?

_Honourable senators interjecting—*

**The PRESIDENT:** Order! When the debate across the chamber ceases, we will proceed.

**Senator BOB CARR** (New South Wales—Minister for Foreign Affairs) (14:14): The question concerns case studies for the college on corruption. I have got a beauty. I have got a really good one. It is right out of New South Wales, and a beautifully rounded study, concerning the period 1988 to 1995, when ministers of the Greiner and Fahey governments had season tickets to ICAC. There was consideration of building a monorail link between the state office block and ICAC in Redfern!

_Honourable senators interjecting—*

**The PRESIDENT:** Order! Minister, resume your seat.

**Senator Brandis:** Mr President, I rise on a point of order on relevance. The minister may not take these allegations seriously, but the opposition and the public do. He was asked about his period as Premier of New South Wales, not a different period. I ask you to please direct him to the question.

**The PRESIDENT:** The question was broader than that. The minister needs to address those parts of the question that pertain to the portfolio. I have ruled previously on this. The minister still has one minute and 34 seconds remaining to answer the question.
Senator BOB CARR: The question was about good meaty, juicy case studies in corruption to get to this college, and we have got some beauties. From 1988 to 1995, there was ICAC’s finding in New South Wales that there existed in 1989 ‘a climate conducive to corruption’ caused by the behaviour of National Party ministers in that government.

Honourable senators interjecting—

Senator BOB CARR: That is a very good case study and we will see that the relevant ICAC inquiry report reaches the college. I think the senator ought to be congratulated because, after a practical suggestion—

The PRESIDENT: Senator Carr, you need to turn this way to address the microphone so that people can pick up the voice.

Senator BOB CARR: I think that would be a delightful case study. While we are talking about case studies for the college, there is another beauty and that is concerning Premier Greiner himself, who traded a seat in parliament for a job in the Public Service and was found corrupt by ICAC.

Honourable senators interjecting—

The PRESIDENT: Senator Carr, you need to turn this way to address the microphone so that people can pick up the voice.

Senator BOB CARR: I think that would be a delightful case study. While we are talking about case studies for the college, there is another beauty and that is concerning Premier Greiner himself, who traded a seat in parliament for a job in the Public Service and was found corrupt by ICAC.

Senator Fifield: I have a point of order, Mr President. Senator Carr is misleading the Senate. The Supreme Court of New South Wales found that Mr Greiner was not guilty of corruption, that ICAC had made an error.

Honourable senators interjecting—

The PRESIDENT: Order! Senator Bob Carr, resume your seat.

Senator Brandis: I rise on a point of order, Mr President. That Senator Carr will not defend his own government speaks volumes. You should direct him to the question.

Senator Chris Evans: Mr President, I rise on the point of order, to make an obvious point. My view is that these questions are not necessarily in order and that they do not go to the minister’s responsibilities. But you have ruled them in order and you have generally taken a liberal view of that and I accept that and I am not in any way critical. But I think it is the case that if the opposition want to try to slur the minister by referring to things that occurred not in this parliament and not in his role as minister, they really have to get used to the fact that the glass jaw cannot be the position they adopt. If they make a sleazy political accusation, they have to expect to get beaten up in return.

Senator Abetz: On the point of order, Mr President, the question was very specific in that it asked about the ministers, namely, Eddie Obeid and Ian Macdonald, both of whom are now appearing before ICAC in relation to issues of corruption.

Honourable senators interjecting—
The PRESIDENT: Order! Senator Abetz, just wait a minute. Order, on both sides.

Senator Abetz: To seek to talk about every other former premier in New South Wales other than the one actually spoken of in the question, is clearly against the sessional order which requires direct relevance in the answer.

Honourable senators interjecting—

Senator Jacinta Collins: Mr President, I rise on this occasion because you ruled on the last occasion that the question was in order, and it remains so. That Senator Brandis and Senator Abetz do not pay more attention to how they frame their questions is becoming more and more obvious. This question started with reference to the International Anti-Corruption Academy and case studies. If you want to ask a more specific question, Senators, I suggest you frame one.

Honourable senators interjecting—

The PRESIDENT: I have ruled previously and I will rule again that the minister needs to address that part of the question that pertains to the minister's portfolio. I have been very consistent. The minister has three seconds remaining.

Senator BOB CARR: I will seek further case studies.

Senator FIERRAVANTI-WELLS (New South Wales) (14:22): Mr President, I ask a supplementary question. I refer to the minister's answer on 21 November, in which he said:

Australia's record, and that of NSW in the years I can speak for, is exemplary.

Given all the corruption allegations put to him about Mr Obeid when he was Premier and all the evidence now coming to light, how can the minister seriously contend that there was no corruption by his ministers during his premiership and that all the disgraceful matters now being revealed by ICAC had their genesis after the minister stepped down as Premier?

The PRESIDENT: Again, the minister need answer only that part that refers to the portfolio.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:23): There is nothing in it that refers to my portfolio, but I am happy to struggle otherwise with the relevance of the question.

Senator FIERRAVANTI-WELLS (New South Wales) (14:23): Mr President, I ask a further supplementary question. Given that it is likely that the minister will be called to give evidence to the ICAC inquiry, will he arrange his overseas travel commitments to allow this to occur?

The PRESIDENT: Minister, again you can only answer that in so much as it relates to your portfolio.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:23): In starting the current ICAC inquiry, the commissioner assisting spelt out the period it was dealing with, which is 2007 and 2008. As I was not Premier after August 2005 and as there was no ICAC finding against my government and that is not a claim the previous coalition government could make; as I have just demonstrated, there were a raft of ICAC findings against Greiner and Fahey, a pile of ICAC findings this high against—

Senator Brandis: Mr President, I once again rise on a point of order on direct relevance. The minister was only asked about his travel arrangements to enable him to appear before the ICAC inquiry. Perhaps he wants the public to believe that the corruption started out of the blue in 2007, but he should be responsive to the question.
The PRESIDENT: The minister is answering the question. There is no point of order. The minister has 21 seconds remaining.

Senator BOB CARR: As I ceased to be Premier in August 2005, I have not been called before an ICAC inquiry into matters that occurred in 2007 and 2008. I am proud again to say that during my 10 years as Premier there was not a single finding on corruption against my government, which is a big contrast to the findings against your colleagues— (Time expired)

Honourable senators interjecting—

The PRESIDENT: When the debate across the chamber ceases, we will proceed. Senator Wright is entitled to be heard in silence.

Education

Senator WRIGHT (South Australia) (14:25): My question is to Senator Kim Carr, the Minister representing the Minister for School Education, Early Childhood and Youth. Given that yesterday the Prime Minister said that this week she will introduce legislation to give every child an entitlement to an excellent education, which is a commendable aspiration but it must be backed by enforceable legislation and a significant financial investment in Australian schools, particularly government schools that teach the vast majority of students experiencing disadvantage, and given that the Gonski review called for real action on a new schools funding model and much greater investment in our education system, my question to the minister is: where has Gonski gone? How much additional funding will the government invest in public education over the next four years to ensure that the Gonski recommendations will be implemented sooner rather than later? And where will that money come from?

Senator KIM CARR (Victoria—Minister for Human Services) (14:27): I thank Senator Wright for her question. The government has indicated on a number of occasions that legislation will be introduced this week to give effect to the Gonski reforms. The goal the government will pursue is to see Australia back in the top five schooling systems in the world with regard to reading, mathematics and science and to have a high-quality and high-equity system by 2025.

The final funding arrangements will be settled through negotiations. The Commonwealth is prepared to contribute with the states and territories if the states and territories contribute their fair share, so it was with some concern that I read about the effects of the cuts that are occurring in New South Wales. Only yesterday I was alarmed to read that an effect of these funding cuts will see that school sports carnivals face the axe under the O'Farrell government in New South Wales. If we are talking about trying to build an internationally excellent education system and in New South Wales $1.7 billion is being taken out of the education system, we find that that makes it much more difficult. School sports carnivals cannot proceed as a result of the New South Wales government's cuts.

So is it not surprising that I read that Liberal MPs have now been banned from some schools in New South Wales, from school prize nights? The reaction from parents and from school communities is such that they know that the government of New South Wales is not committed to a genuine national partnership to ensure that the children of this country are able to enjoy the full benefits— (Time expired)

Senator WRIGHT (South Australia) (14:30): I thank the minister for his answer. I have a supplementary question. Because
the Gonski reforms are about improving our education system and providing every child throughout Australia with the best educational opportunities, what progress has indeed been made in discussions with the states and territories to ensure that Gonski will be funded and implemented as soon as possible? What proportion of the investment in schools funding will the Commonwealth contribute to the Gonski reforms and what proportion will come from the states and territories? I again ask: where will the Commonwealth proportion come from? Where will the money come from?

**Senator KIM CARR** (Victoria—Minister for Human Services) (14:30): I thank Senator Wright for the supplementary question. I can indicate to the chamber that negotiations have not concluded with the states and the territories and the non-government education authorities, but what we will see is a bill introduced to the parliament which will set out the broad principles of the new schools funding arrangements. In this legislation the Commonwealth will recognise the need to work with the states and territories and the non-government sector and there will be an ongoing process of reform. So the Australian government is going to continue to work in good faith with all jurisdictions for a much fairer and a more equitable education system based on a funding scheme which is based on needs. If you look at my home state of Victoria, you see some $480 million has been cut from education. School bus subsides have been reduced; 7½ thousand students in rural and regional areas have been left stranded as a result of— (Time expired)

**Senator WRIGHT** (South Australia) (14:31): I thank the minister for his answer and I have a second supplementary question. Yesterday a study by the University of Melbourne highlighted the unintended consequences of NAPLAN, including the fact that about 90 per cent of the principals and teachers who were surveyed reported that some students felt stress before NAPLAN tests and exhibited symptoms such as crying, sleeplessness, vomiting and absenteeism. How does the government plan to respond to this research and, in particular, the concerns raised by the study that NAPLAN tests are having an adverse impact on students' health and wellbeing?

**Senator KIM CARR** (Victoria—Minister for Human Services) (14:32): I indicate to Senator Wright that the reports of this survey also highlighted the methodological flaws that were characteristic of this report. It was an opt-in survey, which means the responses were more likely to come from a particular group of people, which would give a distorted view of the effects of the NAPLAN tests. The fact remains that there is nothing in any of the NAPLAN tests which students need to learn above and beyond what is already part of their normal curricula and, of course, we have repeatedly said that there should not be a process of trying to put pressure on students to perform well in their NAPLAN, as their tests are about trying to demonstrate benchmarks from which we can determine whether or not there have been improvements. What we do know is that the NAPLAN tests have shown us that there is considerable evidence to suggest that the expenditure that has been made in schools has— (Time expired)

**Budget**

**Senator CORMANN** (Western Australia) (14:33): My question is to the Minister for Finance and Deregulation, Senator Wong. I refer the minister to her comments in the *Australian* on the weekend where she said that the government had a fiscal rule that would 'limit real spending growth to two per cent until you get back to a trend surplus of
one per cent of GDP. I also refer to the final budget outcome for 2011-12, which shows that real spending grew by 4.8 per cent in 2011-12, more than double the two per cent target when the budget was nowhere near a surplus of one per cent of GDP. Isn't it a fact that Labor ran a massive deficit of $43.3 billion, or three per cent of GDP, in 2011-12? If Labor were really committed to a fiscal rule of limiting real spending growth to two per cent until a trend surplus of one per cent of GDP had been achieved, why then did the government break that rule again last financial year?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:34): The one thing I will say of that question is it is a little better than Senator Joyce did on Q&A last night when it came to his discussion about debt.

Opposition senators interjecting—

Senator WONG: I will take that interjection and he was more entertaining than me, Senator Brandis; that is true and guilty as charged.

The PRESIDENT: Order! Ignore the interjections and come to the question.

Senator WONG: Mr President, in answer to Senator Cormann, I would make this point: the government in which Peter Costello was Treasurer had a real growth in payment record of 3.6 per cent—

Senator Cormann: Mr President, on a point of order in relation to the requirement for the minister to be directly relevant: I asked a question about the government's fiscal rules as outlined by the minister in the weekend press. I did not ask a question about what the Howard government's fiscal rules were. We all know about the Howard government's excellent track record when it comes to budget management.

The PRESIDENT: There is no point of order. I am listening to the minister's answer. The minister still has one minute and 26 seconds remaining to address the question.

Senator WONG: I am happy to discuss the fiscal rules. But isn't it extraordinary in this question time that every time there is any criticism of the opposition they are so quick to jump to their feet! There are a bunch of glass jaws over there. Tell us about the million jobs you say you are going to create without any policies. No, you won't do that, will you? You just come in here with the sort of political smear campaign that we are seeing in the other place. Senator Fierravanti-Wells is including in this chamber—

The PRESIDENT: Senator Wong, come to the question.

Senator Cormann: Mr President—

Senator WONG: But I will come to the point now, Senator Cormann.

The PRESIDENT: Senator Cormann, I have just asked Senator Wong to come to the question.

Senator Cormann: I have a point of order, Mr President. I cannot see how anything that the minister has just said can be seen in any way, shape or form to be directly relevant to the question, which was in relation to the government's fiscal rules which the government has been breaching year in and year out.

The PRESIDENT: Senator Cormann, if you have not just heard what I have said, I drew the minister's attention to come to the question. I draw the minister's attention to the question, and you have got 57 seconds remaining.

Senator WONG: The senator should note that the average real growth in payments over the four years of the forward estimates is 1.1 per cent. The last time I
looked, that is below two per cent. That compares very favourably with the 3.6 per cent average annual real growth in payments, which was the case for the last four years of the Howard government. While I am at it, I would remind the senator that, despite his rhetoric, we are also a lower taxing government. The level of tax to GDP that we inherited was significantly larger than that projected for this year and over the budget estimate period. I know the opposition do not like the facts to get in the way of their chants—they are very good at chanting—but the chants happen to be based on things that are simply not true.

Senator CORMANN (Western Australia) (14:37): Mr President, I ask a supplementary question. I refer the minister to the recent MYEFO, which shows that government spending is projected to grow by 4.4 per cent in real terms next financial year, which is more than double the two per cent target even though the budget is still nowhere near a surplus of one per cent of GDP. In 2015-16, spending will grow by more than two per cent in real terms—all this without taking $120 billion in unfunded Labor promises into account. Is it not a fact that the government's own projections in MYEFO show that Labor has no intention of complying with its so-called own fiscal rules?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:38): The senator might like to acquaint himself with pages 38 and 39 of the MYEFO. There you will see again, Senator, that, in total, real growth in payments is estimated to be negative 4.4 per cent in 2012-13 compared with negative 4.3 per cent in the 2012-13 budget. The government is delivering on its commitment to restrain real growth in spending to two per cent a year on average until surpluses are at least one per cent of GDP while the economy is growing at or above trend. I refer him to table 3.3 on page 39, which makes clear that the average growth in real payments is 1.1 per cent.

Senator CORMANN (Western Australia) (14:39): Mr President, I ask a further supplementary question. Given that since the last election the minister co-chaired a $33.3 billion blow-out in the budget deficit just last financial year while continuing to ignore the government's own so-called fiscal rules and making $120 billion of unfunded spending promises on top of $172 billion of accumulated Labor deficits so far, why should anyone trust any promise from this Labor government that it will deliver a surplus in 2012-13?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:40): The continual recitation of nonfacts, which is the senator's wont, disregards the global financial crisis; disregards the fact that, under this government, we have the fastest growing economy of all major advanced economies in the world for 2012; disregards the fact that, since this government came to power, we have seen some 800,000 jobs created at the same time as 27 million people have joined the unemployment queues around the world; completely disregards the fact that we are seeing interest rates lower than at any time under the Howard government; disregards the fact that the IMF has talked about the strength of Australia's public finances; and disregards the fact that we have a AAA
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credit rating from all three credit rating agencies. But do not believe them; believe Senator Cormann.

**Pensions and Benefits**

Senator FURNER (Queensland) (14:41): My question is to the Minister for Human Services, Senator Kim Carr. I premise this question on the basis of some of my experiences in my five duty seats in respect of dumping of responsibilities, struggling single mothers, charities and food banks. How does the government respond to claims that it is dumping its responsibilities for struggling single mothers onto charities and food banks?

Senator KIM CARR (Victoria—Minister for Human Services) (14:41): I thank Senator Furner for his question and the fact that he is responding so well to his constituents' concerns. I am aware that claims have appeared in the press that have said that the Department of Human Services has been phoning affected parents and referring them to charities. I asked the department about this, and the department has advised me that it is not true. I have directed that officers contact every single person affected by the decision by the government—that is some 84,000 people who are affected by the decision on parenting payment—because I want to make sure that every one of those persons is aware of their rights and their entitlements and to ensure that they are treated properly and fairly, and that is what is going on.

The purpose of those calls was not to push people off onto charities but to ensure that they received every possible support from the government. New payment options are obviously critical in this regard. There is Centrepay, there are new financial information officers available and there is also the option of follow-up consultation with the department's social workers. When all of these options are exhausted, a social worker may also connect the parent to a state or local community support. Our aim is to ensure that no parent is left alone. We want to ensure that parents have no need to resort to these measures. So I am pleased to report today that 99 per cent of the 84,000 people have been contacted, and 69 per cent have been approved for Newstart and 25 per cent have started their Newstart applications and we anticipate another 3,000 will be eligible for carers or disability support. So parents will be applying for other programs such as child-care benefits, job service benefits and tax benefits. (*Time expired*)

Senator FURNER (Queensland) (14:43):

Mr President, I ask a supplementary question. I thank the minister for that response and in particular for those statistics with regard to what we are doing as a government. What role do referrals play in the government's services delivery model in these particular areas?

Senator KIM CARR (Victoria—Minister for Human Services) (14:44): Thank you, Senator Furner. We want to make sure that people take advantage of the professional support teams that are available through the Department of Human Services. In no way do I want to imply that we do not appreciate the importance of partnerships. They are critical to our work. It is a core principle on which the new Department of Human Services is based.

I want to make sure that this is not misunderstood either, because Australia is not Tory Britain. Australia is not the sort of Tory Britain that we see those opposite pine for: where we see privatisation by stealth, where we see the quite explicit presumption that the workhouse is, somehow or another, an alternative to a modern social security system. We have to ensure that we are not pushing people off as the responsibilities of
others. We are in the business of building the community sector by building a strong public sector that works in partnership with the community sector. We are about making sure we put more social— (Time expired)

Senator FURNER (Queensland) (14:45): Mr President, I ask a further supplementary question. I once again thank the minister for that response, in particular a greater understanding of the issues that we are facing on many occasions of those that are being put on our systems as a result of Liberal state governments. Is the government concerned that these investments will be compromised by the savage cuts to community and public programs by the Liberal state premiers that we are seeing out there in each of our states around the countryside in respect of those significant and severe cuts? (Time expired)

Senator KIM CARR (Victoria—Minister for Human Services) (14:46): Our approach is built on partnership. Those opposite's approach is built on cuts. We see in Queensland what is happening with the Campbell Newman government; we see that it is misguided to the point now where some of his own MPs are walking away. It appears that one in four voters want, of all things, Clive Palmer to take the wheel, so it does show you just how desperate things have become in Queensland. This is the same Mr Palmer who wants to build a new Titanic. We know he does not have to look far beyond the Liberal Party for that.

We also know that the Nationals in Queensland are reaching for the lifeboats. We see the Red Cross workers are being defunded. We know that AIDS prevention programs have been cut. We know that rehab for women in prisons is gone. We know that the BoysTown job placement scheme has been shut down. And we have seen the employment assistance for people with special needs cut by $7 million. (Time expired)

Broadband

Senator BIRMINGHAM (South Australia) (14:47): Mr President, my question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Mr President, I note the minister's admission yesterday—

Government senators interjecting—

The PRESIDENT: Order! Just wait a minute, Senator Birmingham.

Government senators interjecting—

Senator BIRMINGHAM: I have plenty of questions here.

The PRESIDENT: Order! Senator Birmingham, I am waiting to give you the call and it does not assist when you are—

Honourable senators interjecting—

The PRESIDENT: Order! Senator Birmingham, ignore the interjections, and, those on my right, cease interjecting. Senator Birmingham, you are entitled to be heard in silence.

Senator BIRMINGHAM: Thank you, Mr President. Mr President, I note the minister's admission yesterday that the NBN has only 7,000 active fibre connections. This compares to iiNet's 10,000 fibre connections and Telstra's 40,000 Velocity fibre connections. Mr President, through you, I remind the minister that Labor in 2007 promised that their then version of the NBN would be finished by 2013. After 5½ years, with no chance of it being remotely finished next year, and more than $3½ billion dollars invested in NBN Co., can the minister please explain to the Senate when he expects NBN Co. to at least become Australia's second largest fibre provider?

Senator CONROY (Victoria—Minister for Broadband, Communications and the
Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:49): I thank Senator Birmingham for maybe his fourth or fifth question—I have lost count, we have had such a rush in the last few days. Mr President, I am aware of the report. I am aware of the media reports that iiNet has more customers connected to fibre-optic cabling than NBN Co. I did see that. I am glad to see you are still reading about the portfolio, Senator Birmingham.

Increasing numbers of Australians on fibre to the premise technology is a very good thing. According to those opposite we were going to wipe out all the other fibre providers. Remember that debate: a long debate in the chamber that no-one else would be able to provide fibre to the home. But to paraphrase iiNet CEO Michael Malone, fibre to the premise is the best internet connection around. This is a fact that obviously escaped the tactics committee and Senator Birmingham in preparing the question: I note that of iiNet's 10,700 fibre customers, 25 per cent—or around 2,700—are connected through the NBN. That is actually there in the fact of those 10,000—2,700 are NBN customers.

In fact, I can now update the Senate. As I said yesterday, but was verballed in the question, there are 'more than 7,000'. Let me give you an update, and each time I get a chance to give you an update you will see it has gone up. There are 8,613 fibre customers on the NBN as of 23 November. This has now pushed us past 30,000 NBN customers all across Australia. (Time expired)

Senator BIRMINGHAM (South Australia) (14:51): Mr President, I ask a further supplementary question. Will the minister inform the Senate whether his office yesterday requested Hansard to correct his answers given in Senate question time from stating 'over 7,000 premises' had been connected to instead stating '8,200 premises' of the NBN in April 2009, will the minister confirm that the number of customers added to the fibre network each day is averaging somewhere around seven or eight per day? Will the minister confirm that to reach NBN Co.'s target for June 2013 of 54,000 active fibre customers it will have to go from seven or eight per day to an average of 270 new users per day? Will he unconditionally commit to the Senate that that will be achieved?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:51): What I can say, as I have said a couple of times, is 758,000 under construction or completed by the end of December this year. The NBN will connect that. To achieve the target of the 50,000-odd I think Senator Birmingham was talking about, we will have to something NBN Co. demonstrated to Senator Birmingham in the last joint parliamentary committee, where he did not have the guts to ask these questions—he did not have the guts to ask NBN a relevant question; neither did Mr Turnbull. They sit there and they talk about absolute rubbish. Mr Quigley in his opening statement tabled some documents which are available for every single one of you. What they show is that we will hit our targets. Mr Turnbull said back in February, 'Oh, they'll never meet 758,000.' Well, we will see what Mr Turnbull and you have to say— (Time expired)

Senator BIRMINGHAM (South Australia) (14:53): Mr President, I ask a further supplementary question. Will the minister inform the Senate whether his office yesterday requested Hansard to correct his answers given in Senate question time from stating 'over 7,000 premises' had been connected to instead stating '8,200 premises'
had been connected by fibre, but then subsequently this morning corrected that correction to once again return it to 'over 7,000' homes, now claiming more than 8,600? If the minister and his own office do not know how many there are, how can anybody else have any faith in his $50 billion—(Time expired)

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:53): Can I firstly say that I am unaware of any contact on this issue. My statement yesterday was completely accurate. I said over 7,000. What I said was that I would be able to give you an update on the figures. Today I have given you that update. It is 8,613. Both the over 7,000 yesterday was accurate and the 8,613 today is accurate. But that you shows you, Mr President, that those opposite have no broadband policy. We had 11½ years, 20 failed broadband plans. We have had seven different broadband plans under Senator Birmingham and Mr Turnbull. The latest invention is: "We are not doing a wireless anymore." Remember wireless was going to save the world? Mr Turnbull said recently on television, 'No, no, wireless can't do it. We are fibre-to-the-noding.' Labor's policy in 2007—(Time expired)

Pharmaceutical Benefits Scheme

Senator DI NATALE (Victoria) (14:54): My question is for the Minister representing the Minister for Health and Ageing, Joe Ludwig. Minister, in light of the recent controversy over chemotherapy drugs, my question relates to the government's policy on the Pharmaceutical Benefits Scheme. Last year the government chose to defer the funding of seven drugs that were assessed by the Pharmaceutical Benefits Advisory Committee as being cost-effective. A Senate inquiry criticised the government's deferral and recommended against political interference into the decisions of the PBAC. Since then two new hepatitis C drugs, telaprevir and boceprevir—drugs that would prevent many of the 200,000 Australian hepatitis C sufferers from developing liver cancer—have been recommended for listing. Can the minister advise why these drugs have not yet been funded through the PBS?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:55): I thank Senator Di Natale for his continuing interest in issues surrounding the PBS. If I do not provide the whole of the answer to the question Senator Di Natale asked then I will take that part of it on notice. But I think it is important to recognise that there have been announcements by the health minister around the government's decision to subsidise a range of medicines on the Pharmaceutical Benefits Scheme, and from 1 March 2013, subject to listing conditions being met, a list is estimated to cost $447 million over five years for a medicine such as Lyrica. This listing will be a great relief to many of those who suffer from particular chronic nerve pain. But more broadly there are some recommendations from the Pharmaceutical Benefits Advisory Committee that are yet to be considered by government. This includes high-cost medicines—and I will not try, Mr President, to pronounce these names—with brand names such as Victrelis and the one Senator Di Natale mentioned. It starts with a 'T' and it is a brand name for the treatment of hepatitis C. So we are on the same page.

Under the memorandum of understanding with Medicines Australia, the government has agreed with industry on timeframes for considering the new high-cost listings. The agreement recognises that the government
must be allowed time to carefully consider the clinical and financial implications and opportunity costs of high-cost proposals such as these. (Time expired)

Senator DI NATALE (Victoria) (14:57): Mr President, I ask a supplementary question. A further drug, dabigatran, which is a blood-thinning agent which can be used as an alternative to existing treatments, was recommended for listing on the PBS 18 months ago. Rather than funding the drug on the PBS, as is normal practice, the government commissioned a review of all blood-thinning drugs. I understand that the review is with the Minister for Health and Ageing. Minister, when will the recommendations from this review be made public and when will the recommendations be implemented?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:58): I thank Senator Di Natale for his question in relation to the Pharmaceutical Benefits Scheme. I will take that part of the question on notice in respect of what may or may not be with the Minister for Health and Ageing. I accept that the question is well meant. If it is with the minister for health then those matters of course will be addressed by the minister for health. The timing of the release, of course, is always a matter for government, subject to the minister for health's considerations.

But it is worth putting it in a broader frame. In 2012-13 PBS expenditure is expected to be $9.7 billion, an increase of around $500 million over 2011-12. That is the annual wage of something in the order of 5,200 nurses. These are significant decisions that have to be made. They have to be carefully considered by the minister for health— (Time expired)

Senator DI NATALE (Victoria) (14:59): Mr President, I ask a further supplementary question. Given that recent evidence shows that the time taken between the approval of drugs to their listing under the PBS has increased dramatically, can the minister confirm whether there is a deliberate policy by cabinet to defer the funding of new drugs? Can the minister confirm whether new drug listings are being deferred until corresponding offsets can be found elsewhere in the health budget?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:59): I thank the senator for his second supplementary question. Of course, I am not going to comment on budget considerations; they are matters that the Treasurer could answer. It is important to note, when we then look at the considerations, that the Minister for Health has done an extraordinary amount of work in this area to bring on medicines that can change people's lives. As I mentioned earlier in my response to the primary question, the one dealing with chronic nerve pain has been listed. It is one of those areas where price increases for nine PBS listed medicines were announced at that time. New listings have continued to be announced. On 24 October 2012 a number of new, amended and extended listings of PBS which will treat serious conditions—

Senator Di Natale: A point of order, Mr President. My question was quite specific. I am just asking whether the costs are going to be found elsewhere in the health budget. That was the purpose of that question. Does the money to fund these new drugs need to be found through offsets in the health budget?
The PRESIDENT: I believe the minister is answering the question. The minister has six seconds.

Senator LUDWIG: As I said, they were matters for budget consideration at the outset. What I then went on to say was that if you look at... (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Fisheries

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (15:02): Mr Deputy President, on 22 November 2012 during question time, Senator Whish-Wilson asked me several questions as Minister representing the Minister for Sustainability, Environment, Water, Population and Communities. Minister Bourke has provided the following answers to the Senate as questions, and I seek to leave to incorporate.

Leave granted.

The answer read as follows—

Question

1. My question is to the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, Senator Conroy. Just when you thought it was safe to go back in the water! Is the minister aware of media reports that Seafish Tasmania is allegedly looking at options to fish the small pelagic fishery quota with a large, 90-metre factory freezer trawler? Has the minister or his department met with Seafish Tasmania Pty Ltd in regard to a new trawler with different specifications to the FV Abel Tasman operating in the Australian small pelagic fishery?

Response

1. The Minister and officers from the Department of Sustainability, Environment, Water, Population and Communities have met with Seafish Tasmania representatives on two occasions — 21 August 2012 and 11 October 2012. At the second of those meetings, Seafish Tasmania sought to raise alternative proposals and the Minister asked them to put any alternative proposals in writing.

The Minister is aware of the media reports and can confirm that the company has written to the Minister seeking guidance on two proposals; one to modify the Abel Tasman; the second to use a smaller factory trawler.

The Minister has written to the company seeking further information about its proposals as they may raise uncertainty about the environmental impacts.

Question

2. Mr President, I ask a supplementary question. Thank you, Minister. Are you aware that the definition of a ‘specific vessel’ in the final declaration of 2012 of the Environment Protection and Biodiversity Conservation Act, section 390SF, provides a conspicuous loophole for operators to execute commercial fishing activities with the same or potentially even greater uncertainty about the environmental impacts as the supertrawler FV Abe/ Tasman? Was this loophole your intention?

Response

2. The final declaration relied upon each of the elements specified in the new laws passed by the Parliament.

In order to make the final declaration, the Environment and Fisheries ministers had to agree that:

1. there was uncertainty about the environmental impacts of the commercial fishing activity
2. that it was appropriate to establish an expert panel to conduct an assessment of the environmental impacts of the commercial fishing activity, and
3. that the commercial fishing activity should be prohibited while the expert panel conducts the assessment.

The final declaration was made because there is uncertainty about the environmental impacts of large mid-water trawlers operating in the Small Pelagic Fishery that are greater than 130 metres in length, have on-board processing facilities and have storage capacity for fish or fish products of over 2000 tonnes.

It was not the Minister's intention to ban all new commercial fishing in Australian waters.

If there is uncertainty about other new commercial fishing activities, then these too may be subject to a declaration and therefore prohibited while an assessment is undertaken. It was the Minister who initiated the legislation because of concern about the potential environmental impacts.

Question

3. Mr President, I ask a further supplementary question. Thank you again, Minister. Can the minister indicate whether the expert panel to conduct an assessment of the commercial fishing activity in question and report on the matter will be appointed? Will the minister ensure that the expert panel will contain genuinely independent members who are not receiving a pecuniary benefit from the commercial fishing industry and consult with all stakeholders, including recreational fishers and conservationists, before reporting on the matter?

Response

3. The Minister has asked his Department for advice about membership of the expert panel. The expert panel will be independent. The Minister has asked his Department to prepare draft terms of reference in consultation with Department of Agriculture, Fisheries and Forestry before he formally consults the Fisheries Minister on the terms of reference, as required under the legislation. The terms of reference will set out the matters to be assessed by the panel and provide guidance on how the assessment should be undertaken. Its role is to provide expert advice on the potential environmental impacts of the declared commercial fishing activity.

There will be transparency in this process of scientific assessment about environmental impacts.

The views of stakeholders informed the Government's decision to initiate the legislation.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Asylum Seekers

Senator CASH (Western Australia) (15:02): I move:

That the Senate take note of the answer given by the Minister for Sport (Senator Lundy) to a question without notice asked by Senator Cash today relating to asylum seekers.

You know a government is embarrassed by its failures when the relevant minister in question time refuses to confirm what are facts that are put to her and in fact the minister actually says in relation to a question that I asked, 'I cannot confirm what Senator Cash is saying.' She then went on to say that she completely rejected the premise of my question. All I can say to that is that the minister is clearly so embarrassed by her government's failures that she wanted to 'take me to task' in relation to the undisputed fact that, under the former Howard government in the 2002-03 financial year, the number of boats that arrived was zero and the number of people who arrived was zero.

Perhaps the minister could explain, when she next answers one of my questions, why she was taking me to task in relation to that fact. This is a government that continually says to the people of Australia, 'We want to stop the boats.' I would have thought that you would actually celebrate the fact that you can, as a government, implement policies that do as this government tells the people of Australia it wants to do. It is a fact, even if Senator Lundy would not confirm it—that five years ago when the Howard government left office there were four people in detention. That is an undisputed
fact. It is also a fact, even if Senator Lundy did not want to confirm it, that now more than 2,000 people attempt to enter this country—in fact, they do not attempt; they do enter this country—illegally under the current government’s policies. It is also a fact—again, even if Senator Lundy is too embarrassed to confirm it—that there are now more than 12,000 people in detention; and, because there are more than 12,000 people in detention the government has had to adopt a policy of actually releasing the thousands that are still there into the community. For a government that says that it wants to stop the boats—I have to say, based on their record to date, that 30,408 people have arrived on 521 boats—there are two possible scenarios that arise. You actually do not mean what you say—and there is a very good chance that that is actually true given that this government is the government that said to the people of Australia, prior to the 2010 election, ‘There will be no carbon tax under a government I lead.’

So maybe they actually do not mean it. Alternatively—this is probably the more likely scenario—the Gillard Labor government are truly incapable of securing Australia’s borders. To add insult to injury, more than half of the 30,408 people who have arrived in Australia have arrived under the Gillard Labor government. Former Prime Minister Rudd, former Minister for Foreign Affairs Rudd and nearly now backbencher Mr Kevin Rudd must quite literally choke on his Wheaties in the morning. He must choke because one of the reasons that was given by the Labor caucus at the time for having to politically execute Mr Rudd was, as stated by Ms Gillard, that ‘Mr Rudd had fundamentally failed when it came to border protection in Australia’, and as a result Mr Rudd had to lose his job and be sent to the backbench.

If Mr Rudd had failed in his responsibility to properly secure Australia’s borders, I really do not know the turn of phrase that the Australian public would use when it comes to Ms Gillard. It is a fact that the former Howard government stopped the boats. So those on the other side cannot say that they cannot implement policies that do not stop the boats. I want to read into the Hansard record these figures: 2002-03, zero boats, zero people; 2004-05, zero boats, zero people; 2006-07, four boats, 133 people. Governments can stop the boats. The former Howard government did, but those on the other side just do not have the political backbone—(Time expired)

Senator URQUHART (Tasmania) (15:07): I rise to take note of answers by Minister Lundy on the government’s asylum seeker policy. I firstly need to take umbrage at the continual use of the term ‘illegal arrivals’ and ‘illegal immigrants’ and the like. In using these terms, the opposition show their true colours in this debate. They highlight that they are interested only in perpetuating the fear of the unknown that unfortunately abounds in sections of our community. This government is committed to continuing to break the people-smuggling trade. We are committed to stopping people from getting on boats to make a very dangerous journey to Australia, and we are committed to an orderly migration program.

The government sought to implement the Malaysia agreement but this place voted it down. We then moved to seek recommendations from an expert panel chaired by former Chief of Defence Force Angus Houston. The Houston report includes numerous pieces of evidence gathered by the trio who worked on that inquiry. Air Chief Marshal Houston, Mr Aristotle and Professor L’Estrange provided clear recommendations to the parliament in their report. The government said at the time of announcing
the review that to break the policy impasse it would accept the recommendations of this review in full. This has seen the government work through an extraordinarily difficult process, looking at thousands of people in need, people seeking help from a rich country like Australia—and those opposite seek to demonise these people.

The Houston inquiry report recommended action that was very different from what was put forward by the Pacific solution. The report drew clear differentiation between what happened in the past and what their recommendations said. The government committed to come back into this place and implement what was said in the Houston inquiry report. Senators need to pay close attention to the whole of the Houston inquiry report. They need to look closely at all of the recommendations as a package, as a process to achieving regional cooperation, as a process to stopping people from getting on leaky boats and risking their lives and as a process to increasing Australia's humanitarian intake of refugees. We have committed to implementing the recommendations as a suite, and we continue to do so. It has been constantly stated that you cannot just choose elements of the recommendations. You cannot pick and choose the politically expedient ones. You have got to look at all the processes, all the steps, and you have got to ensure that they work together. You cannot just explain three specific policies as being the silver bullets to this difficult policy issue.

Labor will continue to look at the issues of those who seek asylum and will work to ensure that people are treated with dignity and respect. In doing so, we want to remove the incentives for these people to take the decision to go onto these dangerous boats, to leave their place of refuge and face an unknown future—but this process will need to have the commitment of all people in this parliament. We need to appreciate the desperation of the people who are caught up in the horror of seeking asylum. What those opposite seek to do is to demonise people who are seeking asylum.

On that note, I congratulate the producers of the television series Go Back to Where You Came From. This show had six high-profile Australians, including former coalition Minister for Defence Mr Peter Reith. The six Australians faced intense danger on the streets of some of the world's most dangerous cities. Three were taken to Mogadishu, the capital of Somalia, and the other three were taken to Kabul, the capital of Afghanistan. All six experienced time inside the walls of the Christmas Island detention centre. All six took part in a voyage, south from the Indonesian coastline, on a wooden fishing boat. But, most importantly, this show put these six high-profile Australians in direct contact with asylum seekers in Australia and across the world. It showed the desperation of these people, who want a better life, free from persecution. It showed that the baseless attacks from many of those opposite on these people can be combatted—combatted through conversation, through basic dialogue about humanity. The desperation of the people who take to these boats is admitted across the board.

The government is committed to a process that seeks to break the trade of the people smugglers. That is why we commissioned the Houston report. We are seeking to implement the suite of its recommendations to achieve a regional framework for assisting refugees. We need to stop the dangerous rhetoric of turning back the boats. (Time expired)

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (15:12): I rise to take note of the answers.
given by Senator Lundy to questions asked by Senator Cash. I have to note that, as I was looking at Senator Lundy, as I do many of those opposite as they speak about border protection—I am a great observer of people—I think I have got the answer. It has taken me a long time but I think it is one of those presentations by people who are often confronted by their own inadequacies—and that is denial. Denial is quite a well-known and well-written about presentation, and certainly the senator opposite, in terms of her answers to the questions, was presenting that.

I suppose it is something that really can be applied throughout the Labor Party and particularly to those ministers who have been responsible for this appalling failure in border protection. When they have been basically staring their failures in the face, I have often wondered why they have not moved to change their place. It is probably a little bit like Alcoholics Anonymous in this regard when people are continually in denial that they in fact have a problem with grog.

The Labor Party—and this time it concerns Senator Lundy—should simply stand and declare: 'I now know that our border control policies are a complete failure.' Unless you can declare that you have got it so badly wrong, you will not move out of denial. When you move out of denial, you can heal thyself. You can start looking at alternative lifestyles and, in this case, alternative policies. But every time I come into this place people stand up and say, 'No, it's all okay.' We have just heard from the good senator, and she says, 'There are ebbs and flows.' That is not bad! The ebb was when we had no boats under the previous government, and now we have their flows. That is a term of denial. I have a few drinks! The flows are 512 vessels. That—unremarkably, probably—is twice the size of the Spanish Armada. Those vessels have suddenly arrived when they are saying, 'Oh, there's bit of a flow, a couple of boats—not really too much to worry about.' Sadly, I do not really think you are going to change anything unless you get over it.

Perhaps they should just consider a bit of a list. This is their policy approach and how they go. Since the Malaysian announcement—we can remember that—there have been 279 boats, and 18,000 people arrived. I am not sure how that went for you, but I do not really think you could give that a bit of a tick as working. We then had the signing of the Malaysian deal on 25 July. Since then 286 boats have arrived, carrying 18,389 people.

Senator McLucas: You didn't support the Malaysian deal. That's why. You didn't support the Malaysian deal.

Senator SCULLION: No, that was your answer. I will take the interjection. That was your answer, and as a consequence of that policy another 18,000 people arrived on boats. Don't be in denial. Accept it. It is the way. Accept that you have completely failed. Then you can actually get better at it.

I can tell those senators on the other side that tragically it goes on. Remember when, on 25 November 2011, you decided to make the bridging visa announcement: 'That'll fix it.' We said, 'Look, you really need a whole suite of things.' Two hundred and sixty-four boats have arrived since that announcement. It does not sound to me as if it is stopping too much. It does not sound as if it is stopping anything at all. Nothing that is associated with your policy has stopped the boats and the misery associated with them. Again, we have had another crack on: 'We've decided that we'll do the single-assessment system. We'll bring in the single-assessment system on 24 March.' How did that work for you? Another 233 vessels, with 14,496 people. I do not think that is working for me.
I do not know about you, but it does not appear that that is something that is really going to change anything at all.

Sadly, to once again get the sort of response we have had from the other side is just a presentation of denial unless you change your policies significantly. I think we have been pretty open-hearted about this. We have offered policies that work. We have simply said, 'Adopt the entire suite of policies from the Howard government, who had zero people and zero boats'—not a bad thing to aim for. I think it is quite reasonable. Our claim to stop the boats and the misery, of course, is based on good policy, and I think that we will not accept that those on the other side have any idea about how to control our borders through good policy unless they first of all stand and say, 'I have failed.' (Time expired)

Senator SINGH (Tasmania) (15:18): Senator Lundy did reject the premise of the question put by Senator Cash, and rightly so, because the premise of that question was incredibly wrong. Temporary protection visas under the Howard government did not work. Their system of temporary protection visas did not work, so the minister, Senator Lundy, was correct in rejecting that premise. But the sad, sad thing about taking note of this issue on immigration policy is the fact that there are those opposite that simply cannot recognise that there are some things that are more important than political wins or political losses, however you want to look at it, and this is one of those issues that are more important than political wins, because it is about humanity. It is about people's lives, and therefore it is the responsibility of every member of parliament and every senator to forget about the politics and look at ways in which we can work together to ensure that we get a good outcome so that, yes, people do not drown at sea, risking their lives trying to find a safe haven to live in into their futures.

We know that in the past eight months or so something like 300 people have drowned attempting to make that dangerous voyage to Australia. So of course we do not want people to do that, because we do care for the basis of humanity: that people can live a safe life and, of course, be able to seek asylum in Australia—something that is legal, not illegal. The Leader of the Opposition, Tony Abbott, and those opposite continue to like to use that kind of absolutely appalling language, as though they are not talking about human beings. We are talking about human beings, and we are talking about humanity. That is why we have received the Houston report and accepted the recommendations provided in that report, because we know that we need to rise above claiming these kinds of political victories that have been thrown about through slogans like 'We're going to stop the boats' in the past of those opposite. We need, bluntly, to concede that the Houston report praises some aspects and rejects or criticises other aspects of both government policy and the opposition's policy. The fact is that we need to reach a compromise to stop the people that have drowned and the ongoing potential of people drowning at sea. So we recognise that, and that is why we have accepted the report and accepted that we need a broad-ranging approach to immigration policy in this country.

We are up for it, for tackling this tough policy issue, unlike those opposite, who do not want to find a solution but instead want to continue to throw politics at this issue. It is a difficult issue. It is an emotive issue because you are dealing with human beings, you are dealing with people's lives. But we do not want to demonise people, to call them 'illegals', or to use slogans to encapsulate important immigration policy for this
country. We want to get into the detail, into the nitty-gritty, into the important facets needed to ensure that we have a robust, broad and all-encompassing immigration policy in this country for those who seek asylum and for those who come by other means. That is why we have accepted the Houston report. You cannot cherry-pick that report, picking one bit of their policy and leaving out the rest. We have taken it and accepted it as a whole.

We need to remember that since that report the Australian humanitarian program has been increased to 20,000, the largest increase in 30 years. I am proud of that fact. Australia is now the leading resettlement country globally per capita, which is a very good thing, and it is the first time that has happened in 30 years. It never happened under the Howard government. We now have the increase in place to ensure we are addressing some of the important issues for those risking their lives, which we do not want to continue to happen. (Time expired)

Senator SMITH (Western Australia) (15:23): I was going to begin on a very positive note and share with the Senate the contribution that the Leader of the Liberal Party and of the coalition set out this morning at our regular party meeting. But, before I do that, let me make this very clear response to Senator Singh’s comments: you do not do humanity or human beings any justice by encouraging them, or the people smugglers who would like to benefit from the trade in their hope or their search for a better life, with a set of policy prescriptions that only encourage them to travel dangerous distances over dangerous seas to our shores. Labor’s conscience is rightly bruised by this shameful policy approach it has taken to protecting our borders—a policy approach that has failed.

On a more uplifting note to begin my contribution to this debate, it was pleasing this morning at our regular party meeting for Tony Abbott to use the last opportunity in this session for a meeting of coalition members and senators to recommit himself and our party to build a better life for the Australian people, to build a better life for the forgotten families of our country. In his very eloquent speech he committed the coalition to a positive plan to deliver a strong and prosperous economy and a safe and secure Australia. Not surprisingly, and in response to the very many calls Australians have made of their coalition representatives, he committed himself to securing our borders, to stopping the boats by putting in place policies that we know can work in the future because they have worked in the past.

We have heard this afternoon that this government is 'committed' to breaking the people-smuggling trade, to slowing down illegal arrivals and to putting in place an orderly immigration program. But, I am sorry, commitment is not enough. What the community want is real, effective action. They are not seeing that from this government. What they want to see is a policy program that delivers results; a policy program that will work because it has been proven to work in the past.

We heard from Senator Lundy about the 'ebb and flow' of illegal arrivals in our country as somehow excusing this government's failure to secure Australia's borders. I think that, instead, 'ebb and flow' better describes the government's policy thinking: its indecision, its poor policy choices of the past and its constant failing when it comes to protecting our borders. Please! We also heard from one government senator that the government can defend its policy failure, defend the arrivals of thousands of illegal immigrants on hundreds of boats, by talking up a television series.
The virtues of a television series are now being used to defend the government's poor policy making on border protection.

Hardly a day goes by without another boat arriving to remind Australians, as if they needed reminding, that this government has comprehensively botched the management of our borders. On Saturday we marked—I deliberately do not use the word 'celebrated' but, rather, marked—five years since Labor won office. Looked at another way, this means it is five years since Australia had in place a suite of comprehensive, effective policy measures that actually stopped the boats. The Howard government had solved the problem, thanks to its tough stance and its use of temporary protection visas. People had ceased risking their lives by making the dangerous boat journey to Australia. But, as we all know, this Labor government took a solution and created a problem.

When the Rudd government won office there were just four—the same number as there were in the Beatles; the same number as there are seasons—just one, two, three, four people in immigration detention who had arrived illegally by boat. Five years later, that number is around 12,000. We have approximately 2,000 people arriving by boat every month, and this government has no earthly idea what to do about it.

Recall the sorry history: the Prime Minister seized the leadership from Kevin Rudd because, she said, this was one of the big three issues she was going to fix. She started by launching her East Timor solution. She then moved on to the Malaysia solution. Alas, the Prime Minister failed again, that one shot down by the High Court. (Time expired)

Question agreed to.

Education

Senator WRIGHT (South Australia) (15:28): I move:

That the Senate take note of the answer given by the Minister for Human Services (Senator Kim Carr) to a question without notice asked by Senator Wright today relating to education funding.

I want to note in particular the Prime Minister's statement that she will introduce legislation to give every child an entitlement to an excellent education. The question that I—I think reasonably—asked was: how is that to be achieved when the legislation she is describing contains no firm commitment of money from the government and is, by its own clauses, unenforceable? That does not create an entitlement; that is just rhetoric, just a wish list. So I asked: where has Gonski gone? How much additional funding will the government actually invest in public education, which is chronically underfunded and educating, as it does, the great majority of Australia's most disadvantaged students?

The Gonski review has found that Australia's international performance in education has declined over the last decade and that underfunding of public education has led to a deep inequity in Australia's school system, which, unfortunately and tragically for the students involved, deprives us as a society of the full potential of those students—the full potential of our children. The Gonski review recommended that a significant increase in funding is required across all schooling sectors, with the largest part of this increase flowing to the government sector because of the significant numbers and greater concentration of disadvantaged students attending government schools. The Gonski review also recommended that our nation embrace a new schools funding model that seeks to address this inequity and improve overall student performance by providing funding on the basis of student need.

Since the Gonski review was released publicly in February, the Australian Greens
have been calling for legislation to implement its recommendations urgently and by the end of this year. Last week the government's draft education bill was finally released, and we expect the bill to be introduced this week. After such a long wait it was very disappointing to see that it was essentially an exercise in rhetoric rather than meaningful action. It did not contain the means to implement the reforms and to create that entitlement that the Prime Minister has referred to, the recommendations put forward by the Gonski review. It does contain some commendable principles, but they are not worth anything if they are not enforceable. Most importantly, the new funding model that we have been waiting for is still nowhere to be seen.

We know that this coming year will be make or break for our schools. Gonski has provided clear evidence of a broken system and a way forward on how it can be fixed. This is the best opportunity we have had for decades to reform what is essentially an inequitable and broken schools funding system, and we must grasp that opportunity. There are too many students in Australia who will be disadvantaged if we do not. We must not squander this opportunity. We need action now, and our public education system needs investment now. We must legislate for Gonski, and we must make a serious investment in our schools and the future of our children.

Furthermore, I raised questions about the fact that this government has presided over a system of ramped up NAPLAN testing that has now become so competitive—so high stakes—that it is having an adverse impact on student wellbeing, as identified in a University of Melbourne study released this week. It is affecting not only student wellbeing and health but also the breadth and richness of the curriculum being offered to Australia's students. The evidence is that teachers, terrified of the judgement that is attracted by NAPLAN results, are increasingly teaching to the test, running practice tests on a weekly basis—which causes boredom among the students—and restricting the curriculum they are working with. They are essentially translating to students the concern and the anxiety that they feel about the fact that they are going to be so badly judged.

I refer to an article by Christopher Bantick, who says:

The fact is that NAPLAN was never intended to be a test of school performance. It has morphed into this. There is massive pressure on schools and individual teachers to lift their school results. The logical consequence is to teach to the test. Unfortunately, because of the competition and because of the high-stakes nature of this, teaching now is not based on good pedagogy, is not based on enriching the curriculum and is not based on teaching and preparing our students for the future that they will need to embrace. It is actually about a simplistic way of comparing schools and judging teacher performance that does not have any strong evidence base. So, I put it to the Minister for School Education, Early Childhood and Youth, Minister Garrett, that rather than denying the credit of the study they should respond to it. (Time expired)

Question agreed to.

PETITIONS

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

Avalon International Airport

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

The petition of the undersigned shows our support for Avalon Airport to operate as an international passenger airport. The provision of international passenger services at Avalon Airport will provide very important economic benefits for the Geelong region and Victoria as a whole,
particularly with respect to employment, tourism, trade and the development of new industries.

Your petitioners ask that the Senate calls on the Gillard Labor Government to honour its 2010 election commitment to the residents of the Federal electorates of Corangamite and Corio by permitting Avalon Airport to operate as an international passenger airport by:

- providing the requisite land use consents to build an international terminal; and
- supporting the establishment of the relevant Commonwealth agencies, such as Customs and Immigration, necessary for the operation of an international passenger airport at Avalon Airport.

By Senator Ronaldson (from 1,473 citizens).

Petition received.

NOTICES

Presentation

Senator Stephens to move:
That the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Thursday, 29 November 2012, from 9.30 am, to take evidence for the committee's inquiry into Australia's trade and investment relationship with Japan and the Republic of Korea.

Senator Sterle to move:
That the Rural and Regional Affairs and Transport Legislation Committee be authorised to meet during the sitting of the Senate on Thursday, 29 November 2012, from 4 pm, for a private briefing.

Senator Rhiannon to move:
That the Senate—
(a) notes that:
(i) there is widespread community support for broad freedom of information laws and transparency in government,
(ii) the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010 are currently under review,
(iii) the Prime Minister, Ms Julia Gillard, on taking office in September 2010 stated 'we will be held more accountable than ever before, and more than any government in modern memory. We will be held to higher standards of transparency and reform, and it's in that spirit that I approach the task of forming a government', and
(iv) the OpenAustralia Foundation has developed a new website 'Right to Know' to improve the ease with which Australians can lodge freedom of information requests and to make the whole request and response process public;
(b) recognises the new 'Right to Know' website;
(c) congratulates the Foundation for its 'Right to Know' initiative which will further improve access to government-held information; and
(d) urges the Government to use the site, provide feedback and support the Foundation in its aim of encouraging effective citizen access to government information.

Senator Ludlam to move:
That the Senate—
(a) notes:
(i) demonstrations will be held in Adelaide, Perth and Darwin to mark the Toro Energy Limited annual general meeting on Wednesday, 28 November 2012,
(ii) the Toro Energy Ltd uranium project near Wiluna, Western Australia is located within a lake bed that floods periodically, and
(iii) the project poses potential risk to cause extinction of flora species and the extinction of or adverse impacts to stygofauna; and
(b) calls on the Government to:
(i) insist that the proponent and the Western Australian Government provide further information, baseline surveys and studies under section 133 of the Environment Protection and Biodiversity Conservation Act 1999, particularly regarding impacts to tecticornia, stygofauna, radiological modelling on the risks of contamination of aquatic ecosystems and water supply for the full life of the mine,
(ii) prevent the extinction of any species or sub-species occurring,

(iii) demand adequate assessment of the potential for contamination of Lake Way from seepage from the proposed tailings storage facility, and

(iv) act to ensure the comprehensive protection of the local environment and of future generations of Australian taxpayers by requiring the highest operational standards and comprehensive and costed closure and rehabilitation.

Senator Ludlam to move:

That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 30 June 2013:

The role, adequacy and effectiveness of government regulation of uranium oxide transport, including:

(a) the mitigation of public radiation exposure from uranium oxide transport;

(b) the evaluation of the frequency and severity of transport and handling accidents including the 27 December 2011 train derailment resulting in toxic copper concentrate flowing into the Edith River;

(c) the process of issuing and auditing compliance with radiation transport management plans;

(d) the resourcing and conduct of transport related aspects of nuclear actions referred under the Environment Protection and Biodiversity Conservation Act 1999;

(e) the preparedness and resourcing of regional emergency contingency planning, education and training services;

(f) the Australian Radiation Protection and Nuclear Safety Agency codes, including the Code of Practice for Safe Transport of Radioactive Material;

(g) the Australian Safeguards and Non-Proliferation Office regulation of the transportation of nuclear material and issuance and auditing of compliance with transport permits; and

(h) other relevant related matters.

Senator Milne to move:

That the following matters be referred to the Environment and Communications References Committee for inquiry and report by 20 March 2013:

(a) recent trends on the frequency of extreme weather events, including but not limited to drought, bushfires, heatwaves, floods and storm surges;

(b) based on global warming scenarios outlined by the Intergovernmental Panel on Climate Change and the Commonwealth Scientific and Industrial Research Organisation of 1 to 5 degrees by 2070:

(i) projections on the frequency of extreme weather events, including but not limited to drought, bushfires, heatwaves, floods and storm surges,

(ii) the costs of extreme weather events and impacts on natural ecosystems, social and economic infrastructure and human health, and

(iii) the availability and affordability of private insurance, impacts on availability and affordability under different global warming scenarios, and regional social and economic impacts;

(c) an assessment of the preparedness of key sectors for extreme weather events, including major infrastructure (electricity, water, transport, telecommunications), health, construction and property, and agriculture and forestry;

(d) an assessment of the preparedness and the adequacy of resources in the emergency services sector to prevent and respond to extreme weather events;

(e) the current roles and effectiveness of the division of responsibilities between different levels of government (federal, state and local) to manage extreme weather events;

(f) progress in developing effective national coordination of climate change response and risk management, including legislative and regulatory reform, standards and codes, taxation arrangements and economic instruments;

(g) any gaps in Australia’s Climate Change Adaptation Framework and the steps required for
effective national coordination of climate change response and risk management; and

(h) any related matter.

Senator Milne to move:
That the Senate—
(a) notes that off-shore tax havens are a vehicle for international corruption with a current value of at least $21 trillion globally;
(b) supports the European Union Savings Directive, the United States of America, the OECD and all other countries working to implement a comprehensive international agreement of automatic tax information exchange between revenue agencies, so that a receiving country will immediately report to another country when its citizen or corporation has transferred assets or income into its jurisdiction;
(c) is highly critical of the 'Rubik Agreements' signed between Switzerland and the United Kingdom, and Switzerland and Germany, used to undermine international progress towards closing the loopholes in the current multilateral agreement; and
(d) urges the Government to work towards implementing a comprehensive global agreement on automatic tax information exchange.

Senator Di Natale to move:
That the following matter be referred to the Community Affairs References Committee for inquiry and report by 16 May 2013:
The impacts on health of air quality in Australia, including:
(a) particulate matter, its sources and effects;
(b) those populations most at risk and the causes that put those populations at risk;
(c) the standards, monitoring and regulation of air quality at all levels of government; and
(d) any other related matters.

Senator Ludwig to move:
That the following bill be introduced: A Bill for an Act relating to diseases and pests that may cause harm to human, animal or plant health or the environment, and for related purposes. Biosecurity Bill 2012.

Senator Fierravanti-Wells to move:
That the Senate—
(a) recognises that:
(i) Christian Assyrians, a minority religious and racial group in Iraq, are subject to ongoing violence, intimidation, harassment and discrimination on religious and ethnic grounds,
(ii) on 31 October 2010, 58 Christian Assyrians were killed in an attack on a church in Baghdad in an act of violent extremism targeting this minority group,
(iii) Christian Assyrians are actively discriminated against by having their land illegally occupied and transferred to squatters,
(iv) 600 000 Christian Assyrians have now fled Iraq, including many thousands to Australia, and
(v) Assyrians remaining in Iraq are denied many basic human rights and subject to ongoing harassment, intimidation and discrimination;
(b) condemns violence, intimidation, harassment and discrimination on religious and ethnic grounds wherever it may be found, including in Iraq; and
(c) calls on the Government to raise the significant human rights concerns of Christian Assyrians with the Iraqi Government.

Senator Wright to move:
That the Senate—
(a) notes that:
(i) Australian peacekeepers make a significant contribution to international peace and security,
(ii) 48 Australians have died on peacekeeping missions overseas, and
(iii) over 19 000 individuals have signed a community petition calling for the 48 Australian peacekeepers who have died in the service of their country to receive equal recognition and be
placed on the Roll of Honour at the Australian War Memorial; and

(b) calls on the Government to ask the Council of the Australian War Memorial to consider the community support for including peacekeepers on the Roll of Honour at the Australian War Memorial and make a decision on this matter at its first meeting in 2013.

Senator Waters to move:

That—

(a) the Senate notes, with concern, the recent and growing job losses in state governments around Australia, as well as the difficulties many state public sector employees face in bargaining over wages and conditions; and

(b) the following matter be referred to the Education, Employment and Workplace Relations References Committee for inquiry and report by 17 June 2013:

The conditions of employment of state public sector employees and the adequacy of protection of their rights at work as compared with other employees, including:

(i) whether:

(A) the current state government industrial relations legislation provides state public sector workers with less protection and entitlements than workers to whom the Fair Work Act 2009 (the Act) applies,

(B) the removal of components of the long-held principles relating to termination, change and redundancy from state legislation is a breach of obligations under the International Labour Organization (ILO) conventions ratified by Australia,

(C) the rendering unenforceable of elements of existing collective agreements relating to employment security is a breach of the obligations under the ILO conventions ratified by Australia relating to collective bargaining,

(D) the current state government industrial relations frameworks provide protection to workers as required under the ILO conventions ratified by Australia,

(E) state public sector workers face particular difficulties in bargaining under state or federal legislation, and

(f) the Act provides the same protections to state public sector workers as it does to other workers to the extent possible, within the scope of the Commonwealth's legislative powers; and

(ii) noting the scope of states' referrals of power to support the Act, what legislative or regulatory options are available to the Commonwealth to ensure that all Australian workers, including those in state public sectors, have adequate and equal protection of their rights at work.

Senator Hanson-Young to move:

That the Senate calls on the Government to give asylum seekers and refugees the legal right to work.

BUSINESS

Leave of Absence

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:34): by leave—I move:

That leave of absence be granted to Senators Johnston and Boyce for 27 November 2012 on account of parliamentary business.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Xenophon for 28 November 2012, proposing the disallowance of item [1] of Schedule 1 to the National Health (Weighted average disclosed price – interim supplementary disclosure cycle) Amendment Determination 2012 (No. 2), postponed till 29 November 2012.

COMMITTEES

Environment and Communications

References Committee

Reference

Senator McEWEN (South Australia—Government Whip in the Senate) (15:35): I move:
That the following matters be referred to the Environment and Communications References Committee for inquiry and report:
(a) the commitment by the Australian Broadcasting Commission (ABC) to reflecting and representing regional diversity in Australia;
(b) the impact that the increased centralisation of television production in Sydney and Melbourne has had on the ABC's ability to reflect national identity and diversity; and
(c) any related matters.

Question agreed to.

Appropriations and Staffing Committee

Report

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:35): At the request of Senator Feeney, I move:

That the Senate adopts the recommendation in the 54th report of the Standing Committee on Appropriations and Staffing to amend standing order 19.

Question agreed to.

Senators' Interests Committee

Reporting Date

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:36): I move:

That the time for the presentation of the report of the Standing Committee of Senators' Interests on a draft code of conduct for senators be extended to 29 November 2012.

Question agreed to.

BILLs

Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012

First Reading

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:36): On behalf of Senator Abetz, I move:

That the following bill be introduced: A Bill for an Act to amend the Fair Work (Registered Organisations) Act 2009, and for related purposes.

Question agreed to.

Senator KROGER: I present the bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:37): I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

FAIR WORK (REGISTERED ORGANISATIONS) AMENDMENT (TOWARDS TRANSPARENCY) BILL 2012

The Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012 will amend the Fair Work Registered Organisations Act 2009 to improve protection for the hundreds of thousands of members who belong to these organisations, by strengthening the financial disclosure rules, enshrining higher duties for officers, and increasing penalties to provide a genuine deterrent against misuse of position and power.
In April this year the Coalition released a Plan for Better Transparency and Accountability of Registered Organisations. This plan is designed to protect the interests of Australians who join trade unions or employer associations.

The Coalition’s plan will improve standards of governance and financial accountability by, among other things, aligning the rules for registered organisations more closely with the laws that exist for companies under the Corporations Act 2001.

The worst aspect of the ongoing HSU scandal is that 70,000 low paid workers had their hard-earned money misspent by union officials on political campaigns and escort services. Earlier this year, Fair Work Australia found that HSU officials had used union members’ money for personal advantage, failed to act in the best interest of members, and breached financial management rules.

Since that time the list of scandals, revelations, and unanswered questions involving some registered organisations has continued to grow. It is clear that real change is needed now.

This bill will give effect to three key elements of our policy:

- To ensure that financial reports are lodged on time and in compliance with the relevant provisions of the RO Act by clarifying circumstances where a report is non-compliant, and increasing the penalty for late filing and non-compliance;
- To deter malfeasance by creating new penalties for organisations, their officers and employees who do not act in good faith, or use their position or information, to directly or indirectly create a financial gain for themselves or someone else to the detriment of the organisation; and
- To deter non-compliance with court orders by creating new penalties for organisations, their officers and employees who do not comply with the order of a court.

This will provide a genuine deterrent against misuse of position and power.

Registered organisations are a central part of the Fair Work regime and they must operate to the highest of standards. The Coalition believes that the members of registered organisations deserve transparent and accountable representation. Australian workers who join trade unions deserve to know that their membership fees are being used for proper purposes.

The Coalition’s bill should be welcomed by the overwhelming majority of registered organisations and their officers who do the right thing and have nothing to hide from their members.

The Coalition calls on the Government to support this bill.

If the Government refuses to support this bill, it will be further evidence that Labor under Ms Gillard is not committed to the good governance of employer associations and unions.

Senator KROGER: I seek leave for Senator Abetz to continue his remarks later.

Leave granted; debate adjourned.

Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012

First Reading

Senator WATERS (Queensland) (15:37):

I move:

That the following bill be introduced: A Bill for an Act to amend the Environment Protection and Biodiversity Conservation Act 1999 to prevent the Commonwealth from handing responsibility for approving proposed actions that significantly impact matters protected under the Act to a State or Territory, and for related purposes.

Question agreed to.

Senator WATERS: I present the bill and move:

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

Question agreed to.

Bill read a first time.
Second Reading

Senator WATERS (Queensland) (15:38):
I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (RETTAINING FEDERAL APPROVAL POWERS) BILL 2012

The Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 prevents the Commonwealth from handing its responsibilities for approving proposed actions that significantly impact matters protected under our national environmental laws to a State or Territory. It also prevents this Government, or any future Government, from handing its responsibilities for regulating nuclear activities to state or territory governments.

Our national environment law, the Environment Protection and Biodiversity Conservation Act, was passed in 1999 by the Howard government. Written into these laws was the ability for the federal government to accredit states to make environmental approvals on their behalf, effectively removing the federal government from the process. At the time Julia Gillard MP railed against those provisions, saying;

...In this legislation they have enabled the states and the Commonwealth to now go through a process where, through a bilateral agreement, in future the Commonwealth could say to Victoria — and states with track records of environmental vandalism like Victoria — 'Here, you have the responsibility for the Ramsar wetlands. Here, you have the responsibility for the environmental impacts of a toxic dump,' and just let it happen.

Yet after meeting with business and industry earlier this year, the Gillard government has now decided to rush through the handover of powers to the states, through COAG. If the handover goes ahead, it will mean the federal environment minister will no longer have a role in approving projects that significantly impact our nationally listed threatened species, our world heritage areas, internationally listed wetlands and other nationally important wilderness places and species.

These changes reverse decades of positive environmental reforms in Australia – reforms that have seen the Commonwealth step in to protect the Great Barrier Reef from oil rigs, the snowy mountains from grazing, and the Franklin River from being dammed. Ultimately this reform process resulted in the clear, targeted responsibilities of the federal government as set out in the EPBC Act. This reflects the community's expectation that responsibility for our most vulnerable species, our world heritage areas, our internationally listed wetlands must all remain with our national environment minister.

On almost all indicators Australia's natural environment is in decline. There are ten mines planned for Tasmania's incredible Tarkine forests. James Price Point in WA, home to dinosaur footprints, is to become a massive liquefied gas hub. Our iconic Great Barrier Reef is facing serious threats from industrialisation and risks being listed by UNESCO as "world heritage in danger". Even our beloved koala and Tasmanian devil are facing extinction, and logging has reduced Victoria's state emblem, Leadbeater's possum, to only a thousand left in the wild. The Government needs to be strengthening our national laws, strengthening its role in protecting the places and species Australians value, and yet they are doing exactly the opposite by washing their hands of responsibilities and leaving it up to the states to act in the national interest.

The Australian community expects our national government to uphold its responsibilities to protect our most precious places and species, not to hand over responsibility for their future to the states.

It was Bob Hawke's government which advanced the Commonwealth's role in protecting our environment through a successful bid to stop the Franklin Dam in the High Court, which cemented the environment on the national agenda as an asset too precious to all Australians to be left to the states, a legacy that is now being dramatically wound back. Even Robert Hill, John
Howard’s environment minister, has said this handover to the states is ‘a mistake’.

Contrary to the government’s claims, the proposed standards that will underpin these approvals bilateral agreements will be unable to deliver the environmental protection Australians expect for our most important environmental icons. Discretion is inherently involved in decisions made under the EPBC Act (which require the often difficult balancing of economic, social and environmental matters). This means it matters who makes the ultimate decision – all the more so because it is difficult to codify how the exercise of that discretion must be made when accrediting state laws to replace the operation of the EPBC Act. A cursory look at the record of state governments demonstrates that the states can’t be trusted to look after the national environment. There is no standard in the world that will fundamentally change the approach of state governments to prioritise short-term economic gains over environmental protection or social outcomes. Likewise, there can be no confidence that the states will comply with the standards – if they can’t find a way to get around them they will simply breach the standards, as Premier Newman did in accepting an environmental impact statement for the Alpha mine in which breached the assessment bilateral standards for environmental impact statements. And how will the Commonwealth know that the standards are being adhered to when it has given up its role in this space? The draft standards give no confidence that there will be adequate monitoring and auditing to ensure technical compliance by state and territory governments with the standards, let alone monitoring and auditing of the genuine on-ground environmental outcomes of these proposed arrangements.

Approvals bilateral agreements are the key weapon in the current populist agenda of cutting so-called “green tape”. This debate critically overlooks two important aspects of the EPBC Act. Firstly the EPBC Act already has a high bar that precludes federal intervention in all but the most environmentally damaging projects. The Act’s “significance” threshold has meant that since its commencement in 2000, only 1,022 projects, from across the whole of Australia, have ever required formal Commonwealth approval. This significance threshold ensures consistent, targeted federal intervention and regulatory certainty.

Secondly, the current debate fail to recognise that if the business community and government were actually concerned about streamlining regulation (rather than just seeking to undermine our current environmental protections), they would increase use of an EPBC mechanism already available in all states and territories – assessment bilateral agreements. Assessment bilateral agreements are now in place between the federal government and each state/territory. These agreements align the assessment requirements of state and federal environmental assessments, but, critically, retain the final decision making responsibility for nationally important aspects of major projects with the federal government. In the government’s own words these arrangements “minimise duplication between Commonwealth and State or Territory assessments”. Any steps to hand off approval powers would just be environmental corner-cutting, rather than a reduction in duplication.

It is unbalanced and poor process that the Business Council of Australia has been able to dictate the environmental policy agenda of the Government to allow the hand-off of federal approvals to the states. The community has had no opportunity to have its say on the handover of powers. Whilst they would get the chance to review draft approval bilateral agreements, this is a far cry from being consulted on whether the approvals bilaterals should be drafted in the first place. An inquiry into this bill would be the first opportunity the community has been given to have its say on whether this course of action is appropriate. The Greens are happy to provide that vehicle but it is an embarrassment that the Government has conducted such a lopsided consultation to date, with the Business Council of Australia given its own full day prior to each key COAG meeting and the community ignored.

For all the reasons outlined above, the Australian Greens want to see the removal from the EPBC Act of ability of this Government (and any future Government) to hand its responsibility for approving projects that involve significantly
damaging our nationally protected matters – our world heritage areas, our national heritage areas, our internationally listed wetlands, our threatened species and ecological community, and migratory species – to state and territory governments.

We are in a biodiversity crisis. This is not the time for the federal government to step back from its responsibilities. It is in the interest of the long term protection of our most valuable wild places and species, and the ongoing federal management of nuclear actions, that I am presenting this Bill.

I commend the bill to the Senate.

Senator WATERS: I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Water Amendment (Save the Murray-Darling Basin) Bill 2012

First Reading

Senator HANSON-YOUNG (South Australia) (15:39): I move:

That the following bill be introduced: A Bill for an Act to amend the Water Act 2007, and for related purposes.

Question agreed to.

Senator HANSON-YOUNG: I present the bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator HANSON-YOUNG (South Australia) (15:40): I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

WATER AMENDMENT (SAVE THE MURRAY-DARLING BASIN) BILL 2012

For more than a century Australians have been diverting an unsustainable and environmentally damaging volume of water from the natural resources in the Murray-Darling Basin. The creation of a Basin Plan to correct the devastating over-allocation is a long-overdue and critical national reform, which requires a substantial investment of public funds and, as Australia re-enters a drying cycle, must be effective in assuring the long-term health of the Basin.

It is imperative that the Basin Plan restores the iconic Murray River and Basin resources to optimum health and resilience because the environmental health of the Basin and the socio-economic prosperity of local communities and the nation are inseparable.

This bill has been introduced into the Senate by the Australian Greens in November 2012, at the same time as the Government’s tabling of the first Murray-Darling Basin Plan drafted under the Water Act 2007 (Cth) (the Water Act hereafter).

This bill responds to the deeply disappointing circumstances that, despite the legal requirements of the Water Act, the Basin Plan as developed by the Murray-Darling Basin Authority (the Authority) and adopted by the Government is not consistent with the best available science. It does not take into account climate change, fails to take a credible and precautionary approach to future groundwater extraction and fails to guarantee that key environmental assets up and down the Basin will be kept adequately watered, healthy and resilient in wet and dry times.

This bill amends the Water Act by establishing a number of minimum environmental outcomes that any Basin Plan must achieve. These environmental safety nets will supplement the current requirement of ‘best available science’ and guarantee that the billions of tax payer dollars are not wasted on a Basin Plan that does not achieve its fundamental purpose.

Climate change

This bill amends the Water Act to ensure that any Basin Plan must continuously take into account the most up to date science on the effects of climate change. We know that global warming could deprive Basin rivers of up to 37% of their flow by 2030, and to respond to this, in the Guide to the Basin Plan released in 2010, the Authority proposed a reallocation of diverted water to the
environment over a 10-year period for adaptation to climate change. Taking climate change into account is the only sensible avenue because scientists have been clear that an unforeseen decrease in planned environmental water will affect flows out of the end of the system, impede the export of salt and pollutants, and pose a great threat to South Australia's internationally recognised wetlands.

Yet the final Basin Plan that has been adopted by the Government and tabled in Parliament does not take into account any calculation of the impacts of climate change, such as reduction of water run-off. This is a significant oversight that leaves an unacceptable margin of error in terms of ensuring that the Basin Plan recovers adequate water to achieve its purpose.

To ensure that such an oversight will not be repeated by the Authority or any government developing a future Basin Plan, this bill enshrines in the Water Act a new, explicit requirement that in developing the sustainable diversion limit for water resources in the Basin, the Plan must take into account the most up to date climate science.

**Modelling**

One of the primary concerns raised by the community throughout the duration of the Basin Plan consultation process, particularly scientists and conservationists, is that the Authority never undertook or released integrated Basin-wide modelling of more than one water recovery target (of recovering 2800GL/yr). The Guide to the Plan made it clear that between 3856GL and 6983GL per year needs to be recovered from consumptive use to restore the Basin to health.

But the Basin Plan tabled by the government has a starting point of 2750GL and a hard and unguaranteed ceiling of 3200GL. We also know that if this Basin Plan only returns between 2750-3200GL to the environment, it will still only satisfy between 57-67% of critical environmental targets in the Basin.

The Greens concur with the many experts who have critically observed that there is no good reason why the Authority never conducted modelling to determine what water recovery volume would get us closest to satisfying all of the environmental targets across the Basin. This modelling would be critical for illustrating the environmental trade-offs as the water recovery target is reduced.

The best available science approach would require that a Basin Plan be developed with the full knowledge of what volume of water is required to deliver a healthy working river. This bill makes it clear that the development of a Basin Plan must be supported by thorough investigation and understanding of the optimum environmental water recovery scenario, even if that is not what is ultimately settled on by the Authority and federal Parliament on account of factors such as some delivery constraints and socio-economic considerations.

**Groundwater**

We are informed by scientists, including the Wentworth Group of Concerned Scientists, that the vast majority of groundwater and surface water in the Murray-Darling Basin is hydraulically linked. The level and extent of this connectivity, and other aspects of groundwater science, remains a largely unknown factor that is subject to ongoing investigation by Australian scientific institutions. The National Water Commission has recommended that it should be assumed that all groundwater bodies are connected to surface water resources, unless it is otherwise proven.

As such, many scientific and environmental experts who participated in the consultation of the Basin Plan advised that a precautionary approach should be taken in relation to groundwater extraction, to avoid the mistake of repeating the surface water over-allocation of the past.

Yet, the Basin Plan tabled by the Government substantially increases the extraction of groundwater in blithe disregard of the long-term scientific implications of doing so. Despite the mandate of being based on the best available science, this Basin Plan permits overuse of groundwater resources in the absence of knowledge of the environmental and sustainability consequences. Parliamentary inquiries have been advised by experts that the risk posed by groundwater extraction in this context might mean the promised environmental outcomes under the Basin Plan might never be achieved.
This bill strengthens the requirements of the Water Act so that the any future groundwater extractions must be assessed using a regional scale, multi-layer, transient ground water flow model that is linked to existing surface water models. This is the level of inquiry that has previously been required by the Government in assessing the environmental impact of some coal seam gas developments in Queensland, and this should similarly apply to water resources in the Murray-Darling Basin.

The bill also amends the Water Act to require that any proposed groundwater extraction must demonstrate the cumulative impact on surface and groundwater flows and the long-term impacts on aquifer recharge. It will also require the report to demonstrate how the proposed water extraction relates to the environmentally sustainable limits under the Basin Plan.

Environmental Safety Nets

This bill also requires that a Basin Plan developed under the Water Act must satisfy a range of environmental minimum standards including reduction of salinity levels in the Coorong and Lower Lakes, water levels in the Lower Lakes, Murray Mouth openness, over barrage flows, environmental watering of flood plains and others.

It is not good enough that the Basin Plan will just improve environmental outcomes. To serve its purpose and justify the massive expenditure of public funds, the Basin Plan should be actually restore key environmental assets, including the ten Ramsar-listed wetlands that the Basin boasts, to health and resilience in the long run. South Australian environmental icons like the Coorong and the Lower Lakes were devastated during the Millennium drought. We need a Basin Plan that delivers sufficient volumes of flows to those precious places at a frequency that will keep the mouth open and flushing to sea during times of average rain fall, and times of drought that are certain to come.

I commend the bill to the Senate.

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

Leave granted; debate adjourned.

MOTIONS

Middle East

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:41): I move:

That the Senate—
(a) notes that Palestinian representatives have indicated that on 29 November 2012 they will be introducing a resolution to the United Nations (UN) General Assembly to recognise Palestine as a non member state of the UN; and
(b) calls on the Australian Government to support Palestine in being granted non member state observer status at the UN.

I seek leave to speak on this motion for one minute.

Leave granted.

Senator MILNE: This is a very important motion before the Senate today. As I said, on 29 November there will be a vote in the United Nations General Assembly on the recognition of Palestine as a non-member state observer in the United Nations. This would provide Palestine with the same status as the Vatican and would enhance the legal rights of Palestine. It is a compromise position. Australia, with an increased leadership role as part of the Security Council, ought in my view to join the overwhelming majority of the rest of the world in supporting this move to enhance the legal rights of Palestine. I note that today the government has moved in its position, now saying that it will abstain from the vote. While the United States and Israel will oppose the non-member state observer status, Australia will now be abstaining.

(Time expired)

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (15:42): I seek leave to speak on this motion for one minute.

Leave granted.
Senator FIFIELD: The coalition oppose this motion because we do not believe that it is the path to peace and reconciliation between the Israeli and Palestinian peoples. Our concern is that the drive for greater recognition at the United Nations is an attempt by the Palestinian leaders to internationalise the conflict by bringing action against Israel through various international courts. This is likely to escalate and prolong the conflict rather than lead to a resolution of disputes. The only path to peace is for the Palestinian leadership to officially recognise the right of Israel to exist and to halt the firing of rockets and mortars as part of a campaign by militants to terrorise and kill Israeli citizens. Australia has long supported the two-state solution and the right of the Israeli and Palestinian peoples to live peacefully and in safety within internationally recognised borders. We urge both sides to resume negotiations towards a lasting peace in the region.

Question put.
The Senate divided. [15:48]  
(The Deputy President—Senator Parry)  
Ayes…………………..11  
Noes…………………29  
Majority………………18

AYES  
Di Natale, R  
Ludlam, S  
Milne, C  
Siewert, R (teller)  
Whish-Wilson, PS  
Xenophon, N

NOES  
Hanson-Young, SC  
Madigan, JJ  
Rhiannon, L  
Waters, LJ  
Wright, PL

Question negatived.

Thorium Ore  
Senator RHIANNON (New South Wales) (15:50): On behalf of myself and Senator Ludlam I move:  
That the Senate—  
(a) notes:  
(i) the rare earths miner Lynas Corporation Ltd has established a processing plant at Gebeng in Malaysia to process material from Lynas’ Mount Weld mine in Western Australia,  
(ii) rare earths, including radioactive thorium residues, will be transported from Mount Weld to Fremantle, where it will be shipped to Malaysia,  
(iii) a rare earths refinery operated by the Mitsubishi group in Perak in northern Malaysia was closed after news broke of cases of birth defects and leukaemia in some local residents,  
(iv) Lynas plans to dispose of the waste radioactive material near fishing communities in the Malaysian state of Kuantan,  
(v) in early January 2012 the Malaysian press reported severe restrictions on the public’s ability to access information about the proposed Lynas plant, and  
(vi) residents who live near the proposed Lynas processing plant and non-government organisations in 2011 marched on Malaysia’s Parliament and held a demonstration at the Australian High Commission calling for the processing plant not to be sited in Malaysia;  
(b) expresses grave concerns over the Malaysian Government’s approval for a new rare earth refinery in Pahang, and the process by which it has been established; and
(c) calls on Lynas to process the thorium ore on site at the Mount Weld mine to minimise the risk of damage arising from radioactive waste.

Question put.

The Senate divided. [15:51]

(The Deputy President—Senator Parry)

Ayes.......................9
Noes.........................32
Majority.................23

AYES
Di Natale, R
Hanson-Young, SC
Ludlam, S
Milne, C
Rhiannon, L
Siewert, R (teller)
Waters, LJ
Whish-Wilson, PS
Wright, PL

NOES
Back, CJ
Bilyk, CL
Bishop, TM
Brandis, GH
Bushby, DC
Cameron, DN
Cash, MC
Collins, JMA
Collins, J
Donaldson, J
Fawcett, DJ
Feeney, D
Fifield, MP
Furner, ML
Furner, J
Gallacher, AM
Gilbert, DN
Groth, P
Guise, Peter
Hawke, SC
Hawke, S
Hedgcock, C
Hildyard, GL
Hawke, T
Hancock, J
Hunt, AL
Jackson, AM
Jackson, J
Johnson, JW
Judd, M
Katter, Janine
Katter, Peter
Ketter, J
Knapp, AM
Koch, A
Kolonoff, J
Ludwig, JW
Lundy, KA
Macdonald, J
McEwen, A (teller)
McKenzie, B
McLucas, J
Marles, J
Parry, S
Polley, H
Ruston, A
Singh, LM
Smith, D
Stephens, U
Sterle, G
Thistlethwaite, M
Thorp, LE
Urquhart, AE

Question negatived.

MINISTERIAL STATEMENTS
People-Trafficking
Abuse in Defence

Senator JACINTA COLLINS
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:53): I present two ministerial statements relating to:

- People trafficking, including fourth report of the Anti-People Trafficking Interdepartmental Commission—Trafficking in persons: The Australian government response
- Apology to people subjected to sexual or other forms of abuse in Defence.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (15:53): by leave—I move:

That the Senate take note of the statement on the apology to people subjected to sexual or other forms of abuse in Defence.

I make this statement on behalf of my friend Senator David Johnston, the shadow minister for defence, who is unable to be in the Senate today. The coalition offer our strong and unqualified support to the government as it offers a formal apology to the men and women of the Australian Defence Force who have suffered abuse in the course of their service to our nation.

Ours is a unique fighting force, a small but potent military that has delivered a disproportionate effect upon every battlefield upon which it has fought. We have a rich military history and can rightfully hold our heads high in the concert of nations when it comes to defending freedom. Our history of military endeavour is second to none. Yet, despite our overwhelming battlefield success, there have been a flood of complaints, some going back to the 1950s, of abuse within the ranks. By any standard, the litany of abuse allegations is completely unacceptable, let alone by the standards of the finest fighting force in the world, the ADF. This conduct does not accord with the values of our society, let alone the values of our military. Our military is a disciplined force; however, the DLA Piper review has made it clear that there have been elements and individuals within the ADF that have abused their power or position and inflicted abuse on those who sought only to serve our nation.
We deeply sympathise with and say sorry to those who have experienced abuse at the hands of those who were to be trusted with their leadership and care. This was a great betrayal. This abuse should never have happened. Every effort must be made to ensure that it does not happen again. Our military must train hard and fight hard, but, as they do, we must not allow our men and women to suffer abuse in any form. This is not who we are as a country and it is certainly not who we are as a military. Abuse destroys lives, limits our operational capability and undermines public confidence in our military.

We are at our best when we pause and walk in the shoes of others and reflect on their experiences, acknowledge their pain and then commit to right that which is wrong. That is the start of the process. Accordingly, the government enjoys the full support of the coalition as it establishes its Defence abuse task force. We will provide every support to the senior defence leadership and we have faith in their capacity to work with the task force both to assist it in its work and to implement its recommendations. The coalition stands with the government with an absolute commitment to care for all of those who care for us.

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:57): The Greens join the government in expressing our deep sadness and apology to the victims of abuse in the Defence Force. We welcome the fact that on 26 November the federal government issued that apology to hundreds of victims of physical and sexual abuse within the Australian Defence Force and we also welcome the fact that the Minister for Defence, Stephen Smith, also announced the setting up of an independent task force to deal with hundreds of claims of sexual and physical abuse within the ADF.

We note that Sex Discrimination Commissioner Elizabeth Broderick, referring to the inquiry she led into the treatment of women in the Australian Defence Force, said:

...by its nature, the ADF is a workplace involving inherent risks.

Experiencing sexual misconduct, harassment, bullying, victimisation and sexual abuse, however, should never be one of them. The reality is that sexual harassment and abuse exists today in the ADF.

The Greens commit to giving the government what support it needs to make sure this inquiry has the power it needs to establish what happened, why it was able to happen and what must be done to ensure it never happens again as well as to enforce recommendations.

Determining the facts of individual cases and compensating the victims is important, but it cannot end there. We must make the changes necessary to protect the people who join the defence forces from this kind of horrendous treatment in the future.

Concern that compensation has been capped at the seemingly arbitrary figure of $50,000 per case is something that we share with some of the victims' groups. We urge the government to reconsider that element and we hope that in the course of the inquiry that might be something that is able to be reconsidered. However, we do take on board the fact that at least the government has made a commitment to compensation in this regard.

We want to ensure that broader issues about the Defence justice and complaints system and the Defence culture are able to be pursued, even if that is separately—

The DEPUTY PRESIDENT: Order! It being 4 pm, the debate is interrupted pursuant to an order made by the Senate earlier today.
BILLS

Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator WRIGHT (South Australia) (16:00): I rise to speak on the Privacy Amendment (Enhancing Privacy Protection) Bill 2012. The Australian Greens support the aims and objectives of this bill, in particular the unification of the National Privacy Principles and the Information Privacy Principles into the new Australian Privacy Principles that apply to both Commonwealth agencies and private sector organisations.

The bill amends the Commonwealth Privacy Act 1988. It has been developed following numerous reviews and inquiries, which have included significant consultations with stakeholders. However, as was pointed out during this inquiry process, the reforms have been a long time coming. For example, this is the first major reform to credit reporting since its introduction in the 1990s. While there was majority support for the contents of this bill amongst stakeholders, some concerns were expressed that although the bill did improve on the current position—that is because it is an important step towards that goal of harmonisation and simplification—it could not necessarily be said that it was an enhancement. Indeed, during the Senate committee inquiry into the bill three different stakeholders expressed some concerns that this bill was a missed opportunity and it did not go far enough in either streamlining provisions or in providing consumers and citizens with better protections.

Changes to Australian law to modernise, strengthen and streamline privacy and credit reporting provisions are important. In doing this we need to be careful that we strike the right balance between privacy rights and the free flow of information. The Australian Greens strongly support the strengthening of Australian law to ensure enhanced compatibility with our obligations under international human rights law. As a signatory to the International Covenant on Civil and Political Rights, the ICCPR, Australia has an obligation to promote and protect the right to privacy. Indeed, article 17 of the ICCPR provides that:

1. No one shall be subjected to arbitrary or unlawful interference with his—
And I use that word advisedly; it is slightly anachronistic—privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

In signing up to the ICCPR Australia has agreed to take all the necessary steps to respect, protect and fulfil human rights.

We agree with the findings and recommendations made in the committee report, and we made some additional comments directed at improving consumer protection and privacy rights. We acknowledge that the government has agreed to implement many of those changes and is putting forward amendments today. However, we feel that a couple of additional changes should be made to improve consumer protections. I will turn to these now.

In relation to proposed paragraph 6Q(1), the Australian Greens would have preferred to go further than what was recommended by the Senate committee. We are of the view that a default listing should not occur until at least 30 days after a default notice has been given. In practical terms that gives a borrower sufficient time to receive the notice, which may be subject to the vagaries
of the post, contact the credit provider and/or try to rectify a default before a listing can be made, and is consistent with other credit laws. This recommendation was made in the inquiry by the Consumer Credit Legal Centre NSW. The Consumer Credit Legal Centre submitted that the current provisions in the bill essentially enabled a credit provider to list a default immediately after issuing written notice to an individual, and submitted that this is procedurally unfair as it is the notice that is important in notifying the consumer that there actually is a default. It is more than possible to be unaware of the default simply because there was a bank error in direct debits—that is given as an example.

The Consumer Credit Legal Centre has significant expertise in providing consumer assistance advocacy and representation. It sees how these sorts of legal provisions work in practice and how they can impact on, particularly, vulnerable Australians. I think it is important that we respect this expertise and on-the-ground knowledge, which often speaks on behalf of consumers. The Consumer Credit Legal Centre recommended that the bill should be amended to require 30 days to have elapsed from the date of the written notice, before listing can occur, to avoid unintended and unfair consequences.

The submission of the Australian Communications Consumer Action Network also suggested that a listing should not occur until the credit provider has made 'reasonable attempts' to contact the debtor and has provided a specific warning regarding the default listing.

We recognise the practical reality for consumers who face financial strain, and we think that it is important they are provided with sufficient notice about overdue payments and the consequences of failing to pay such overdue payments. For this reason we support the recommendation by the Consumer Credit Legal Centre that the bill should be amended to require 30 days to have elapsed from the date of the written notice, before a default listing occurs. For that reason the Australian Greens will be moving an amendment to that effect.

We also support he recommendations made by consumer advocates that the threshold minimum amount for which a consumer credit default listing can be made should be increased. During the Senate committee inquiry stakeholders also suggested that the threshold overdue amount that gives rise to a default listing was unrealistic. The Energy and Water Ombudsman NSW, the Australian Communications Consumer Action Network and the Consumer Credit Legal Centre advocated for increasing the overdue amount from $100 to $300. The purpose of increasing the threshold overdue amount is to exclude small utility bills from the adverse consequences of credit listing. It also recognises increases in costs of living over recent years.

The Australian Greens agree that there should be an amendment to reflect recent changes in the cost of living and we suggest that the threshold amount be changed from $100 to $150. We also note that there is provision in the bill for a higher amount to be prescribed by regulation, which provides flexibility in responding to consumer concerns and cost-of-living increases down the track when $150 is not sufficient. However, we think that this minor change goes some way towards a more realistic situation. We feel that these changes will improve consumer protections in the Privacy Act.

During the inquiry process we noted that some concerns were raised by consumer
advocates that the amendment to the definition of 'serious credit infringement' would not address the serious problems that this definition currently creates. As serious credit infringement is, apart from bankruptcy, the most serious type of listing that can be made—and it will ordinarily remain on a credit report for seven years—it is very significant and has substantial ramifications for individuals. For these reasons, consumer advocates such as the Consumer Action Law Centre, considered that it is essential that such listings are proportionate to the type of credit infringement and are accurate and based on clear evidence. The Consumer Action Law Centre, CALC, expressed concerns with the amendment to the bill that requires that a serious credit infringement cannot be listed unless six months has elapsed since the credit provider last had contact with the debtor. It appears that the intent of this change is to ensure that credit providers attempt to make contact with the debtor so as to avoid an incorrect listing. By its intent, the amendment seeks to enhance consumer protections. However, as CALC points out, there is no guarantee that this amendment will achieve its purported aim as the credit provider is not required to be proactive and attempt to make contact. The only requirement is that the credit provider waits six months before listing a serious credit infringement.

CALC referred to a previous submission by consumer advocates and recommended that the definition of 'serious credit infringement' should be replaced with two new definitions: 'uncontactable default' and a 'never paid flag'. The Australian Greens gave serious consideration to this stakeholder recommendation. We considered it in detail in our additional comments and raised it with the government. However, we are not satisfied that the recommendation could be adequately implemented so as to take into account instances where there was intentional fraud, and we were of the view that, practically speaking, it was not appropriate to remove the fraud from the definition of 'serious credit infringement'. We do however understand the concerns raised by stakeholders and we will endeavour to follow up with them as to how this could be reconsidered in the future.

Finally, we note that, during the inquiry process, significant concerns were raised by the Australian Privacy Foundation and the Consumer Credit Legal Centre regarding the lack of determinations that have been made under section 52 of the act. As a result of this history, the Australian Privacy Foundation, the APF, is apprehensive about the effectiveness of new reform under section 96, which provides a right of appeal to the Administrative Appeals Tribunal against decisions by the commissioner to make a determination of a complaint under section 52(1) or 52(1A). In its view, this new right of appeal is of little use unless complainants can require the commissioner to make formal decisions under section 52 of the act. It recommends that the Privacy Commissioner should be required to make a determination under section 52 wherever a complainant so requests and for complainants to be informed that they are entitled to such a formal resolution of their complaint.

The Australian Law Reform Commission, the ALRC, in its Report 108: for your information: Australian privacy law and practice, made a similar recommendation in 2009. The Office of the Australian Information Commissioner provided a supplementary submission to the inquiry and noted that the government specifically rejected the recommendation of the ALRC in 2009 on the ground that, as an independent statutory officer, the Australian Information Commissioner should be responsible for
exercising the administrative decision-making powers under the Privacy Act. We understand the tension here and the importance of promoting and respecting the independence of the OAIC, the Office of the Australian Information Commissioner, and we believe that it would be prudent for the government to reconsider this matter and conduct a review of the functions and powers of the OAIC in relation to its system for managing complaints, conciliations and determinations. In our additional comments to the Senate committee, we recommended that, 12 months after the enactment of the bill, the government should conduct a review into the effectiveness of the OAIC's system for managing complaints, conciliations and determinations because, if there is a right to appeal against a determination but no determination is made, essentially there is no right of appeal.

The Australian Greens take an interest in ensuring that the privacy rights of Australians are adequately promoted and protected and we will be monitoring the impact and effectiveness of this bill when it becomes law. While we have some concerns with this bill, overall we feel that it improves and streamlines privacy laws and we support its passage. We note that the government is introducing some amendments which respond to many recommendations put forward by the Senate committee and we will be putting forward our own amendments. On this basis, we support the passage of this bill.

Senator XENOPHON (South Australia) (16:13): I indicate my support for the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, with amendments. I believe it makes a number of important and necessary changes in relation to privacy law in Australia. However, I would like to express my concerns in relation to the credit reporting provisions in this bill. I agree that Australia needs a strong and robust credit reporting system. I know that some organisations have concerns about privacy in relation to disclosing credit history and I believe there must be checks and balances in place to address those concerns. But we need to remember that credit reporting forms an important role in our banking and finance sector. It gives credit providers the information they need to make informed decisions about risk. We do not want to see greater risk in this area, particularly in the current financial climate.

I am very concerned about the fact that lenders mortgage insurers have not been included in the parties allowed access to credit history information with respect to this bill. Lenders mortgage insurance has been part of the Australian housing and mortgage market since the 1960s. Insurers offer protection to lenders if a borrower defaults on their loan, and the insurance products are usually required where borrowers have contributed less than 20 per cent of the purchase price as a deposit. This insurance means that lenders have a safeguard in place and it also means that they have the flexibility to allow borrowers to rectify the loan in cases of default.

So, lenders mortgage insurance is a critical part of the housing market and it is a critical part of finance in this nation, and without it housing would be less affordable and fewer Australians would be able to have access to that finance. Overall, the insurers provide a level of protection and security to the market. They also act as an additional level of scrutiny by assessing risk in terms of loan conditions and credit history. It is simply not in the insurer's best interest to cover high-risk loans, given that they bear the risk of borrowers defaulting on their loans.

Lenders mortgage insurers currently have access to credit reporting information. I
understand the need for privacy protection in these circumstances, but I am concerned that it will come at the cost of overall increased risk in this area. I know that there is the possibility for lenders to pass on that information to insurers under the bill. I believe that this is not good enough; it should not be up to mortgage insurers, who bear their own risk and who have their own financial structures and models, to rely on a third party to pass on information. Insurers need access to independent, accurate information, such as credit reports, firsthand.

There are also concerns that this will lead to lenders acting as gatekeepers of such information and choosing to insure the low-risk loans themselves, leaving only the higher risk loans for independent insurers. That is untenable in the impact it would have on the market. There are also further concerns that with this increase in self-insurance, lenders may take greater risks themselves or not make appropriate allowances to cover debts. The likely outcome of this in the long term is less choice, and worse, for consumers as insurers fold under the strain of covering high-risk loans. It is important to note that in similar jurisdictions, such as Canada, which operates in a similar regulatory system, insurers have direct access to credit-reporting information.

Lenders mortgage insurance is regulated by APRA, and there are currently specific controls on how credit-reporting data can be used. Insurers are also licensed under consumer credit protection laws and regulated by ASIC. There are multiple reasons why providers of lenders mortgage insurance should be granted access to credit-reporting information. To this end, I have had some very useful discussions with Senator Brandis and his office, the Australian Greens and Senator Williams in relation to this, and that is why I have circulated an amendment in the names of a number of parties in order to rectify this. I understand that the government will be moving its own amendments in relation to this to deal with the same issue, and that is welcome. I really query why it had to come to this, but I do welcome any changes that will rectify what is a glaring anomaly in respect of mortgage insurers.

So I look forward to discussing this amendment further in the committee stage, but it is a problem that must be fixed. With that caveat, I support this legislation.

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:17): I would like to thank senators for their contributions to this debate. I would also like to put on the record my thanks to the Senate Legal and Constitutional Affairs Legislation Committee for its report and detailed work in considering this bill.

The Senate committee made 21 recommendations. The government has accepted 20 in full or in principle, and has noted the final recommendation, which calls on the Senate to pass the bill. The Senate committee has asked that a number of issues be addressed through amendments to the bill and in the revisions to the explanatory memorandum.

I foreshadow that opposition senators have also sought revisions to the explanatory memorandum and review of certain provisions. The government has carefully considered these requests and agreed to them. These changes will result in privacy laws that balance more appropriately the privacy of individuals and the legitimate activities of government agencies and the private sector.

The bill is ultimately the culmination of an extensive process of consultation with stakeholders and, of course, scrutiny by this
parliament. It will implement more than half of the Australian Law Reform Commission's 295 recommendations. The bill will bring Australia's privacy regime into the digital age, reflecting our new approach to providing personal information over the internet. In particular, consumer privacy protection will be strengthened; and can I add that the Commonwealth Privacy Commissioner will also have the power to get an enforceable outcome—an apology, a retraction, a takedown notice or compensation from a court. The commissioner will be able to apply to the courts for a civil penalty, and there are new civil penalties for serious repeated breaches of privacy, for which companies may be liable for a significant penalty.

In dealing with this bill in the summing-up stage, can I then say that the bill contains what this government considers the most significant reforms to privacy law since Labor introduced the act in 1988. They are long-overdue reforms that will give effect to key aspects of the ALRC's landmark report on privacy in Australia. I take this opportunity to thank the numerous stakeholders, from the industry associations to the law reform and privacy advocates, and also those opposite and on the cross benches, for the detailed discussions, arguments and feedback to finalise this bill before parliament.

In conclusion, I add that I am confident that we have struck the right balance in privacy law for Australia in this bill. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:21): I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill.

The TEMPORARY CHAIRMAN (Senator Edwards): Does the minister want to move his amendments?

Senator LUDWIG: I do note that Senator Xenophon has an issue with one, as I understand it. It would seem that we could move government amendments (1) to (40), but noting that government amendment (17) is in conflict with Senator Xenophon's. It is a question of whether you want me to pull that one out and move (1) to (40), save (17) and then deal with that afterwards? It is probably an easier way of doing it, and then we could deal with that one separately. In doing otherwise, we then have a problem.

So, I seek leave to combine (1) to (40), save (17)—

The TEMPORARY CHAIRMAN: Before I give leave, I call Senator Wright.

Senator WRIGHT (South Australia) (16:22): I just want to indicate that the Australian Greens would prefer to have government amendment (27) also dealt with separately.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:22): I am happy to do that as well. I seek leave to move our government amendments together.

Leave granted.

Senator LUDWIG: I move government amendments (1) to (16), (18) to (26) and (28) to (40) on sheet BP262 together:

(1) Clause 2, page 2 (table item 2), omit "9 months", substitute "15 months".

(2) Clause 2, pages 2 to 3 (table items 3 to 9), omit the table items, substitute:
3. Schedule The day after the end of the period of 15 months beginning on the day this Act receives the Royal Assent.

(3) Clause 2, page 3 (table item 11), omit "9 months", substitute "15 months".

(4) Clause 2, pages 3 to 4 (table items 13 to 15), omit the table items, substitute:

13. Schedule The day after the end of the period of 15 months beginning 163 to 180 on the day this Act receives the Royal Assent.

(5) Clause 2, page 4 (table item 17), omit "9 months", substitute "15 months".

(6) Clause 2, page 4 (table item 19), omit "9 months", substitute "15 months".

(7) Schedule 1, item 88, page 23 (lines 4 and 5), omit the item, substitute:

88 Subsection 95(1)

After "privacy", insert "by agencies".

(8) Schedule 1, item 104, page 29 (line 6), at the end of paragraph 2.2(b) of Australian Privacy Principle 2, add "or who have used a pseudonym".

(9) Schedule 1, item 104, page 30 (after line 24), at the end of Australian Privacy Principle 3.4, add:

Note: For permitted general situation, see section 16A. For permitted health situation, see section 16B.

(10) Schedule 1, item 104, page 34 (after line 4), at the end of Australian Privacy Principle 6.2, add:

Note: For permitted general situation, see section 16A. For permitted health situation, see section 16B.

(11) Schedule 1, item 104, page 35 (line 7), omit the heading to Australian Privacy Principle 7.1, substitute:

Direct marketing

(12) Schedule 1, item 104, page 39 (after line 3), at the end of Australian Privacy Principle 8.2, add:

Note: For permitted general situation, see section 16A.

(13) Schedule 1, item 104, page 39 (line 34), omit "Note", substitute "Note 1".

(14) Schedule 1, item 104, page 39 (after line 35), at the end of Australian Privacy Principle 9.2, add:

Note 2: For permitted general situation, see section 16A.

(15) Schedule 2, item 39, page 52 (lines 24 and 25), omit "an act relating to the collection of", substitute "the act of collecting".

(16) Schedule 2, item 69, page 63 (line 12), at the end of subsection 6L(3), add "or a person prescribed by the regulations".

(18) Schedule 2, item 72, page 84 (lines 2 and 3), omit "the assessment of the credit worthiness of individuals", substitute "credit".

(19) Schedule 2, item 72, page 84 (line 10), omit "the assessment of the credit worthiness of individuals", substitute "credit".

(20) Schedule 2, item 72, page 84 (lines 15 and 16), omit "the assessment of the credit worthiness of individuals", substitute "credit".

(21) Schedule 2, item 72, page 100 (after line 11), at the end of subsection 21B(4), add:

(i) whether the provider is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link;

(j) if the provider is likely to disclose credit information or credit eligibility information to such entities—the countries in which those entities are likely to be located if it is practicable to specify those countries in the policy.

(23) Schedule 2, item 72, page 101 (line 25), omit "complaint.", substitute "complaint;".

(24) Schedule 2, item 72, page 101 (after line 25), at the end of subsection 21C(3), add:

(e) whether the provider is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link;

(f) if the provider is likely to disclose credit information or credit eligibility information to such entities—the countries in which those entities are likely to be located if it is practicable to specify those countries in the credit reporting...
(25) Schedule 2, item 72, page 102 (line 3), after "scheme", insert "or is prescribed by the regulations".

(26) Schedule 2, item 72, page 102 (line 22), after "licensee", insert "or is prescribed by the regulations".

(28) Schedule 2, item 72, page 105 (line 12), omit "and the body corporate has an Australian link".

(29) Schedule 2, item 72, page 105 (lines 13 to 17), omit paragraph 21G(3)(c), substitute:

(c) the disclosure is to:

(i) a person for the purpose of processing an application for credit made to the credit provider; or

(ii) a person who manages credit provided by the credit provider for use in managing that credit; or

(30) Schedule 2, item 72, page 105 (after line 32), at the end of subsection 21G(3), add:

Note: See section 21NA for additional rules about the disclosure of credit eligibility information under paragraph (3)(b) or (c).

(31) Schedule 2, item 72, page 106 (lines 7 to 10), omit paragraphs 21G(5)(c) and (d), substitute:

(c) the credit provider discloses the credit eligibility information under paragraph (3)(b), (c), (e) or (f); or

(d) the credit provider discloses the credit eligibility information under paragraph (3)(d) to an enforcement body.

(32) Schedule 2, item 72, page 111 (line 18), omit paragraph 21M(1)(b).

(33) Schedule 2, item 72, page 111 (lines 19 and 20), omit "for the purpose of the collection of payments", substitute "to the person or body for the primary purpose of the person or body collecting payments".

(34) Schedule 2, item 72, page 111 (after line 26), at the end of subsection 21M(1), add:

Note: See section 21NA for additional rules about the disclosure of credit eligibility information under this subsection.

(35) Schedule 2, item 72, page 113 (after line 9), after section 21N, insert:

21NA Disclosures to certain persons and bodies that do not have an Australian link

Related bodies corporate and credit managers etc.

(1) Before a credit provider discloses credit eligibility information under paragraph 21G(3)(b) or (c) to a related body corporate, or person, that does not have an Australian link, the provider must take such steps as are reasonable in the circumstances to ensure that the body or person does not breach the following provisions (the relevant provisions) in relation to the information:

(a) for a disclosure under paragraph 21G(3)(b)—section 22D;

(b) for a disclosure under paragraph 21G(3)(c)—section 22E;

(c) in both cases—the Australian Privacy Principles (other than Australian Privacy Principles 1, 6, 7, 8 and 9.2).

(2) If:

(a) a credit provider discloses credit eligibility information under paragraph 21G(3)(b) or (c) to a related body corporate, or person, that does not have an Australian link; and

(b) the relevant provisions do not apply, under this Act, to an act done, or a practice engaged in, by the body or person in relation to the information; and

(c) the body or person does an act, or engages in a practice, in relation to the information that would be a breach of the relevant provisions if those provisions applied to the act or practice;

the act done, or the practice engaged in, by the body or person is taken, for the purposes of this Act, to have been done, or engaged in, by the provider and to be a breach of those provisions by the provider.

Debt collectors

(3) Before a credit provider discloses credit eligibility information under subsection 21M(1) to a person or body that does not have an Australian link, the provider must take such steps as are reasonable in the circumstances to ensure that the person or body does not breach the Australian Privacy Principles (other than
Australian Privacy Principle 1) in relation to the information.

(4) If:

(a) a credit provider discloses credit eligibility information under subsection 21M(1) to a person or body that does not have an Australian link; and

(b) the Australian Privacy Principles do not apply, under this Act, to an act done, or a practice engaged in, by the person or body in relation to the information; and

(c) the person or body does an act, or engages in a practice, in relation to the information that would be a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) if those Australian Privacy Principles applied to the act or practice;

the act done, or the practice engaged in, by the person or body is taken, for the purposes of this Act, to have been done, or engaged in, by the provider and to be a breach of those Australian Privacy Principles by the provider.

(36) Schedule 2, item 72, page 125 (line 20), at the end of the heading to section 22E, add "etc."

(37) Schedule 2, item 72, page 125 (lines 26 and 27), omit "for use in managing credit provided by the provider"

(38) Schedule 2, item 72, page 126 (lines 3 and 4), omit "in managing credit provided by the credit provider", substitute "for the purpose for which it was disclosed to the person under paragraph 21G(3)(c)"

(39) Schedule 2, item 72, page 126 (lines 8 to 10), omit all the words from and including "information" to the end of subsection 22E(3), substitute:

information if:

(a) the disclosure is to the credit provider; or

(b) the disclosure is required or authorised by or under an Australian law or a court/tribunal order.

(40) Schedule 4, item 189, page 193 (after line 18), at the end of section 80Z, add:

Note: In determining the pecuniary penalty, the court must take into account all relevant matters including the matters mentioned in subsection 80W(6).

In dealing with these amendments, I may also touch on government amendments (17) and (27) on sheet BP262. I note that the addendum to the explanatory memorandum was tabled in the Senate on 22 November 2012. It addressed recommendations made by the Senate Legal and Constitutional Affairs Legislation Committee in its report on the bill, which was tabled on 26 September 2012. The government is introducing certain amendments to items in schedules 1, 2 and 4 of the bill. Many of these amendments, as I think I indicated in my second reading speech, respond to the recommendations of the committee report on the bill.

The amendments to schedule 1 of the bill respond to recommendations 1, 2 and 8 of the committee's report and will improve the effectiveness and operation of the proposed Australian Privacy Principles. These amendments are as follows: amendment (8), clarify the pseudonymity principle in Australian Privacy Principle 2; amendment (11), remove the word 'prohibition' from the subheading of APP 7, which deals with direct marketing, to more accurately reflect the content of the provisions; amendments (9), (10), (11), (12), (13) and (14) will add notes under those APPs that refer to permitted general situations and permitted health situations to provide useful cross-references to those meanings of those terms; and amendment (7) makes a minor amendment to the provisions dealing with medical research. The government will also expand the list of provisions that will be reviewed 12 months after commencement. The review commitment was given in response to a recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs. As a result of discussions with the opposition, the
government will add APP 7, which deals with direct marketing, to that list of matters to be reviewed.

The amendments to schedule 2 of the bill respond to recommendations 10 and 15 of the committee's report about the credit reporting provisions. The amendments to schedule 2 will also address a number of additional stakeholder concerns. These amendments are as follows. We will deal with amendment (27) shortly. Amendments (18), (19) and (20) broaden the identification provisions to permit research to be generally about credit. The Australian link requirement will be redrafted to ensure credit providers can continue to undertake various offshore processing activities in relation to credit eligibility information, clarify the scope of the managing credit and debt collection provisions, and make a number of related changes. We will deal with amendment (17) later.

Amendments (16), (25) and (26) add regulation, making powers to allowed prescribed credit providers that are not licensees, such as Indigenous Business Australia, to access repayment history information, exempt and prescribe credit providers, such as IBA, from certain obligations to be a member of an external dispute resolution scheme and allow additional relay services that may be developed in the future to be exempt from the requirements to obtain prior written authorisation where the prescribed service is used to assist an individual and access seeker to communicate for the purpose of obtaining access to their credit reporting information.

Amendments (1) to (6) will extend the commencement period of the bill to 15 months after royal assent. This longer commencement period will ensure industry has sufficient time to make necessary changes to their systems and procedures. Amendment (40) will add a note to the civil penalty provisions in schedule 4 of the bill to clarify the matters that a court must consider in determining an appropriate penalty for multiple breaches of the act. That will ensure that a court will take into account all relevant circumstances in deciding on the total penalty to impose where there have been multiple breaches relating to the same conduct. In summary, we may be able to deal with any questions related to those issues that may have arisen, but I commend those amendments.

Before I conclude, it seems I could, by leave, add government amendment (17) on sheet BP262 to the government amendments, as it is a more efficient way of dealing with it, if there is no objection. I understand that there is not, but I seek leave to do that.

Leave granted.

Senator Ludwig: I move government amendment (17) on sheet BP262:

(17) Schedule 2, item 72, page 77 (lines 7 and 8), omit all the words from and including "recipient" to and including "licensee", substitute:

recipient of the information is:

(a) a credit provider who is a licensee or is prescribed by the regulations; or

(b) a mortgage insurer.

Having moved that amendment, I will speak briefly on it. Amendment (17) permits credit reporting bodies to disclose repayment history information to mortgagee insurers.

Senator Brandis (Queensland—Deputy Leader of the Opposition in the Senate) (16:29): I just want to say a few words on behalf of the opposition in relation to the government's amendments. The bill, in its exposure and first reading considerations, attracted a great number of representations and submissions from affected stakeholders, including from the telecommunications, utilities, banking, insurance and direct marketing sectors.
Fifty-nine submissions were received by the Senate Legal and Constitutional Affairs Legislation Committee, which reported on 25 September.

I want to take the opportunity to thank the committee for the comprehensive nature of its hearings and its report. I want in particular to thank my colleague and, indeed, my parliamentary secretary, Senator Gary Humphries, for his tremendous industry in the work of the committee. The majority of the committee made 21 recommendations including substantive amendments, new transitional provisions and a comprehensive review within 12 months of the passage of the bill. The coalition members of the committee made an additional four recommendations.

I will speak momentarily to amendment (17) among the government amendments. That amendment is to substantially the same effect as an amendment jointly circulated in my name and the names of Senators Xenophon, Williams and Wright. Given that government amendment (17) is to substantially the same effect, I just indicate to the minister that we are happy for it to be considered among the government amendments. But let me speak briefly to it.

That amendment, government amendment (17), raises an issue specifically identified in the hearings by coalition members of the committee. In their report, the coalition members of the committee said:

Proposed new subsection 20E(1) (item 72 of Schedule 2) of the Privacy Act prohibits a 'credit reporting body' which holds 'credit reporting information' about an individual from using or disclosing that information. There are a number of exceptions to this general prohibition (proposed new subsections 20E(2)-(3)); however, under proposed new subsection 20E(4) a 'credit reporting body' cannot disclose 'credit reporting information' derived from 'repayment history information' to recipients who are not 'licensees' under the National Consumer Credit Protection Act 2009, including, for example, lenders mortgage insurers (LMIs), ... which are regulated by the Australian Prudential Regulation Authority.

The Insurance Council of Australia highlighted that LMIs assume the same risk as lenders:

[Impeding their ability to assess this risk by denying direct access to the full range of credit information is likely to significantly affect the LMI providers' ability to actually provide [lenders mortgage insurance]. This will impact on the availability and accessibility of borrowers (particularly first home buyers).

Coalition Senators note that such an outcome would be contrary to some of the benefits of privacy reform identified by the Attorney-General in her second reading speech and, in particular, the enhanced ability of the finance and credit industry to make more accurate risk assessments. Consistent with the introduction of more comprehensive credit reporting, Coalition Senators consider that, with the appropriate safeguards, there is no sound justification for disallowing LMIs from receiving 'credit reporting information' from a 'credit reporting body'.

And that is the effect of the amendment, government amendment No. (17). I acknowledged Senator Gary Humphries a moment ago, but I should also acknowledge Senator John Williams, who was a participant in the hearings of the committee and who, I think, had a particular interest in this amendment. As to the rest of the government amendments, as I have indicated, the opposition supports them. They are in each case a reflection of the recommendations of the Legal and Constitutional Affairs Legislation Committee and their adoption is the result of a very productive discussion that took place between the Attorney-General, myself and Senator Humphries last Tuesday afternoon. So the government amendments have the support of the coalition.
Senator XENOPHON (South Australia) (16:34): I note the comments of Senator Brandis and also acknowledge the role that Senator John Williams has played in relation to that particular amendment with mortgage lending insurance, because it would have been quite anomalous for this bill not to include that. To not give mortgage lending insurers access to credit reporting information would have caused chaos in that industry and would have had quite severe effects.

I am also grateful for the discussions that I have had with Senator Wright from the Australian Greens in relation to this. I think that common sense has prevailed. The weight of numbers in any event is such that the combination of the coalition and the Greens and myself would have been overwhelmingly one of needing to fix up the anomaly, and so it has been fixed. I am very pleased that the government has moved this amendment which, in effect, reflects the amendment that was in the joint names of Senators Brandis, Williams, Wright and myself. I am pleased that this has been fixed, much to the relief of the mortgage lenders, and I think to home lenders and intending homeowners in Australia as well.

Senator WILLIAMS (New South Wales—National Whip in the Senate) (16:35): I would just like to add some comments following Senator Xenophon. For some 46 years, I think, mortgage insurance companies have had access to individual credit history and I believe that it is very important that the status quo remains. Those mortgage insurance companies have got to provide the insurance and they need to know who they are insuring.

I do not know whether this was an oversight by the government or by the Attorney-General when this legislation was brought in to the other place. I hope it was just an oversight not with some other meaning as far as the mortgage insurance companies go. I do welcome the government’s amendment, which is basically the amendment put forward by Senators Brandis, Xenophon, Wright and myself. It was a serious problem and I am glad that that problem has been solved.

I thank Senator Brandis for his input to this very important issue, and his staff. I thank Senator Xenophon and I acknowledge Senator Wright as well. Through the weight of numbers, as Senator Xenophon said, I am glad the government has listened to this very important issue. No doubt they have had plenty of meetings and plenty of people knocking on their door, saying, ‘You have got this wrong.’ The Senate inquiry has obviously had the problem highlighted by coalition senators, and it is a pleasing result. Mortgage insurance companies will have that problem fixed so that they can access credit history, knowing what sorts of individuals they are dealing with when they put their money at risk. That is only fair and, as I often say, life is about fairness.

Senator HUMPHRIES (Australian Capital Territory) (16:37): I want to make a few comments on all the amendments the government has moved, except amendment (17). I welcome this raft of amendments, which in part exhibits a responsiveness and attentiveness to coalition senators’ concerns in a dissenting report. We are unaccustomed to this but welcome that tendency by the government in this case at least to take these matters on board and to move amendments that respond to them. I particularly welcome the extension of the commencement date of the legislation. It was very clear from the inquiry that the new regime will be very complex and the stakeholders themselves made clear that the time frame originally provided for—nine months from royal assent for the commencement of the legislation—
was too short. The Australian Bankers Association, for example, said:

... as far as the general privacy provisions are concerned, the proposed implementation timeframe in the Bill will be insufficient for our members to implement those reforms effectively. It has taken four years since the Law Reform Commission initiated this process of improving our privacy regime until the legislation was tabled this year. It would be a pity if such a long period of time had elapsed and then the implementation were so rushed that the process was not effectively consummated.

I also note what the minister said about Australian Privacy Principle 7 and the issue of direct marketing. I welcome the fact that the drafting of that privacy principle has been amended to make it clear that not all direct marketing is prohibited—except that which is expressly exempted by the principle. I want to put on record that I am aware of still serious concerns in some parts of industry, in this case particularly the online sector, that this issue is not yet resolved. They have concerns that the model used for marketing on platforms such as Yahoo, Facebook and so forth is not accommodated by this legislation as currently drafted. They remain concerned that they may not be able to deliver, because of the arrangements in place with our privacy principles outlawing direct marketing based on the private information supplied to those platforms by their customers, a product to Australian customers which they can deliver to customers pretty well anywhere else in the world.

I believe the minister said he would be ensuring a review was conducted. I welcome that. I hope that inherent in that there would not be any prosecution of parties in circumstances where current business practices were continued which have been thought and understood by suppliers of those services to be acceptable under these new arrangements but which in fact are not covered by the new legislation. Those matters are not clear. I hope the government will exercise restraint in addressing its discussions with the online sector as to how it overcomes any differences of view about how these changes are to be implemented.

Having said that, I think these amendments take this legislation to a better place. I personally welcome them.

Senator WRIGHT (South Australia) (16:41): Some concerns were raised in the inquiry process by stakeholders. We feel that the majority of these have been addressed through the government's response to the committee report. They are actually now in the form of these amendments. As a result, we feel the bill has been significantly improved. I acknowledge the government's willingness to be responsive in this event both to the report and to concerns raised by the Australian Greens, my colleague Senator Xenophon and the coalition about mortgage insurance as well. However, there are two additional amendments I will be moving in order to improve consumer protection in the bill.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:42): I want to deal with Senator Humphries's last issue. I think it is worth putting on the record the way the government would expect it to work. For the online group, if I can generally call them that, the Privacy Commissioner will develop guidelines. You would expect the commissioner—and I cannot direct the commissioner—would develop those guidelines in consultation with the online industry. That will take a certain amount of time, one would expect, but in doing that the online community can express the issues
Senator Humphries also raised. That would fall prior to the review, so one would expect that those issues would be managed in that way.

Question agreed to.

Senator WRIGHT (South Australia) (16:43): by leave—I move Greens amendments (1) and (3) together:

(1) Schedule 2, item 69, page 65 (after line 27), after paragraph 6Q(1)(b), insert:

(ba) at least 30 days have passed since the day on which the notice was given; and

(3) Schedule 2, item 72, page 102 (line 35), omit "a reasonable period has", substitute "at least 30 days have".

These amendments relate to the time period after which notice is given before a default credit listing can occur. The Australian Greens are of the view that a default listing should not occur until at least 30 days after a default notice has been given. In practical terms that gives a borrower sufficient time to receive the notice, to become aware of the fact that there is an amount owing—there may be vagaries of the post that interfered with the delivery of that notice—to contact the credit provider and/or to try to rectify the default before a listing can be made. This is consistent with other credit laws.

In some cases the listing may arise out of an event of which the borrower is not aware—for instance, if there is a bank error—and it will give them time to become acquainted with that and to do something to rectify it. This was a recommendation that was made by the Consumer Credit Legal Centre of New South Wales, which submitted that the current provisions in the bill essentially enabled a credit provider to list a default immediately after issuing written notice to an individual. That is clearly procedurally unfair as it is the notice itself that is important in notifying the consumer that there actually is a default. It is more than possible to be unaware of the default where, for instance, it is out of the control of the borrower—as I said with the bank error.

The Consumer Credit Legal Centre has significant expertise in providing consumer assistance advocacy and representation and it sees how these sorts of legal provisions work in practice and how they can impact on vulnerable Australians. I think it is important that we respect this expertise and avoid unintended consequences by applying on-the-ground knowledge, and it often speaks on behalf of consumers. The Consumer Credit Legal Centre recommended that the bill should be amended to require 30 days to have elapsed from the date for the written notice before listing can occur. The submission of the Australian Communications Consumer Action Network also suggested that a listing should not occur until the credit provider had made reasonable attempts to contact the debtor and provide a specific warning regarding the default listing.

We recognise the practical reality for consumers who face financial strain and we think that it is important that they are provided with sufficient notice about overdue payments and the consequences of failing to pay such overdue payments. For that reason we support the recommendation by the Consumer Credit Legal Centre that the bill should be amended to require 30 days to have elapsed from the date of the written notice before a default listing occurs.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:46): The government does not support the motion. The government has, in the alternate—and as I think we will be doing—accepted the committee's recommendation to require at
least 14 days to elapse after a notice has been provided to an individual before default information about the individual can be included in the credit reporting system. The government has agreed with the committee's view that a 14-day period provided sufficient time for an individual to receive the final notice warning them that a default would be listed for the overdue payment and to contact the credit provider to make appropriate arrangements for the payment of the overdue amount. The government has looked at the issue of extending it to 30 days and does not believe it is appropriate. I note, if you put it in this context, that an individual must be 60 days overdue in making a payment before a credit provider can send the individual a notice warning them that their default will be listed. A 30-day period before listing would mean that the individual was overdue by at least 90 days and has not contacted the credit provider in that time to make alternative arrangements. The government considers that that is an excessive period of time. It is more important that the credit provider can contact and talk to the creditor in those instances. It is, of course, only a minimum period. The government notes that the credit reporting code of conduct may provide additional obligations in relation to listing defaults, including addressing situations where a longer time period may be appropriate. The credit reporting code will be developed by all stakeholders and, once registered by the Information Commissioner, compliance with the code will be mandatory for all credit providers. Having given that short synopsis, those are the reasons why the government will not be supporting the Greens amendments.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (16:48): The opposition will not be supporting Greens amendments (1) and (3) either, essentially for the reasons recited by the minister. Under the way the legislation works, a notice cannot be issued until there has been a default of at least 60 days so the mischief identified by Senator Wright, which these amendments would correct, really does not arise because already there has been a default for a period of two months. While I am on my feet I might say that Greens amendment (2) does seem to us to be reasonably innocuous and therefore we have no objection to it.

Question negatived.

Senator WRIGHT (South Australia) (16:49): I move Greens amendment (2) relating to the threshold for overdue payments:

(2) Schedule 2, item 69, page 65 (line 31), omit "$100", substitute "$150".

The Australian Greens are seeking to extend the threshold from $100 to $150. There was evidence given in the committee inquiry from various stakeholders, including the Consumer Credit Legal Centre who said:

We now have a generation of young people with mobile phones. Over 50 per cent of the default listings on the current credit reporting list are for telcos. It should not be, under any circumstances, that people's lives completely stop for five years over a hundred bucks. A hundred bucks is just too small an amount. We need to put that up to $300. A hundred bucks is just too small an amount. We need to put that up to $300. Another example is electricity: many, many people are struggling with paying their electricity bills. A hundred dollars for a default listing is catastrophic; it should be higher. I understand that some of the energy and water ombudsmen are advocating for that minimum listing to be increased. I also understand the Telecommunications Industry Ombudsman is as well.

In its submission, the centre said:

The overdue amount needs to be commensurate with the detriment caused by a default listing. A listing for $200 being a small amount remains on a consumer's credit report for 5 years. This is a severe detriment for a small amount of money
overdue. … The overdue amount needs to reflect rising loan amounts. Many years ago $100 would be a reasonable amount but now as loans get larger, it is inappropriate to list a default over such a small overdue amount. For example, it is possible to have a home loan and an investment loan and suddenly be unable to refinance due to a mix up at the bank on the payment amount over a 60 day period in the amount of $200 on a $400,000 home loan. … There are a number of utilities where it is very common for consumers struggling with living expenses and other financial hardship to be a bit behind on payments. As it stands that "bit behind" in the Bill would be $100. With rising electricity prices and problems with capping costs on mobile phones, it is essential that consumers are given a bit more leeway than $100 overdue before they are prevented from getting a home loan, credit card, personal loan etc. for 5 years.

That came from the submission by the centre.

Comments by the Consumer Credit Legal Centre for increasing the overdue amounts from $100 to $300 were supported by the Energy and Water Ombudsman New South Wales and the Australian Communications Consumer Action Network. The purpose of increasing the threshold of overdue amount is to exclude small utility bills from the adverse consequences of credit listing. It also recognises increases in the cost of living over recent years.

The Australian Greens agree that there should be an amendment here to reflect recent changes in costs of living and, after some negotiation and an awareness of what is likely to be agreed to by the chamber, we suggest that the threshold amount be changed from $100 to $150. We also note that there is a provision in the bill for a higher amount to be prescribed by regulations, which provides flexibility in responding to consumer concerns down the track that $150 is not in fact sufficient. However, we do think that this minor change will go some way towards a more realistic situation. We feel that these changes will improve consumer protections in the Privacy Act.

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:52): The government agrees.

**Senator BRANDIS** (Queensland—Deputy Leader of the Opposition in the Senate) (16:52): As I said, the opposition supports the amendment as well. But I cannot let the occasion pass by without making the observation, through you, Mr Acting Deputy President: Senator Wright, if you are so concerned about the rise in the cost of living and the effect upon poor people of rising electricity prices, why are you imposing upon this country the world's greatest carbon tax for no environmental gain and whose very purpose is to force up electricity prices and will hurt poor people most?

Question agreed to.

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:53): I move government amendment (27) on sheet BP262:

(27) Schedule 2, item 72, page 102 (line 35), omit "a reasonable period has", substitute "at least 14 days have".

This amendment refers to the 14-day issue. It is just putting it back on the record.

**Senator BRANDIS** (Queensland—Deputy Leader of the Opposition in the Senate) (16:53): The opposition supports that.

Question agreed to.

Bill, as amended, agreed to.

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CHAMBER
Bill reported with amendments; report adopted.

**Third Reading**

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:55): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**BUSINESS**

**Rearrangement**

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (16:55): I move:

That intervening business be postponed till after consideration of the government business orders of the day relating to the Fair Work Amendment Bill 2012 and the Wheat Export Marketing Amendment Bill 2012.

Question agreed to.

**BILLS**

**Fair Work Amendment Bill 2012**

**Second Reading**

Debate resumed on the motion:

That this bill be now read a second time.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:56): The coalition welcomes a number of aspects in the Fair Work Amendment Bill 2012 but also has great reservations about a number of other aspects. To set the scene for the debate that we are having today it is necessary to remind ourselves that there was no regulatory impact statement when the Fair Work Act was implemented. As a result, the government was required to have a review within two years. Finally, on 20 December last year, the Minister for Employment and Workplace Relations, Mr Bill Shorten, announced the review.

The review, colleagues will remember, was a review undertaken by hand-picked panellists whose pedigree was that they were Labor sympathisers. We had the good professor who, after only two months of Work Choices, was able to make definitive statements about it and yet, two years after the Fair Work Act, came up with the lame description that it required 'more time' before we could tell its impact. This is the same professor who railed against the use of the corporations power for coalition workplace relations policy yet has remained strangely silent when it comes to the use of the corporations power for Labor workplace relations legislation. So, a very simple approach: Liberal, bad; Labor, good. Hardly what you would expect from an academic and hardly what you would expect from a person who would provide an independent mind and judgement to these matters of great importance to our nation and of great importance to individual workers right around Australia.

I could go on with other panel members but I will not. What we do know is that the terms of reference under which this cherry-picked, hand-picked panel had to work with were skewed. How do we know that? We know because, after many questions not being answered, my office finally undertook a freedom of information request which showed the documentation and the email trails where the department quite rightly had expressed concern that fundamental issues such as union militancy, red tape and productivity were not part of the terms of reference. Long story short: hand-picked panel, skewed terms of reference. Nevertheless, it provided a report which was, as one might expect, disappointing.
But, nevertheless, there were 53 recommendations, and a majority of those recommendations were recommendations with which the coalition agreed, recommendations where—despite the biased nature of the panel, despite the skewed terms of reference—reality mugged the panel to such an extent that they had to accept a number of recommendations. As a result, there are a number of issues here where the coalition is in full agreement. But I might add that instead of implementing all of the 53 recommendations or seeking to deal with them, Mr Shorten has done a political act in relation to this and has only dealt with 17 out of the 53 recommendations. Let me go through a few of them.

One of them is that the panel recommended that the Fair Work Act be amended to expressly empower Fair Work Australia to strike out an award variation application that is not made in accordance with the Fair Work Act, is frivolous or vexatious or has no reasonable prospects of success. Good, sensible stuff; the coalition fully supports it. I move on to the implementation of recommendations 44 and 45, where the panel recommended that the President of Fair Work Australia give consideration to requiring applicants to provide more information about the circumstances of the dismissal in the initial documentation lodged with Fair Work Australia. That is in relation to unfair dismissals. Similarly in relation to unfair dismissals there is the suggestion that costs orders be able to be made.

I indicate that as a coalition we have been talking about that for about two years and, yes, the ACTU, unable to help itself, had to come out and condemn us. Interestingly enough, the Fair Work Act review panel came to the conclusion that in effect what we as a coalition were saying was right. Small business has suffered, and suffered terribly, under this extreme unfair dismissal regime and it is a credit to the Labor government that they are willing to address these issues at least in part. It is somewhat strange that when the coalition make such recommendations, the ACTU is out there opposing it; when the government finally get mugged by the reality that these things do have to be changed, the ACTU is deafeningly silent because other trade-offs have been made with them.

Allow me to turn to those aspects of the bill where we as a coalition have very real issues and where we will be seeking to move amendments during the committee stage. First of all, this bill also contains matters extraneous to the Fair Work Act review panel's recommendations. A matter that the coalition have long been concerned about is the default superannuation schemes in the modern awards. We believe that they should be opened up for competition so that workers can get the best deal possible. But of course when you have industry super funds that are run by union and employer groups and they are the organisations making representations to Fair Work Australia, guess what? There is always a consent agreement that these superannuation funds should be part of the award, part of the default superannuation mechanism. It has always been the coalition's view, and my personally strong view, that these superannuation funds should not be allowed to be default funds just because two sectional interests happen to agree because they have certain benefits.

**Senator Farrell interjecting—**

**Senator ABETZ:** Senator Farrell interjects and says, 'I think that they are the best funds.' My view is, very clearly: let them prove that they are the best funds. And if they are, they have nothing to fear from an expert panel examining them and determining whether they are worthy. In fact,
that is what the government’s own review, conducted by the Productivity Commission, actually recommended. But what do the government do? They do not implement the Productivity Commission’s recommendations, because they are hell-bent on protecting the gravy train of certain of the industry super funds from which the trade union movement in particular does exceedingly well. This is not serving the interests of Australian workers, it is not serving the interests of superannuation generally, it is not serving the best interests of our nation as a greater proportion of the population need to rely on their own retirement funds and are no longer able to rely on the pension. As a result, we will be moving amendments, and I will be expanding on that later, to have those schedules removed.

Another aspect of this bill, which is gobsmackingly arrogant, gobsmackingly vain of this Prime Minister, is the government’s refusal to accept that the name of Fair Work Australia should be changed. That was the finding of the review panel. It is the considered opinion of the President of Fair Work Australia. It is the considered opinion of the trade union movement. It is the considered opinion of employer groups. It is the considered opinion of the Independent Contractors Association, the Council of Small Business of Australia, the Housing Industry Association. Do you know who else is on the list? The Maritime Union of Australia. So we have this absolute clean sweep across the board, from the MUA right through to employer organisations to the President of Fair Work Australia, and the recommendation of the President of Fair Work Australia itself. And their strong recommendation: delete the name ‘Fair Work’ from the name ‘Fair Work Australia’. Why? Because the brand has been trashed. Why has the brand been trashed? Because of the way Fair Work Australia has conducted the Health Services Union inquiry. I have given speeches about that in the past and will not dwell on it for too long. Further, the brand has been trashed by the appointment of an endless tribe of ex-trade union bosses to sit on the bench of Fair Work Australia. Furthermore, the name ‘Fair Work Australia’ is Orwellian if ever there was such an example.

That is why every single sensible contributor—and it is not often I will be saying that about the Maritime Union of Australia, might I add—from the Maritime Union of Australia right through all agreed that ‘Fair Work’ should be deleted from the name. But we have the vanity of this Prime Minister saying, ‘Nobody will stand in the way of Fair Work Australia remaining.’ If Labor and the Greens want to combine here in this place and retain the trashed brand of ‘Fair Work Australia’, they can be our guest, but in so doing they will be doing a disservice to the workplace relations system in this country. They know it, the panel knew it, the President of Fair Work Australia knows it, the union movement knows it, the employers know it. Everybody knows it other than the woman that gave it the name—namely, the current Prime Minister, Ms Gillard. It is her vanity that stops the name change that would be such an improvement and cultural change that is so vitally important. That is why we will be recommending that the name should be changed to the ‘Australian Workplace Relations Commission’.

More important for us is the amendment being moved by the government to the Fair Work Act to create two new vice-presidential positions. Out of the 250 submissions to the Fair Work Act review, did anybody raise this issue? No. Was it recommended by the review panel? No.
From where did it come and why is it so urgent? Nobody can explain other than this is a blatant attempt by this government, thinking that it is in its death throes, to try to future-proof Fair Work Australia from any attempt at getting a balanced bench. We know that the new president—and I mean him no disrespect by this—of Fair Work Australia could only have gotten the job, I am sure, because in a previous life he was an assistant secretary of the ACTU. You then have a look at the endless tribe of ex-trade union officials that have been appointed to Fair Work Australia. You then ask yourself the question: why do we need these two extra positions, at a cost to the taxpayer of $1.5 million per annum? That is the estimate from the department. When the government budget is haemorrhaging everywhere, we are creating two new positions to try to leapfrog all the other senior officials in Fair Work Australia.

Is this just the coalition being concerned? No, it is not. No less a body than the Law Council of Australia has come out in condemnation of this proposal, because they see it for what it is: an undermining of this quasi-judicial body by creation of new positions to try to sideline other people who have seniority within Fair Work Australia. Of course, who are these two people with seniority in Fair Work Australia? Former Howard government appointees, Mr Lawler and Mr Graeme Watson—or should I call them vice-presidents Lawler and Watson. The government has put no argument to us as to why this is such an important amendment, such an important proposal, other than to try to ensure that they so stack out Fair Work Australia that no government will be able to correct the balance for a long, long time. It is shameful, it is transparent and it is another indication that Mr Shorten in this role as workplace relations minister does not understand that he has an overriding responsibility to the national interest. He still sees himself as a trade union boss just wearing a different hat and, as a result, he will do that which he believes is necessary to advance the cause of ex-trade union bosses. That is not what provides confidence to the Australian people and to Australian workers and Australian businesses that Fair Work Australia will provide sound, balanced decisions in this difficult and vexed area.

Further, the government needs to explain why this legislation was rushed into the House of Representatives one day and then passed the very next day—forced through. Then we have it moved in the Senate today that the bill be exempted from the cut-off. We had the embarrassment yesterday of the government doing this with another workplace relations bill only to be scrambling around with amendments to try to fix it up. That is why there are these time gaps between legislation moving from the House to the Senate. That is why bills should lay on the table. That is why proper consideration by Senate committees should be allowed. But since the Greens and Labor have got control of this place the Senate committee system has fallen into disrepute. This important bill was given four witnesses to be heard and was rushed through in one day.

*Senator Polley interjecting—*

**Senator ABETZ:** We hear Senator Polley's interjection, which is very unwise because we know that, since the Greens-Labor alliance have got control of this place, they have thus far guillotined 150 bills since the last election. When the coalition had control of the Senate, those opposite condemned us because we had guillotined less than one-third of that number in the whole three-year period of the government. They have now gone strangely silent because the Greens-Labor alliance opposite know
how they are abusing this chamber and are ensuring that legislation is not being properly considered. So much for the Greens and the country Independents promising a new paradigm of legislative transparency, that the parliament would be made to work as it should. Here we have bills rushed through the House, rushed through the Senate, no proper Senate committee stages and, as a result, bad legislation getting passed.

The coalition's view on this legislation is that there are a lot of good things in it which we support. There are also many bad things in it which we oppose. We will pursue each and every one of our amendments to a division. We will seek to put on record our very important concerns. If at the end of the day it is the Senate's view that the legislation should be unamended—and it is quite clear what its view will be—we will not oppose.

Senator WRIGHT (South Australia) (17:16): I rise to speak on the Fair Work Amendment Bill 2012. The Australian Greens will be seeking leave to move amendments—we are calling them the better work/life balance amendments—that mirror the Fair Work Amendment (Better Work/Life Balance) Bill 2012 introduced by my colleague Adam Bandt in the other place.

Statistics constantly tell us that in Australia there is often a mismatch between the hours that people actually work and the hours that they want to work. On average, full-time employees would like to work about 5.6 hours less per week while part-time workers would like to work around four hours less than they are currently working. In addition, as a country we perform $72 billion of unpaid overtime each year. It cuts the other way too: there are many people—though, according to the studies, a lesser number—who would like to work more hours than they are currently working but are unable to.

A 2010 study on the health and working conditions of approximately 78,000 working Australians concluded:

…it may be counterproductive for employers to expect long working hours as employees are likely to take more time off and work less efficiently.

The study also commented that there is considerable evidence of an association between work demands and poor health. We have a situation where just over half of all Australians want to change their hours of work, even if this might impact on their income.

The Australian Work and Life Index—AWALI—is an annual study by the Centre for Work and Life at the University of South Australia. I am familiar with the work of AWALI, and it is held in great respect. The authors use the term 'work/life interference', and the 2012 data shows it is persistent and for some people getting worse. The report noted that around one-quarter of the Australians surveyed report that work frequently, often or almost always interferes with other life activities. Women's work/life outcomes are worse than men's when we take into account differences in work hours. Long hours and a poor fit between actual and preferred working hours are both associated with worse work/life outcomes. Most of those who work long hours would prefer not to. I am sure it is not a sentiment that would be understood by members of this chamber or the other place, but apparently that is the case in Australia!

Unfortunately, things are getting worse for women working full time. Work/life interference for this group has increased from 2007 to 2012. Full-time women's dissatisfaction with their work/life balance has risen from 15.9 per cent in 2008 to 27.5 per cent in 2012. In 2012 the gap between full-time women's actual and preferred hours is the largest since 2007. On average, they
would prefer to work 8.7 hours a week less than they actually do. 41.8 per cent of mothers in full-time employment would prefer to work part time. This is the largest proportion since 2007.

There is no doubt that many good employers already recognise the benefits of providing flexible working arrangements; however, this recognition is not as widespread as it could or should be. The Australian Greens want people to have more control over their time and working arrangements. We need a better match between the hours people want to work and the hours they actually work. At the moment, people do not have an enforceable right to request flexible working arrangements. At the moment, under the Fair Work Act you can request a change to your working hours but, if the employer says no, there is nowhere for you to go—no appeal, no recourse, no prospect of improvement in your work/life balance. You are stuck with it.

These amendments would ensure that requests for flexible working arrangements are treated seriously. Employers would not be forced to agree to every request, but they must give them proper consideration. These amendments that the Australian Greens will be moving will extend the right to request flexible working arrangements to all employees unless there are reasonable business grounds for refusal. In addition, the right to request would be strengthened for those with caring responsibilities, with employers only able to say no where there are serious countervailing business reasons. In all instances ongoing employees must have performed a minimum of 12 months service before the request can be made.

If an employee's request for flexible working arrangements is refused, Fair Work Australia would be empowered to hear an appeal and, where appropriate, make flexible working arrangement orders. Flexibility is a concept we hear about commonly from employers and employer organisations, but it does need to be a two-way street. That is what flexibility is. People need to have more control over the hours they work, the location they are working and the arrangement of those working hours.

The Australian Greens' amendments would give all employees an enforceable right to request arrangements that will deliver a better work-life balance. Of course, this must be balanced against legitimate operational needs of employers, and that is exactly what these amendments will do. They will provide a test that would make it easier for carers to obtain flexible working arrangements but would still allow any disputes to be resolved in Fair Work Australia by an independent umpire. It is important to note that these amendments are not radical or unprecedented, in fact. This proposal is actually quite a modest proposal by international standards and brings us into line with many other countries.

The United Kingdom, the Netherlands and Germany have been doing this for a number of years and their experience is illustrative. A review of flexible working arrangement laws in these countries showed that a number of valuable lessons had been learned and a number of myths dispersed regarding the laws. There was a reasonable but manageable level of requests. The Netherlands had the highest level of requests with 14 per cent of employees, while the UK had only 3½ per cent and Germany recorded less than one per cent. Significantly, the majority of requests in each country were acceptable to employers. Costs were not a major problem with implementation and sometimes even resulted in savings. In addition, interestingly, very few requests ended up in dispute. In the Netherlands and Germany, fewer than 30 requests per country
resulted in court action in the first two years of the law.

So the overseas experience suggests that being obliged to provide flexible work for employees may in fact help companies by ensuring that they examine alternative models that they may not have been willing or able to consider previously. An expanded right to request flexible working arrangements does not have to override management prerogative; it simply ensures that full and proper consideration is given and provides an enforceable right and oversight from Fair Work Australia.

I note that the 2012 Australian Work and Life Index report recommends that the right to request flexible working arrangements be widened and that workers be given protection from unreasonable refusal. The amendments that the Australian Greens will be moving will deliver on that recommendation and deliver a better work-life balance for Australian workers.

Senator McKENZIE (Victoria) (17:24): Before I make my contribution on the Fair Work Amendment Bill 2012, I want to make a couple of comments about Senator Wright’s contribution and the amendments that she will move on better work-life balance. This is not a radical move. We are not running sheltered workshops here. The UK is illustrative of the impact of this type of legislation on small businesses. When we talk about wanting better work-life balance for our workers, I have to say that as a daughter of a small business owner—and Mr Deputy President, I know that you were involved in small business as was Senator Scullion, who is in the chamber—work-life balance for workers is fantastic, but what about the work-life balance for those who actually produce and drive our economy—the small- to medium-sized enterprises in our communities? I can actually attest to the fact that their work-life balance is not particularly healthy. Yet they are out working, not always bringing in the big bucks but enjoying the independence that being a small business owner brings.

I rise to speak today on the Fair Work Amendment Bill 2012, and I say from the outset how disappointing it is that the Labor government is rushing through legislation—in this case, legislation that will affect every employer, every employee and every independent contractor—without allowing the Senate Standing Committee on Education, Employment and Workplace Relations adequate time to hold a thorough inquiry to investigate the detail of the bill. I am concerned that we are required to consider this bill in the Senate prior to the Parliamentary Joint Committee on Human Rights completing its report and before the responsible minister responds to the concerns of the Senate Standing Committee for the Scrutiny of Bills regarding inappropriate delegation of power and possible undue trespass on personal rights and liberties. This government should stop shirking scrutiny and permit the Senate and its senators to fulfil their duties.

The bill seeks to make several amendments as part of the government’s first tranche of changes to the Fair Work Act, based selectively on reports from the Fair Work Act Review Panel and the Productivity Commission inquiry into default superannuation funds in modern awards. Many listening, including those in the chamber, will recall that the terms of reference for the Fair Work Act review were widely criticised for their limited scope, the omission of productivity, the impact of union militancy and the monetary impact of red tape. Indeed, we discovered that the Department of Finance and Deregulation and its Office of Best Practice Regulation shared the concerns of the coalition and the business
sector. It was therefore no surprise to learn that the minister's political advisers had drafted the terms of reference to achieve Labor's political goals. They are probably the same advisers who draft the media releases that drive so much of this government's policy conversation with the Australian people.

The bill's provisions include amending unfair dismissal provisions to align time frames at 21 days and an attempt to improve the integrity of application and hearing process. They include changes to the structure and operation of Fair Work Australia, including renaming it to the Fair Work Commission. There is also a provision to create two additional vice-presidential appointments. The desire of this government to simply rename, rebadge, things, as if we will not notice a change or the cost involved in doing so each and every time, seems to be its modus operandi at the moment, when we consider some of the bills that we discussed last week. The provisions also introduce a process for determining the most appropriate default super fund, clarify who can vote and participate in protected industrial action and who can rightfully act as a bargaining representative, as well as amendments to enterprise agreements, particularly for individuals.

A number of submitters to our inquiry—I sit on the Senate Standing Committee on Education, Employment and Workplace Relations—expressed disappointment about the government's failure to address critical flaws with the existing legislation in the first tranche of changes. The Australian Chamber of Commerce and Industry said:

Unfortunately, the report and its recommendations, as well as the first tranche response, will do little to address the problems identified by Australian employers …

Apparently, Senator Wright, it is not a two-way street. The ACCI went on to say:

This includes the majority of SME business owners, many of whom have mortgaged the family home while trying to create valuable employment opportunities and build wealth for all Australians. By simply ignoring the problems will not make them go away.

Priority matters raised by submitters to our inquiry included the costly requirements to respond to trade union applications prior to bargaining being agreed; ensuring capacity to make greenfield arrangements without exorbitant wage and condition outcomes or unnecessary project delays; and ensuring protected industrial action can be taken only as a last resort. Multiple submitters opposed moves to prohibit single-employee enterprise agreements on the basis that it would disadvantage small business operators. A number of amendments were proposed, including limiting the provision to proprietary limited companies and excluding partnerships and sole traders or simply improving the 'better off' test for allowing enterprise agreements, regardless of the number of staff.

The Victorian Employers' Chamber of Commerce and Industry were one of the many peak bodies standing up for small businesses, saying they were:

… invariably award dependent, without in-house workplace relations expertise, and are most vulnerable to the inequities and uncertainties of the legislation of the day.

They went on to say:

… many VECCI members have described the policy outcomes of the Fair Work reforms as detrimental to the capacity of business to do business productively, flexibly and efficiently, and have not provided an appropriately modern regulatory framework for modern workplaces and business structures. More specifically, while the Federal Government promised that the Act would not increase costs, the cost of doing business has increased as a consequence of the Act—along with the administrative and practical on-costs of
regulatory uncertainty, coupled with uneven and two or three track economic conditions many industries face.

One of the 'systemic defects' identified in the Master Builders Australia submission was bargaining provisions. They stated:

... many of the pattern agreements which are being rolled out across the country on a "sign up or else" basis, by the CFMEU in particular, contain provisions which adversely affect the efficient operation of building sites. Greater balance in the bargaining laws is a pressing reform.

In my home state of Victoria, the CFMEU were condemned for approving illegal industrial action at Grocon sites earlier this year. It was illegal, it was disruptive and it was violent. Workers took out full-page ads in the state daily newspapers declaring they did not support their union's actions. Tens of thousands of dollars in members' fees were forked out for legal costs and a further $10.5 million is possibly payable to cover Grocon's losses due to union bosses choosing to act outside the law.

I take this opportunity to highlight a court judgment on a matter even closer to home, in my patron seat of Bendigo. The High Court delivered a landmark ruling in the Barclay v Bendigo TAFE case on adverse action in September, showing that union officials will not be immune from disciplinary action if they fail to perform in their job or breach employment conditions. Disappointingly but hardly surprisingly, Labor intervened in the matter on the side of—the AEU official, arguing that it was the intention of the Fair Work Act to make union bosses untouchable even if they did the wrong thing. In a statement released on the judgment, Justice Heydon said the intervention of the workplace relations minister had increased the costs awarded against the union by around 15 per cent. He said...the Minister's stance before and during the oral hearing was not that of an intervener, but that of a partisan.

It is a damning assertion.

There are numerous examples of union officials failing to act in the best interests of their members, breaching financial management rules and using members' money for personal advantage that have hit the headlines this year—most noticeably the HSU scandal. The cost of the HSU investigation to Fair Work Australia is in excess of $1.8 million, not including the cost of its court action against the formerly Labor member for Dobell, following findings that he had used HSU funds to pay for escort services and other improper purposes. The coalition is firm in its view that this must stop. That is why we are currently seeking to amend related Fair Work acts to increase penalties to five years prison and/or up to $220,000 for those in breach, to improve protection for the members of these organisations.

Undeniably, Fair Work Australia's reputation took a hit during the protracted HSU investigation. The review panel recommended a name change that included the word 'commission' and removed the tarnished brand 'Fair Work'. It is a little surprising—but only a little, given that this is probably thematic every time I stand up to deliver a speech. It does not matter whether it is the Murray-Darling Basin Plan, Senator Back, or Indigenous affairs, Senator Scullion, or education policy or Senator Cash's work in equal opportunity for women last week. We changed the name. Let's see if we get a different outcome. We doubt it. So I am only a little surprised that the Prime Minister intervened and that subsequently, in a clear contradiction of the recommendation, the legislation seeks to change Fair Work Australia's name to the 'Fair Work Commission'. The coalition believes the
review-recommended name of 'Australian Workplace Relations Commission' is more appropriate and will move an amendment to that effect. While there is apparently no monetary implication for this bill, I would be most interested to learn what the rebranding exercise will cost taxpayers.

Further on monetary implications, this bill includes provision to introduce two new vice-president appointments. The coalition shares the deep reservations expressed by many submitters to the EEWR inquiry, who noted that this was not recommended by the review panel—but don't let that get in the way of a piece of government legislation. It stinks of 'jobs for the boys' and is perhaps the minister's primary reason for suddenly pushing this legislation through parliament. I anticipate a couple of union mates are about to get a nice Christmas present. While cost implications have not been declared in the explanatory memorandum, the Deputy Secretary of DEEWR told our committee during the inquiry that there would be costs in the vicinity of $1.5 million per annum for these positions. The coalition strongly opposes the creation of the two additional vice-president positions and has moved amendments to that effect.

In the limited time remaining, I will touch briefly on amendments impacting superannuation. Minister Shorten took forever and a day to ask the Productivity Commission to conduct a much-needed inquiry into this matter and then cherry-picked its recommendations that essentially maintain the status quo. So, instead of introducing legislation that would ensure genuine competition and improve transparency, we have a bill that seeks to impose yet another layer of government intervention in the default fund market. Given that the MySuper bill has gone through the Senate this week, the coalition believes all MySuper products should be eligible to be selected under the award and proposes that the bill be amended to that effect.

The Liberal-National coalition is disappointed by government's failure to address the concerns of Australian employers and employees regarding its industrial relations laws. The coalition senators' dissenting report to the Education, Employment and Workplace Relations Legislation Committee's inquiry report into the Fair Work Amendment Bill, tabled yesterday, recommends several amendments to the bill at hand. The Leader of the Opposition in the Senate, Senator Abetz, will be moving those amendments to address the many flaws identified in the bill and I give them my full support.

For regional Australia, the whole concept of small to medium enterprises and their crucial underpinning of our local economies cannot be underestimated. I am not just talking about farmers or greengrocers. According to the ABS, if we divide our nation into the urban areas and those not in a capital city, we have 700,000 small businesses right across this nation that are outside of our capital cities. They employ 4.3 million people and their turnover is $200 billion a year. Some of them, like my own family business, are employing a father and some very recalcitrant children—Senator Back, I tell you, we had better take this one to Fair Work Australia, sorry, the commission—at two dollars a day. I think that was probably in 1978, but even if we extrapolate from that it is probably still under award.

Senator Back: Very generous!

Senator McKenzie: It taught me a lot about the value of hard work, listening to your father and getting on and saving, because clearly, at that rate, I was not going to get to my target goal purchase—which I
think back then was a pair of rollerskates—anytime soon.

Our small businesses out there in regional Australia provide 75 per cent of our employment. So these big-stick approaches do not work in companies where people are working alongside each other to ensure that the small business grows and develops. The employer wants his boss to succeed, wants the business to grow, wants to work hard so that he can not only maintain his job but his boss's business can contribute to the local footy club or the local surf lifesaving club. The employer and the employee have to fight fires together. They have to play footy on, hopefully, the same team because otherwise it could lead to some issues on a Monday morning, depending on what the game was.

Essentially, though, the way small business operates outside of capital cities is with a more collaborative approach. Small to medium enterprises underpin our local economies in the regions. We encourage the Greens and Labor to support our amendments to the bill so that we can make it the best piece of legislation going forward for industrial relations.

*Senator Back* (Western Australia—Deputy Opposition Whip in the Senate) (17:40): Deputy President, I thank you for the opportunity to contribute to the debate on the Fair Work Amendment Bill 2012. I intend to commence my contribution with a quiz but, because everybody in this chamber and certainly most people watching or listening would know the answers, there will not be a prize. I am going to give some quotes and then rhetorically answer the time and the person. The first quote is this:

I give you this as an absolute guarantee here on your program. I will not be prime minister of this country and appoint some endless tribe of trade union officials to staff or ex trade union officials to staff the key positions in this body. That's not my intention. That's not the way in which it's going to work.

Of course, all of you put your hands down now because you know who it is. It was the then leader of the Labor opposition, Mr Kevin Rudd, in 2007, prior to the 2007 election. As we know, by June 2010 his party was sick of him so they got rid of him. For those of you who did not get that one right, I move on to the next quote and again I ask you who the person was and the place. The quote is this:

The Labor Party is the party of truth telling. When we go out into the electorate and make promises, do you know what we would do in government: we would keep them. When we say them we mean them.

The same person said, 'The question of truth is not a game and it is not my game.' The same person also said:

On the question of standards in government—openness, accountability, divorcing the workings of government from the influence of peddlers and the donors—we need to be absolutely right, not just better by comparison.

On the question of how we treat each other, we must show our values in action.

Those latter quotes, as you will know, are from the now Prime Minister of this country, Ms Gillard. Whilst my final quote is not exactly relevant to the debate, I think it is very timely in the context of 27 November 2012, and it is this from the now Prime Minister, speaking on Newcastle radio in November 2006:

… question time is supposed to be one of our key accountability mechanisms. If there is a big scandal or a corruption allegation, you are supposed to be able to get to the matter in question time.

Madam Acting Deputy President, there is no need for you to take notes because I will be providing you with a script of what has been said.
We are dealing today, regrettably, with something that flies in the face of the sense and the words of everything that I have just quoted, and that is the indecent haste with which this Fair Work Amendment Bill is being rushed into and possibly through this place. I was a participant in the Senate Education, Employment and Workplace Relations Legislation Committee process at its meeting last Wednesday evening in which I had the opportunity to question only four witnesses. There were many more who wished to express their concern at the speed, the haste and, indeed, the accuracy of what we have seen leading to the bill before us today. More time should always have been allowed. If Ms Gillard's words were to be anything other than an empty bell in a cathedral then she should have directed her Minister for Employment and Workplace Relations, Minister Shorten, to comply with and allow full transparency, full dialogue, a full consultation process and the democratic process of witnesses being allowed to come before a committee of the Senate and put their views before committee members. In most instances, they were denied this.

I do not intend to go at length over areas that our leader, Senator Abetz, did or, indeed, Senator McKenzie did when she was contributing to this discussion this afternoon, except to speak briefly to the superannuation issue. I think that Senator Farrell made a contribution whilst Senator Abetz was speaking. As has been said—

Senator Farrell: A very good one!

Senator BACK: I am sure that Senator Farrell himself stands as testament to the fact that competition is far and away the best outcome for employees, for employers and for those who provide the services.

As has been said in the last few minutes, the MySuper legislation has passed through this place this week. And yet, perversely, we are not going to see the full allowance of competition in superannuation finding its way into this legislation proposed today. Indeed, it should. There were circumstances put to us the other night that there will be instances with some small employers where there will only be a choice of two and up to a maximum of 10. I ask: if an insurer is fully compliant under the MySuper provisions, why should the full range of competition not be available so that employers and employees alike can benefit from those superannuation provisions? I see no reason for it; no logic has been presented and, of course, we know that it has been roundly argued and disputed, including by those who appeared as witnesses.

Incidentally, the superannuation industry were denied the opportunity. So in the hearing the other night, it was only the Australian Chamber of Commerce and Industry and the Australian Mining and Metals Association that were able to contribute to that discussion on their behalf. But openness, transparency and the full competitive process should be the guidance by which this legislation goes through. I look forward to support from all sides of the chamber to ensure that full competition does find its way, and so the flawed legislation may be a little less flawed at the end of it.

The Financial Services Council said:

We believe the market structure proposed in this Bill for default super/MySuper will limit competition in the $1.4 trillion superannuation industry and result in reduced fee pressure and innovation for consumers.

There are the two characteristics, the two indicators: reduced fee pressure and innovation. And who might be the winners? Of course, we all know: the union-dominated super funds. That is not acceptable. As we know from the OECD, all OECD countries fundamentally rely on competition in product markets to organise production. Those are
the justifications for the reason we must proceed.

I turn to the Fair Work review itself. Whilst I do not want to go back at great length, I could be reminded of Mr Rudd's comments about not stacking with endless tribes of trade union officials or ex-trade union officials, or indeed those sympathetic only to one side of the political process. But we know that in December last year Minister Shorten announced the details of the review of the Fair Work Act. In doing so, he was at a position where two things at fault happened: the first was in his choice of those who were to do the review, and the second was the very, very limited scope which he gave those people. Indeed, he insulted them; he insulted their professionalism in so limiting them.

As it is known, the coalition has flagged its general support for the review. But look at those reviewers—Professor Ron McCallum, Dr John Edwards and the Hon. Michael Moore. As I said, they were given skewed and limited terms of reference. In fact, I think we used the analogy from the situation of a horse on a race track; that is, with their blinkers on. The terms of reference failed to address the essential ingredients of productivity, flexibility and union militancy. Those areas were deliberately denied the reviewers. You have to ask why that could be the case in the first review.

Because I have introduced it into the written report, I do not propose to comment adversely on the participants themselves, except to say that they could hardly, at least in two cases, have been regarded as fully independent in terms of what they have said or written in the past about the process, and except to say that Professor McCallum raged against the use of the corporations power by the coalition when in government, but he has been strangely silent on its use under the Fair Work Act. In these circumstances an opportunity was lost—an opportunity to look at productivity, flexibility and union militancy. And this bill will be the poorer because of it.

If I may turn to the question of productivity, I will quote a Western Australian colleague, Michael Chaney. Chaney chairs Woodside Petroleum, he chairs the National Australia Bank, and he was the chief executive of WesFarmers when he took that organisation into ownership of Bunnings and when he extended the WesFarmers organisation considerably. As we know, under his successor, Richard Goyder, that organisation has gone further and taken over Coles. He is the sort of person one would listen to—the sort of person who has created the employment opportunities around this nation that everybody so proudly trumps as their own. It is the Michael Chaneyes of this world who are the ones who are the champions when it comes to creating long-term, high-quality, high-value employment. What is Chaney saying? I quote:

'Australia will find it difficult to achieve meaningful economic growth without boosting productivity through micro-economic reform,' says Chaney:

'I'm concerned that if we don't manage to lift our productivity, we are going to find it very difficult to achieve any real economic growth. He was talking about high terms of trade, high levels of investment up to now, strong population and workforce growth.

This is not the sort of the man who ought to be ignored. He should not have been ignored by Minister Shorten. Nor should the review panellists have been denied the opportunity to actually examine some of these issues.

It goes, of course, to the fact that we asked the department during the inquiry about two
We asked about productivity, especially as measured through work days lost due to industrial action, and it was not possible in the committee hearing to learn of any improvements in productivity as a result of the Fair Work Act coming into existence. At a time when Europe is in its demise and when so many countries in Europe would be bankrupt if they were companies, at a time when the United States of America is looking very, very jaded in terms of its economic outlook, and at a time when even China—that powerhouse that has kept Australia alive and its head above water over the last few years—is now looking at a downturn, it is an opportunity lost that this review did not address itself to those issues associated with productivity improvement and union militancy.

The issue of the vice-presidents of Fair Work Australia has been canvassed here this afternoon. As was said a few moments ago, it was originally the view that there was a no-cost implication to this particular legislation. Of course, when I asked the representative from the department, he concurred with me that there was an estimated $1.5 million of added cost as a result of this introduction. Senior Deputy President Kaufman wrote to the President, Iain Ross, recently, questioning the need for two new vice-president positions, saying that it was reintroducing a level of seniority at the tribunal that was removed under the Fair Work Act in 2009. Senior Deputy Presidents Watson and Richards have written to Justice Ross of their concerns that the government will use the opportunity to install government-friendly appointees. The review panel themselves were not of a view that there should be new appointees.

A commitment was given to us in the hearing the other night that this process would be open and transparent and that there would be advertisement undertaken. The officer said to me, 'No, the department has not given any advice to the minister and, as far as the department is aware, the minister has not started the process because he wants it to be seen to be as at arms-length.' Let us work out into the future whether that is the case. It was Mr Knott from AMMA who, appearing before us, said:

I think this does give the opportunity ... to really damage the independence or the perceived independence and impartiality of the tribunal. We have senior appointments made to the tribunal which, through the political cycle—there are people who are appointed by one side who may not be appointed by another side, but that is the way it goes over the fullness of time in the political cycle.

And, as Senator Abetz quoted from the submission of the Law Council of Australia:

As a general principle, once a person has been appointed to sit on a Court or independent Tribunal with designated powers and privileges, any change that would have the effect of removing or reducing that particular person’s powers or privileges while not affecting the powers and privileges of other Members of that Tribunal—

and this is the key point—

has a tendency to undermine the independence of the Court or Tribunal.

These are very important points. They go to amendments that will be debated later in this place, and I look forward to there being agreement based on those concerns of very, very diverse and independent people.

There has been discussion of the term 'the Fair Work Commission'. We know that the panel recommended that there be a change, that the words 'fair work' be removed. I believe the MUA recommended a change. AMMA and other employer based groups have recommended that there be a change, and it will be the recommendation of the coalition that the term 'the Australian Workplace Relations Commission' or similar
becomes the title. It is interesting that the most simple of the panel's recommendations, being the change from Fair Work Australia to something akin to the Australian Workplace Relations Commission, has been rejected by the Labor government, despite its support from a broad sector, including the President of Fair Work Australia, the Law Council, the maritime workers union, the Australian Chamber of Commerce and Industry, and the Australian Mines and Metals Association. They have all recommended the change but we know, of course, that it is Prime Minister Gillard, whose quotes I commenced my contribution with, who is the one who has demanded that we continue that circumstance.

There were opportunities lost in this review. Senator McKenzie mentioned the case of Barclay v Bendigo TAFE. It was the High Court which came down with its adjudication and decision in this area. There were recommendations that could indeed have found their way into these changes we are talking about today. It is most interesting that Justice Heydon of the High Court said in his judgement, speaking about the intervention by the responsible minister, Minister Shorten:

… the Minister's stance before and during the oral hearing was not that of an intervener, but that of a partisan. For example, some of the Minister's oral submissions were directed to factual material. This is hardly the province of an intervener.

What a damning statement about the minister responsible for this portfolio.

'This is hardly the province of an intervener'—I would certainly not want that said about me.

Recommendation 47 of the review panel, which time prevents me from reading out, went to the very points of Barclay v Bendigo. The other one of course was the full Federal Court in JJ Richards and, again, the review panel itself made recommendations to deal with that inequity, which of course played its way out through the courts, and, again, at the direction of the minister, this also failed to find its way into the recommendations. I commend the amendments that we are to deal with and I certainly do not like the text of the bill.

Senator SINODINOS (New South Wales) (18:00): I am surprised that I have to follow Senator Back and that we do not have too many speakers from the other side. Despite three-quarters of Labor senators being ex-union bosses, not one of them aside from the minister, I understand, can bring themselves to speak on the Fair Work Amendment Bill 2012.

This bill will have a significant impact on every employer, employee and independent contractor in this country, and now the labour movement is allowing the legislation to go through without a murmur, at least from the representatives of the movement in this chamber. Not one of them wants to come in here and defend the provisions that we are debating here today. Not one of them wants to come in here and debate workplace relations out in the open. They prefer to do those deals in those smoke-filled rooms, move the amendments at the national conference and then put them up and hope that no-one will oppose them or have anything to say about them.

Well, we will debate them. We will talk about them. The reason we do so is that, as I said before, the Fair Work Act is a very important act, one of the most important acts before us in this chamber. The opposition are disappointed that this act was not the subject of a full-blooded independent review. A number of my colleagues have discussed that in some detail. I will not go over the same ground, except to ask: what has the government got to lose from a full-blooded
review? If we are confident of the impact of this act on the wellbeing of this country and on various parameters of that wellbeing, what did the government have to lose from having a full-blooded review, an independent review? While three eminent persons were given the job of undertaking this review, they were members of the club. They were insiders. In many ways they were being asked to review their own handiwork, or handiwork that they strongly supported or for which they had an ideological disposition. It is fine to have an ideological disposition, but the fact of the matter is that we have an obligation as a parliament to look more impartially and objectively at the impact of legislation on the economic condition of our country, the social condition of our country, and all of those desiderata that are important in considering public policy.

Unfortunately, on this occasion we had an insider review. It was only through freedom of information legislation that we were able to glean that there had been a debate within the Public Service about the terms of reference for the review and the fact that the Public Service in the tradition of giving frank and fearless advice said that there should be fairly broad terms of reference so that the review could look at all those issues around productivity and flexibility which are so important when you discuss industrial relations. One of the members of that review, Professor John Edwards—former economic adviser to Paul Keating, former journalist, and I think now a member of the Reserve Bank board—has argued on many occasions that there is not much of a linkage between the industrial relations system and productivity. This is not right, there is a major linkage. But it was surprising that he, as an eminent economist, would make that sort of point. The reason I mention it here is that this was precisely the reason he was chosen to do this review, because of the disposition he brought to the review. So we ended up with hamstrung, politically determined terms of reference which largely guided, I think, the committee or the panel to the recommendations that they made.

There will be some areas in which we will support certain of the recommendations, because we think that they will advance certain issues that we have identified in our consultations with business, both large and small. But on the whole we are disappointed by the way that this review has gone forward. We should not be surprised that that was the method of carriage, because this has been a government which is owned lock, stock and barrel by the trade union movement. They bought this government with their 'Your rights at work' campaign in the run-up to the 2007 election.

It is true that the dragon of Work Choices did rouse some of the slumbering members of the union movement from the last part of the Howard years. That is true. But while Labor in parliament, particularly in that other place, argued about case studies of employees being allegedly exploited by employers, the real motive behind the trade union movement and its opposition to Work Choices came from the fact that they saw it somehow as an existential threat to them.

It was not an existential threat to them. In a competitive marketplace you earn the right to represent others. They were afraid of competition, they were afraid of contestability, therefore they put all their resources behind electing a government that would not only remove Work Choices but also turn the clock back on industrial relations even to pre the Keating era. It was the Keating government that, after the 1993 election, made the first major moves in the direction of enterprise bargaining. It was the Keating government that moved on
enterprise bargaining even though they twinned it with some backward steps on unfair dismissals, which I will discuss later. But the point is that the bargain that was struck between the Parliamentary Labor Party and the trade union movement was to put in place this legislation which turned the clock back on industrial relations and undid some of the good work of not only the Keating period but also the Howard period, particularly in relation to things like Australian workplace agreements which added another layer of flexibility to the labour market.

That is the context in which all of this occurred. In fact in 2007, Julia Gillard came up with an extremely pro-union draft industrial relations policy that Kevin Rudd had to water down because of employer resistance in the run-up to the 2007 election. He became so worried about losing business support that he watered the policy down. Then when they were in government the policy was implemented. It was an election commitment. A commitment was made that after two years there would be in effect a post-implementation review. That is where the review we are talking about today originated.

In the meantime, government has not only moved to put in place a more retrograde industrial relations system but also complemented it by a whole series of other measures that further entrench the role of trade unions in the workplace and the role of productivity-reducing employment practices. I am referring here to specific packages in areas like the shipping industry. The shipping reform package essentially gave concessions to shipping companies and gave important benefits to the Maritime Union of Australia. The Maritime Union of Australia promised, hand on heart, that there would be a productivity compact between the shipping companies and the MUA that would deliver major productivity gains that would offset the costs of the package we are talking about in the shipping industry. We are yet to see the colour of their money on the productivity compact, and we will be waiting awhile.

In the road transport sector we had the establishment of the transport remuneration tribunal under the guise of promoting driver safety. We all support greater driver safety, but this has become a mechanism for further regulation of wage rates in the transport sector. That tribunal works as a subset of Fair Work Australia so its genesis and outlook are very much from within that framework of Fair Work Australia.

In the building and construction industry we had the watering down of the Building and Construction Commission. It was defanged. In 2007 the now government said, hand on heart, that it would not water down the cop on the beat in the construction sector, but it has. We are seeing the impact of that in a number of industry sectors, particularly obviously construction and building. You just have to go to Victoria to see some of the disputes going on. In the centre of Melbourne there is the Grocon dispute and in Geelong as well there is a dispute. The one in Geelong I think involves the CFMEU. But my point is that the Fair Work Act is buttressed by a whole series of other actions that this government has taken to entrench trade union privilege in the Australian economy.

I turn now to superannuation, another area where the government allegedly is moving in the direction of greater contestability—in this case in relation to the default funds that workers can use for their superannuation. Again what will happen here is that advice will be provided by a panel and Fair Work Australia will make those judgements. Again it will therefore not be a genuinely open,
contestable and transparent process where any eligible fund can be a default fund but it will be one which is very much controlled within the framework of Fair Work Australia.

This is where we come up against one of the greater achievements of the labour movement—that is, the way some of these organisations are staffed. In the case of Fair Work Australia we have had the debate in the context of this bill about the creation of two new senior vice-presidential roles. There has been much speculation as to the sorts of people who will occupy those roles. We have had speculation about Jeff Lawrence, a former Secretary of the ACTU, being appointed. It has been the tradition over the years to have employer and employee advocates and representatives become members of some of these quasi-judicial bodies. The speculation has been that it might be Jeff Lawrence, a former Secretary of the ACTU, or Josh Bornstein, a lawyer. Those who watched the ABC miniseries about the waterfront dispute will know that Josh Bornstein played a role in the waterfront dispute by sort of advising I think the MUA at that stage. Lately he has been tweeting advice to the Prime Minister about how to handle the AWU matter or seeking to promote her cause in that regard. He was recently quoted talking in a lecture about the lack of a link in economics between industrial relations systems and frameworks and productivity. Those are some of the potential candidates for senior vice-presidential roles on Fair Work Australia.

Any government has the right to appoint whomever it wants, but you need to have a process which gives confidence to people in the marketplace—employers and employees—that they will face a group of people who will be impartial, objective and consistent with the objects of the act in carrying out their duties. That is not what you would get here if you get these sorts of players promoted to these roles. We already know something about the sorts of players on these bodies. An overwhelming number of people appointed to Fair Work Australia have a trade union pedigree, including Bernie Riordan, a former official of the Electrical Trade Union, who was appointed in the last round. He mysteriously had civil proceedings against him settled the day before his appointment. If I recall correctly, Mr Riordan comes out of New South Wales and he not only was a trustee of his industry super fund but also was involved with a group called Chifley Financial Services, which provided services to that fund. That goes to the issue about the conflicts of interest that exist through the relationship between the trade union movement and some of the industry super funds and the fact that some of these industry people also provide services to some of these funds.

If I recall correctly, Mr Riordan at one stage was also one of the leaders of the opposition to the privatisation of electricity assets in New South Wales. At a time when you have Martin Ferguson, an ex-President of the ACTU and one of the real straight talkers in this government, calling on state governments to privatise their electricity assets in order to create a more competitive and more efficient national electricity market you have people like Bernie Riordan floating around Fair Work Australia bringing his age of the dinosaur views, if I can put it like that, into play on industrial relations. That is the nature of what we are dealing with here.

There has been debate in the context of this bill about the name of Fair Work Australia and the fact that 'fair work' will be retained. The reason 'fair work' will be retained is, as I understand it, that the Prime Minister herself intervened, because obviously she wants to create that link with the policy she took to the 2007 election.
What that tells you is that they are unreconstructed, that there is no appetite for taking reform forward. I have said it before and I will say it again: the trade union movement of 2012 is not a patch on some of the trade union leaders of the eighties and the nineties who were prepared to be in the vanguard of economic reform in the national interest. Yes, they got benefits for their members out of it but the point is they did something that was also in the national interest. They were able to balance the two in a way that was beneficial for all of us.

There has been discussion in recent days in another place about matters to do with the Australian Workers Union. All I will say on that point is that that discussion has highlighted a culture in parts of the union movement of standing over businesses in order to get contributions, accountability for which—as we have seen in certain parts of the AWU in the 1990s—was not what it should be. This culture of standing over companies and getting money—money which was not used for the purposes for which it was allegedly raised—raises important questions about the governance of the trade union movement. I think a future coalition government should take a very good look at the structure and governance of the trade union movement. It should be subject to a no-advantage test, as is the way I would put it; in other words, to create a level playing field between unions and other bodies that want to represent workers. What we want to create is a situation where it is a competitive marketplace in representing workers and where workers have all sorts of options, because it has got to be a system which is driven by the interests of the worker, the customer, and not driven by the interests of a union hierarchy—because today the government is driven by the interests of a union hierarchy and so is the labour movement. So we need that culture to change and you can only change it through competition and contestability.

I now want to turn to unfair dismissal. Here the government is making some adjustments in relation to the rules around unfair dismissal which we welcome in the context of dealing with potentially vexatious claims. Let me make this point in the context of my work with the Coalition Deregulation Taskforce, a very good task force of which Senator Bushby was deputy chairman and did an excellent job around the country. One of the areas on which we got a lot of feedback was unfair dismissal and that the concept, principle or phenomenon of going away money had returned, that it was much easier for an employer just not to have to worry about dealing with the matter through the fair work system and that an employer would in fact be getting advice from Fair Work Australia that the best thing would be 'just to settle this and move the person on'. Now that just creates an extra tax, a tax borne by employees, because if it becomes harder to fire there is less of an incentive to hire. Particularly when it comes to small business, we need to be doing everything we can to reduce the burden of regulation, compliance and paperwork on small business. So their having to shell out $5,000, $10,000, $15,000, $20,000 or whatever it is simply to settle with an employee because they cannot be bothered to go through the process, given the time that is required to deal with it in a more rigorous and thorough way, is a condemnation of the system as it stands. So for us any support for reform in that direction is welcome and we will of course support that.

We believe that the fair work review should have gone further. It should have looked not only at the matters discussed here today but also particularly at what is happening in the building and construction industry. There should be more focus on this.
Martin Ferguson, the Minister for Resources and Energy, made it very clear recently that he was concerned about the upsurge in costs associated with infrastructure investment and building and the impact that would have on our competitiveness in the mining and resources industries. He called an end to the price boom in the mining and energy market. What he was talking about was that now was the time for the hard yakka of extracting the volumes and that to extract the volumes required being competitive. It does not mean cutting people's wages but it means restraining our costs and boosting our productivity, and these are all issues that the government has tended to sweep under the carpet. These are all issues for which the government has tended to in effect say, 'Well, look, if costs are high in Australia it's because we've got a high exchange rate and that explains most of it.' Well, it does not explain most of it. The high exchange rate is a factor but the fact of the matter is any respectable international survey will show you that over the last five years our cost structure has gone up considerably. We are one of the highest cost locations in the world, both in a consumer sense and an industry cost sense, and it is getting worse.

The challenge we face in the years ahead, as the terms of trade settle given all the rest of it, is that the hard yakka to create jobs and to create higher real incomes and living standards will come from improving our productivity and improving our competitiveness. This bill in its current form does nothing to address any of those issues. It is window dressing of the type that we have come to expect from this government. There will be no change on this front until we have an honest discussion about the parameters around industrial relations policy and we have a government which is willing to enforce the law and make everybody, including the trade union movement, subject to the law.

**Senator CASH (Western Australia)** (18:20): I rise to speak on the Fair Work Amendment Bill 2012. Whilst the coalition has some serious concerns with this bill, as Senator Abetz has advised we will not be opposing it, albeit Senator Abetz will be moving amendments during the committee stage. The coalition supports a majority of the recommendations from the fair work review. However, we note, in relation to this bill, that the government has yet again failed to stand up to the union bosses and is only implementing non-controversial recommendations from the fair work review in the short term. That is hardly surprising to anybody on this side of the chamber. Why would the government want to stand up to the people who are their best mates? In relation to the fair work review itself, the coalition believes that the terms of reference deliberately excluded the vital ingredients of productivity, flexibility and union boss militancy and were clearly, without a doubt, skewed towards a predetermined outcome.

Coalition senators understand, as do the majority of the Australian people, that when a Labor government that is made up of former union bosses, and held accountable only by and to its union mates, makes changes to the industrial relations system in Australia, those changes are never about increasing productivity. They are never about, as Senator Sinodinos so eloquently said, furthering the Australian economy and they are never about what is truly fair for the average worker or for the person who is employing the average worker. They are only ever about Labor delivering on a promise that it has made to one of its union mates. That is hardly policy that has been made in the national interest.
Despite the review being a disappointing document on so many levels, we do note that in relation to certain issues there is no doubt that the reviewers, albeit that they were hand-picked by the Labor government, were without a doubt mugged by the reality that the current system is just not working. I take the Senate to some of the recommendations that the fair work review panel made: that Fair Work Australia and the Fair Work Ombudsman should actively encourage more productive workplaces through the promotion of best practice model productivity clauses for modern awards and agreements; changes to the individual flexibility agreements to make them more attractive to both employers and employees, including an increase in the minimum term from 28 days to 90 days; changes to the way in which greenfields agreements are reached and provisions for protracted negotiations; and changes to the good faith bargaining provisions of the act to rectify very serious problems that were identified in the JJ Richards case.

The recommendations that I have just read out, which were made by Labor's own fair work review panel, are recommendations in relation to issues that the coalition has for some time now been drawing attention to and that, I note, both the Labor Party and the union bosses have consistently attacked us on. However, what do we have now? We have Labor's own hand-picked review panel picking up on the issues that the coalition has been highlighting for some time and making recommendations in that regard. One can only hope that, after the government has once again freely spent a million dollars of taxpayers' money and now finally has a review in its hot little hands, it may at some point in the future decide to give consideration to what are very good recommendations coming out the review going forward.

In relation to the bill itself, we are yet again disappointed that the government has rushed through the relevant committee a significant bill that will affect each employer, each employee and each independent contractor in Australia without, once again, the parliament being able to undertake a fulsome inquiry. The bill was introduced into the House of Representatives at 4.30 pm on 30 October. The bill was then called on for debate the next morning, on 31 October, and a vote was taken later on that day. To date, the Minister for Employment and Workplace Relations has given no explanation to the parliament as to why there is a critical need to pass this legislation without subjecting it to the scrutiny to which it should be subjected. In that regard, I echo the comments of Senator Sinodinos, whom I am following in this debate. If one looks at the speakers list on this exceptionally important piece of legislation, you would actually think that the only people who care about industrial relations in this country and who are concerned about the negative impact that this bill may have are coalition senators. There does not appear to be anyone other than the minister on the Labor side of the house who is prepared to come into this place and justify why the government is not implementing more of the recommendations from the fair work review.

One might say that perhaps those on the other side are a little embarrassed that one of the things that this bill will do is create two additional jobs for their mates. In fact, maybe their mates have already been hand-picked and they are just waiting for the announcement. I can only assume that those on that side do not care about industrial relations in this country or do not care about the negative impact this bill may have on productivity going forward, or perhaps they are just too embarrassed to come in here and explain why, contrary to evidence given to a
Senate inquiry, they are going ahead with creating additional jobs for their mates.

The bill itself purports to implement the first tranche of 17 recommendations arising from the government's review of the Fair Work Act. The bill also seeks to make changes to the internal architecture of Fair Work Australia and provide the Fair Work Australia president with further powers. In addition, the bill implements the government's response to the Productivity Commission review into default superannuation arrangements in modern awards. This response will see the continuation of the process where conflicted parties within Fair Work Australia will continue to select default super funds under modern awards.

The coalition has a longstanding position in relation to this and we believe that any MySuper compliance superannuation fund should be eligible for selection as a default fund. For the Labor Party, though, it is all about their mates in industry funds. In fact, when the Prime Minister said, 'There'll be no carbon tax under a government I lead,' she would perhaps have been better off saying, 'There'll be no competition in relation to superannuation funds under a government that I lead,' because that is exactly what we are seeing as a result of this legislation. The coalition is deeply disappointed that the government has introduced legislation into parliament which, instead of ensuring genuine competition—but the government does not like competition; it does not like competition because it might be shown up—will impose an additional layer of government intervention in the default fund market. The coalition is also extremely concerned that Minister Shorten has been so desperate to protect the vested interests of his friends in the union movement that he has actually lost sight of his responsibility as a minister of the Crown to act in the public interest.

I alluded to the fact that this legislation is creating further jobs for Labor government members' mates—jobs for the boys; jobs for unionists. Well, it does. The bill also contains the creation of two additional vice-president positions at Fair Work Australia, two of the highest officers in the organisation. Minister Shorten has completely failed to explain to the parliament why these positions are necessary or justified, apart from the department's submission that the President of Fair Work Australia sought the additional roles. These two positions would slot into the second and third most senior officers of the tribunal. Since the announcement of these two additional positions, there has been widespread community concern, including from within Fair Work Australia.

Debate interrupted.

Sitting suspended from 18:30 to 19:30

Low Aromatic Fuel Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (19:30): I rise to make some comments on the Low Aromatic Fuel Bill 2012. There is absolutely no doubt that the issues that we see in our Indigenous community have been for a very long time now at the forefront of the thinking of those of us here in parliament—and I accept the comments that my very good colleague Senator Scullion said the other day, that it is often in a bipartisan way. I think it has been a credit to all sides of this parliament that, in the main, there has been a very bipartisan approach to this.
I have to say that, quite some time ago now, I was—I am not sure if 'fortunate' or 'unfortunate' is the right word, but I think both are correct in the context of what I am about to say—fortunate enough to spend some time with Senator Scullion in the Northern Territory for several days, traversing communities and traversing the Northern Territory visiting Indigenous communities. In that very short space of time, in the company of Senator Scullion, I think I came to more of an understanding of the issues that are facing Indigenous Australians than I had in my previous 46 years. I do not think there is anybody in this parliament—granted, there are probably a couple who come close—who understands the issues that are facing our Indigenous Australians better than Senator Scullion does. We are very fortunate in this parliament to have Senator Scullion to contribute to the policy debate, to contribute to the policy-making, to try to reach some solutions for Indigenous communities and to assist Indigenous communities right across the nation.

As part of that trip up north I spent about an hour and a half in a charter plane with Senator Scullion, flying back from the middle of somewhere to Darwin. All I can say, Mr Acting Deputy President, is I wish there had been a tape recorder running, or I wish that every single Australian had been sitting there listening to Senator Scullion's account of life in the Territory and the history of the Territory for Indigenous Australians—because the Australian people would have a much better understanding of what has actually happened and what is continuing to happen in the Northern Territory.

The damage that petrol sniffing does to families and communities is extensive—I cannot even think of the right word. And those of us who spend very little time in these communities do not really understand the impact that it has on these communities. We can say we do, but I suspect that those of us who do not live, eat and breathe those communities do not understand them completely—do not really know—but we can certainly try to understand the impact and what needs to be done.

I commend Tony Abbott, the then Minister for Health and Ageing, many years ago now, for the effort that he put into getting the low-aromatic fuel Opal out into the communities. It was way back on 18 February 2005 that the Leader of the Opposition, the health minister at the time, said:

The Commonwealth government today welcomed the availability of a new fuel to help reduce the harm caused by petrol sniffing in remote Indigenous communities. Known generically as Opal, BP has developed a fuel that contains neither lead and only has very low fuels of the aromatic hydrocarbons which give the high sought by petrol sniffers. This fuel will replace avgas under the government's Comgas scheme.

He went on to talk about the communities that participated in the scheme. The work that was done at the time by Tony Abbott should be acknowledged. He recognised the importance of trying to find a solution to what was, and still remains, a devastating problem in the Northern Territory.

Having seen some improvement in these communities from the rollout of Opal and the benefit that that brought, as Senator Scullion said yesterday, we are seeing some leakage in the system. There is more petrol sniffing starting to occur, and that is something that we simply have to address. One reason, of course, that we have come to understand is the recalcitrance of a number of petrol stations from actually being involved in this and rolling out the Opal. We cannot just sit by and accept that we have seen this diminution, if you like, of the effectiveness
of the Opal rollout; we have to do something about it.

It is interesting that the Labor minister said the way forward was for the states and territories to legislate and that he believed it would be more effective to have the rollout as part of a national framework. On this side of the chamber, we agree with that—absolutely, it does make a lot of sense to roll it out through a national framework. What was extraordinary was to see the backflip from the government. Having had the minister say that the way forward was for the states and territories to legislate—to, as I understand it, be very clear that the national framework was the way to go—we then see the backflip. Only just the other day—Senator Scullion might correct me if I am wrong—at literally two minutes to midnight Senator Scullion was informed that the government had changed their position on the bill and were actually going to support the Greens bill. It is quite an extraordinary state of affairs.

On this side of the chamber, we do not support this legislation. The legislation will not work because it relies on the corporations power. That effectively means that it is not going to be robust. Organisations, as I understand it, will be able to change their status to escape the process that we are trying to put in place to ensure the rollout of Opal across these stations. Why on earth would we support a piece of legislation that simply was not going to work? The fact that it relies on the corporations power is a huge concern. We have a better option in front of us, which involves the move to a national system with the states and territories being part of an overall framework of legislation. I simply do not understand why the Labor government would roll over and do a big backflip to support the Greens when there is a better solution that their minister has already acknowledged. It makes no sense whatsoever.

The Northern Territory has had in place since 2005 some legislation, the Volatile Substance Abuse Prevention Act, which works effectively in addressing this issue. It works far more effectively than any proposed legislation involving the corporations power. I understand South Australia is looking to this legislation as a model for something it could do in that state. It makes a lot of sense to have some kind of national framework around this.

I simply do not understand why the government has done a backflip on this. I have here the recommendations of the Senate committee report. Senator Scullion and I plan to commend Senator Moore not only for the work she has done on this inquiry and in producing this report but for the consistent work she does on the Senate Community Affairs Committee. She has a very genuine ongoing commitment to improving the lives of Indigenous Australians in those communities. The report of the Senate Community Affairs Legislation Committee inquiry into the Greens’ Low Aromatic Fuel Bill 2012 made a list of recommendations. Recommendation 2 was:

The committee recommends that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power.

I have a great deal of respect for this committee. If this committee, having done the work and thoroughly looked at this legislation, comes up with that recommendation, then in the collegiate way that this Senate works I am very prepared to accept that recommendation in this circumstance. Recommendation 5 was:

The committee recommends that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of
low aromatic fuel to ensure that there is agreed and coordinated action to address petrol supply.
Again, this seems to be a very sensible recommendation. I know how thorough this Senate committee is. I know the work that is put in not just by Senator Moore but by others on the committee. Having been involved in a number of inquiries, I understand the work and very genuine commitment that goes into ensuring the recommendations are appropriate and reflect the evidence that is brought forward to the committee.

Recommendation 6 was:
In light of the preceding matters—
and there were a number of them—
the committee recommends that the current bill not be proceeded with.

When you put that together with the fact that the minister had previously said that a national framework was the appropriate way to address this issue, why do we see, at two minutes to midnight, the Labor government doing a backflip to support the Greens' legislation, the Low Aromatic Fuel Bill 2012? It simply makes absolutely no sense. The minister said a national framework was the way to go; a highly respected Senate committee put forward recommendations reflecting the evidence that was given to it through the inquiry process; and the government has simply chosen to ignore the previous position of the minister as well as the committee recommendations and rolled over at two minutes to midnight to support the Greens. That makes absolutely no sense to me. In the absence of anything else that is conclusive—in the absence of any other reasoning with any kind of substance—one can only imagine that there was some kind of deal done between the government and the Greens such that the government rolled over at two minutes to midnight to support this bill. I cannot think of anything else. Perhaps Senator Siewert or one of the other Greens will stand up during the committee stage of the bill and give a good explanation of the two minutes to 12 rollover by the Labor government. Given the minister's previous position, and the very good recommendations from the Senate committee, I do not know. Until somebody can give me a better reason I can only surmise that there was a deal done.

We know how it works in this place. Occasionally there are deals done. Occasionally things are traded off in back rooms. It is not to the best reflection of the Senate, I have to say, but occasionally it happens. But, when it happens in such a way that Australians in Indigenous communities get a substandard piece of legislation to deal with what is a distressing and prevalent issue, that is simply wrong. That is not on and that should not happen. As I say, there might be another reason. I do not think, Senator Scullion, that a good one has been given, so we must surmise that a deal took place.

This government has form when it comes to backflips, doesn't it? On this issue, at two minutes to midnight, we see yet another backflip. Before the last election the Prime Minister, Ms Gillard, said, 'There will be no carbon tax under a government I lead.' What have we seen? A carbon tax was introduced. Under Julia Gillard, Labor's immigration policy was going to solve our asylum-seeker problems. We have now seen backflip after backflip when it comes to the immigration policy. Just recently there was the issue of the supertrawler. It was Senator Ludwig, I think, sitting on the other side of the chamber saying, 'We're basing it on science. It's all going ahead.' It seemed like the very next day I was appearing on Q&A with Minister Burke when he said, 'No, we've changed our mind about that.'
It is just extraordinary that we see this from this government. This side of the chamber will not support this legislation. It simply will not work, it is not the appropriate way forward and there is a better way to deal with this issue for Indigenous Australians.

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop): The time allotted for consideration of this bill has expired. The question is that this bill be read a second time.

Question agreed to.

In Committee

Bill—by leave—taken as a whole.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (19:45): by leave—I move government amendments (1), (5), (6), (9), (11), (12), (14) to (17) and (19) to (23) together:

(1) Clause 3, page 2 (line 7), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(5) Clause 4, page 3 (lines 23 to 25), omit the clause, substitute:

4 Object of this Act

The object of this Act is to enable special measures to be taken to reduce the potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in certain areas from sniffing fuel.

(6) Clause 5, page 4 (before line 1), before the definition of conduct, insert:

Aboriginal person means a person of the Aboriginal race of Australia.

(9) Clause 5, page 4 (after line 23), after the definition of supply, insert:

Torres Strait Islander means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

(11) Clause 11, page 11 (line 15), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(12) Clause 13, page 12 (after line 8), after paragraph (1)(a), insert:

(aa) Aboriginal persons or Torres Strait Islanders (or representatives of Aboriginal persons or Torres Strait Islanders);

(14) Clause 14, page 13 (line 13), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(15) Clause 14, page 13 (line 14), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(16) Clause 14, page 13 (line 16), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(17) Clause 14, page 13 (line 18), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(19) Clause 15, page 14 (line 3), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(20) Clause 15, page 14 (line 5), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(21) Clause 15, page 14 (line 8), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(22) Clause 15, page 14 (line 11), after "people", insert ", including Aboriginal persons and Torres Strait Islanders,"

(23) Clause 16, page 14 (after line 25), after paragraph (1)(a), insert:

(aa) Aboriginal persons or Torres Strait Islanders (or representatives of Aboriginal persons or Torres Strait Islanders);

I move these amendments to include specific reference to Aboriginal persons and to Torres Strait Islanders. References to Aboriginal persons and Torres Strait Islanders in the bill will help to more explicitly identify them as beneficiaries of the bill and strengthen the claims in the explanatory memorandum that the bill satisfies the criteria of a special measure for the purposes of the Racial Discrimination Act. Most notable is the proposed
amendment to the object of the act, which now makes explicit reference to Aboriginal persons and Torres Strait Islanders.

Senator SIEWERT (Western Australia—Australian Greens Whip) (19:46): I indicate the Greens will be supporting these amendments. I would like to address this issue specifically, because this is the issue that has come up during the Senate inquiry and the committee inquiry and, most recently, Senator Nash was addressing it. I think it is important that we set the record straight, because coalition senator after coalition senator has said that they are not supporting the bill because the Senate committee said that we should not be supporting it.

The Senate committee made a number of recommendations, and I think it is really important that the community understands this. The reason we send legislation to committees—so that those listening understand it—is so that they can examine a bill, identify its strengths and weaknesses and make recommendations, which is exactly what the Community Affairs Legislation Committee did. Recommendation 2 of the report states:

The committee recommends that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power.

This is what this amendment addresses. It broadens that. In my minority report on the inquiry I stated that I was nervous about expanding those powers. I have been very clear about that. So I undertook to consult further—and I also articulated this in my other comments and when I was circulating amendments. The consultation has come back to me from organisations that work in this field, particularly Aboriginal organisations, saying that they do support the amendments to broaden the base of this particular piece of legislation. They thought it would address the issues in the report.

The other recommendations that the committee made about amendments have been picked up by either the Greens' or the government's amendments. So we are keeping faith with the Community Affairs Legislative Committee report to address the concerns with this legislation.

I was concerned about this and I am glad that the government has picked up on these recommendations and has sought other constitutional powers to shore up this bill or to make the powers of this bill clear. I am glad that the bill now specifically references Aboriginal and Torres Strait Islander peoples as affected communities, so the bill can operate as a special measure to close the gap.

Strengthening the bill to the use of this particular measure was an approach that was suggested by submitters to the Senate inquiry and in evidence to the committee. CAYLUS's and Gilbert + Tobin's submissions during the committee inquiry process also recommended this proposal. It is very clear that special measures are not inherently bad measures, but they are not our first preference if there are other powers that can be appropriately applied. However, as I have said, I subsequently consulted those people who participated in the Senate inquiry, and those who will be affected, and I feel that there is sufficient community support for this particular amendment. Those who have responded have told me that they can accept it, especially if the approach is what is required to ensure the bill passes, because there is such strong support in the community for this particular bill, and that practical steps can be taken to help complete the low-aromatic fuel rollout that has been so successful to date. But as we have articulated in this place through this debate, and as did others on numerous occasions, it is not enough.
I want to draw a distinction between these measures and the alcohol measures that have been applied in the Northern Territory, for example. Apart from anything else petrol sniffing is not an accepted practice anywhere in Australia, unlike for example the consumption of alcohol. This bill does not make rules that are different for Aboriginal people, compared to other people in the region, and that is plain from the amendments the government has circulated. This improves the bill. I acknowledge that and I take on board what the Community Affairs Committee said. We always need to consult and make sure that we get these measures right. If it takes re-consultation and re-consultation, that is exactly what we did in this specific instance. So I am confident that we do have community support. In fact I have an email here from a number of organisations that have articulated their support for these particular measures.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (19:51): I am pleased that Senator Siewert actually provided some rationale. As usual I will be as dignified as I can about that contribution. It has taken, amazingly, probably seven minutes of time. It is normally not an important matter here. But we have now been told that it is only half an hour to make a contribution to make what I consider very bad legislation better.

As Senator Siewert would know, we do not have time to achieve something that could have been achieved in a much more decent fashion. With an hour and a half to spare, the minister said, 'By the way, I've changed my mind. I've changed our position of the last three and half months and now we are supporting the Greens legislation.' Quite clearly, a deal was done, but now another deal has been done: 'We can’t wait until February. We can't get it right. We now have to rush it through.' Of course, right at the end of that, they say, 'By the way, I've got some mates who say that use of the race powers in the Constitution is going to be quite okay.'

I would actually like some answers, Minister. I would love to take up time by berating my mates over there, but I really do need some answers. I am advised it is at best questionable as to whether a passing reference to include Torres Strait Islander persons will be sufficient to trigger the race power under section 51, part 26, of the Constitution. Perhaps I can broaden the question so that the advisers are not confused by something quite specific: whether it is section 8 of the Racial Discrimination Act, which talks about special powers, or whether it is the race power more generally, have you actually sought some advice about that matter?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (19:53): Yes, we have had legal advice—infact, robust legal advice—that says that amendments of this nature will provide surety. Under the Racial Discrimination Act, these amendments will provide the ability for it to be considered as a special measure.

I do not want to break the rhythm, but I take this opportunity to table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (19:54): I will never get an opportunity to see that in the next period of time. Again, it all smacks of something that is being rushed. This is absolutely important. I am really pleased that you have that explanatory memorandum. As you would be aware, Minister, the Expert Panel on Constitutional Recognition of Indigenous Australians
recommends the abolition of section 51, part 26, of the Constitution that refers more broadly to the race powers. Are you a little uncomfortable given that the expert panel specifically recommended that it be abolished? Is this a signal to the panel about the government's acceptance of that recommendation?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (19:55): No, you cannot take that as being a signal to the panel. What you can take is that this government is working assiduously, tirelessly, to ensure that we can assist people who are unfortunately addicted to petrol sniffing in the best possible way that we can. I come from Far North Queensland. We do not have the level of petrol sniffing that unfortunately occurs in other parts of Australia, but it does happen from time to time. As Australians and particularly as legislators, we have to do everything we possibly can so that people do not start petrol sniffing. You agree with me on this. This is the way we are doing that. The assertion that you have just made is incorrect. I can advise you that the expert panel still recommends that a power is needed to support legislation for Aboriginal and Torres Strait Islander peoples.

Senator SIEWERT (Western Australia—Australian Greens Whip) (19:56): I just want to expand on that a little further. Having been a member of the expert panel, I just want to pick up on it very quickly. I am aware of time. The panel clearly recommended the need to address the advancement of Aboriginal and Torres Strait Islander peoples. It was a very clear recommendation of the expert panel.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (19:56): As I said, sadly I do not have time to pursue that issue to the degree I would like to. There are a couple of areas in this legislation. One is the relationship to the state and territory laws. This is really important. We now have three states and a territory that are fundamentally affected by this. The minister has written to them. I have spoken to the office of one state and ministers in three states about their adoption of the framework of the current Northern Territory Volatile Substance Abuse Prevention Act. It was recommendation 5 of the Senate committee recommendations. Both the minister and I have pursued this assiduously. Have you considered this: when the law comes in, is it capable of acting concurrently with the Volatile Substance Abuse Prevention Act of the Northern Territory?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (19:58): The question that Senator Scullion is asking probably relates more to other questions. As we usually do in this place, we have a broad-ranging discussion at the beginning of the committee stage. The minister will consider the response from the states before considering the designation of an area. The government is committed to pursuing a consistent national approach by tackling the harm caused by petrol sniffing. In addition to writing to relevant state and territory ministers in South Australia, Queensland, WA and the NT in July this year to seek their views on pursuing nationally consistent legislation, the Department of Health and Ageing officials have also liaised with their counterparts to progress this work. The relevant state and territory governments have indicated a willingness to continue discussions about legislative controls to prevent petrol sniffing. That is why the government amendments include a provision
whereby, before designating a low-aromatic fuel area or a fuel control area, the minister must be satisfied that the appropriate states and territories have not enacted legislation consistent with the Low Aromatic Fuel Act or are unlikely to enact legislation within a reasonable period.

Senator SIEWERT (Western Australia—Australian Greens Whip) (19:59): I think that the minister has just articulated that they have, in fact. The minister did meet requirements of recommendation 5, which was:

… that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of low aromatic fuel …

As I understood it, the minister just articulated that that has been happening.

We will also be supporting the amendments that the government has moved around that additional requirement for further consultation. However, Minister, I am concerned that that would be an endless consultation process. I understand that the minister would then put a time frame on that process because otherwise we end up in, 'we're gonna, we're gonna, we're gonna,' and we never do, which is what we have been seeing for the last seven years. So there needs to be a commitment that there would be a time frame put on that.

We would also like to say that if the Northern Territory volatile substances legislation were useful as it stands, then surely governments would have used it? I understood from the Senate inquiry that the current legislation does not address this particular issue and that there is also concern that if one state dealt with bringing in legislation—as happened with Urandangi across the border in Queensland—and Queensland decides not to do anything that you cannot deal with that issue either. There is clearly a need for this national approach.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (20:01): This goes back to the comments that I made earlier to Senator Scullion. I can put on the record that we are concerned about lag, and the time lag that has occurred. I understand that Minister Snowdon has indicated that if states and territories have not put in the appropriate systems, if I can use the more general word, by mid-next year then this bill, if enacted, will be enforced.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (20:01): Thank you for that clarification. As I said, I can assure you that certainly the Northern Territory—and that will be the first amendment that takes place—will be well and truly enacted before then. This is why I cannot understand why we are in this position today.

In any event, I would just like to go to a couple of the technical details of the legislation. I suspect the original legislation relied intensely on the corporations power. But forget about what it relied on: it appears that the legislation talks about corporations. It talks about offences by corporations and it does not talk about offences by other bodies or people. For example, in part 2 are these requirements related to fuels for low-aromatic fuel areas and fuel control areas. It pretty much sets out the principal offences: you should not supply it, you should not transport it and you should not have it. These are the fundamentals of substance control in anything related.

The first one says that a corporation must not supply and that a corporation must not transport et cetera. Now, let's say we have two blokes—a pastoralist, 'Jimmy Giraffe',...
who owns 'Giraffe Vale Station' and, of course, he is 'Giraffe Enterprises'. He is an incorporated body. His brother, 'Simon', lives just down the road. They are both in the transport business—one runs his transport to pastoral properties around the place as does the other, to a slightly smaller degree. One is a partnership and the other one is an incorporated body.

As I read this legislation, it only seeks to capture those people who are an incorporated body. Can you just qualify whether my reading of this legislation is correct or otherwise with regard to the supply, possession and transport?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (20:03): The government acknowledges that the bill draws its authority from the corporations powers in the Constitution. While the obligations outlined in the bill may apply only to constitutional corporations, that is, incorporated bodies, the bill will be an important tool that the government can utilise to help combat the harms of petrol sniffing.

The government's proposed amendments improve the operation of the Low Aromatic Fuel Bill. The amendments do not address all the issues identified in the recent Senate committee report, but they go a long way to improving its administration. As noted in the Senate debate on 22 November, the amended bill provides an evolutionary step forward and enables other complementary activities—for example, education and diversionary programs—to have a positive effect.

The government has considered whether to expand the constitutional basis of the bill to draw on the race power to ensure that all retail and commercial entities involved in the supply of fuel in a designated area, not just a constitutional corporation, would be required to comply with the requirements of the bill. This could only be achieved by making it an offence for individuals to supply regular unleaded fuel in low-aromatic fuel areas or a fuel control area.

In addition, due to the complexity of the fuel supply chain it is unlikely that there would be circumstances in which the supply chain would not include a constitutional corporation, which would be bound by the provisions of the bill, and that would effectively stem the flow of regular unleaded petrol into a designated low-aromatic fuel area or fuel control area.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (20:05): Thank you for that. That was a bit of a surprise: I thought there was something that I had not caught in there. I know, for example, that there is an outlet that is not incorporated. I know that; right now, one of the target outlets is not incorporated. I have sought advice about sliding from an incorporated body into some other body. It is not hard, particularly when we know that these people have been avoiding our best efforts.

But thank you for clarifying that. There is obviously now a large hole that you can drive a large fuel truck through. But in any event that is a function of having to rush things through. The Commonwealth put a whole range of things in section 51, and control of retail fuel is not amongst them. It is something that should be in the bailiwick of the states and the territories.

I wonder if I could just take you to part 3, section 16, Minister? It is on page 14 of the bill. I know you are taking advice perhaps on that other matter, and I am more than happy for you to provide that advice in one hit. It is actually in the area that talks about designating a fuel area, whether it is the
wellbeing of the people living in the area or whether it is a reason for the health of the people living in the area, every single part of that is designated by living in an area.

I will give an example of providing a fuel area around my old mate’s place—one of my favourite people—at Tilmouth Well. They have, through their continuing sale of regular unleaded petrol, caused damage in Balgo. Most of that information I have in fact received from Senator Siewert, and certainly confirmation of those matters. If we are going to put something in a designated place it will affect the wellbeing of people living in an area—Aboriginal people do not live at Tilmouth Well. It is just a service station. It primarily employs white people, or non-Aboriginal and Torres Strait islander people. There are a lot backpackers, but that is it. Most of the people who go through are tourists, but people know that any cars that go through Balgo have been to Tilmouth Well. So, when you get into Balgo, they know the car had to fuel up there, so they will knock some fuel off. Hence, there is the trouble.

When you are designating an area, you are talking about the wellbeing of people living in an area. I cannot understand the wellbeing of people living in the area of Tilmouth Well. It is certainly not threatened. The backpackers go and have a beer at night, slob around and do backpacker stuff, put fuel in cars and go away. Aboriginal people do not live there, so how are you going to use the race power to designate an area—and I am quite seriously miffed by this—for the wellbeing of people living in that area? In my view it is not going to capture what you want to do, because the people who are at risk of harm are living not only in another area but in another state, as opposed to the Territory. If you can give me a little relief on that, Parliamentary Secretary, that would be great.

Senator MCLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (20:08): There are two points I can make about that, Senator Scullion. The boundary of an area is not constrained by the tenancy of a petrol station. The boundary can be designated by the minister according to the needs of the events that are happening at the time. Secondly—and I really need to underline this—in the process of designating an area there will be significant consultation that ensures that the point that you are making—and it is a real point—is considered in that designation of an area.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (20:09): Thank you for that, Parliamentary Secretary. Again, without criticising you—I understand we are not in the circumstances that we would like to be and we would all like to have had more time to truly appreciate the task of drawing up this legislation within the Commonwealth powers. I acknowledge it has been difficult and I thank you for your frank and helpful answers.

We just do not have time to go through the amendments. We have far more amendments than we have time for, even to go through them briefly. These are the lumpy bits of the legislation that would stand out even to a boat hand like me and that I thought needed a little bit of sunlight.

If this legislation only captures people who are incorporated, the capacity for them to slip out of incorporation, to be existing sole traders or to be existing partners, means that this legislation will have no impact at all on those people. I am simply saying that it will not have any impact on them in the sense of the corporation powers. Perhaps they can be caught by some other aspect of
the legislation, but it certainly will not be able to impact on people who are transporting or supplying fuel. There are a number of sole traders and a number of partnerships who run up and down the highway and deliver fuel. In terms of people who supply fuel, quite clearly, there is a reliance on the corporations power, and whatever the answer can be it is nowhere near as tight as saying, 'If you live in this area, we do not care if you are a corporation, a natural person, a sole trader or a partnership.' It is just poor legislation. I know that nobody is motivated by ill will here. It is just that it is second-class legislation; it really is. It only captures people who are, in effect, an incorporated body, and I suspect those people who have been avoiding this for some time will ensure that they will do it again.

In terms of recommendation 5, the volatile substance abuse act: Parliamentary Secretary, I can promise you, through the work that I have done and the conversations that I have had—as well as the ones the minister has had, because this is supposed to be a genuine bipartisan process—that the Volatile Substance Abuse Prevention Act of the Northern Territory is an act that is currently being amended to ensure that we can forensically capture all of the mischief that we find. It is terrific that this legislation says, 'Well, if that comes up, this will not be necessary.'

I understand from your answers that the issues of quantifying an area do not destroy the legislation, but these are real issues. As Senator Siewert indicated, in terms of the declaration and the movement of fuel in the area, whether it is Urandangi or Lake Nash—and that is actually in a different direction; it is coming from Queensland into the Northern Territory—and in saying that we have to have the consultation in broader areas, it all takes longer and it is all very muddled, it is like that simply because the Commonwealth is not equipped to do things that state and territory governments, and probably even local governments, could do even better. Whilst I am illuminated by your answer in terms of the expert panel, I certainly have a different sense. I think they were specifically talking about the legislation and the race powers we are using today. Yes, they said we should have something different, but they do not want this.

I should not be surprised, because this was all that was left. No doubt that the government was told, 'By the way, you are going to have to do this tomorrow.' I had an hour and 10 minutes—it was not two minutes to midnight; I want to be accurate—but I probably would have said, 'Well, what else have we got? The race power? Well, whatever.' But this is a very significant and serious Commonwealth power and it really begs the question of whether we are now moving into saying, 'Well, if you now to place murder, now, instead of being a criminal matter for a state or territory, murder of a person—including murder of an Aboriginal or Torres Strait islander person—immediately triggers Commonwealth powers under which we can legislate—

Senator McLucas: This is silly!

Senator SCULLION: No, I'm sorry; it is not silly at all. It is silly because this is without precedent. We are talking about dealing with retail outlets. In any event, this is very poor legislation. It is a very serious matter, but I would still like to acknowledge, despite my reticence, the goodwill in terms of the motivation.

I have been very annoyed by this process, as the senators will probably imagine, but I know that nobody has been motivated by ill will. I think that it has been a complete waste of time. We could have worked together on this as we have done in the past. Instead, we
are somehow saying that the Greens have had a victory. Sadly, this is second-class legislation for our First Australians and I do not think that the provision of second-class legislation for our First Australians is acceptable. We will not be supporting this legislation.

The CHAIRMAN: Order! The time allotted for the remaining stages of the bill has expired. The question now is that government amendments (1), (5) and (6), (9), (11) and (12), (14) to (17) and (19) to (23) on sheet CA238 be agreed to.

The Committee divided. [20:19]
(The Chairman—Senator Parry)

Ayes......................35
Noes......................29
Majority................6

AYES

Bilyk, CL
Brown, CL
Carr, KJ
Collins, JMA
Di Natale, R
Farrell, D
Gallacher, AM
Ludlam, S
Lundy, KA
McEwen, A
Mlne, C
Polley, H (teller)
Siewert, R
Stephens, U
Thistledthwaite, M
Urquhart, AE
Whish-Wilson, PS
Xenophon, N

NOES

Bishop, TM
Cameron, DN
Crossin, P
Evans, C
Feeney, D
Hanson-Young, SC
Ludwig, JW
Marshall, GM
McLarren, J
Moore, CM
Rhiannon, L
Singh, LM
Sterle, G
Thorp, LE
Waters, LJ
Wright, PL

McKenzie, B
Parry, S
Ronaldson, M
Ryan, SM
Sinodinos, A
Williams, JR

NOES

Nash, F
Payne, MA
Ruston, A
Scullion, NG
Smith, D

CONROY, SM
Faulkner, J
Furner, ML
Hogg, JJ
Pratt, LC
Wong, P

CONROY, SM
Boyce, SK
Fierravanti-Wells, C
Boag, SLD
Boswell, RLD
Johnston, D
Brandis, GH
Heffernan, W

Question agreed to.

Senator SIEWERT (Western Australia—Australian Greens Whip) (20:22): In light of those amendments having been passed, I now seek leave to withdraw Greens amendments (1) to (5) on sheet 7289.

Leave granted.

The CHAIRMAN: The question now is that amendments (6) and (7) on sheet 7289, circulated by the Australian Greens, be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

The DEPUTY PRESIDENT (20:24): The question now is that the remaining stages of the bill be agreed to and the bill be now passed.

The Senate divided. [20:24]
(The Deputy President—Senator Parry)

Ayes .................33
Noes .................29
Majority ............4

AYES

Bilyk, CL
Brown, CL
Bishop, TM
Cameron, DN
Before the interruption, which was brought on of course because the Labor Party got together with the Greens to guillotine debate for the rest of the week, I was referring to the positions of the vice-presidents of Fair Work Australia or, as has been put by several people, the jobs for their union mates. Since the announcement of these two additional positions there has been widespread community concern, including from within Fair Work Australia. Indeed, the Australian Financial Review reported recently:

In an email obtained by the Weekend Financial Review, Senior deputy president Les Kaufman wrote to Fair Work president Iain Ross on Wednesday questioning the need for two positions, which reintroduces a level of seniority at the tribunal that was removed under the Fair Work Act in 2009.

He said the appointments would “further erode the standing” of the tribunal and “gives rise to the perception it is being stacked.” That was Senior Deputy President Les Kaufman of the Fair Work panel.

In addition, many of the submissions to the relevant Senate committee also expressed deep reservations about the inclusion of these two positions, including one submission that stated as follows:

This was not recommended by the Panel. It is unclear why these amendments are necessary or required.

The coalition has concerns that there has been an overwhelming number of people who have been appointed to Fair Work Australia with a trade union pedigree. You only have to look at the last round of appointments by the Labor government to see that of Mr Bernie Riordan, who is a former Electrical Trades Union official and who, lo and behold the day prior to his appointment, mysteriously had civil proceedings against him settled. That is
right: the day before his appointment he mysteriously had civil proceedings that had been taken out against him sent away. The coalition, in relation to this particular provision of the act, trusts that the resourcing of these positions will not come at the expense of Fair Work Australia's newly established branch to oversee the financial accountability and transparency of trade union bosses. We will be opposing the provisions of this bill that create these two additional positions.

I turn to the fair work panel's recommendation:

… The Panel recommends that the FW Act—Fair Work Act—be amended to change the name of Fair Work Australia to a title which more aptly denotes its functions. It is recommended that the new title contain the word 'Commission' and that it no longer contain the words 'Fair Work'.

That was a recommendation from the government's own hand-picked fair work review panel, so what does the government do with this particular recommendation? They reject it outright. The coalition was somewhat surprised that the legislation seeks to change Fair Work Australia's name to 'Fair Work Commission', which is in clear contradiction of the recommendations made by the expert panel. Time and time again, day after day, when it comes to border protection we are criticised by those on the other side for not accepting every single recommendation that was set out in the Houston panel's report. The Houston panel's expert findings are now the Labor Party's bible when it comes to border protection. But when it comes to the report of their own hand-picked fair work review panel, they pick and choose, cherry-picking the recommendations, and we all know why, because once again when you are held accountable to union bosses—you need to be very careful which recommendations of the fair work review panel that you do implement. The coalition notes in addition that there is wide stakeholder support for the name being changed to 'Australian Workplace Relations Commission' and Senator Eric Abetz will be moving an amendment in relation to this.

In relation to other recommendations from the fair work review panel that have surprisingly not been taken up by the government because they would have very serious consequences for the behaviour of union bosses in Australia, I refer to the Barclay v Bendigo TAFE case. The High Court's unanimous judgement in the Barclay v Bendigo TAFE case found that union bosses should not be an untouchable class in the workplace. This decision provides much-needed comfort to the employers who have had to put up with unacceptable behaviour from some union bosses, often on a daily basis. However, it is highly disappointing and emblematic that the Labor government intervened in the High Court case on the side of the union boss, Mr Barclay, arguing that it actually was the intention of the Fair Work Act to make union bosses untouchable even if they did the wrong thing. That was the submission that the Labor government put to the High Court, that it was the intention of the Fair Work Act to actually make union bosses untouchable even if they did the wrong thing! The High Court issued a damning statement in relation to Minister Shorten and stated that Mr Shorten had acted as a union boss first and as a minister of the Crown second after foolishly intervening on the side of the Australian Education Union in the Barclay v Bendigo TAFE case.

In relation to the Grocon issue in Victoria, up until a few months ago I do not think there were too many Australians, other than those that lived in Melbourne, that actually
knew that Myer was developing a new emporium. However, thanks to the absolutely despicable behaviour of the CFMEU in relation to this, the whole of Australia now knows about it. The Grocon dispute witnessed the deployment of hundreds of police, at great expense to taxpayers, just so people could get to work. The violent attacks on police and police horses in Melbourne are to be condemned in the strongest possible terms. This is something that, unsurprisingly, Minister Shorten was unable to do and has been unable to do to date, apart from a very non-specific statement that he gave saying ‘I condemn illegal activity’. When asked if the CFMEU was engaging in illegal activity, he lamely said that this was ‘for the courts to decide’. But we all know who Minister Shorten is accountable to. When you are accountable to union bosses, as Minister Shorten is, quite frankly that is about the extent of the explanation that you are going to give. Make no mistake, the scenes that were witnessed by Australians in Melbourne were a direct result of the CFMEU being emboldened by the abolition, by the Labor government, of the Australian Building and Construction Commission. We on this side of the chamber have been very clear in relation to our commitment on the Australian Building and Construction Commission. If we are given the opportunity to again govern, one of the first acts of a coalition government will be to restore the ABCC with all of its former powers. We on this side are very clear that families should not have to live with the worry of their breadwinner being attacked and victimised by union thugs when they go to work.

In relation to the JJ Richards case, the decision in this case is very significant in that it showed that the Fair Work Act did not faithfully embody what Labor promised before the 2007 election. The then opposition leader, Kevin Rudd, pledged hand on heart that the Fair Work Act would not allow the return of ‘strike first, talk later’. Yet the decision in the JJ Richards case shows that is exactly what the Fair Work Act does.

The Federal Court's judgement confirmed that the argument advanced on behalf of JJ Richards was understandable and reasonable but for the specific wording in the Fair Work Act which entitles unions to obtain protected action ballots in circumstances where most reasonable people would argue they should not be allowed. In relation to the findings of the Federal Court, Labor are yet to tell the Australian people whether this was simply a drafting error or whether the Labor government, once again, deliberately misled them. I have to say that, given Mr Shorten's refusal to include a response to the JJ Richards recommendation in the review in the first tranche, it is now becoming clear that JJ Richards was just one in the same series of broken promises to the Australian people, along with the carbon tax.

In concluding my comments, whilst the coalition have some serious concerns with this bill, which coalition senators have outlined in their speeches, we will not be opposing it, albeit we will move amendments in the committee stage. We would suggest the government give consideration to those amendments because they will enable the government to do what the Fair Work Act review panel has done in its recommendations. We support the majority of the recommendations from the fair work review but note— (Time expired)

**Senator CORMANN (Western Australia)** (20:38): I will talk about a particular subset of the Fair Work Amendment Bill that is before us, which relates to default superannuation funds. One of the very bad aspects of the Fair Work Act as it was introduced by the now Prime Minister, Ms
Gillard, and passed by the parliament is the way that default funds are selected under modern awards. It was so bad that even the Labor Party in the lead-up to the last election were shamed into promising that they would fix it. Even the Labor Party were ashamed of the process that they had put in place to select default funds under modern awards.

Just let me make very clear what we are dealing with: if workers across Australia do not make active choices in relation to the superannuation fund to which they want their superannuation contributions to be transferred by their employers, those funds are transferred into a default fund. One of the changes that the current government made when introducing the Fair Work Act was to make default funds and the selection of default funds an 'allowable matter under modern awards', which is the way it is technically described. Essentially that means that Fair Work Australia decides which superannuation funds are allowed to be listed as default funds under various modern awards. Mr Acting Deputy President, it will not surprise you that the process that this government designed was specifically with a view to providing a competitive advantage—we would argue an inappropriate competitive advantage—to union dominated industry funds.

Union dominated industry funds provide an important service to many Australians, and there is nothing wrong with industry funds being eligible and being part of the options that people have available to them when it comes to default superannuation arrangements. But they should not be available to them as part of a locked-up, closed shop anti-competitive arrangement organised through a non-transparent, secretive process through Fair Work Australia, which is littered with inherent conflicts.

That is exactly the process that we currently have. We have an anti-competitive, closed shop arrangement whereby Fair Work Australia, inside of a black box, makes decisions on which superannuation fund should be listed in a particular award as the default fund for workers under that award. Whoever is listed in any such award does get a significant advantage from that in the marketplace. It is quite valuable for those funds that are selected to be selected in that way, and you would want to know that the criteria by which those funds are selected as default funds under modern awards are objective, transparent and evidence based and that there is competitive tension in the way that that selection occurs. But the current government was not interested in getting the best deal for employers and employees. The current government was only interested in providing a competitive advantage for one segment of the financial services market, which just happens to be close to its friends in the union movement.

As I said, even the Labor Party were embarrassed by what they had done, which is why in the lead-up to the last election in August 2010 they made a promise that they would fix it. They made a promise that they would ensure that there is an open, transparent and competitive process to select default funds under modern awards. That came after an unsuccessful attempt by former senator Nick Sherry, the then Assistant Treasurer and Minister for Superannuation and Corporate Law, to try to get Fair Work Australia to do the right thing. He wrote to Fair Work Australia some time back in 2008 and said, 'You really should select default funds under modern awards through a more open, transparent and competitive process.' Fair Work Australia told him, 'You've got absolutely no authority to give us directions in this area.' Those were not the words they used but that was the
effect of the letter that went back from Fair Work Australia to the minister. So, in the end, the Labor government in the lead-up to the 2010 election said: 'If we are re-elected to government at the 2010 federal election we will fix this. We will get the Productivity Commission to do a review into the way that default funds are selected under modern awards and other industrial instruments.'

Minister Shorten was very unenthusiastic about that commitment. That was very clear right up-front. It took him forever to get around to calling the actual review. He eventually got around to it, early this year, more than two years after he became the minister. He commissioned the Productivity Commission to conduct a review into the selection of default funds under modern awards. The initial draft report from the Productivity Commission was a very good report which made very good and very sensible recommendations. They recommended that the default fund market be opened up to competition. Competition is the only way that ultimately you maximise value across all aspects of the superannuation value proposition for people with superannuation, making sure that net returns are maximised, which means making sure that your returns are maximised, your fees are minimised and that you have good quality service.

A number of the industry funds who come to see me from time to time say: 'We perform so much better. We are the best in the market, so we should be chosen to be default funds under modern awards. It shouldn't even be a question.' But the truth of the matter is that if you are the best in the market, you have nothing to fear from competition. You have nothing to fear from an open transparent process which makes merit based decisions. But just because you are the best today does not mean you are going to be the best tomorrow, and even if you are the best today, if there is a risk that somebody else is going to be more innovative or come up with a cheaper, better way to provide the service that you are providing, that will keep you on the toes, which means that ultimately people in superannuation will have the value of their retirement savings maximised.

The closed shop, anti-competitive arrangement that has been in place for the best part of five years now, introduced by this government, has been a national disgrace. It was shamelessly and deliberately put in place to give a competitive advantage to the union movement in Australia at the expense of the public interest. And this government was deliberately slow to act even when in the lead-up to the last election they had been shamed into fixing it. And now here we are. The Productivity Commission were finally asked to conduct this review, and they came out with their interim report making very sensible recommendations to open up this process to genuine competition. What does Minister Shorten do? He attaches his name and the status of his office to a joint submission by his two departments—the Treasury and the Department of Education, Employment and Workplace Relations. By attaching his name to the submission, by endorsing it, by publicly supporting it, he gives it the authority of government. He effectively responded to the Productivity Commission review before they had finally reported, putting a complete stop to any attempt to ensure genuine competition in the default fund market.

It is very important for the Senate to note that while all of this is happening, the government is progressing legislation to enshrine in law the consumer protection mechanisms the government judges are necessary to protect people in default super by legislating the conditions for MySuper
default products. As of 1 July 2013 Australia will have, if the legislation passes through the parliament, legislated default MySuper products with the conditions of registration ensuring that all of the consumer protection requirements and all of the accountability requirements that are necessary for default products are complied with before particular products can qualify for registration of such a product.

If any provider is able to register a product which complies with all of the conditions of registration to be a MySuper default product as prescribed by this government, why shouldn't any such product be able to compete freely in the default fund market? Why should there be another level of government intervention based on a process that is inherently conflicted?

The ACTING DEPUTY PRESIDENT (Senator Bernardi): Order! Senator Cormann, excuse me for a moment. Could I ask the senators at the back of the chamber to keep their voices down in their conversation.

Senator CORMANN: I think my colleagues are just amazed that the government would not have been more forthright and more determined in fixing this absolutely terrible national disgrace which is the current process by which the default funds are selected by Fair Work Australia under modern awards.

Here we have a government which at the same time are legislating what they say are the conditions that are required to ensure that a particular default product complies with all of the consumer protection requirements that the government judge are necessary, but then they say, 'We don't really trust the criteria that we have determined in legislation because we think that, after all that has happened, and even though some products are adequate enough and are so good that they comply with all of these conditions of registration, we think that there is a desperate need for another process, still through Fair Work Australia, to run another ruler over it.' Additional costs, additional inefficiency, additional red tape. What for? If you think that your MySuper legislation is inadequate, fix it. Do not come in here and say, 'Once you are able to register your MySuper products, we think you are still not good enough to be able to provide default fund products under modern awards.'

Here we have Minister Shorten—having commissioned a review eventually, after a lot of pushing and shoving, after it is recommended in his initial draft report that there should be genuine competition—bullying them into a position where they back away from it and make a watered-down recommendation. But then even that watered-down recommendation, after the bullying from Minister Shorten, he still does not go along with. Here we have a situation now where the government has introduced legislation into the parliament, in the form of these bills, which instead of ensuring genuine competition will impose an additional layer of government intervention in the default fund market. The government is also seeking to limit the number of MySuper products in modern awards to just 10, contrary even to the clear but weakened recommendation of the Productivity Commission, which was that there should be an unlimited list of default funds.

In fact, the government has ignored the Productivity Commission's final weakened recommendations in a number of other areas. The Productivity Commission's proposed default superannuation panel will not be created, as recommended. Rather it will be subsumed into the existing minimum wage panel. The new panel is not the final decision maker under this bill, as recommended. The full bench of Fair Work Australia will
approve default funds in each award after recommendation from the expert panel.

There is the process of including funds in awards occurring every four years, starting in 2014, when modern awards are due for review, as opposed to an ongoing application process. All awards must have default funds, when currently there are 13 awards that do not list default funds at all.

Genuine competition in the default fund market, as I mentioned, is critically important to ensure that efficiencies and value for Australians in default super are maximised. Instead, this bill, if passed by the parliament, would see the continuation of a process where conflicted parties within Fair Work Australia will continue to select default super funds under modern awards. That is completely unsatisfactory, which is why the coalition will be moving a number of amendments to ensure that there is genuine competition between any eligible MySuper default products in the market.

Bill Shorten has been so desperate to protect the vested interests of his friends in the union movement that in our view he has lost sight of his responsibility as a minister of the Crown to act in the public interest, which is why we on the coalition side have said that, if the government will not do what needs to be done to right the wrong, the coalition will. We are moving these amendments in order to give the Senate the opportunity to join us in doing the right thing. If the Senate does not go along with us today, because the Labor Party continues to persist with its conflicted ways, seeking to provide competitive advantages that are close to them in the financial services market, then we in government will do the right thing and we will move to ensure that there is genuine competition in the default fund market.

There are many other problems with this bill. It does not go far enough in a number of areas. But other colleagues of mine who have direct responsibility for these areas have spoken on these matters very eloquently—of course led by our leader, Senator Abetz, who has portfolio responsibility in this area. But as far as my area of policy responsibility in relation to superannuation is concerned, let me just make very clear that this legislation provides an opportunity for us to ensure that there is genuine competition between default funds under modern awards, which is something that is manifestly in the public interest, which is something that the Senate should pursue today, because today is the opportunity when we can make it happen. In years to come, if we get it wrong today, people will ask the question: 'Why did you not vote to ensure that I had genuine choice and had the benefits of genuine competition in the default fund market? Why did you vote to not allow me to have all of the benefits that come from a genuine competition in this market?'

With those few words, I will be moving a series of amendments on behalf of the coalition in this area. I am hopeful that the Senate will see fit to support them. I will leave all other matters in relation to this particular bill to Senator Abetz and my other colleagues.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (20:55): I thank senators for their contribution to this debate. This bill delivers on a number of significant commitments made by the government. First, we made a commitment to undertake a review of our Fair Work Act within two years of its full implementation. On 22 December 2011 the Minister for
Employment and Workplace Relations announced an independent panel of three experts to review the Fair Work Act. The independent panel reported to the government in June. The panel concluded that the Fair Work Act is working well and is meeting its objectives and that the economic outcomes under the Fair Work Act have been favourable to Australia’s continuing prosperity. Fifty-three recommendations were made to the government by the review panel. Since receiving the panel's report, Minister Shorten has been discussing the recommendations with employers, employer organisations, unions, Fair Work Australia and the Fair Work Ombudsman, state and territory governments, and small business representatives. This has encompassed both formal consultations through bodies such as the National Workplace Relations Consultative Council as well as informal consultations with individual stakeholders. It became clear from these consultations that there was broad support for around one-third of the panel's recommendation. This bill implements these recommendations.

Second, before the election the government made a commitment to have the Productivity Commission inquire into and develop an open, transparent and competitive process for selecting default superannuation funds in modern awards. The Productivity Commission conducted its inquiry this year and reported to the government in October. This bill reflects the government's response to the Productivity Commission's inquiry.

I note that the Senate Education, Employment and Workplace Relations Legislation Committee conducted an inquiry into the bill. The Senate committee noted that the evidence before it indicated broad overall support for the bill and that what has been proposed by the government is the product of lengthy consultations and reflects an appropriate balance of the needs of both employer and employee groups. The committee recommended that the bill be passed, and I thank the committee for its considered report on the bill.

Before concluding I want to make a few brief comments in response to some of the issues raised during the debate on the bill. Firstly, with respect to the Fair Work Commission, the government proposes the name 'Fair Work Commission' for the national workplace relations tribunal. We consider this name reflects both the nature of the work of this important tribunal but also its place within the Fair Work system. The government considers the name 'Fair Work Commission' is entirely appropriate for an independent umpire overseeing the Fair Work system.

Regarding vice-president positions, it is important to clarify for the benefit of senators that the Fair Work Act does not provide for statutory vice-president positions within the Fair Work Australia structure. During the minister's consultations with stakeholders, the President of Fair Work Australia, Justice Ross, recommended that two vice-president positions should be created within the commission. Justice Ross recommended this change to ensure that senior legal specialists with high-level expertise are attracted to Fair Work Australia to assist him in the administration and management of the tribunal. Fair Work Australia deals with important and complex matters of industrial law and the government is of the view that it should be structured accordingly. It is the government's policy that appointment of members to the Fair Work Commission be through an open, transparent and merit based process. The criteria for appointment—

Senator Abetz interjecting—

Senator JACINTA COLLINS: Senator Abetz scoffs at this point, and perhaps this is
my time to reflect on some of Senator Cash’s comments. Certainly Senator Abetz was around during the period I recall when Minister Reith was the minister. Indeed, some of the appointments such as that of registrar and others during that period included his senior advisers and in fact his chief of staff, so I do not think the opposition is in a particularly good place to scoff on this matter.

The criteria for appointment of vice-presidents will be set out in the Fair Work Act and are reflected in the bill. This reflects the approach taken in respect of other members of Fair Work Australia and previous iterations of the legislation. The criteria for appointment are the same as those for the president. The process of selecting the two vice-presidents will be open and transparent. It will be merit based. The positions will be advertised publicly. Anyone, including current members of Fair Work Australia, will be able to apply for the positions. An advisory panel consisting of senior officials from the Department of Employment, Education and Workplace Relations and the ASPC will recommend a shortlist of applicants, and the incumbent minister will then seek cabinet’s endorsement for the appointments, as is the usual practice. The endorsed candidates will then be recommended to the Governor-General and Executive Council. Again this is the usual practice.

With regard to default fund superannuation, the government acknowledges points raised by organisations such as Qantas, BHP and ANZ in relation to the treatment of corporate funds under this bill. The government recognises that these comments are made in the interests of employees of those organisations and the government will ensure that there are appropriate arrangements in place so that funds operated by organisations like these can continue to receive default contributions within the parameters of MySuper and the expert panel arrangements set out in the bill. The government commits to introducing any required amendments in the first sitting next year to ensure appropriate arrangements are in place before the commencement of the new provisions in early 2014.

In conclusion, I note that in the public and parliamentary debates on this bill some have characterised the government as going too far and others have criticised the government for not going far enough. Others have raised reasonable policy points of difference. The government has clearly stated that we will continue to work with all stakeholders on the remaining recommendations of the review panel and that, where there is clear policy justification which reflects the government’s policy principles, we will make appropriate amendments. Stakeholders want to get on with discussing other policy matters that are important to them.

This bill is largely uncontroversial. This was the clear and consistent evidence to the Senate committee. This bill does not represent the last step in workplace relations reform. The government has referred to it as ‘the first tranche’—and I note some senators opposite adopting the same language—because that is what it is. The government retains an open mind on all remaining recommendations from the Fair Work Act Review Panel, and none of them have been ruled in or out. We look forward to debating the opposition on workplace relations through the coming months. We are looking forward to hearing their views on unfair dismissals, on protecting the take-home pay of working Australians, on what they intend by way of reintroducing Australian workplace agreements and of providing support and protections for those balancing their work and family commitments. I commend the bill to the Senate.
Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:03): This legislation yet again highlights the shambolic legislative agenda that this government is presiding over. It is little wonder that, if one cannot manage the Senate agenda, one cannot manage the country, and all the consequences of that are there for the Australian people to see.

This bill, which is allegedly non-controversial, was rushed into the House of Representatives at 4:30 pm on Wednesday, 31 October and then brought on for debate the very next day. The Parliamentary Secretary for School Education and Workplace Relations might like to explain to the Senate how that fits into the new paradigm of parliamentary process and transparency that we were promised under this rainbow alliance of Greens, Labor and the country Independents. She might also like to explain why it was necessary to exempt this bill from the cut-off. She might also like to explain, in the context of this new paradigm, parliamentary processes being followed, parliamentary processes being honoured and individual senators being given the opportunity to genuinely examine legislation. She might like to explain why the Senate committee looking into this bill was only allowed one day of hearings—when I say one day I mean part of one day—with four witnesses.

What is the great rush? Why was the parliament denied the normal courtesies and considerations that should and would apply to any other piece of legislation?

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:05): Senator Abetz raises the normal courtesies of, I assume, both the House and the Senate. He knows as well as I do how this fits within those normal courtesies if we reflect on the passage of a variety of different pieces of legislation over the course of both his own and my own career. For a piece of legislation upon which wide consultation has occurred; indeed, as has been reflected in the second reading contributions in this debate, where it is relatively non-controversial, taking into account some of the issues that have been canvassed; and where, generally, progress on this first one-third of the recommendations of the review panel work, the time frame that he has outlined is not at all exceptional and neither is exemption from the cut-off where we have the position of this bill where there is general support for progressing these generally agreed recommendations.

Whilst I understand that Senator Abetz wants to make a few political points about appointments or, indeed, the name of the tribunal, I think it is fair to reflect that progressing these generally agreed amendments is not something of any great contention.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:07): If this has all emanated non-controversially out of the review panel, clearly the review panel's recommendations have been deliberately ignored in relation to the name change—and there is no doubt about that. The most courteous way of putting it is to say that it has been ignored, when every single submission to the review suggested the deletion of the name 'Fair Work'. The president of Fair Work Australia recommended it. The panel recommended it. It is hardly ever that I would find myself on a unity ticket with the Maritime Union of
Australia. There is widespread support. The only thing stopping that change is the vanity of the Prime Minister herself.

But I was not talking about the name change in relation to the questions that I was posing. I was posing those questions in the general term, because some of the proposals that are before us this evening, in this rushed, shambolically put together legislation, do not find their genesis in the Fair Work Act Review Panel's recommendations. Indeed, they do not find their genesis in any of the submissions made to the Fair Work Act Review Panel.

It seems that an ex-union boss had a chat with another ex-union boss and, as a result, they agreed that certain new positions ought to be created. As a result, you have got to rush that through the parliament. As a result, you cannot even allow the Law Council of Australia to make a verbal submission to the Senate committee. This is the parliamentary process of which I speak. This is the parliamentary process which we were promised in the so-called new paradigm. The promise that was made, signed, sealed and delivered by the member for Lyne in particular and by the member for New England has been broken day after day after day with their complicity, with their silence and, might I add, with the complicity and silence of the Australian Greens—so full of promise and yet so very shallow when it comes to delivery. I ask the parliamentary secretary again in relation to those aspects of the bill that do not find their genesis in the Fair Work Act Review Panel's recommendations: how does she justify the government rushing them through the parliament without proper consultation?

Senator JACINTA COLLINS
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:10): Senator Abetz has visited these points on other occasions. He and I will both recall the last estimates, when I think quite a lengthy period of time was covered in relation to the name of Fair Work Australia. Senator Abetz, I do not know your understanding of consultation, but mine does not mean that if someone raises something it is adopted, but nor does it mean that if the government does not completely accept the proposition put forward to someone they have shown some blatant disregard of their point of view or they have ignored people.

During estimates we covered the name of Fair Work Australia. We traversed the issue that there were essentially two issues. One was a concern with Fair Work Australia's standing with respect to some of the issues that have confronted Fair Work Australia in recent times. The other one was a concern with the colloquial-type name of 'Fair Work Australia' and a view that 'commission' would be more appropriate. Apart from you, I am yet to hear anyone who has taken extreme exception to the notion that we retain 'fair work' and combine it with 'commission' to remove the colloquial aspect that has concerned some people.

These colloquial phrases emanated from the Howard government, as I recall. I fondly recall one particular piece of legislation—More Jobs, Better Pay. We ended up calling it the 'MOJO bill' because it was a sign of then Minister Reith's mojo. Indeed, the fashion of coining phrases and names like that for tribunals and organisations emanated roughly during that period. I certainly favour a move to the Fair Work Commission. Whether it is 'fair work' or 'workplace relations' is a different issue. There is some strength to the argument that we now have a Fair Work system involving, for instance, the Fair Work Ombudsman as well. There certainly is the view that the Fair Work
system is more broad than simply the Fair Work Commission. Senator Abetz may or may not agree with those considerations. You might seek to make some cheap political points about the Prime Minister's vanity, but I think there are some quite solid arguments for why Fair Work Commission is an appropriate response to a variety of the submissions that the government received.

Senator Abetz, given your earlier comments, I should cover more broadly the issue of the consultation and, indeed, what is in this bill. Consultation occurred not only with respect to the processes of this parliament but also with the National Workplace Relations Consultative Council, where all of the provisions in this bill were canvassed over time. In relation to the response to the first third of the recommendations by the Fair Work review panel, members welcomed Minister Shorten's intention to introduce legislation in the near future to implement the first tranche of legislation in response to the review panel's report covering these matters.

The other matters in this bill, with respect to responding to Justice Ross's concerns about the name and standing and responses to the standing of the Fair Work Commission, are an important component of addressing some of those concerns, and I think all parties would be keen that the government respond to those issues. It might be to the political advantage of some people to continue to have the commission confronted with issues about managing their internal arrangements, but I think that all agree that in the longer term, for Australia's industrial relations harmony, it is important to have an effective commission operating, and that is indeed what Justice Ross is seeking to do in his recommendations both on the name change and on the appointment of these new vice-president commissioners.

Senator Abetz: That's wrong. That's just wrong.

Senator JACINTA COLLINS: Senator Abetz, you will have your opportunity to say that is wrong if that is your view, but these are very important considerations for the ongoing operations of the commission, and this is what the government has been responding to.

With respect to the superannuation reforms, again the government is seeking to progress matters that have concerned some parties, and I have highlighted also that further amendments will be looked at to address some particular issues to improve the industrial superannuation arrangements and how they are managed. I only need to remind people, after listening to Senator Cormann, that it was a Labor government that introduced industry superannuation. It is very, very near to our heart. We are proud of our arrangements, we are proud of our improvements to industry superannuation and we will fight tooth and nail to maintain the integrity of that scheme.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:16): As is the wont of the parliamentary secretary, she traversed everything but the actual issue that was raised. I will not get distracted—as the parliamentary secretary studiously seeks to distract the Senate in this debate—by the name change, because I will specifically deal with that later. But Mr Ross himself, at Senate estimates, said he favoured the removal of the words 'Fair Work' from the name of Fair Work Australia or the commission. So do not try to verbal Mr Ross and suggest that he was—

Senator Jacinta Collins: I didn't.

Senator ABETZ: You suggested that he was agreeable to the name change.

Senator Jacinta Collins: No, that's not what I suggested.
Senator ABETZ: Have a look at the Hansard of what you just said and also of Senate estimates. But when the Fair Work Act review was done—and I have made commentary about the panel itself and the skewed terms of reference in the past, so I will not traverse that—one of the important procedures of it was that people could make submissions. Those submissions were made public. After that, people could respond to the submissions made, so there was actually a bit of dialogue taking place. Where was that opportunity afforded when one ex-trade union boss had a chat with another ex-trade union boss to create these new senior vice-president positions in Fair Work Australia? Was the Law Council of Australia, for example, given the opportunity to respond to that suggestion? No, it was not.

What is more important is that we now, I think, have an understanding of why this legislation was introduced on 31 October and rushed through the House on 1 November, because it is now on the public record that the two country Independents might well have voted differently on the issue of the senior vice-presidential positions had they been aware of the Law Council concerns as they have been so articulately expressed in recent times. Can I say to the parliamentary secretary that that is once again an example of what happens when legislation is rushed through. Sure, you have whacked it over them and the country Independents are unfortunately in lock step with you—they will never let you go and they will keep you on life support—but they have now indicated their concerns about the 'jobs for the boys' that this scenario will create and the diminution in stature of Fair Work Australia as a quasi-judicial body. So one wonders why it was rushed through the House of Representatives, because these hapless country Independents voted for the government and the government's legislation only to find out that they have now helped pass legislation about which, according to the public record, they are now genuinely concerned.

The government will use their numbers in this place, as they did in the other place, and completely disregard the normal parliamentary processes and the proper consideration of legislation. Indeed, it was this parliamentary secretary—only yesterday, if I recall correctly—that was in this chamber moving government amendments to the government's own legislation because there were unforeseen consequences. Why? Because they had rushed it through the other place and did not want proper consideration, and then they realised that they themselves had mucked up their legislation and had to amend it. Here we have a similar situation where the House of Representatives was denied proper consideration and now some of those House of Representatives members are reconsidering their position—albeit chances are it is too late for them. I simply say to those country Independents: if you genuinely believe in what you said when you signed your lives away with Ms Gillard about a new paradigm of parliamentary process, ensure that it happens, because if you do not then you will be left with egg all over your individual faces, as has now occurred.

Can the parliamentary secretary advise us as to the cost of these changes that are to be made—these two new vice-presidential positions and the cost of changing the name of Fair Work Australia?

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:21): I will deal with some other matters as I wait to see if we
can find a specific response to Senator Abetz's query regarding—

**Senator Williams:** Just be like Wayne Swan and have a guess!

**Senator JACINTA COLLINS:** I am hoping to provide the Senate with some more accurate information, if that is immediately available, Senator Williams. Whilst I wait for that I will deal with some other aspects of Senator Abetz's commentary.

In relation to the consultation with respect to the senior vice-presidents, I recall the meeting of the National Workplace Relations Consultative Council on 15 October where these appointments were raised with that consultative council and, indeed, announced if they were not announced prior to that. So from 15 October those organisations that may have had some critical concerns about that issue, such as Senator Abetz claims that the Law Council may have, and whether they would have had an impact on the view of the Independents is probably quite another question. But it is not as if the government launched these positions out of nowhere. It is not as if there was some private conversation between the minister and the vice-president and no further consultation. And it is not uncommon for there to be a one-day legislation inquiry on not greatly complex legislation and generally agreed non-controversial recommendations from an independent review.

Senator Abetz may want to progress the debate about why time was not made for the Law Council. I am not sure but I do not recall that having been made an issue by his colleagues on that committee. I do not recall a concern that there was not sufficient time or that the appropriate witnesses were not there. So I suspect on this point that Senator Abetz is simply making a stab in the dark, trying to find one way to undermine what is generally an agreed process and trying to characterise a concern of Justice Ross's that the government is responding to as something that was just a private conversation between the minister and Justice Ross, which is just absolutely ludicrous.

Let me deal with the cost figures that he raised. The Fair Work Australia general manager is conducting an internal review to determine what will be required to change the name, including the cost. They have an internal committee process established to do this. It is not complete yet. I will take an exact figure on that point on notice. I note that some estimates have been bandied around about what the cost would be for the appointment of the senior vice-presidents. On advice, as I understand it the costs that may be involved there will be determined or are yet to be determined by the Remuneration Tribunal.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (21:25): So the Remuneration Tribunal is going to determine the cost of the name change. I do not think so.

**Senator Jacinta Collins:** No, that is not what I said.

**Senator ABETZ:** Well, tell us what the cost of the name change is going to be.

**Senator JACINTA COLLINS** (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:25): I will repeat the remarks I made earlier with regard to the name change. The general manager of Fair Work Australia is conducting an internal review to determine what will be required to change the name, including the cost. They have an internal committee process established to do this. It is not complete yet and I will take the exact figure on notice.
**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (21:25): That is exactly what we were told at the Senate hearing one week ago. Mr Kovacic took this matter on notice on behalf of the department. Here we are, a week later, being asked to vote for legislation where we do not know what the costs will be.

**Senator Jacinta Collins:** Yep.

**Senator ABETZ:** Senator Collins says 'yep'. Do you know what, Mr Temporary Chairman? That is why this nation has had the four biggest budget deficits in its history. That is why this nation is now confronted with the biggest debt it has ever had in its lifetime—because of that sort of high-handed approach by ministers in this government. They could not care less about the cost because I think they are relying on the coalition coming in sometime soon to clean up the mess yet again. That is, unfortunately, our history. After the Whitlam government we had to do it. After the Keating government we had to do it. And there is no doubt that we will need to do it after the Rudd and Gillard failures. We are also told that the senators on the Senate committee somehow did not object to—

**Senator Jacinta Collins:** I was not aware of it.

**Senator ABETZ:** The minister who is handling this says that she was not aware of senators’ concerns about the time.

**Senator Jacinta Collins:** Where did they report it?

**Senator ABETZ:** The Fair Work Amendment Bill 2012 coalition senators’ dissenting report. The senator at the table took such a keen interest she could not even get past the first sentence, which reads:

1.1 Coalition senators are highly disappointed that once again, the Government has rushed through the Committee a significant Bill that will affect each employer, employee and independent contractor in Australia without the Committee being able to conduct fulsome inquiries.

That was the concern expressed by coalition senators that had to deal with this about a week ago. It is still our concern. So be assured that that has been an exceptionally consistent approach.

The explanatory memorandum this bill tells the hapless parliamentarians who do not look at these things in detail, who do not have the benefit of a proper parliamentary debate, who do not have the benefit of a proper committee system, that this bill is to be cost neutral. It is going to be cost neutral, but we do not know what the cost is going to be. No wonder this is a government that has its budgets blow out in every single area of its endeavours. It is cost neutral, but we do not know what the cost will be. Isn't that a great way to run the country? Isn't that a great way to run the finances?

Unfortunately, this is just another—albeit relatively small—example. But do you know what? All these $1½ millions here and $1½ millions there actually add up to the tens of billions, and now over $100 billion, that this country is in debt for. But we will not get an answer to it. It was taken on notice at the Senate committee hearing, and here we are a week later, still without the relevant information. Yet again it reflects on this government.

Can I ask the minister: in relation to the review of the Fair Work Act, why did the minister and the minister's office decide to change the terms of reference as recommended by the department?

**Senator JACINTA COLLINS** (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:30): Before I go to that question I might respond to a few of the earlier issues that Senator Abetz
canvassed there, because there is some further information that might assist him.

I have to say that I am astounded at the level of verballing and the extravagance of some of Senator Abetz's behaviour at the moment. It seems that he was not listening earlier when I made the point that consultation does not necessarily mean that the government adopts every point that stakeholders, or partners with government in the delivery of services, make. Just because we did not accept the full recommendations, for instance of Justice Ross, around the name change or, indeed, the full recommendations in other respects, it does not mean that we have not listened and that we have not responded to the concerns raised, or that we do not respect the opinions of those with whom we are consulting.

Perhaps if I go to the other verballing that occurred in relation to my attempt to deal with Senator Abetz's questions around costs: I was attempting to isolate the particular issues that Senator Abetz raised, the first of those being the actual cost of the name change and the second around the appointments of the senior vice-presidents. Senator Abetz, with his fiscal concerns—or in the words of another senator, his 'fiscal manhood'—might appreciate knowing that Fair Work Australia will absorb the cost of the name change. So his concern about a million here and a million and a half there can be allayed. Fair Work Australia will absorb any additional cost with respect to the name change.

In relation to the changes to the terms of reference for the review panel: the Office of Best Practice Regulation was consulted by the Department of Education, Employment and Workplace Relations in relation to the terms of reference for the review. The OBPR was satisfied with the terms of reference. In response to correspondence from Senator Abetz, OBPR confirmed by a letter on 13 January 2012, which appears on their website, that it was satisfied with the terms of reference.

Unlike the opposition, we have nothing to hide here. We wanted to ensure that the independent review was comprehensive and met best practice requirements. The review was based on broad terms of reference, which were cleared by OBPR, and which, indeed, go beyond their requirements. The review's terms of reference refer explicitly to the objects of the Fair Work Act. Promoting productivity is in the objects of the act and so was clearly within the terms of reference.

In finalising the review, the department engaged with the Office of Best Practice Regulation to make sure that best practice regulation requirements were met. The OBPR confirmed that the review met best practice regulation requirements on 15 June 2012.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:33): We know what the Office of Best Practice Regulation wrote to me after that. My office undertook an FOI request, and the FOI request blows the argument of the parliamentary secretary out of the water, because the email chain clearly discloses the concern of the department. Sure, they finally signed off on it. But to suggest that this was all hunky-dory and that there was no intervention by the minister's office is not to tell us exactly what happened. The documents I was able to obtain under the Freedom of Information request expose that. I must say that I have raised this with the Office of Best Practice Regulation at Senate estimates—that their letter to me was not the sort of independent, full response that one would normally have hoped for from a body such as that.
In relation to the parliamentary secretary saying that she was not fully aware, or aware, of when the Law Council expressed its concerns: the Law Council did make a submission to the Senate inquiry, and they have set out the principles in no uncertain terms. But, of course, that will be of no concern, because if they can stack out Fair Work Australia even further then that is what they will do.

I ask the government: does the government accept the report of the Fair Work review panel as a considered body of work, and does it have the confidence of the government?


Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:35): Thank you very much! So the government accepts the report as a considered body of work, and it has the confidence of the government; so why is it not implementing their recommendations? Clearly, you do not have confidence in it because you are rejecting their proposals. You are rejecting their proposals—

Senator Jacinta Collins: We're not rejecting anything!

Senator ABETZ: And the hapless parliamentary secretary interjects, 'We're not rejecting anything'. Can I remind her of recommendation 50:

The Panel recommends that the FW Act be amended to change the name of Fair Work Australia to a title which more aptly denotes its functions. It is recommended that the new title contain the word 'Commission' and that it no longer contain the words 'Fair Work'.

And yet here we have the parliamentary secretary misleading this place and saying that you accept their recommendations, that you accept their body of work and that you have not rejected one of their recommendations. Clearly, you have. They have said that it should no longer contain the words 'Fair Work Australia', and the parliamentary secretary is now playing school debating tactics, saying, 'Oh no, we are not rejecting anything; we are only accepting in part.' You had already covered it, Parliamentary Secretary, and the roosters ought to be crowing, because we know what happens when there are three denials that are untrue. We now find that you are rejecting the panel's recommendations. Possibly, Parliamentary Secretary, you can explain to us how the government has expressed its confidence in this report and not rejected any of the panel's recommendations by retaining the words 'fair work' in the title when the specific recommendation is that the new title no longer contain the words 'fair work'.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:38): I do not intend to travail this path much further. It has deteriorated to a considerable degree, I have to say, Senator Abetz, when I am told that we all know what happens when three denials occur. I am sorry, but you are definitely starting to go over the top. I know there is a bit of pressure from Senator Brandis occurring at the moment. I have to say that neither of you have quite the capacity in this area that you think you do.

For the third time, we will try. I explained in my summing up speech that, whilst you accurately describe recommendation 50, the government has decided to accept that recommendation in part. We have accepted that we should change the name by virtue of the word 'commission' but, with respect to 'fair work', I repeat: we think it is appropriate
that we retain 'fair work' because the Fair Work Commission operates within the fair work system, which also includes, amongst other things, the Fair Work Ombudsman.

I do not intend to revisit this issue. I know that Senator Abetz wants to make a song and dance about this. He has made a song and dance about it before. I repeat my point: when the government consults, it certainly does not logically follow that we will accept every piece of advice we receive. It does not reflect a lack of confidence in the review panel. It does not reflect a lack of confidence in those whom we consult. It is the government's considered position with respect to those with whom we have consulted and with respect to the review panel.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:40): Can the parliamentary secretary simply explain: if you do not accept one of the recommendations, does that not mean that the government believe that the panel got it wrong? If you accept that the panel got it right, why would you wilfully not adopt their recommendation? Here we have the parliamentary secretary oozing all the arrogance that this government displays on a daily basis. You corner them and they can no longer explain their disgraceful behaviour, their disregard for the parliamentary process and their disregard for the review panel’s recommendations. And what do they do? They just sit there and say, 'We don't have to answer that.'

I know that you are following the example of your Prime Minister when it comes to the Australian Workers Union scandal. She had one media conference that was going to explain it all and she would not say anything more because she had answered everything. Well, where was she yesterday? She was having to come back and try to explain but, once again, simply arrogantly obfuscating—and that is what we are witnessing in this chamber tonight by the parliamentary secretary, who is saying she does not have to answer a very simple question. The very simple question was: if you are not adopting the panel review recommendation, does it not therefore follow that you believe they got it wrong?

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:42): I have already answered no to that.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (21:42): If they did not get it wrong, does it stand to reason that they had to get it right?

Senator Jacinta Collins interjecting—

Senator ABETZ: I do not know what the parliamentary secretary had for dinner, but it clearly was not a brain stimulant. I ask her: if the panel did not get it wrong, does it stand to reason therefore that they got it right? If they got it right, why is the government wilfully not following their recommendation, which the government accepts is right? Explain it to the Australian people. They are entitled to an explanation, especially in circumstances where it is not just the coalition banging on about this. It is the widest coalition of support that I think you could find in this country, from the Maritime Union of Australia to the ACTU, all of the employer organisations, the Fair Work Act Review Panel and the President of Fair Work Australia itself.

And can I tell you that the issue here is not about why we need a name change. It is that the organisation has become discredited. It is a damaged brand, courtesy of Mr Craig Thomson and the Health Services Union scandal. So what does Labor do? It says, 'Do
you know what the damaging part of the title is? It is the name 'Australia'. You've got to get rid of 'Australia'; that's the damaging part of the name. Get rid of 'Australia', replace it with the word 'commission' and, as a result, everybody will forget about Craig Thomson and the Health Services Union."

The president wants the name changed because it is discredited and the panel has recommended it. Yet here we have a parliamentary secretary completely and utterly unable to explain, given this vast body of support—and there is no dissent about the name change to delete the name 'Fair Work'—where the opposition has come from other than the vanity of this Prime Minister.

Senator JACINTA COLLINS
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (21:45): I do not think that I will go beyond what I think is about the fourth occasion when I have simply explained without hysteria that the government has accepted, in part, recommendation 50, and I have already explained at least two or three times the reasons for that and the place of the commission within the Fair Work system.

But I cannot let go unchallenged Senator Abetz's exaggeration around the level of concern with the name 'Fair Work Commission' so I will relate to him one anecdote. After the last estimates, when he put on a very similar performance to what we are experiencing today, I was asked by Ai Group to come and talk to a group of their HR specialists. I took the opportunity of that presentation to ask the room of somewhere between 50 and 70 HR specialists within Ai Group what they thought about the issue of the name change—and it was sitting in my mind recently, if I recall correctly, from around about the time of the estimates performance of Senator Abetz.

Do you know what they said, Senator Abetz? They said, 'Change it to commission.' They said, 'Change it to commission.' They said, 'Change it to commission.' Not one of them said, 'Change Fair Work.' Give us a break!

Senator CORMANN (Western Australia) (21:46): I just have a few questions for the minister and they go specifically to the issue that I raised in my second reading speech in relation to the default superannuation arrangements under modern awards. What I would like to know from the minister is why they are not prepared to fix up once and for all the anticompetitive, closed-shop arrangements under which Fair Work Australia selects default funds under modern awards through a widely discredited process. Even the Labor Party was embarrassed about it in the lead-up to the last election to the point where they had to be shamed into promising that if they were re-elected they would fix it. Even the Labor Party had to recognise in the lead-up to the last election that what they did in relation to the selection of default funds under modern awards was fundamentally wrong and that they sold out the public interest at the expense of very specific vested interests—

Senator Back interjecting—

Senator CORMANN: Very specific vested interests, Senator Back, of the union-dominated industry funds. Of course we do know how very close to the minister's heart the protection of these vested interests of the union movement are in the financial services and superannuation portfolio. In fact, for a minister who is supposedly in the financial services space asserting that he wanted to remove conflicts from the financial services space, he is the most conflicted Minister for Financial Services and Superannuation that
we have had in the Commonwealth for a very, very long time.

This was a nice cosy arrangement that the Labor Party enshrined in this Fair Work Act for union-dominated industry funds. They said that they were going to get Fair Work Australia to determine who could be identified, who could be selected as a default fund under various modern awards, and then of course nobody else would be allowed to have a part of that business. That locks up straightaway a guaranteed share of the market for union-dominated industry funds. Why do you think that is?

Senator Gallacher: Not for profit—

Senator CORMANN: 'Not for profit,' he says. Here we have got the industry funds movement, quite frankly, which is completely outdated in terms of its corporate governance structure and is not prepared to engage in genuine competition. Having said that, let me just say—and I have made this point on a number of occasions to senior executives in some major industry funds—that this government is not doing them any favours by seeking to protect them from genuine and open competition. If they are as good as they assert they are then, quite frankly, why is the government trying to protect them from genuine competition? If they are as good as they say they are, they will thrive and prosper under competitive arrangements and people in default super will thrive and prosper, because only if you have got genuine and appropriate competitive tensions in the system will the benefits for people in default super be maximised.

I can see that the minister at the table is very touchy about all of this, because the Labor Party is always very touchy when it comes to their links and the vested interests of the union movement across Australia. This is big business. Superannuation is very big business for a large part of the union movement now. The conflicts that we have witnessed in recent years in the way that Fair Work Australia has made decisions about identifying industry funds as default funds under modern awards is breathtaking. We have had union delegates making representations to Fair Work Australia in their capacity as a delegate for a particular union in the context of Fair Work Australia without declaring that they were at the same time trustees for a particular fund that happened to be recommended for a particular award. Senator Sherry, who had a very distinguished career in this whole area of financial services and superannuation, was embarrassed. Senator Sherry wrote a letter to Fair Work Australia, saying, 'Fix it,' and Fair Work Australia said to him, 'Go away. You have not got the authority to tell us what to do.' Senator Sherry said that they should go through a more open and transparent process.

The current process by which default funds are selected by Fair Work Australia under modern awards is a national disgrace. It is a secretive, closed-shop, anticompetitive arrangement which is widely discredited and which is there for one reason and one reason only: it is the government trying to protect the commercial interests of its friends in the union movement.

In the lead-up to the last election the government said they would fix it. After the election who is the new minister for financial services and superannuation who has got the responsibility to fix it? It is none other than Mr Shorten. We gave Mr Shorten ample opportunity. We had motion after motion pass through the Senate. In fact, the Senate passed a motion back in early 2011 when we actually referred to the Productivity Commission the request for them to develop a process to select default funds through a more open, transparent and competitive process. Minister Shorten stopped them
going ahead with it. Minister Shorten said, 'Don't do that.'

So month after month came. Minister Shorten wanted to protect the commercial vested interests of his friends as long as possible. It took him until early this year before he commissioned the Productivity Commission review. The Productivity Commission did what they usually do—they did a very good job and came out with a very sensible interim report that recommended a strong move to genuine competition in the default fund market, but the government did not go along with it. Not only that, Minister Shorten effectively provided a response to the Productivity Commission review before it had issued its final report.

Those who know Minister Shorten and his modus operandi reasonably well will know that that is completely out of character. Normally when Minister Shorten is presented with a policy problem he will commission a review through the Productivity Commission or somebody else. That gains him eight, nine or 10 months. After he gets the report he will commission a roundtable, a consultation paper or a further review into the review to gain him another six, seven, eight or nine months. In fact, I think I might have called him in the past the 'minister for reviews, consultations, indecision and essentially not getting on with it at all'.

But on this occasion he was as quick as a flash. He was in like Flynn responding to the Productivity Commission review on how to introduce genuine competition in the default fund market before they had actually reported. Of course, the result was what was expected. The final report was a serious weakening of the draft recommendation. It was a serious move away from their initial recommendation to move towards a genuinely open, transparent and competitive process. But even the weakened recommendation was still too strong for Minister Shorten, so the legislation we have in front of us does not even go along with the weakened recommendation of the Productivity Commission.

I would like to know from the minister: why shouldn't every single MySuper product, which is a product that this government has designed, be able to compete freely in the default fund market? What is the government's problem with genuine competition? If the government have put forward all of the parameters that they think are important in a MySuper product and all the consumer protection requirements that they think are necessary for default fund products, then once a superannuation fund registers a product as a MySuper product that complies with all of those conditions, why should that product not be able to compete freely in the market? Why is there a need for an additional process, for further government intervention, through Fair Work Australia on top of the process that is already taking place through the MySuper registration process?

We know that this is a government that loves red tape. Senator Sinodinos has been given the very important job by our leader, Tony Abbott, of chairing a coalition deregulation task force, which is absolutely committed and focused on cutting red tape to achieve about $1 billion in savings per annum for business, which of course will flow through the economy and through the community in the form of lower costs of living and lower costs of doing business.

But this government is adding red tape on top of red tape on top of red tape. There have been more than 21,000 new regulations since the Labor Party was elected to government. No wonder the cost of doing business keeps going up in Australia. No wonder the cost of doing business has been going up under this
government. No wonder we are less competitive internationally now than what we used to be. As Senator Sinodinos reminds us on many occasions, this is the government that went to the 2007 election promising that for every new regulation coming in they would take one regulation out: the one-in one-out policy, as was promoted by the then Prime Minister Kevin Rudd. But the only one that went in and out was the Prime Minister himself. Maybe he was too keen on cutting red tape and the Labor Party was not at all that excited about cutting red tape.

Here is my question to the government. Why would you not pursue what you promised you would pursue in the lead-up to the last election—that is, a genuinely open, transparent and competitive process? Why would you persist with this widely discredited and inherently conflicted process through Fair Work Australia where clearly parties that have got interests under the equal representation model on an industry super funds board are also interested parties on other matters in an industrial relations context in Fair Work Australia? That is completely inappropriate. There is no need for it. It is inappropriate. It is costly. It is inefficient. It should be scrapped.

Given that this government has done what it thought it needed to do to put in legislation the features of a default fund product, as soon as that product has qualified as a MySuper default fund product there should be no other process. That is enough process. That is enough red tape. As soon as somebody has jumped that hurdle they should be able to compete freely. Minister, can you explain to us why this government does not want to do it? I am very interested in your response.

Progress reported.
In 1977, after many years of ignoring the truth, CSR's managers finally accepted the moral and humanitarian, as well as financial, obligation that they had to pay compensation to the victims of their deadly asbestos business. Unfortunately, that is when the real villains stepped in: heartless corporate lawyers who advised CSR management to ignore their 'emotive moral and humanitarian feelings' and build a 'legal fortification' to defeat valid compensation claims.

The conduct of CSR's lawyers came to light during a test case brought in the WA Supreme Court by brave workers Tim Barrow and Peter Heys. CSR's lawyer, a solicitor from the Perth firm Robinson Cox, which later became Clayton Utz, founded CSR's legal fortifications upon the 'four dog defence', a brutal strategy designed to stonewall valid claims, perfected by ruthless asbestos industry lawyers in the United States. It goes something like this. Your dog jumps over the fence and bites your neighbour's child to death. The first line of your defence when they take you to court is that you never owned a dog, or if you did, it was always kept tied up. If you lose on this point, you then claim you had no idea the dog was savage. If you lose that one, you try to make out that the child must have provoked the dog and it was the child's fault. The last line of the defence, if all else fails, is that okay, you did have a dog, it wasn't tied up, you did know it was dangerous, it did bite the child, but the child's actual death was caused by something else.

The 'first dog' deployed by CSR's solicitor was to find every basis imaginable to reject compensation claims brought by the dying victims of the Wittenoom asbestos mine. As the President of the Asbestos Diseases Society of WA, Robert Vojakovic, remarked, CSR's solicitor played a key role in their attempts to deny compensation to the victims of Wittenoom:

… she was CSR's lead lawyer at the time the company was rejecting claims for compensation from dying victims, thereby forcing the families to go to trial …

"She and CSR caused extra suffering for people who were already dying with painful diseases, causing extra trauma for families of victims as well,” …

The 'second dog' deployed by CSR's solicitor to defeat claims was to use procedural tactics to delay judgement until after the claimants' deaths. As Mr Peter Gordon, solicitor for Mr Barrow and Mr Heys, noted:

"CSR was represented by—
their solicitor and she—
… was rhetorically asking the court why it was that workers should be entitled to jump court queues just because they were dying." The solicitor's tawdry efforts partially succeeded—Mr Heys died of mesothelioma before the court could deliver justice, leaving his wife and children to continue his claim.

Why did CSR's solicitor try to delay judgement until after Mr Heys' death? The answer is simple: to reduce CSR's compensation bill. This was the third dog deployed by the solicitor: exploit the fact that Mr Heys died before judgement to reduce the amount of compensation payable to his family. Because Mr Heys died before judgement was delivered, CSR was able to apply a discount to the compensation payable to his surviving wife and children. Although Mr Barrow and Mr Heys' landmark case ultimately succeeded, CSR's solicitor was not prepared to let sleeping dogs lie and continued to exploit technicalities to reduce the compensation payable to Mr Heys' surviving wife and children.

In 1989 the solicitor deployed her fourth dog: an appeal against the compensation awarded to Mr Heys' family, arguing that CSR's debt should be reduced because Mr Heys received workers compensation
payments while he remained alive. The solicitor’s cynical manoeuvre succeeded, and she ripped almost $19,000 out of the hands of the dead man’s family. In subsequent years, CSR’s solicitor has pleaded that she was simply acting on her client’s instructions and the advice of barristers when she sought to delay justice to dying men. But the solicitor, and she alone, is responsible for her conduct as a solicitor. She cannot shift the blame to her clients or advising counsel. This is spelt out in black and white in section 32 of the WA solicitors professional conduct rules, which requires solicitors to exercise independent judgement in the conduct of proceedings, notwithstanding client’s instructions or advice from barristers. This principle of professional independence has been affirmed by none other than the Chief Justice of the High Court, in the case of Giannarelli v Wraith.

The apparent failure by CSR’s solicitor to exercise the required degree of independent judgement may not be her only failure to live up to the professional standards expected of an ethical lawyer. In the Barrow and Heys case, the WA Supreme Court was frustrated from making further findings about CSR’s conduct because key documents had suspiciously gone missing. In my opinion, the loss of these documents reeks of a cover-up. And what makes it even more concerning is that the solicitor involved was from none other than the law firm that became Clayton Utz.

We all remember the shocking scandal that beset Clayton Utz when it was discovered the firm had deliberately destroyed thousands of documents to help British American Tobacco escape liability for injuries caused by its own trade in death. Were CSR’s missing documents also victims of the hardworking shredding machines that featured in Clayton Utz’s ‘document retention policy’? Was Clayton Utz’s effort to destroy documents in the British American Tobacco case simply the last in a long line of dodgy legal practices? These are very serious questions that must be answered.

The solicitor responsible for CSR’s behaviour towards the victims of its asbestos mines should feel ashamed of the harm she has caused to the people of Western Australia. In my opinion, she has demonstrated a total lack of judgement and failed to exercise the requisite degree of professional independence; she displayed highly questionable values and conducted the litigation in an immoral and inhumane manner; and she failed to live up to the ethical standards expected of her as a lawyer by seeking to defeat the fair and efficient administration of justice. The solicitor in question also has serious questions to answer about the suspicious disappearance of documents that may have been of assistance to the victims of Wittenoom.

Mr Deputy President, you may ask why this solicitor’s professional conduct some 20 years ago is relevant today. The answer is that the solicitor in question is now a member of this parliament, and to quote the Deputy Leader of the Opposition:

It goes to … character … ethics … judgement, whether people can have trust and confidence …

Your character doesn’t commence being judged from the moment you take up your position as a Member of Parliament. People deserve to know what sort of person you are, how you conducted yourself in your professional life.

With those words the Deputy Leader of the Opposition makes a noose for her own neck. You see, the Deputy Leader of the Opposition is the solicitor whose disgraceful conduct I have been discussing these past minutes. The Deputy Leader of the Opposition was CSR’s lead solicitor in the Wittenoom litigation. After her disgraceful
behaviour towards the Prime Minister, any failure to answer these questions will expose the Deputy Leader of the Opposition as a rank hypocrite and will once again expose the terrible lack of judgement inherent in her decision to meet with admitted fraudster Ralph Blewitt, a decision which has led to intense speculation about her increasingly uncertain future.

Ord River Region

Senator EGGLESTON (Western Australia) (22:09): Australia is a big country with some big icons. We have the Great Barrier Reef, Ayers Rock and the Opera House, and some people say the national debt under Labor. But in Western Australia there is the mighty Ord River. Some 650 kilometres in length, with an average discharge of 3.8 million litres per year, the Ord Dam is a huge expanse holding back a volume of water equal to six times that contained in Sydney Harbour. With a basin area of over 46,000 square kilometres, it might not be as big as the Murray-Darling Basin but it is also not as controversial. Named in honour of an early Western Australian governor, the Ord River is not just an important source of water for the region. It is finally set to achieve some genuine economic outcomes for Australia’s largest state and to establish permanent agriculture in the north.

The Western Australian government established a small experimental station on the banks of the Ord River in 1941, and thus began the saga of the development of agriculture in the north of Western Australia. Sadly, this small agricultural station was closed just four years later when the Kimberley research station opened on the Ivanhoe Plain. The research station grew crops of rice, cotton, safflower, flax and sugarcane, with results encouraging enough for the Western Australian government to develop an irrigation scheme on the Ord River in due course. Commercial farming began in 1963, the same year that Sir Robert Menzies opened the groundbreaking diversion dam on the Ord.

With the recent announcement for unregulated sugarcane plantations, Western Australian Premier Colin Barnett has brought to fruition nearly a hundred years of research in tropical agriculture in the Ord region. For almost a century, the Western Australian government has sought to reap the benefits of this important river while preserving its natural heritage and environmental beauty. It has not been an easy process but one spotted with occasional misfortune and back to the drawing board moments. As one author wrote, ‘The process of decision making on the Ord River scheme involved a seemingly endless sequence of small, incremental and uncoordinated adjustments on the part of both the Commonwealth and the Western Australian governments.’

The north of Western Australia is not only a vast place but also a place of isolation and extreme climatic conditions. The region has a semiarid monsoonal climate, with a warm dry season and a hot wet season from around November to April. Rain in the wet season comes primarily from monsoonal depressions and not infrequent tropical cyclones, and at other times rainfall can be sparse; nevertheless, it is very fertile land. Time and money have been spent on researching how best to utilise in the Ord River region for agriculture in the north. It has taken a long time to get there but it seems that, with this sugar industry development in the Kununurra area, the North is really coming into its own as an agricultural region.

Over the years, Western Australian governments have investigated a number of crops which could be grown in the area. In
the early 1920s, attention was given to planting various kinds of tropical plants, but it was soon discovered that water would not be available in the dry season and so that was not considered sustainable at that time. The Ord is a case of extremes in which the river flows through the rich fertile land in proportions of flood in the wet and is simply too low and dry for sustainable agriculture in the dry. Another crop that was considered was cotton, but that was abandoned in 1974, again due in no small part to the irregular climate.

But last week the Western Australian government, in what is the first genuine outcome for the Ord River region, announced its decision to allow development of Ord Stage 2 as a sugar plantation. A Shanghai-based company, run by a Chinese person who has lived in Melbourne, I am told, for 10 years, has been selected. Its plan is to spend up to $700 million over six years to convert almost 13,500 hectares of land in the Kimberley in Ord Stage 2 into sugar farms. According to the *Australian Financial Review* last weekend, the plan is to sublease the farms to individual growers who will develop sugar plantations. The owning company will buy the sugar cane from the farmers and put it through its sugar mills and then export the sugar from the port of Wyndham to other parts of the world. This approval will allow the Ord River Scheme to be brought back to its original concept of creating irrigated agriculture in the area. Not only is the developer planning to convert underdeveloped country into sugar fields but, as I have said, it will also build a large sugar mill near Kununurra and overall spend a lot of money in that part of the Kimberley. This can only be regarded as beneficial not only for the region but also for Australia as a whole.

It is important to understand that the Ord continues to be a research project. It is naive to think that the northern part of Australia will be easy to convert into a food bowl from which we can feed Asia and the world. The reality of the north is that the climate, as I have said, is far from friendly and there are numerous pests to deal with. There have been many failed agricultural projects in the north, such as the Humpty Doo rice farm in the Northern Territory, which is a testament to the difficulty of establishing agricultural projects anywhere in the north of Australia.

There are those who have criticised the Barnett government for proceeding with the sugar development, but it has to be remembered that for the last half-century the Ord has been working towards this kind of development. The whole focus has been that in the end there would be sustainable agriculture on the banks of the Ord River, and it would seem that this long-term objective is now being achieved. Of all the governments in Australia, the WA government is perhaps the most appropriate to undertake a great development project such as the Ord Stage 2 given the great record of Western Australian Liberal governments in sponsoring the visionary development of the Pilbara iron ore industry in the 1960s and 1970s and the North West Shelf gas project in the eighties. The Western Australian government has a great track record of undertaking enormous projects in the north, and I am sure that, given time, this agricultural development on the Ord River will turn the Ord into one of the great food bowls of Australia.

**Environment: Burrup Peninsula**

**Senator LUDLAM** (Western Australia) (22:18): I rise to speak about a place that to me and to many others is too precious to lose; I mean to speak about the Burrup Peninsula. In the local language it was and is known as Murujuga, and it is a place very close to my heart. On modern maps you will
find it as the centrepiece to the Dampier Archipelago. I have been visiting the Burrup with my friend and colleague Robin Chapple since he introduced me to this extraordinary place in 2001. One of the reasons it is such a valuable part of our continent is that it has among the oldest and largest outdoor rock art galleries anywhere in the world. Some estimates place it confidently at 6,000 to 10,000 to 30,000 years old, and there are six or seven or more distinct types of rock art located across the peninsula and the islands of the archipelago. Thirty thousand years places it well before the onset of the last ice age.

There is somewhere between half a million and a million petroglyphs, ancient rock carvings created by hundreds of generations of people, and these go back to styles that look as though they came from South America—very complex, ancient styles that I am told are among the oldest on the peninsula—right up to material that was clearly being incised after the occupation by Europeans had begun. As well as the rock art, there are terraces, standing stones, enormous shell middens—some of them metres deep; rock formations with a significance lost completely to us now. The landscape itself is of granifier boulder piles, steeply incised valleys that frame billabongs and remarkable wetlands. And the priceless archaeological, cultural and artistic values of this place to Aboriginal people of the region and to wider communities have been recognised by the International Council on Monuments and Sites—ICOMOS—and of course Australia's National Trust.

In July 2007, after a campaign that ran for nearly a year, one of Senator Siewert's campaigns—she is on a bit of a roll—the Australian federal government announced National Heritage listing for the Burrup Peninsula. Or, as it turned out, parts of the peninsula. We discovered that that listing, which was eventually delivered by the then environment minister Malcolm Turnbull, simply protected the areas that industry had decided it did not want and the maps that were eventually delivered just had big rectangles chopped out of them. Nothing by way of a protective management plan; no signage, no protection from vandalism which, if anything, has increased in recent times. The Aboriginal custodians of the Burrup, represented now by the Murujuga Aboriginal Corporation, voted unanimously for World Heritage listing earlier this year. This listing will not be a cure-all, but we believe that it will provide a much higher degree of protection than placement on the dangerously toothless National Heritage List. The World Monuments Fund has listed the Burrup three times as one of the top 100 most endangered heritage places on the planet, and the only one listed in Australia.

What, you might ask, is it endangered by? For anybody who has spent time up there you will also be well aware that the Burrup is a site of one of Australia's most lucrative resource developments. It is the site of the Woodside North West Shelf gas plant, a tremendously important complex—the first gas processing plant set up in Western Australia in the 1980s—which has now spawned a host of other developments, including fertiliser factories, ports, lay-down areas and so on, with their attendant pipelines, desalination corridors, roads and power infrastructure. It is, in fact, one of the more important sites of industrial development in Western Australia, and it is an absolute disaster that successive governments have allowed one industry after another to crowd out the fragile and precious heritage and environmental values of this area.

The archaeologist Ken Mulvaney estimates that well in excess of 10,000 petroglyphs have already been erased.
either happens by blasting, cutting and filling or, as occurred when Woodside established the gas plant in the 1980s, the boulders are simply ripped out of their original emplacement and they are dumped—they are set aside in a fenced yard, some of them face down. The petroglyphs are then degraded by fire and other insults. It was described by an old man who showed Robin and I around up there a couple of years ago as 'a graveyard', and he told us that the petroglyphs which he referred to as 'witnesses' were 'dead', having been removed from their original places and dumped out of the way.

There are images of suns and of animals, including some now extinct. If you want to see thylacines carved—and they are unmistakably thylacines and they have been extinct in the north-west of Western Australia for many, many centuries—you can see them as fresh as though they were carved yesterday. As you stare at these extraordinary messages from millennia ago, the flare towers from the Woodside gas plant and other modern intrusions churning out ammonia and various other forms of toxic fumes interrupt the skyline.

The Burrup is Australia's Stonehenge; it is not enough to simply say, 'We offered National Heritage Listing to a fraction of it,' and the rest of it can go under the bulldozers or be blasted flat for new gas plants. This is not some historic insult from the 1980s that we have learnt the error of our ways from, because of course Woodside erased several hundred square metres of this terrain and parked the Pluto plant not even in one of the valleys—you could argue the North West Shelf plant is at least out of sight, apart from the flare towers; they put it on a bench above the landscape. There is simply no willingness as far as I am aware in the Western Australian government to offer the slightest amount of protection from the invasion of heavy industry that is occurring.

Instead of the Burrup being treated as though it is Australia's Stonehenge, keeping in mind of course it is thousands of years older than that, the Barnett government is in the midst of approving another nitrate plant. So the industrial vandalism of this extraordinary place continues unabated. It is interesting that Premier Barnett, who has had so much to do with the ruination of the landscape of the Burrup, is also one of the few people who has a clue as to its value. When he was in opposition he actually said—I will paraphrase; I do not have the exact quote with me—that, if we had known that that was there, that these were the values, we wouldn't have done it. But, of course, once elected to Premier, industry was simply given its lead, as we have seen right across Western Australia at the moment, and the destruction continued.

The Australian Heritage Council's report on the World Heritage values of the rock art of the archipelago was handed down to the minister and his department earlier this year. The report indicated that the Burrup met two criteria for World Heritage listing. It also listed four direct threats to the World Heritage values, including industrial development and the knowledge and engagement of the Ngarda-Ngarli people.

So we want to know when the minister will be moving to place the Burrup on the tentative list. It is well known and understood that the Commonwealth can move unilaterally if it looks as though these sites are in danger and that they, indeed, have the values of the World Heritage register. As we know at the moment, there are seven areas of land on the Burrup still zoned for heavy industry. Those are developments that will last 20 years, maybe 30 years, if we are lucky, as they go through the depleting gas reserves of the North West Shelf. But in fact they have the capacity to destroy human heritage that dates back tens
of thousands of years. This is a place that is too precious to lose.

In closing I want to pay tribute to those who have stood up in defence of this place. We cannot but imagine how much more we would know about the values of the Burrup but for the massacres at Flying Foam that occurred many decades ago now and the smallpox epidemics that went through and wiped out the local populations. Nonetheless, the songs are still sung, the stories are still told by a dwindling number of people in the area. This heritage is still living. To whitefellas from the south, of course, it is a stunning outdoor art gallery. But to the people of the area it is much more than that as a living cultural landscape.

I want to pay my respects to FARA, the Friends of Australian Rock Art. It is a Western Australian based organisation that has done a huge amount to raise awareness and campaign for the values of the Burrup; also to the National Trust, who have gone way above and beyond the call of duty for the Burrup; and to international groups like ICOMOS and the World Monument Fund, who have pitched in and done their bit when the locals seemed not to care. Of course, I could not go much further without mentioning my dear friend Robin Chapple, who has made it a significant part of his life's work to stand up for the Burrup. This is a place that is too precious to lose. We want the Commonwealth to exercise Commonwealth powers and not simply re-delegate them back to the state that has shown no interest at all in protecting the unique values of this place.

Brisbane Relay for Life

Senator FURNER (Queensland) (22:28): This evening I rise to speak about a matter that I am involved in on a regular basis each year now, and that is raising money for a charitable organisation—the Cancer Council of Queensland Relay for Life. Each year I set targets to meet and this year I am happy to report that I exceeded my target of $25,000 in achieving the highest fundraiser level for the Brisbane Relay for Life 2012.

Relay for Life has its origins in the US, where, in 1985, Dr Gordy Klatt, a colorectal surgeon, spent a gruelling 24 hours running and walking around a local oval. He wanted to raise awareness about cancer and raise money.

From those beginnings Relay for Life events are now held in more than 600 communities across 20 countries. Relay for Life began in Australia in 1999 when the Victorian community of Murrumbeena raised over $75,000 for the Cancer Council. Relay for Life now is run in every state and territory and raises over $14 million each year for the fight against cancer. Each year, many of the donations come through online contributions. I must put on record my appreciation for these members of parliament: Senator Evans, Senator Moore, Senator Bilyk, Senator Faulkner, Senator Singh, Senator Thistlethwaite, Senator Di Natale, member for Griffith Kevin Rudd, member for Fraser Andrew Leigh and member for Deakin Mike Symons. They are only a few of those who were willing to come forward and assist with raising money to try to rid our communities of this insidious disease.

In addition we organised and commenced our fundraising early in the year. Around February we held an event at Byblos restaurant down at Portside Wharf at Hamilton. We named it the Arabian Nights. The proprietor, Antoine Ghanem, was very considerate in providing subsidy for the meals on the night. The rest of the subsidy went to our team for Cancer Council. Additionally we raised money through raffles and auctions to meet our target of
somewhere around $4½ thousand for that particular event.

The other event was in June at Mount Gravatt, and the Bakhoun Charitable Society of Brisbane was the main group involved in that. I must put on record my appreciation of the Obeid family, which was instrumental in preparing that fundraising event and bringing along beautiful trays and items of Lebanese food. In all, everyone had an enjoyable afternoon and once again raised considerable thousands of dollars towards our team for the Cancer Council.

The last event was a couple of weeks prior to the Brisbane Relay for Life in November. This was held in October at the Club Pine Rivers and was in the sense of a sportsman lunch. We had Tonie Carroll, ex-Bronco, and Paralympian gold medallist swimmer Brenden Hall come along and speak about their endeavours and goals in how they achieve. In all we again raised somewhere around $4½ thousand to $5 thousand, which went toward our total of over $25,000.

In addition to that we ran a raffle called the Where's Wally Ball Raffle. It was an NRL football. Those who understand the NRL would get this. It was signed by the king, Wally Lewis. Some would not know who King Wally Lewis is, but he is legendary in Queensland. I must say getting the signature on that ball was a credit to Petrina Zaphir, who is a close friend and journalist for Channel 9 on the Gold Coast. She has been a marvellous supporter for our team over several years. I must congratulate and thank everyone in this house as well because they are the main supporters behind the raffle. Some of the senators here in the room this evening assisted in making that possible. The ball was won by Tim Woltmann, who I understand works for Mr Ripoll's office and is a Queenslander as well. I once again thank everyone who supported the fundraising for the Where's Wally Ball Raffle, which helped us reach our target.

In addition I would like to thank some ongoing regular people who have donated on a recurring basis each year. I start with my good friend Terri Irwin from Australia Zoo. There are also Clubs Queensland; Ron, Wayne, Rocket and Peter from Club Pine Rivers; Karen Barfoot from Bristol-Myers Squibb; Russ Furner, my brother; Russell Thirgood; Shan Jiu Lin; Evan Jones; and Ivan Fufligin and Irina Kislyakovka, who both made considerable donations towards us getting over and reaching our target, so I thank them so much. Once again Petrina Zaphir brought to us many vouchers used in the raffles. Those vouchers came from the Sheraton Mirage, Warner Bros., Hilton Surfers Paradise, Bunning's and Dan Murphy’s and were no doubt excellent prizes for the raffles we ran in all those fundraising events.

Ongoing support from regular donors who have assisted us over the many years that I have been involved in raising money for the Cancer Council through Relay for Life includes organisations and companies such as Metcash Distribution, Peter Finn from Lion Dairy and Drinks, Transport Workers Union Queensland Branch, Campbell's Wholesale, Kerry Ingredients, Kathy Doolan, Brad Newman, Super Retail Group, David Smith from the ASU National Office, Alana Smith, Vicki Thomas, Gail Ker from Access Community Services and Anthony Torbey, the Honorary Consul of Lebanon in Brisbane. It is great to have their support on a regular basis this year, as we generally do on each occasion.

We call ourselves a team name, and this year we called ourselves the Senate Stars, so we came along to celebrate. This is what Relay for Life is all about. You do the hard yards fundraising and then on the night have
a bit of fun. So we dressed up as stars—some came along as rock stars, some came along as movie stars. I turned up in a commando outfit from the Arnold Schwarzenegger movie—I even put the jungle green on my face—and had a bit of fun with everyone else. There were a Marilyn Monroe and others there. The team consisted of me as the captain and also this year having the privilege of being patron of Brisbane Relay for Life; you, Acting Deputy President Moore; Christine Stubbs; Terry Kent; Adam Obeid; Abdul and Mona Obeid; Sharon Stocker and her family; Russell Vieritz; Leah Olsson and her children, Nicholas Maguire and Emma Maguire; Petrina Zaphir; and Vicki James, who works for the Cancer Council on the Gold Coast as a major fundraising manager down there and who is always a great asset to have come along and assist on the night. We also had a couple of candidates: Michael Gilliver, the candidate for Dickson; and Fiona McNamara, the candidate and next member for Brisbane. They came along and participated on the night.

In general, this year took on a special matter of interest and significance, and that was that we were missing three special past team members. I mention in particular John Marshall, who is the partner of Carol Cooke. He is suffering from terminal cancer and naturally was not able to attend on the night. Carol and her sister Wendy also were not there. It was disappointing not having those close friends who were not able to attend on the night, but our wishes were with them. During the night we lit candles. I think we did the candlelight ceremony at around 7 o'clock. We wrote messages on the bags in which the candles sat, recognising John and wishing him all the best.

As mentioned, the team received the award for being the highest fundraiser. It raised $25,676.70. Our team has raised over $110,000 for Cancer Council Queensland—something that I am very proud of, that I am committed to doing and that I will continue to do. This year in the Brisbane Relay for Life there were 64 teams, and they raised just a touch over $170,000. The overall attendance was around 150 patrons. Approximately 46 survivors and carers attended the event.

Cancer Council Queensland raised $4.4 million—and that figure is still rising across the state—which is up from $3.6 million last year. This is an amazing effort. The survivorship rate continues to grow every year, with the overall percentage at 67 per cent of all cancer patients. You can see that the money is going to a good cause and is increasing the survival rate of those with cancer.

In closing, I congratulate the Cancer Council Queensland organising committee for the excellent work that they do every year, along with the tireless work and effort of the volunteers, the survivors and all the teams that made the Brisbane Relay for Life 2012 possible.

Cooperative Research Centre for Contamination Assessment and Remediation of the Environment

Senator EDWARDS (South Australia) (22:38): I rise tonight to talk about my visit to the Cooperative Research Centre for Contamination Assessment and Remediation of the Environment, or CRC CARE, located at the University of South Australia, Mawson Lakes Campus. Mawson Lakes, for those of you who are listening who are not from Adelaide, is approximately 10 kilometres north of Adelaide.

I want to talk about CRC CARE because its work is not very well known—but it should be. There are many cooperative research centres around Australia and they range in activities from agriculture, forestry
and fisheries through to manufacturing, mining and other general services. Cooperative research centres are very important in the context of our country maintaining its competitive scientific position in industry and public affairs.

CRC CARE exists due to the work of former Senator Jeannie Ferris. She was a passionate supporter of this CRC, and it was her initial interest in it that finally resulted in it being funded in 2005 by the Howard government. Sadly, Senator Ferris did not live to see the wonderful maturing of this scientific enclave to the world-class environmental remediation research centre that it is today.

The Centre for Environmental Risk Assessment and Remediation, or CERAR, which has been around since 2002, helped develop CRC CARE. CERAR develops innovative, cost-effective and sustainable solutions to complex contamination problems by taking a multidisciplinary approach. It focuses on Australian research priorities and industry opportunities. There are over 80 staff, students and visiting domestic and international researchers based at the purpose-built, world-class laboratories at Mawson Lakes. It has international linkages with Germany, the USA, the UK, Singapore, Bangladesh and Italy.

CRC CARE brings together Australian universities, state and Commonwealth agencies and regulatory authorities, mining, petroleum and agricultural industries, venture capitalists, environmental consultants and suppliers to work collaboratively on vital contamination issues at sites in Australia and the broader region. These bodies stump up with their 'hard earned', as we call it, to partially fund this organisation—always the ultimate market test for an organisation's need and relevance in any society. It is headed up by a great South Australian, Professor Ravi Naidu. I would like to thank him for his continuing passion in this area and for taking time out to inform me of the work that he and his team are doing. Thanks, Ravi.

CRC CARE is providing cutting-edge technologies and knowledge in assessing, preventing and remediating contamination of soil, water and air as well as methods for assessing contamination risks in land, groundwater and air, managing and/or remediating contamination, developing safe options for land use and the reuse of wastes on land, and developing solutions that are acceptable to regulatory agencies and the public, and capacity building generally. Its research is centred on four programs: best practice policy; better measurement; minimising uncertainty in risk assessment; and cleaning up. This research is carried out by CRC researchers working in collaboration with postgraduate students. These postgraduate students are provided with a practical industry training program which enhances knowledge and encourages professional development in a range of areas. It is a high-performing centre and, at the end of its first funding term last financial year, it had successfully completed on average 93 per cent of its research milestones.

I toured their laboratory and research facilities and spoke with many of the highly motivated and diversely educated people there. I was able to chat with some of the students who are undertaking research and PhDs into various aspects of soil remediation. Their facilities contain some of the most sophisticated and, by implication, expensive pieces of research equipment in Australia. We saw evidence at the RAAF Edinburgh base of their innovation with water treatment facilities. CRC CARE have been making great advances in conjunction with the Department of Defence on a broad range of decontamination projects using
innovative interdisciplinary solutions in their extensive landholding.

I especially note the effectiveness of what they call the AFFF, the aqueous film forming foams waste water remediation process installed within the base. The fire training activities that occur at Edinburgh generate very large volumes of AFFF contaminated waste water. This waste water contains toxic chemicals and there are a number of problems with its disposal.

The treatment plants at the base developed by the CRC CARE people have successfully treated over 770,000 litres of waste water and returned it for reuse. This particular project is one of many where researchers at the CRC CARE directly engage with the end user. Rather than achieving just the goals of the researcher, CRC CARE also works with industry and other stakeholders to ensure that there are practical and cost-effective outcomes that can be utilised by industry groups and the broader community.

CRC CARE is important for a number of reasons. Remediation is a big business worldwide, and it is estimated that between $US20 billion and US$40 billion is spent annually in this area. In Australia the cost of remediating known and potential sites is estimated at between $US3 billion and $US4 billion a year. Contamination has clearly been an expensive problem, while understanding and remedies have been sought. Australia has inherited contamination from past practices caused mainly by mineral processing, heavy manufacturing, and fertiliser and pesticide use. This has occurred in soils and in water at sites where, or close to where, these industries have operated. As blood tests confirm, the majority of people have probably been exposed to some degree of contamination at one time or another. We lay no blame and note that this problem was born out of innocence from a time past.

It is estimated that around the world there are five million to 10 million contaminated industrial sites. Closer to home, Asia alone is thought to have some three million to five million sites, while estimates for Australia range between 60,000 and 200,000 contaminated sites. Most are located in cities and surrounding urban areas. These sites include former factories and tanneries, fuel dumps and chemical stores, service stations, munitions plants, farm livestock dips, timber treatment plants, oil and chemical refineries, landfills and the sediments of rivers, estuaries and coastlines where waste has in the past been piped for disposal. They are expensive to remediate and there are a lot of them. So new approaches and technology are needed to help bring the cost of remediation down.

During the presentation by the team at CRC CARE a map of Melbourne showing the contaminated sites in the inner city was displayed. It was like a patchwork quilt—such was the extent of contamination across that city. I immediately considered the value of the land that is currently locked up as a result of being contaminated. If we can efficiently and cost-effectively remediate contaminated land, the potential value that we could unlock would be enormous. Multiply that across all of the capital cities and you are looking at billions of dollars worth of prime real estate.

We must recognise the opportunity that this provides, given that the work of CRC CARE is spiralling the cost of remediation down at a remarkable rate. Their work is actually ensuring that this undertaking is going to cost less. It is also an opportunity to cluster jobs, skills and expertise in South Australia. There will be opportunities to commercialise some of the processes and techniques that are developed. And, as I have outlined, the extent of international site
contamination is such that the market for new products is significant.

I think Dr Bruce Kelley, Global Practice Leader Environment at Rio Tinto, best describes this organisation, and I leave you with his words:

CERAR increasingly offers a one stop shop in the site remediation world. CERAR’s ability to provide world class science-based site remediation solutions is an essential component of effective mine closure. It is truly emerging as a global centre of excellence.

Indigenous Affairs

Senator SIEWERT (Western Australia—Australian Greens Whip) (22:48): I rise tonight to talk about some ongoing issues for Aboriginal people in Western Australia. I will touch briefly on the first one, and that is stolen wages. The WA government announced earlier this year that they would provide reparations for those affected by stolen wages in Western Australia. Unfortunately, the time frame for applications for reparations for stolen wages under this process was considered inadequate by many people in the community. Although the Western Australian government did extend the time frame, there are many in the community who still feel that this time frame has not been extended enough. For example, deadlines for similar schemes in Queensland and New South Wales were four and five years respectively.

Making an application for issues around stolen wages, as I am sure people in this chamber are well aware, is not as easy as walking into an office and filling in a form. There are big challenges, particularly in a state like Western Australia, with its vast size and its language and communications difficulties, particularly for remote areas, not to mention the number of potential applicants that, we understand, are still probably unaware of the process. There are many people who we believe could rightfully make a claim for reparations but live in remote areas and, as I said, are not aware of the full details of the scheme.

We have very strong concerns that in fact, with the relatively early closure of the scheme compared to some of the other states, some people will miss out. I know that there have been representations made to the government to ask them to again extend the application date. I myself have written to the minister asking the government to reconsider the closure date. They have done the right thing. There are criticisms that the reparations are not enough, and I share those concerns, but at least they have gone through the step of opening reparations and acknowledging the issues around stolen wages in Western Australia. It is a pity to spoil that step by unnecessarily closing the application dates early and excluding people that, as we know, are growing older. We think they need to be able to be contacted and still be able to make applications.

The other issue I want to talk specifically about tonight has had a lot of attention in the media recently. It is an issue that I have raised in this chamber and written about to the federal minister for heritage. That is the Yindjibarndi story. This is the story of an Aboriginal organisation and an Aboriginal group that have been up against a mining giant, and we believe there have been some concerted efforts to undermine their capacity to engage with the mining proposals on their traditional lands. I am talking about the story of the Yindjibarndi Aboriginal Corporation and FMG, the Fortescue Metals Group.

It is hard to know where to start when talking about this issue. The reported interference of Fortescue Metals Group in the heritage assessment process, the destruction of sacred sites and the seeming support given to helping a rival group that
would be more accommodating to FMG have had quite a lot of coverage in Western Australia and received some extensive coverage just last week. The Yindjibarndi Aboriginal Corporation are the recognised native title holders of country in the Pilbara in Western Australia that includes FMG's Solomon Firetail mine site.

The Solomon Firetail area is home to burial caves, rock shelters and ceremonial artefacts. In 2008 the Native Title Tribunal accepted sworn evidence from Michael Woodley, the head of the Yindjibarndi Aboriginal Corporation, or YAC, that the Yindjibarndi people had specific cultural connections to the land. Despite their status as the native title holder, there are serious concerns about the way that FMG have operated with regard to the Yindjibarndi Aboriginal Corporation which we believe would be inconsistent with the concept of good-faith negotiations set out under the Native Title Act.

It has been reported that FMG have been keen to circumvent the rights of the Yindjibarndi Aboriginal Corporation to participate in negotiations and have been closely associated with another group in the Pilbara, the Wirlu-murra Yindjibarndi Aboriginal Corporation, or WMYAC. This is a breakaway group and it has been widely reported that it is supported by FMG. In fact, during a very controversial meeting in 2011, this rival group voted by a show of hands to support a proposal from FMG. It has also been widely reported that FMG were heavily involved in organising and supporting that meeting and in transporting people to the meeting. The WMYAC claim legitimacy in continuing to negotiate with FMG because of that vote by a show of hands.

We have a great deal of concern that what this process has done is split the community in Roebourne and the Pilbara. Kerry Savas, who until recently was a lawyer with WMYAC, said in an interview last week:

So, on the face of it this was an Aboriginal meeting. However, when you look at it closely, it wasn't. It was a meeting invited, well, set ... the table was set by FMG and they had prepared the menu as they wanted it. So they had prepared who the guests were going to be, they wanted to get enough people there to defeat the YAC, and they did. So it is unusual when it's a corporation involved and they want to control the meeting to that extent, and to pay fees to people that are voting at a meeting where the outcome of that vote is directly affected to the company. That in itself is very unusual.

I am deeply concerned that, by facilitating the breakaway group, FMG have sought to conduct business dealings with them rather than with the Yindjibarndi Aboriginal Corporation, who are the recognised native title holder. This is having a destabilising effect in the community, causing tensions. I am also deeply concerned about the potential for long-term rifts in the community.

Despite early denials, there has been destruction of a number of the sites in the Solomon Firetail mine site. YAC says that FMG's conduct is a direct assault on the 40,000-year-old traditions and heritage of the Yindjibarndi people and contravenes the most fundamental international human rights covenants. Mr Woodley, the head of YAC, has said:

FMG has done this against all warnings and advice from the Yindjibarndi Aboriginal Corporation, the authorised representative of the Yindjibarndi people. They were clearly advised by the minister that they should conduct heritage surveys with YAC but have failed to do so. Instead they have given misleading reports to the Aboriginal Cultural Materials Committee and the Department of Indigenous Affairs designed to confuse the regulatory process and to dismiss the religious, cultural and heritage importance of our sacred sites in the Firetail lease.
There is no doubt that some of the sites have been damaged or destroyed. What is of concern here is that the Fortescue Metals Group at first denied that sites had been damaged and then, when the Yindjibarndi finally got access to the sites that had been, they said that it was a mistake. However, it has been widely reported that they hired and then fired archaeological teams because they would not change a report, then they hired another team and when that team provided different evidence to the decision makers and the sites were destroyed, Fortescue blamed poor research by the second company. But that second company was then taken back on to do further work when it was finally acknowledged that those sites had been destroyed. It seems very curious that Fortescue would hire people to do archaeological work and when the report came in that they did not like they hired another mob. It is a completely inappropriate way to deal with these issues. (Time expired)

Myanmar: Immunisation of Children

Senator URQUHART (Tasmania) (22:58): Nineteen million children in developing countries do not currently receive the life-saving vaccines that some parents in wealthy nations quite literally take for granted. As a result, each year 1.7 million children die from a vaccine-preventable disease. Vaccines are one of the best ways to ensure a child has the opportunity of a healthy life as they help to prevent these avoidable but deadly diseases. By preventing disease, vaccines are far more cost effective than the treatment required when a person gets sick. As many of the world's poor live in areas where access to treatment and care is virtually impossible to come by, providing vaccines enables these communities to focus their limited healthcare finances on illnesses that are not as easily preventable.

During the 1990s vaccine coverage rates were lagging behind and public health risk was on the increase. The Global Alliance for Vaccines and Immunisation, GAVI, was launched in 2000 to fund vaccines for children in the world's 70 poorest countries. It is an innovative public-private partnership which works with existing World Health Organization and UNICEF structures as well as with public and private donors such as the government of Australia, the Bill & Melinda Gates Foundation, developing countries such as Myanmar and the pharmaceutical industry.

GAVI seeks to close three critical gaps in the provision of vaccines which are: between children for whom immunisation is a given and the 19 million children worldwide with no access to vaccines; between the introduction of a new vaccine in rich countries and the average 10-15 years required for the same vaccine to reach low-income countries; and between the need for new vaccines in developing countries and the lack of research and funds to provide them. To do this, GAVI works with its broad partnership base and delivers its business model based on: securing long-term financing to give developing countries security; empowering developing countries to set targets, integrate GAVI's work into national plans, run and co-finance projects; funding health worker training, monitoring and logistics to ensure that vaccinations get to those most in need; and influencing vaccine prices through monopoly purchasing and encouraging competition between suppliers, while also providing long-term market security to suppliers and pricing vaccines on capacity-to-pay basis.

Australia is a significant contributor to GAVI with pledges and donations currently at $484 million dollars. Fifty-seven countries are currently eligible for GAVI support as their gross national income per capita is...
below or equal to US$1,500. To receive support, countries must make formal proposals to GAVI that outline requirements of how the country will itself plan to boost resources to immunisation and health care more broadly.

I was recently invited to attend a GAVI Alliance visit to Myanmar, formerly known as Burma, one of the poorest countries in South-East Asia. Myanmar is emerging from five decades of isolation, both economically and politically, and has been a partner of the GAVI Alliance since 2002. During the visit we examined how Australia’s aid to the GAVI Alliance is seeing more children vaccinated and Myanmar’s health system strengthened. The trip opened my eyes to the power of Australia’s foreign aid efforts. Together with many other nations, we are funding life-saving vaccinations for some of the world’s poorest children, giving them the opportunity to go to school and have a healthy life.

Myanmar has turned a corner in the past two or three years with a general election in 2010 and, earlier this year, a by-election, which was well contested by the opposition party led by the inspirational Aung Sun Su Kyi. President Sein’s government have released over 500 political prisoners, progressed peace with ethnic groups, and instigated new laws to provide for greater freedom of expression and assembly, labour rights and political participation. Australia has reacted positively to these reforms, and earlier this year we removed economic sanctions and began to normalise trade between our countries. We were one of the first nations to act and lift our economic sanctions, which will encourage the reform process in Myanmar and boost the economic prospects of its people. Further, other nations such as the USA have been encouraged to boost their engagement with Myanmar. In turn, this development will lift many out of a subsistence lifestyle and increase health and education outcomes.

After arriving in Yangon, the former capital of Myanmar and the biggest city, we were briefed by the health teams from the World Health Organization, UNICEF and AusAID and inspected a cold storage facility in Yangon used as the central vaccine store. We then travelled to the new capital, Naypyidaw, a six-hour bus ride north of Yangon. Naypyidaw has been designed and built since 2005 and features the magnificent Uppatasanti Pagoda, a Buddhist temple standing 99 metres tall. One can only appreciate a city that has been planned and, to an extent, built before development occurs when standing in the middle of a 20-lane freeway with only a solitary car rushing by.

In Naypyidaw, I attended the GAVI Alliance and Myanmar Ministry of Health launch ceremony for the pentavalent and measles second dose vaccines.

With one injection, the pentavalent vaccine protects children against five deadly but preventable diseases: diphtheria, tetanus, whooping cough, hepatitis B and meningitis. The second dose measles campaign is to target those children who missed out on the first vaccination program earlier this year. The Ministry of Health and GAVI use public launches to highlight the benefits of vaccinations, and gain significant promotion across the country.

It was heartening at this launch to meet parents and their children who had travelled from the regions surrounding Naypyidaw to get their children vaccinated. I found a six-month-old set of twins waiting for their vaccinations. Their mum gladly passed her babies over to me for a photo. She knew from the information provided by the GAVI Alliance and Myanmar Ministry of Health about the effectiveness of vaccinations. No doubt she would have known people who...
had suffered illness and mortality from the diseases being vaccinated against that day. She was taking her young children to receive their vaccinations and was lining up virtually in the middle of a paddock. The vaccines were being administered in poorly resourced facilities, but she knew that with this vaccination the chance of her young children contracting measles, whooping cough or one of the other preventable diseases was almost totally removed, and that vaccinating her children would reduce the prevalence of these diseases in her community, not only protecting her children, but hopefully preventing a cousin or friend from contracting a disease.

After the vaccine launch, we travelled south of the city to the Thagara health centre in the Yedashe township. Here, we inspected the health centre and further observed immunisations. Importantly, it was an opportunity to get a firsthand understanding of the poor condition of healthcare facilities and the isolation faced by many patients. The cement floors were cold and many of the tiles lining the walls were cracked. The hospital does not provide meals or drugs free of charge to patients—a completely unknown concept to an Australian. If the family of a patient cannot afford the drugs or the food, or if there is no international aid program providing services in a region, the patient will just go without. Further, as nursing staff are in short supply, patients rely on family members not only to prepare food and supply drugs, but to provide a lot of their essential care such as washing.

In Yedashe, I met a young mother who had recently given birth to a premature baby. The baby weighed less than two kilograms. This hospital had no cribs for the babies; they were nursed next to their mother, who was in a room with many others. There were also no facilities at the hospital to assist premature babies or their mothers. This young mother was so severely anaemic that she could not feed the baby, and therefore the ongoing health and survival of mother and baby was completely up in the air. This story highlights the need for Australia to continue to invest through our overseas development assistance program in health-system strengthening across the developing world. It highlights the need for Australia and organisations like the GAVI Alliance to partner with developing countries to improve resources in their health systems.

I was quite shocked this week, barely two weeks upon returning from Myanmar, that the Australian Academy of Science had seen the need to launch a booklet on the science of immunisations in Australia. I had just returned from one of the poorest countries in our region, if not the world—a country that has been torn apart by division and military rule for the best part of half a century, a country that was partnering with the GAVI Alliance to deliver life-saving vaccinations to its people—and in Australia I received a booklet seeking to address the confusion in the public domain in Australia about the effectiveness and safety of vaccinations. I applaud the academy for this initiative and encourage all to visit the website, to download the booklet and to discuss the importance and safety of vaccination with family and friends. After learning about the importance of vaccinations, please ensure that your family and you are adequately vaccinated. And do consider donating to the GAVI Alliance and its partners such as UNICEF that provide life-saving assistance. (Time expired)

Yousafzai, Miss Malala

Senator CASH (Western Australia) (23:09): I rise this evening to speak about Malala Yousafzai, and the impact that she has had throughout the world in raising awareness of the lack of education and
opportunities for girls and women, especially in Pakistan. Malala grew up in the Mingora, in the Swat district of north-western Pakistan. The daughter of a local schoolteacher, she aspired to become a doctor and relished going to school and receiving education.

I am sure that around Australia at this time of year, exam time, there are many students who would perhaps struggle with the idea of school being anything other than a trial. They lack motivation, especially with the warmer weather and the beach beckoning. However, for Malala and her friends education is their motivation to get out of bed every day. It is also, however, a battlefield and a war zone.

Battles between the Taliban and Pakistani authorities in the Swat District from 2007 through to mid-2009 made for a dangerous life for its inhabitants, with particular attention paid to the women and girls of Swat. Malala, in an interview with the BBC in 2009, said that the Taliban and their austere interpretation of Sharia law had gone so far as to ban women from going to the market and girls from going to school. In 2008, before the edict banning girls education had come into effect, Malala spoke to the local press club in Peshawar and stated 'How dare the Taliban take away my basic right to education?'—a question that was broadcast widely in Pakistan at the time. As the Taliban continued their reign of terror over the Swat district, their edicts became more constricting, with girls' schooling being banned in early 2009.

It was during this time that Malala came to the attention of a wider online community as a blogger on BBC Urdu online. Under the pseudonym of Gul Makai, Malala wrote about her life under Taliban rule in the Mingora, including moments when the girls at her school were told not to wear their uniforms to school for fear of being targeted by the Taliban, of hiding her schoolbooks under her clothes as she walked to and from school and the sad fact that many of her friends and their families moved away from the Taliban-ruled area of the Swat district so that their daughters could freely and safely continue with their education. Because of Malala's success in writing for the BBC, and her subsequent training through the Institute for War and Peace Reporting 'Open Minds' project, the Institute for War and Peace Reporting have seen a steady increase in the numbers of girls approaching the institute for guidance as aspiring journalists.

From late 2009 to at least November 2011, Malala acted as the Chair of the District Child Assembly in Swat. This is an assembly established by the Khpal Kor Foundation, with the support of UNICEF, and it ensures that the children and young adults of the Swat District have the opportunity to speak openly about issues and concerns that pertain to child rights and to present workable solutions to them. All of the children of this region have, through the battles for the Swat district, been subjected to atrocities that most of us cannot even imagine. This assembly and coming together of children is an example of hope in the future that the voices of the girls and boys of the region will be heard equally, and also provides them with a space to build upon their experiences. Malala spoke in a UNICEF video documenting the District Child Assembly, saying 'it was a good experience for the girls that they can share their views in front of the stakeholders, the non-governmental and governmental organisations'. It comes as no surprise that Malala's promotion of education and peace within the region meant that she became a beacon of hope in an area beset by fighting. Just last year, the Pakistani government
awarded Malala the inaugural Pakistan Youth Peace Prize.

It is a sobering thought that, in 2012, there are still women in this world who are fighting and dying for the most basic equality. Education is both a right and a responsibility. All children should have the right to learn and access knowledge, to broaden their minds and their outlook and to be able to study and work in their chosen field, regardless of their gender. It becomes a responsibility of every educated person to question and challenge the views and restrictions brought about by extremism.

On 11 October this year, the United Nations celebrated the inaugural International Day of the Girl Child. As the Executive Director of UN Women Australia, Julie McKay, said of the occasion:

When women and girls are empowered and are given equal access to education, participation and leadership, it ensures that their interests are recognised and their contributions to society are valued …

International Day of the Girl Child recognises that women and girls must be respected and valued in order to participate fully in society and to be free from discrimination.

Senators will be aware that it was just two days before this inaugural day to highlight inequalities for girls around the world that an attempt to take the life of Malala Yousafzai was carried out. On her way home from school on 9 October this year her bus was stopped and men later identified as Taliban terrorists entered the bus, sought her out and shot her twice at point-blank range. Miraculously, Malala survived. Following medical treatment in Pakistan, Malala was removed to the UK, to Birmingham's Queen Elizabeth Hospital, for specialist treatment. It was reported in the Washington Post that Ihsanullah Ihsan, who is the chief spokesperson for the Pakistani Taliban, said that Malala was targeted because she created negative propaganda about Muslims and that if she survived that they would once again try to end her life.

I commend Malala's father, Ziauddin Yousafzai, who, when asked if her family would seek asylum when Malala had recovered, said this:

I first laughed at it because all of our sacrifices, my personal (sacrifices), or this attack on my daughter, cannot have such a cheap purpose that we would go to some other country and live the rest of our life there.

This is true courage. It is true that if Malala and her family were to stay in the UK then Malala would be guaranteed an education, but that is not the issue here. The issue is that all children, all girls throughout the world, are entitled to an education. As Malala said, it is her basic right. Families should not have to move towns, cities or countries so that their daughters can be educated in a safe and nurturing environment. They do, but they should not have to. This attempt on Malala's life has increased the volume of her voice a millionfold. Where there was one girl standing up for her rights, there are now tens of thousands standing behind her. It is not she who should have to flee the Swat district, but the destructive Taliban militants.

I echo the statements of the UN Special Envoy for Global Education, former Prime Minister Gordon Brown, who recently met with the Pakistani President Asif Ali Zardari and handed him a petition of 855,000 signatures urging Pakistan to ensure gender equality in education. To quote Mr Brown:

For one Malala shot and silenced, there are now thousands of younger Malalas who cannot be kept quiet.

On 10 November, a day in Pakistan now known as Malala Day, schoolchildren—especially the girls—were chanting, 'I am Malala.' There is also currently a petition for Malala to be nominated for the Nobel Peace
Prize, of which she would be a worthy recipient.

Although once aspiring to be a medical professional, Malala has in recent times set her sights on a political career—something we in this place are all familiar with. I am sure my colleagues here in this place, as well as those in the other place, will join me in wishing Malala a speedy and complete recovery. We hope that her recovery brings with it a renewal of energy in Pakistan and for its people to stand up for equality for women and girls in education, leadership and throughout society.

Bushfires

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (23:18): I rise this evening, with the advent of summer, to warn the chamber and the community of the risks of bushfires as they present themselves in the months ahead. It was in my first speech, 17 March 2009, that I said:

We in the Senate have an obligation to the Australian community to ensure that those charged with the responsibility to protect life and property have the tools, the legislative capacity and the will to so do. It is incumbent on us to review past recommendations by authoritative sources and assess how effectively they have been implemented.

I made the comment at that time:

This is not the last we will hear of this issue in this place.

I concluded those comments with this statement:

The tragic privilege of delivering the eulogy of a 19-year-old volunteer who lost his life in a bushfire and attending the funeral of a brigade member born on the same day as me certainly focuses the attention on the awful sacrifice our volunteer firefighters are prepared to make.

On 1 November this year with my colleague Senator Humphries, I moved, and the Senate accepted, the motion relating to the 10th anniversary of the devastating Canberra bushfires, which occurred almost 10 years ago in January 2003, that we should reflect on the report *A nation charred*. The report was from an inquiry convened by the House of Representatives member at that time, Mr Nairn, and it made 59 recommendations, many of which have not been implemented. In that motion with Senator Humphries, I asked the Senate to recall the Black Saturday bushfires in Victoria—we have several of our colleagues from Victoria in the chamber this evening—which is said to be the worst day in the history of the state. There was the 2009 Victoria bushfires royal commission, which made 67 recommendations, and the Senate Select Committee on Agriculture and Related Industries report, *The incidence and severity of bushfires across Australia*, with which I was intimately associated when I first came into the Senate in 2010. There were 15 recommendations on that occasion—only five were ever accepted in principle and one has been implemented. I come back to the comment: this is not the last we will hear of this issue in this place and I give that undertaking this evening.

Those of us associated with the emergency management, particularly of bushfires, in this country speak of the DEAD cycle: commencing with a disaster, leading to an inquiry with an outpouring of expenditure, all too often that leads to apathy, and following the apathy is another cycle of disaster. The only position that separates us in the different states and territories of Australia is the time interval between each of the Ds—disaster to disaster. It has always been my plea that one of the natural disasters that can be prevented in this country is bushfires. We cannot prevent cyclones, we cannot prevent floods and we cannot prevent tornadoes, but we can prevent the impact of devastating bushfires, and it is
that to which I refer this evening. This very day in Queensland there are some 37 bushfires burning. Thirty of those 37 are wildfires and seven are controlled burns. In Tasmania, there are three bushfires of concern burning at the moment. In our state of Western Australia, there are four, and in South Australia there are 10. To give you just some understanding, we have not yet got to the start of summer, on 1 December, and yet we have that number of bushfires burning.

I refer to some names that would be absolutely unknown in this Senate chamber: Roger Underwood, Frank Bottini, Frank McKinnell, George Peet, Jim Williamson, Bruce Beggs and Don Spriggins. These gentlemen represent some 40 years of experience, reaching back to the 1950s, covering the science of bushfire, fuel reduction burning, strategic planning and fire suppression. In our state of Western Australia, these men and their associates are the mountains of men who have faced fires and dictated policy. I will go on if time permits to share with you some of the success that those people have had over time. They now refer to themselves in their semi-retirement—although I hope that, to their dying days, they will not retire—as the 'Bushfire Front'. This was the warning given by their chairman, Roger Underwood, only in the last few days:

Only luck will prevent WA from experiencing a "catastrophic" bushfire this summer, with WA ill-equipped to handle multiple high-intensity blazes merging into one …

Whilst I speak of WA, we know that we are speaking about Mediterranean, eucalypt dominated, summer, low-rainfall fires. The comments I make can be extended right across southern Australia. That was the comment that Roger Underwood made in recent times. This man has been held in great regard. We have had two major bushfires in the last two summers in Western Australia, one in the Darlington area outside the metropolitan area of Perth, which Premier Barnett asked the recently retired commissioner of the Australian Federal Police, Mick Keelty, to report into and on which Roger Underwood advised him. And only this time last year did we have massive bushfires down in the area that all of you in this chamber would know as Margaret River and surrounding areas. They were devastating bushfires, which regrettably were the result of a controlled burn that had gone badly wrong. Again Keelty was asked to come in with his experience and again Roger Underwood was there to advise him.

Mr Underwood made an important point to the inquiry, which I think should resonate around this country. He told the inquiry that south-west rural subdivisions remained undefendable from wildfire for four reasons—and they are certainly typical across this country: first, dead-end roads; second, unburnt bush; third, inadequate water supply; and fourth, clueless inhabitants from the city. Senator Kroger, if you go back and have a look at the recommendations of the royal commission and the data put before the commission, you will see each of those four was there in abundance, regrettably, during the bushfires in Victoria in 2009.

I speak of these four people and I go immediately, if I may, to the devastating bushfires in 1961 in the town of Dwellingup, right in the middle of the jarrah forests just south of Perth. It is interesting historically because the first of the forest managers that were brought into Western Australia and the other southern states were all from Britain and, of course, they had this idea that the bush never burns, so therefore their whole philosophy was directed toward stopping burning. Well, of course, Dwellingup was a prime example: a building up of fuel loads—fuel loads that never, ever got to the level of
the Victorian situation in 2009. Those fires devastated towns and forests, and it was only the excellence of the people I mentioned and their colleagues that actually saved that town. For the 50th anniversary, in January last year, Roger Underwood and his colleagues compiled a book of the experiences of people and it was a great privilege of mine to launch that book at an event on Australia Day 2011. The point they make—and I think again it is one that all of Australia should bear in mind when it comes to land management—is a basic principle that applies universally to conservation and land management in bushfire-prone areas: if effective bushfire management is not first achieved, no other land management or conservation objective can be achieved. For example, it is pointless to invest in resources such as capital resources and it is pointless to invest in anything to do with the protection of endangered species or recreational facilities in national parks if they are going to be wiped out in a devastating bushfire.

Time does not permit me to actually go through the discussion associated with fuel reduction burning. Regrettably, conservationists and those ignorant of the eucalypt forests have captured the agenda to the extent that now state governments and local governments are reluctant to do the necessary work to protect the community against the inevitability— (Time expired)

Stolen Generations
Abolitionist Sunday

Senator MOORE (Queensland) (23:28): Firstly today I acknowledge the apology made by the Queensland parliament to women who had their children stolen from them. Members of the Senate would remember the Senate inquiry that we did a number of months ago, brought down early in this year, where we recommended that apologies be made to these women. A number of states have done so, and we lead into a federal apology early next year. I want to congratulate Premier Newman and also opposition leader Annastacia Palaszczuk. It was a particularly moving apology and I know that many women and people who had been caught up in the process were affected deeply by it.

This evening I want to talk about 25 November, which is Abolitionist Sunday across churches in Australia. This particular process is led by World Vision. It focuses churches and communities on the fight to end human trafficking and slavery. On this day around Australia we advocate for change in the lives of those around the world who are suffering from the deep injustice of exploitation. Slavery was considered to abolished over 200 years ago, and in this place we have talked many times about the wonderful work of Wilberforce—former Senator Guy Barnett from Tasmania had a particular passion in this area and on many nights talked about that issue in this place.

We thought that slavery had been abolished over 200 years ago, and I think people have the concept that it is still true today. But we know that it is not. Human trafficking and labour exploitation takes place all over the world today in many industries—fishing, construction sites, farms, factories, brothels and private homes. The victims can be men, women or children, and we all think particularly of the case of children when their childhood has been stolen from them by labour, by slavery and by enforced work. They are not free; they are exploited, and they are exploited over and over again. Once you are caught up in this process there seems to be no escape because you are trapped deeply. In our world we exploit people for profit rather than valuing them as people.
On this Abolitionist Sunday we have the opportunity to think about these issues, to learn more about them, to have education and then, most particularly, to take action. Abolitionist Sunday is calling for an end to trafficking, slavery and labour exploitation. We can do this by the sustained growth of Australia's overseas aid budget, which can be focused to tackle global poverty and to protect the most vulnerable from trafficking and exploitation. We can continue to support international anti-trafficking initiatives, and we can also learn and take action locally in our own communities.

The movement is a growing movement, and we can see that. In 2012, over 150 churches will be taking part in Abolitionist Sunday, and we hope that that number will grow. What we need is local action. What World Vision has done, and they do it well, is provide information education tools. They have a church guide to ethical purchasing, which is being made available to communities across the country, where we can learn how to make decisions locally about what we purchase, because so much about the trafficking and slavery trade is based on profit, on products and on things that we buy daily in our lives in Australia. If we asked where the products have come from, if we asked what labour was used to produce them, then we could learn more and make decisions about our own purchases which not only could impact on people being caught up in this slavery but also could then enable us to make change ourselves.

The educational tools tell us how to use the internet to learn more about ethical consumerism, which is making intentional purchasing decisions that not only reduce demand for trafficked and exploited labour but also increase demand for ethical, sustainable and more humane business practices. We can develop our own checklists and look at the pre-existing assessments of fair trade, such as the Rainforest Alliance and UTZ certified products which are already in the system. We can check the products we buy, that our families buy, that our organisations and businesses buy, and we can make change.

We have already seen that there has been real value done through the work around chocolate. I have talked about this matter in this place before, because the use of chocolate seems to be a bit of a unifying aspect. We all seem to enjoy chocolate. The World Vision organisation has been able to re-educate Australians to ask questions about the chocolate they are buying, to insist there are fair trade arrangements in place, and we see those products available now. It did not seem that we could make change; it was too big, too hard and too difficult. But through enforced and sustained community pressure large chocolate manufacturers are now working to produce certification on their product so that we can feel strong when we choose a brand that has that certification. If we can do it with chocolate, we can do it with a range of other things. Abolitionist Sunday provides that awareness to give us the opportunity to look up what is available now, to look at what we are doing and to see how we can make change. That can make a real difference.

The other way we can learn is through another process where World Vision provides the life stories of people who have been caught up in slavery and trafficking. We can read lots of words, and we can study processes and read speeches; but when you actually hear stories of real people who have been caught up in this process and see that lives can be changed, it makes the whole process much more real. One of the case studies that World Vision provides is that of Pattinathar, a young man who is now 31 and who, 15 years ago, was rescued from bonded labour. He retells for us his experiences of
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torture, his lack of hope and then his excitement at seeing his community completely transformed and free of child labour. It is all too sad a story. This young man's father got into debt, because of a medical condition, and effectively sold his son's labour to repay that debt. The debt kept growing, so the young man was never able to be free. He tells of being chained and not able to move, and having to work long days on sugarcane plantations. But World Vision came into the community, saw what was going on and was able to intervene. Fifteen years ago this young man was able to make choices and become more free. Now he is able to work himself, to be involved in his own community and to be open to tell his own story to give us hope.

Another story is that of the young boy Salay, who was working long days of enforced labour in a brick factory, again through debt. He was not able to have education or family, freedom or life. A World Vision staff member visited the factory, saw what was going on and was then able, with the support of other members of the organisation, to intervene and ensure that this young boy would be freed from the debt and be able to move out of that process.

There are things we can do, and Abolitionist Sunday is a way that we can focus. We know that the issues of slavery and human trafficking continue. The Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade is currently conducting an inquiry into the issues around slavery and trafficking. I think that sometimes people get absolutely focused on the overseas nature of this and think that it does not impact on Australia. We know that there are elements of forced labour in our country through immigration and through false use of passports and visas. Those things need to be discussed, and we as a committee need to look at that closely and see what a difference we can make. These things are a blight on our society and on our world. I congratulate the church communities who took part in Abolitionist Sunday last week, and I think that we can do better into the future. I congratulate World Vision as always.

The promise and the challenge for all of us is that we can all make a choice to be involved, and we can actually help to free people from slavery.

Freedom of Speech

Senator BERNARDI (South Australia) (23:38): As the Labor government seeks to regulate and restrict the media, freedom of speech and transparency are now more important than ever. Goaded on by the Greens, this government is stifling free speech, because it cannot stand to be criticised in the public sphere. It vilifies individuals and attacks unfavourable coverage.

Senator Conroy interjecting—

Senator BERNARDI: We do not need, Senator Conroy, more regulation of the mainstream media. Just because ex-Senator Bob Brown harped on about the 'hate' media—that being any outlet that questioned the Greens' agenda and policies—it does not mean that Labor should jump at his command. But I fear that is what has happened.

Unfortunately, the issue of freedom of speech and freedom of the press is not confined to Australia. England is also facing its own battle over censorship and regulation. Last year in England there was a serious debate about super injunctions. These were used to prohibit the publishing of details related to the lives of those who attempt to protect their privacy. For example, a famous footballer took out a super injunction to stop discussion about his alleged affair. When thousands on the social media outlet Twitter
went wild with speculation and started naming the footballer, he actually tried to sue Twitter.

In the end it was a Liberal Democrat MP, John Hemming, who used parliamentary privilege to name the footballer in the House of Commons. Mr Hemming later said of the footballer, Ryan Giggs:

Basically when he ... showed that he was going to go after relatively normal people and try and prosecute them, for gossiping about him on a matter of trivia, I think he has to be held to account for that.

Stories like this, while they may provide sensationalist fodder for the tabloids, also highlight the seriousness of the debate around regulation, censorship and new media. Each year we are seeing increasing demands and stronger moves to restrict what we can and cannot say. This was previously the gambit of communist and socialist regimes. Authorities wielded power over the press and the public, dictating what could be reported and discussed. Now, I fear, it is the objective of an increasing number of Western governments, captured by political correctness, who seek to make taking offence at what others have to say a new occupation. The question remains: why are we now seeking to go back to the days of state sanctioned censorship of opinion and fact?

While in England recently someone told me about the Joint Committee on Privacy and Injunctions which was set up to examine the enforcement of anonymity injunctions and superinjunctions. In looking at some of the committee documents, I came across some written evidence to the committee that made reference to an Australian police murder investigation. A submission made by a man named Mr Mark Burby provides details of a superinjunction filed against him in 2009 by an 'ex-spouse of an Asian head of state'. The injunction was filed by the claimant to protect details about her personal life. The information in this submission is subject to a superinjunction and cannot be discussed publicly in England. The claimant's lawyers even attacked the time honoured principle of parliamentary privilege in an attempt to have the submission removed from the parliament website. According to Mr Burby's submission, one of the areas covered by the injunction is:

Any information calculated to identify the Claimant as the claimant in English proceedings against another individual or as the plaintiff in Australian proceedings against another individual, whom has since been assassinated, and a company that he controlled …

And:

… any allegation that the Claimant was involved in or responsible for that individual's murder.

'Australian proceedings against another individual, whom has been assassinated' are words that guaranteed to pique my interest and, I suspect, would pique the interest of several others. Also, Mr Burby claims in his submission that:

… the existence of the super injunction is suffocating the truth being either investigated or other witnesses evidence being obtained. It is further compounded by the fact the man assassinated was the subject of a similar/identical super-injunction taken out by the same claimant to avoid publication of the same facts. He was assassinated at the juncture of making an application to have the injunction set-aside on grounds that would have, in all likeliness, been successful. This is clearly a matter of public interest.

Indeed, it is a matter of public interest. My concern here lies with the consequences of this injunction and how it might impact on the investigations of this murder in Australia. I have been advised that the superinjunction could be impeding a line of questioning by NSW police. If this is true, we should all be very concerned—not just those who have are
suspected of being involved in this crime or those who have been charged with the crime.

I understand that the sentencing of some of those allegedly involved in the murder is occurring in the next few weeks and that a trial of the alleged mastermind of the assassination is expected next year. I am drawing no conclusions whatsoever about the case itself regarding the innocence or guilt of the accused, but it seems wrong to me that a civil injunction in England is possibly restricting a criminal investigation in Australia. Who knows if information covered by this English superinjunction could actually have an impact on this murder case?

Instances such as this demonstrate that we should remain mindful of the consequences of the push for more restrictions and regulations on freedom of speech. Those who are upset by criticism or have something to hide will never stop trying to chip away at our freedoms. The government's push for media regulation is a prime example of that. I do not believe that it should not be allowed to go unchallenged. By continuing to allow greater censorship in what either the media or the public are allowed to say we do a great disservice to our country and to future generations of Australians who deserve, as much as we do, to enjoy the freedoms that we enjoy.

**World War II: Papua New Guinea Campaign**

**Anzac Day Schools' Awards**

Senator McEWEN (South Australia—Government Whip in the Senate) (23:44): In July 1942 the Japanese landed near Gona on the north coast of Papua, now Papua New Guinea, and advanced along the Kokoda Track over the rugged Owen Stanley Range, eventually coming within 48 kilometres of Port Moresby. For four months on the treacherous terrain and jungles of the track, Australian soldiers fought side by side with Papuan infantry, forcing Japanese troops slowly back along the Kokoda Track. Assisting the troops were PNG civilians who became affectionately known as the fuzzy wuzzy angels. After Kokoda was secured, the fighting moved to the north coast beachheads, where Australians and Americans attacked Japanese positions at Buna, Gona and Sanananda. With increased supplies, reinforcements and air support, the Allies took all three strongholds from the Japanese by January 1943. Those battles of Kokoda and the beachheads cost more than 1,800 Australian lives, and more than 4,000 were wounded or struck down with terrible illnesses.

Earlier this month, a group of eight veterans returned to Papua New Guinea to mark the 70th anniversary of those battles. South Australians Ray Baldwin and Eric Sambell, aged 91 and 92 respectively, were amongst the group of veterans returning to the scene of the campaigns. The veterans took part in a number of commemorative activities while in Papua New Guinea, including commemorative services at Kokoda, Popondetta and Bomana War Cemetery. For most of the veterans who fought in the most gruelling of conditions, it was their first time back in the country where they lost so many mates. For Ray Baldwin, it was his third trip back to Papua New Guinea, but he said it did not get any easier. Mr Baldwin, who served alongside my father in the 2/27th Battalion in Syria, Papua New Guinea and Borneo during World War II, said the painful memories of losing mates would never leave him. He said:

When we left Australia and landed in New Guinea, we had 870 Other Ranks and 37 Officers. After the Battles of Kokoda and Gona, which was a hell hole, we had three Officers and 37 Other Ranks, so those are the memories I have.
I knew so many of them and I've never met better people in my life.

The special trip back to the battlefields was sponsored in part by the government, through the Department of Veterans' Affairs, and all of the veterans agreed it was an honour to be chosen to return to Papua New Guinea. However, while over there, it was not just the Australians being honoured. Our veterans were reunited with surviving fuzzy wuzzy angels and presented them with fuzzy wuzzy angel commemorative medallions at the Popondetta service.

The eight veterans who travelled back this month from Western Australia, the ACT, New South Wales, Victoria and South Australia represented all Australians who served and died in those battles. Today I think it is important that the memories of those men and women who fought for our country in all wars live on. For this reason I am a big fan of the federal government's Anzac Day Schools' Awards, an annual competition for schools around the country to get creative as they learn more about Australia's important wartime history. Recently I had the pleasure of attending Allendale East Area School in regional South Australia and Kildare College in Adelaide's north-eastern suburbs to present the schools with their prizes for the 2012 competition.

For a relatively small regional area school, Allendale East Area School presented excellent work that formed their entry into the 2012 competition. Embarking on a journey that would teach them more about the spirit of the Anzacs, the year 6/7 students, led by Ms Julie Murdoch, ended up winning the South Australian primary state runner-up prize. Beginning early this year by listening to music and reading poetry, the students continued their learning with readings and in-depth discussions about diggers, trenches and the Anzac spirit. The class had a local veteran come and speak to them. By listening intently and asking questions, the students were able to get a personal insight into what it is like to be involved in war. I was most impressed to hear that, prior to Anzac Day this year, the class also invited a local woman to teach them how to construct wreaths made with flowers and foliage that the students had brought in from their own homes. On Anzac Day the students attended the Port MacDonnell dawn service, laying their handmade wreaths on the memorial on behalf of the school. All of this work was entered into the competition and received high praise from the judges, who stated that they were particularly impressed by the students' reflection on their activities and the attendance at their local community dawn service. When I visited the school, it was clear to me that the students had really enjoyed learning about the Anzacs. The poetry that was presented at the assembly was poignant and mature beyond their years, and all the students were enthusiastic about what they had learned over the course of the year.

Along with school students who participated in the competition right across the country, the Allandale East year 6/7 class now have a much deeper understanding of those Australians who have served and died in wars, conflicts and peacekeeping operations.

For the third year in a row, I also recently had the pleasure of attending Kildare College, a Catholic girls school in Adelaide's eastern suburbs, to present them with their prize for the 2012 Anzac Day Schools' Awards. Kildare College yet again demonstrated excellence with their entry, winning both the national prize and the South Australian secondary category. This has added to the success of their previous entries which saw them win the South
Australian secondary prize in both 2010 and 2011 as well as the award for best use of technology in 2010.

In previous years, Kildare College have taken a great idea and produced a highly creative entry for the competition. This year was no different: 2012's year 10 history students published a book containing interviews and historical information on the contribution of women in war. As part of the entry, students interviewed female veterans from the Second World War through to current serving members. The entries were creative, thoughtful and well-researched tributes to the service of women and the sacrifice that they have made for Australia.

As in previous years, the students at Kildare College have again created a piece of history that would otherwise have gone untold. Each year the students spend a great deal of time working on their interviews and striking up some great friendships with the veterans. Due to this, the students are able to extract deeply personal stories and memories, and they capture and relay their messages in a way that honours our current and former service men and women.

I would like to officially congratulate the year 6/7 class from Allendale East Area School and the year 10 students from Kildare College involved in the Anzac Day Schools' Awards. I would encourage all Australian schools to get involved in the Anzac Day Schools' Awards and learn more about Australia's important wartime history, especially as we move towards the Anzac Centenary in 2014.

**Competitive Shooting**

**Senator McKENZIE** (Victoria) (23:52): In schools across rural and regional Victoria, the obvious sports of choice are football, netball and cricket—and I know this because, prior to coming to this place, I happened to be a PE teacher. Whilst popular, they are not always every child's first choice. I notice you smile, Madam Acting Deputy President Moore. I know you have a strong passion for rugby—a passion I do not share; I do not quite understand, being a southerner, but I appreciate that you love the sport in your state.

Rather, it is the highly skilled sport of competitive shooting in some areas which has great appeal. You would probably be surprised by the sport's popularity amongst rural and regional students, particularly in this day and age. The focus is not about moving a ball from one end of the field or court to another but on a brief intense moment when a clay target goes flying across the sky and there are only milliseconds to hit the mark. I hope I have gone some way to explaining how exciting this sport can be. The exhilaration many feel on the football ground kicking a winning goal or taking a hat-trick in cricket is the same as hitting the winning target after an exhausting day of competition.

I hope that those who are listening tonight will appreciate that tomorrow out on the courts on the House of Representatives side here at Australia's Parliament House we have the parliamentary netball team playing the federal press corps at 6:45 am. I am really excited to put that on the record as a keen participant in the parliamentary netball team. Senator McEwen, I notice, is laughing—almost celebrating over there, given her current injury status, I am sure—go for it, Anne. That is fine; no worries we will do it for you.

Going back to my speech, I think the chamber would be intrigued to hear that on August 16 this year, year 12 students travelled from Barham high to Cohuna to compete in the north-west zone down the line shoot. Some 91 students competed in the shoot, with the winners progressing to the
next level, which was held in my own patron seat of Bendigo on 3 September. Jade Heffer was third in the senior girls competition and Emily Jones was first in the junior girls competition. It was a great effort in anyone's book.

For those students who did not make it through, there was a Field and Game shoot in Swan Hill they could participate in. It was yet another opportunity for the students to celebrate and showcase their skills. I was fortunate enough to present the awards at the Bendigo shoot, and I was thoroughly impressed by the high-quality field of young shooters. I was particularly impressed at the senior level. These young people displayed a consistency of skill as they hit the target with round after round.

I would like to highlight the skills of a young female shooter, Penny, who out-shot her male counterpart, Jake, after many, many rounds. There was absolute consistency as they kept hitting the target—five out of five, time after time. I was very impressed.

It is particularly pertinent, given that a couple of weeks ago I was able to participate in the annual Pollie Shoot at the Melbourne Gun Club. I note Senator Ryan is in the chamber tonight. He was a keen participant in that day's proceedings. I was privileged to be a part of one of three National Party teams on the day. Predominantly federal National Party members were in that team, with Senator Scullion and shadow minister John Cobb leading the way. I must say that I did not let the team down. I did not get a full shot, but two out of five ain't bad!

This event was run by Field and Game Australia to introduce and promote to politicians the joys and intricacies of shooting. My contribution requires the next 12 months to be spent in hard training at my local club, in Bendigo. It was at the Pollie Shoot that I was reminded of the concentration displayed by Penny and Jake in their shoot-out. As I raised my gun for round after round it was very heavy and I had to focus on the very intricate skill of getting it right. Just like their football, cricket and netball counterparts, these young students are dedicated to their sport and they practise diligently. Some no doubt harbour a desire to reach elite levels.

There is no questioning how important youth involvement is to the sport of shooting. There are some 50 to 60 schools in Victoria that offer some form of shooting program, some as a curricular activity and others as an extracurricular one. This is often as a result of a single highly educated teacher within the school who has a passion for that particular sport. I think back to my own teaching experience down in South Gippsland, at Yarram Secondary College, where Eva Hirt had a particular passion for teaching our students shooting. She did it in her own time—taking them overseas—and a lot of young people who were not from shooting families got to participate in the sport, which they otherwise would not, had it not been for Eva's passion for it. The idea that regional and rural schools treat shooting like they would their interschool cross-country or swimming competitions is fantastic. Shooting needs youth involvement, whether it be at local fox drives, clay target ranges or wetland restorations, and I will have more to say on that point in a moment. We do not want to see the sport die out. Rather, it needs to grow.

I commend the efforts of the Field and Game branches, which have worked hard to spike students' interest in the sport. The branches have been heavily involved in running secondary school competitions and wetland restorations, tapping into young people's desire to actually make a difference for their local communities. Host branches for major competitions featuring hundreds of
participants have included Sale, Minyip and my old stomping ground of Benalla. At Minyip, school shoots have been held for five years and they have had over 300 entries from 22 schools. Benalla Field and Game and Benalla College hosted a Field and Game shoot for 270 students from 19 schools. This championship has run for 40 years, the last half under the Field and Game discipline. A very good friend of mine from my childhood years, Joanna James, known as Josie, was a key participant in that particular shoot, probably about 20 years ago. In anyone's books, these are astounding figures for participating in sport.

This is the sort of interest we need to maintain in our budding young shooters. Field and Game clubs must be commended for their continued involvement and drive to promote the sport.

Many offer junior membership fees and nominations. This is excellent forward planning. All they need to do is offer an opportunity for a young person that sparks their interest; and many clubs actually have club guns that young people can use as a way of developing their skills in the sport.

Shooters not only display and hold the key skills required for pest eradication, or simply for the joy of the sport but they are also acutely aware of their role in conservation. That is why we need a lot of people involved in promoting the sport of shooting—those with a strong passion—so that young people can not only learn the skills but stick with the sport going forward. The Field and Game Australia website states:

Field and Game Australia have consistently been at the forefront of wetland conservation … Wildlife scientists agree that the loss of habitat is the greatest threat to waterfowl, far greater than recreational hunting.

In fact, Field and Game Australia was created by hunters concerned about habitat loss. A primary objective of Field and Game Australia is to preserve, restore, develop and maintain habitat in Australia. The Heart Morass restoration program is a great example of Field and Game Australia giving back to the environment and wetland communities. Conservationists, hunters and governments have joined together to develop a wetland at the border of the Gippsland Lakes and Gippsland Plains that can cope with variable conditions. The project is six years old this summer. Fifty thousand indigenous trees, shrubs and grasses have been planted, mostly by volunteers. In fact, more than 30,000 waterbirds can be found in this 1,080 hectare wetland—and yes, shooters have had a direct hand in this development.

Young people who get involved in the sport of shooting are not only learning about the discipline of the sport, celebrating wins and dealing with loss, but also about actions and consequences. It is great to have the Minister for Sport here to hear about the great sport of shooting. Local gun clubs also have a hand in doing this. Guns are part of life in regional Australia. 764,000 people are licensed gun owners in Australia—that is nearly 275,000 more than played lawn bowls in Australia in 2011. Livestock, pest control, recreation and sport are all key reasons people hold gun licences.

**Asian Century**

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (00:02): Late last month, Prime Minister Gillard delivered a speech at the Lowy Institute in Sydney in which she introduced one of the most important policy discussions this nation is ever likely to have. It concerned Australia’s strategic positioning—economically, politically, socially and culturally—in the
21st century. She referred to the Asian century—the century in which the world, and especially our region, will witness Asia's ascendancy. The Prime Minister was not content merely to observe this unstoppable trend or surge; she steadily worked her way through five key areas—pathways if you like—in which Australia needs to act on the Asian phenomenon: economic savvy, education, market integration, new ways of building mutual understanding, and security.

It is to this fourth area that I wish to turn to this evening. I want to enlarge on what the minister referred to as Labor's plan for a myriad of stronger, deeper, broader cultural links with the nations of Asia at every level. I want to try to give some idea of how this significant ambition might be developed, with particular reference to several projects emanating from the nation's capital here in Canberra. It is my hometown and it heads into the most exciting year ever.

Next year, in 2013—as all members and senators are well aware—we will recognise and commemorate the centenary of the laying of Canberra's foundation stones and the naming ceremonies that took place very close indeed to where we are gathering this evening, when the Governor-General, Lord Thomas Denman, Prime Minister Andrew Fisher and the Minister for Home Affairs, King O'Malley, used their specially inscribed golden trowels to lay the city's first significant building blocks. Shortly after, Lady Gertrude Denman opened her specially inscribed gold case, took out a card with the word Canberra on it and gave the city its name—and, as it turned out, its official pronunciation as well. These ceremonies took place in the parliamentary period of 1910 to 1913 when Andrew Fisher's progressive Labor government enjoyed a majority in both houses—for the first time since Federation, I might add. Fisher was not interested in exploiting this unique situation for any political advantage; rather—typical of Labor governments in power—he focused his government's sights firmly on the future. Prime Minister Fisher had a keen personal interest in the developing symbols of the new nation: the coat of arms that must be genuinely Australian, the images and motifs on coins and stamps, the national flag and anthem and so on. But he placed this passionate pursuit within the context of a raft of momentous legacy projects for the new federated Commonwealth.

We are now just over a month shy of the commencement of 12 months of a brimming program for Canberra's centenary, so wonderfully constructed and nurtured by the centenary's inspired creative director, Robyn Archer, and her industrious team. It could hardly be a better moment for me to cite a couple of recent examples of centenary projects which exemplify perfectly the kinds of initiatives and legacy ideas anticipated by the Prime Minister when she launched the *Australia in the Asian Century* white paper. Long-term connections between countries at their most constructive and productive must go beyond the diplomatic and trade realms. In recent months the centenary team has done just that, venturing into the field of cultural relations, with splendid results.

In a number of speeches in this chamber over recent years I have made sure that there is a *Hansard* record of the series of centenaries that Canberra has recognised dating back to 2008, the centenary year of the government decision to build the capital in a region then called Yass-Canberra. What we have all learned on the way is that, 2013 aside, there is no doubt that of all the preliminary years this year, 2012, is the most significant. Why? Because it was in this year a century ago that the dream Chicago team of Walter Burley Griffin and Marion Mahony Griffin won the competition to
design the federal capital of Australia. There were a number of appropriate commemorative events and activities in the relevant month of May, earlier in the year. But the grand Griffin narrative—then controversial, poignant, even mystical in some ways—quite simply deserved more.

The Centenary of Canberra team, despite working intensely to get everything in order for the imminent new year, made sure this happened. A few weeks ago, Robyn Archer and the centenary's history and heritage adviser, Dr David Headon, went to India, the United States and England in a packed, whistlestop tour to reinforce a series of Canberra's cultural connections with those three nations, not least the shared heritage past. Australia, India and the United States were each investigating the establishment—or in Washington's case the re-establishment—of a capital city a hundred years ago; all three were intricately connected to the emergent 'science' of town planning at the time; and all three had the ultra-ambitious aim of creating the 'ideal city'.

In India, Ms Archer and Dr Headon participated in two seminars to large, standing room-only crowds organised by the Institute of Urban Designers India, in both New Delhi and Lucknow. The most memorable highlights it seems occurred in Lucknow, a city with an incredible design past with many of its buildings constructed in either the famed era of the Mughals or the following period of the Nawabs. For Australia and the United States, the city has the added significance that Walter Burley Griffin, at the age of 60 in February 1937, died suddenly of peritonitis and was buried in an unmarked grave in Lucknow in the Church of North India's Nishatganj cemetery. Ms Archer and Dr Headon took some water from Lake Burley Griffin to sprinkle on Griffin's grave in a very moving, carefully scripted ceremony that received good publicity here in Australia and outstanding coverage in India in the pages of the national daily, the Hindustan Times, over a period of 10 days. The response of the business community in Lucknow, along with the Vice-Chancellor, staff and architecture students of the local Guatam Buddh Technical University, was overwhelming. A number of joint activities in the near future are now certain.

The same was true when Ambassador Kim Beazley hosted a launch of the centenary program at the Australian Embassy in Washington, once again to a standing room-only crowd. Complementary lectures given by Dr Headon at George Washington University and then days later at Chicago's Northwestern University drew a similar response—a genuine eagerness by some of America's most prestigious institutions and design professionals to engage culturally with Canberra's design and tertiary sectors to expand further the common ground.

London was yet another highlight. Not only did Ms Archer launch the centenary and give the annual Arthur Boyd lecture but she and Dr Headon connected with no fewer than three generations of the Denman family with its historic bond to the Australian National Capital Foundation's story. The Tom Denman golden trowel and the famed gold naming case of Lady Trudie Denman are shortly to be shipped to Canberra for an exhibition which I will have the honour of opening right here in Parliament House on 14 January, in just seven weeks.

The overwhelming enthusiasm for these historically overlooked Centenary of Canberra international connections represents a lesson for Australia at once significant for the national capital and the nation. The centenary's initiatives have
revealed some subtle and surprising cultural connections but not least those shared with India. Built on newly prominent common history, such a fertile pathway can only encourage the most effective global positioning of Australia in the new century, especially one so indelibly marked with an Asian stamp, such as it is. The ties through Walter Burley Griffin and his wife Marion Mahony and India, and in particular the city of Lucknow.

**Trachoma**

**Senator FAULKNER** (New South Wales) (00:10): I seek leave to speak for up to 20 minutes.

Leave granted.

**Senator FAULKNER:** I thank the Senate. Indigenous Australians are six times more likely to be blind and more than twice as likely to have poor vision compared to all other Australians. One of the most common forms and causes of Indigenous blindness is the debilitating and entirely preventable disease, trachoma. Tonight I want to highlight the government's efforts to tackle trachoma and speak more broadly about the future challenges we face in addressing Indigenous eye disease.

Trachoma is a contagious infection of the eye caused by the bacteria, *Chlamydia trachomatis*. This bacterium promotes symptoms similar to common conjunctivitis: stinging eyes, sensitivity to light, swollen eyelids and a build-up of conjunctiva. Left untreated, conjunctiva gradually scars the inner eyelid. Repeated infection, especially in childhood, causes the eyelids to distort, turning the eyelashes inward and making them rub against the cornea—a process known as trichiasis. In advanced stages, the scarring becomes so severe that it causes blindness.

Trachoma is an intimate disease, passed most often from child to child and from child to mother. It is transmitted through close facial and hand-to-eye contact and by anything that touches infected fluids such as bedding, towels and other such things including flies. Trachoma is a product of poverty and biology, its virulence born of place and pathogen. It lingers where poor sanitation, crowded living conditions and poor access to clean water and health care remain Third World conditions or, sadly, Third World conditions that persist in the First World.

More than 150 years since the bacteria prospered in the Dickensian conditions of the industrial revolution and more than 200 years since Napoleon's troops were struck down with blindness during the Egyptian campaign, trachoma remains prevalent amongst the first inhabitants of one of the wealthiest nations on earth. Australia is the only developed country in the world where trachoma continues to cause blindness.

Trachoma disappeared from mainstream Australia more than a century ago yet endemic trachoma persists in two-thirds of all remote Indigenous communities. Its persistence is just lamentable given that its treatment and control is relatively simple. The most effective strategy for controlling the spread of the infection is washing children's faces. The most effective treatment is a course of antibiotics. Even in advanced stages a simple medical procedure can correct trichiasis.

The fight against trachoma in Australia is part of international efforts to rid the world of preventable blindness. On 16 May 1998, the World Health Assembly adopted a resolution calling for the Global Elimination of Blinding Trachoma—now known by the acronym GET 2020. In 1999, this was accompanied by a new initiative called Vision 2020. It is a collaboration between the World Health Organization and the
International Agency for the Prevention of Blindness. Its aim is to end avoidable blindness worldwide by 2020.

Conscious of global efforts to address eye health, in 2009 the Rudd government committed itself to the elimination of trachoma by adopting the World Health Organization's SAFE strategy. SAFE stands for: surgery, antibiotics, facial cleanliness and environmental improvement—all measures aimed at the treatment and control of trachoma. This commitment to a global approach to treatment was matched with a dedication of $16 million over four years to tackle trachoma as part of a $58.3 million Indigenous eye and ear health initiative. Funds for trachoma were earmarked to improve disease surveillance and control.

Since the introduction of these initiatives real progress has been made in the fight against trachoma. The latest assessment prepared by the National Trachoma Surveillance and Reporting Unit at the University of New South Wales shows that in Western Australia trachoma prevalence decreased by six per cent in 2009-10. In the same period, the prevalence of trachoma decreased in all communities across the Northern Territory with the exception of those around Alice Springs. These findings suggest that with improved detection and management, we are beginning the painstaking work of combating trachoma.

However, there is an awful lot of work still to be done if we are to rid Australia of this terrible disease. While levels of trachoma are stable or decreasing in the Northern Territory and Western Australia, results from South Australia are inconclusive. Indeed the latest assessment states that:

Of all children screened across all jurisdictions, 11% had trachoma, demonstrating that Australia continues to have endemic levels of infection.

This level of infection remains well above the target of less than five per cent, set by both the World Health Organization and our own Communicable Diseases Network.

The Roadmap to Close the Gap for Vision, prepared by the Indigenous Eye Health Unit at the University of Melbourne, estimates that $17.4 million is required to extend the SAFE program from 2013 to 2016. The same report estimates a further $5.4 million is required for surveillance from 2017 to 2020. These are effective programs shown to decrease the prevalence of trachoma. In 1901 Andre Cuenod wrote: Trachoma retreats as civilization advances.

It is a measure of the imperfection of our civilisation that trachoma remains within our midst, and it is my view that its persistence is a measure of society's apathy and inequity. A civilization of our capacity and compassion must rid itself of this terrible disease.

The irony is that Aboriginal people begin life with the world's best visual acuity but by adulthood are six times more likely to be blind. They start well ahead but they finish well behind. Like trachoma, the treatment and prevention of all Indigenous vision loss is within our grasp. Ninety-four per cent of all Indigenous vision loss is preventable or treatable, but only 35 per cent of Indigenous adults have ever had an eye examination.

The practice of government is often the art of choosing between competing interests, and one could be tempted to think that perhaps eye health is important but not a life-threatening concern. However, as the team at the University of Melbourne's Indigenous Eye Health Unit point out:

Even mild vision loss … increases the risk of dying 2.6 times in mainstream Australia.

And even 'mild vision loss prevents independent healthy living'. Vision loss, after diabetes and heart disease, is the equal third leading cause of the gap in health outcomes.
between Indigenous and non-Indigenous Australians. Vision loss is a more significant, although perhaps less dramatic, impediment to health equality than trauma, stroke and alcoholism.

Eye health care remains one of the most cost-effective health interventions available and the best advice suggests that additional funds of $20 million per year, or a total $70 million, with the program being implemented over five years would close the gap between Indigenous and non-Indigenous Australians. I say that that would be money very well spent.

This morning in Melbourne, Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, launched the first annual update on the implementation of the Roadmap to Close the Gap for Vision. As was stressed at that launch, there is broad stakeholder support for the roadmap and what is needed now is the concerted commitment of governments to fully implement its recommendations. I sincerely hope that that commitment will be forthcoming.

This evening I have focused primarily on trachoma, but any loss of vision is a disaster of clarity that impedes people's ability to fully participate with the world. Professor Hugh Taylor, a man who has dedicated much of his life to ridding this country and indeed the world of trachoma, once wrote:

"What is really required to eliminate blinding trachoma in Australia is an ongoing political commitment at all levels of government. On a global scale we clearly have the tools and in Australia the resources are available. What is needed to eliminate trachoma as a blinding problem is sustained political will and the commitment to follow through."

The same can be said for all types of preventable blindness. We need to sustain the political will and maintain our commitment to ensure that the clarity of our citizens' sight is not a function of where they live or a function of the colour of their skin.

Tamil Community
Environment

Oxfam: Andrew Hewett

Senator RHIANNON (New South Wales) (00:25): I seek leave to speak for 20 minutes.

Leave granted.

Senator RHIANNON: For Tamils all around the world, including in Sri Lanka, 27 November marks a very important and hauntingly sad day. In Tamil the day is known as Maaveerar Naal. Veerar means 'warrior' or 'hero'; Maa means 'great'; and Naal means 'day'. It is a day on which millions of Tamils will remember the hundreds and thousands of brothers, sisters, mothers, fathers, children and the elderly who sacrificed their life in the 26-year-long struggle for their freedom.

Last year on this day I joined around 2,000 Tamils in Sydney's west to pay respect to the courage, strength and sacrifice of the Tamil people. The overwhelming distress and pain of the Tamil community as they stood in line to lay down a flower in respect for the fallen was a piercing emotional experience for me. I am in parliament today so I will not be able to join the community, but I still stand beside them as their friend on this significant day.

I have come to know the Tamil community in Sydney intimately and I know that their grief and feeling of betrayal by the international community, world leaders, and the United Nations is still very raw. These emotions are perpetuated by the discrimination and brutality the Tamils continue to face at the hands of the Sri Lankan government, including the sexual abuse and exploitation of women,
imprisonment, land grabs, torture, assassinations and kidnappings.

Australia's continuing 'friendly' relations with Sri Lanka in order to stop Tamils from fleeing their country is a matter of despair. The Australian government and opposition's discriminatory views and actions towards Tamil asylum seekers who do manage to make the dangerous journey here is shameful.

The recent assassination in France of a French Tamil community leader is an example of the ongoing challenges that the diaspora Tamils face. Over the weekend, thousands of Tamils across France and Europe gathered in Paris to pay their respects to Mr Nadarajah, also known as Parithi, who was murdered on 8 November. It is alleged that his killing was orchestrated by Sri Lankan government officials. When investigating these crimes I trust that the French authorities will be thorough and transparent with any information that may indicate it was a political assassination.

At the service, there were community representatives from Australia, Canada and New Zealand. French politicians were reportedly present. The mass attendance and the state-like ceremony that was performed reflects the commitment and resolve of the Tamils. Amidst their show of communal grief, they have once again sent a powerful message to the international community that they will not be silenced in their work to achieve a war crimes investigation and justice for Tamils in Sri Lanka.

A few weeks ago the UN made international headlines when a leaked internal UN report prepared by Charles Petrie concluded that various UN agencies had failed to meet their responsibilities in the last months of the civil war in Sri Lanka. The report concluded that 'events in Sri Lanka mark a grave failure of the UN'. Writing for Canada's Globe and Mail on 19 November, Frances Harrison, a former BBC correspondent in Sri Lanka and author of Still Counting the Dead: Survivors of Sri Lanka's Hidden War, stated:

... the latest UN report documents how UN staff members were in possession of reliable information that showed that the Sri Lankan government was responsible for the majority of deaths. And that two-thirds of the killings were inside safe zones unilaterally declared by the Sri Lankan government purportedly to protect civilians. This was information senior UN managers decided not to share with diplomats when they briefed them.

The BBC reported that the Petrie report points out that in Colombo 'many senior UN staff' did not perceive the prevention of killing of civilians as their responsibility, and agency and department heads at UNHQ were not instructing them otherwise' and that there was 'a continued reluctance' among UN personnel in Sri Lanka 'to stand up for the rights of people they were mandated to assist'. The report also talks about the UN's reluctance to publish casualty figures. During the war, the UN maintained a figure of about 8,000 Tamil deaths. After the war, a former UN spokesperson in Sri Lanka, Gordon Weiss, put this figure as high as 40,000. The Petrie report says that 'credible information' indicates 'that over 70,000 people are unaccounted for'. Dr Sam Pari, spokesperson for the Australian Tamil Congress, says Tamil church leaders and civil society, using census statistics, have calculated the death toll to be 146,679.

Against this figure of 146,679 Tamil deaths, the UN estimation of 8,000 is an insult. Even a possible 70,000 figure is hard to trust. So, three years on, we still have no agreed figure of how many men, women, children and elderly were killed in the first five months of 2009.
What this internal review has revealed is nothing new. All throughout the final months of the war, Tamils all over the world pleaded with international leaders to take notice of the massacre taking place in Sri Lanka. Thousands of Tamils continuously took to the streets in India, Australia, Canada, US, Malaysia, New Zealand, Switzerland, Germany and France. In Britain an unprecedented 300,000 Tamils closed off Parliament Square crying out for a ceasefire. Numerous young Tamils were on hunger strike, and in India young men burnt themselves alive, unable to bear the news of what was happening to their brothers and sisters. In a blog post on 15 November, former UN spokesperson, Gordon Weiss, said:

... Sri Lanka pulled off one of the nastiest episodes of mass killing since the Rwandan genocide - and got away with it.

He went on to say:

Despite a clear advantage over the near-vanquished rebels, the army bombed packed hospitals, used starvation tactics, executed civilian captives, raped and killed female guerrillas and corralled women and children into "safe zones" before shelling them. When that was done, it interrogated and then killed the Tamil Tiger political and military leadership, along with their families.

I find it hard to believe that Western governments did not know what was going on. It has been confirmed that the UN certainly did know. While there were diplomatic efforts by some European leaders, the overall efforts were minimal. I congratulate the aid workers, Tamil doctors, priests, Tamil net journalists and diaspora Tamils who stayed in the conflict zone and did everything they could to make the world listen. Many died. Today, I will remember them on Maaveerar Naal.

In responding to the leaked UN internal review, UN chief, Ban Ki-Moon, said in a statement:

... I am determined that the United Nations draws the appropriate lessons and does its utmost to earn the confidence of the world's people, especially those caught in conflict who look to the Organization for help.

I welcome Mr Ban's statement. It is important to hear that the UN is determined to draw the appropriate lessons. Mr Ban has said he will organise a senior-level team to provide him with careful consideration of the recommendations and advise on a step forward. It is a step in the right direction, but we have to acknowledge that it is a very small step. Many feel it is too late.

My concern with Mr Ban's statement is what he omitted: will anyone in the UN be held responsible? In his blog, Gordon Weiss speaks of an incident during the war when Australian UN humanitarian worker, James Elder, warned that children were being killed and a Sri Lankan government official accused him of supporting terrorists. The government expelled Elder. That government official, Palitha Kohona, is now Sri Lanka's representative at the UN. His deputy is a former general accused of mass killing during the war. Is Palitha Kohona going to be held accountable? And what about Vijay Nambiar, who was Mr Ban's then chef de cabinet? Writing for The Huffington Post on 16 November, Frances Harrison says Mr Nambiar implored the UN High Commissioner for Human Rights, Navi Pillay, to dilute her statement when she wanted to speak about potential war crimes by the Sri Lankan government. Will Mr Ban do anything about him? And what about a war crimes investigation? Will Mr Ban take the necessary steps to appoint an independent war crimes investigation to set the record straight? And will member states give him the backing that he needs?
The Australian government has maintained a complicit silence regarding the Rajapaksa regime and the allegations of war crimes against it, and it continues to give a former navy official during the war—Thisara Samarasinghe—diplomatic immunity in Canberra. I note here a sentence from page 28 of the Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka:

From as early as 6 February 2009, the SLA—the Sri Lankan Army—continuously shelled within the area that became the second NFZ—no fire zone—from all directions, including land, air and sea.

The failure of the Australian government and other Western governments to take decisive actions, such as adding their support to Canadian Prime Minister Stephen Harper’s call to boycott CHOGM if it is held in Sri Lanka in 2013, adds to the pain and anguish that so many Tamils and their supporters feel, particularly on a day as important as today.

I congratulate all those who are working to ensure that there will be a war crimes investigation. As 27 November dawns around the world, I acknowledge the grief and courage of Tamils who gather together to remember and reflect on the enormity of the lives lost. I repeat the call that crimes against humanity and war crimes committed in Sri Lanka must be independently investigated.

On another matter, Australia’s coal export industry delivers dangerous climate change to the world. It also presents dangers at home. In the New South Wales Hunter Valley there is a growing awareness that living alongside the coal industry is bad for your health. A community campaign to oppose the fourth coal export terminal being built at Newcastle Harbour is gaining momentum because Hunter residents have become united by a common cause: they are sick of coal.

CTAG is a coalition of 16 Hunter based community groups who oppose the fourth coal loader development proposal, which is known as T4, which is being constructed in Newcastle harbour. A chief concern for CTAG is high levels of coal dust in Newcastle and across the Hunter from an increased number of coal wagons moving through the region and the further expansion of coal mines. They are also concerned about the many negative environmental impacts of the T4 proposal.

It is well known that each year many hundreds of coal ships make the long journey to export coal from Australia to Japan and Korea. What is less known is the reciprocal journey that thousands of migratory birds make each year, flying from Northern Asia to Australia to nest, breed, forage and fatten up in the unique wetland environment of the Hunter estuary, in the heart of Australia’s largest coal-exporting port at Newcastle harbour.

The Hunter Bird Observers Club has expertly and thoroughly documented their concerns that the proposed T4, if built, would permanently destroy a key element of the wetland ecosystem of the Hunter estuary and the Hunter Wetlands National Park. Two wetland sites, Deep Pond on Kooragang Island and Swan Pond on Ash Island, will be destroyed if T4 goes ahead. Unfortunately these two sites lie just outside two RAMSAR listed wetlands. The Hunter Wetlands National Park received RAMSAR listing in 1984, and the nearby Hunter Wetlands Centre was listed with RAMSAR in 2002. Despite the important role they play in the wetland ecosystem, Deep Pond and Swan Pond were not listed, nor were they gazetted by the New South Wales government as part
of the national park. The New South Wales government has now rezoned land on Ash Island to pave the way for the fourth coal loader to proceed.

The federal Minister for Sustainability, Environment, Water, Population and Communities, Mr Tony Burke, has the final say in this. He can save these key wetland sites in the Hunter estuary and honour the Australian government's commitment under international agreements with China, Korea and Japan to protect migratory shorebird populations. These wetland areas, Deep Pond and Swan Pond, under threat of destruction are invaluable. They form a complex and densely interwoven ecosystem, with an extremely rare combination of near-natural wetlands, made up of coastal mangrove, melaleuca swamp forest and freshwater reed marshes, with artificial wetlands such as freshwater lagoons and ponds. Together they form a unique haven for the 112 species of waterbirds and 45 species of international migratory shorebirds they nurture, such as the endangered Australasian bittern and other threatened and vulnerable species like the green and golden bell frog and the estuary stingray. They combine both tidal seawater and brackish freshwater ponds, making them highly significant as both feeding and roosting sites for migratory shorebirds, often at critical stages of their life cycles, and providing refuge in times of inland droughts.

Much of the Hunter wetlands have already suffered from the existing coal port operations, whittled away through reclamation, infilling and dredging and degraded by pollution. When freshwater swamps were lost to development, one of the last remaining lakes, Deep Pond, became a pivotal watering ground for birds and animals alike. Its freshwater flats now provide essential roosting and feeding grounds for a great many local, international and threatened species. These wetlands are internationally recognised as being a most important destination in New South Wales for international migratory shorebirds using the East Asian-Australasian Flyway. They have suffered a 'death by a thousand subdivisions' and are also threatened by changes in tidal range due to dredging to accommodate bigger and bigger coal ships, and changes in the freshwater and saltwater balance.

There is increased contamination of these ecosystems by the constant passage of coal trains and the subsequent coal handling and loading. If the annual throughput of coal to the port of Newcastle reaches the predicted 330 million tonnes in 2022, an estimated 37 tonnes of coal dust would be emitted per kilometre every year from loaded train movements, all of which would pass through this area.

Like so much of the rich biodiversity in the Hunter region, these magnificent wetlands are being forsaken for vested corporate interests. It is so important that we preserve what remaining habitat we have for these migratory shorebirds. I urge the environment minister to offer the highest level of protection available to the Hunter estuary, including Deep Pond and Swan Pond and its migratory bird populations.

On another matter, tonight I wish to pay tribute to Andrew Hewett. Andrew is resigning as Oxfam executive director. I congratulate Andrew for his tremendous contribution to overseas development. What I have admired in Andrew's work, since I met him in the early nineties, is his commitment to involve in decision making, at both ends of development, the people who are the recipient of Australia's aid and those who campaign and advocate in Australia for a more humane and environmentally appropriate overseas aid program. People matter to Andrew. When you talk with him
about the many projects he is driving, about his strategic plans for Oxfam, about campaigning to influence government policy, Andrew is brimming with ideas on how to create meaningful involvement of communities and people wherever they live, whatever their abilities.

I first met Andrew when I worked with Aid/Watch in the early 1990s and Andrew was establishing Oxfam's advocacy and campaigning program. In Australia's vibrant overseas aid community, Andrew has been a leading light with over two decades working with one of the world's leading aid bodies, Oxfam. Andrew has done the heavy lifting too in delivering aid projects. He coordinated Oxfam's international response to the 1990 Timor-Leste crisis and worked on the 2004 Boxing Day tsunami, and the recent African food crises. Since 2001, Andrew has been Oxfam's executive director. He is on the board of ACFID, the peak council of non-government overseas development agencies, co-chair of the Make Poverty History coalition, and a member of the Oxfam international board.

Andrew clearly has a talent for organising and motivating people and those skills have been honed over a lifetime of work taking on injustice. When Andrew was at school, he helped for a secondary student union. He stood with his teachers when they staged a five-week strike and spoke out publicly in support of those teachers, giving what was probably his first TV interview. After school his activism continued as an organiser with the Australian Union of Students, and later in a similar role with People for Nuclear Disarmament, where he organised two of the massive Palm Sunday rallies that brought hundreds of thousands of people onto the streets in Melbourne and around the nation in a united call to end the nuclear arms build-up.

Andrew's bent for a creative approach shone in one of his most challenging jobs—organising for the Campaign for Nuclear Disarmament at Barrow-in-Furness in north-west England, where a third of the workforce was employed building Trident nuclear submarines. Andrew worked with the local trade unions and workers to develop a committee to find alternative employment.

I congratulate Andrew for what he has brought to overseas development in terms of delivery, policy and building campaigning experience in Australia. I have particularly admired his commitment to members of Oxfam. He never lost sight of the fact that these are the people he works for. (Time expired)

Franklin River

Senator WHISH-WILSON (Tasmania) (00:45): I seek leave to speak for 20 minutes.

Leave granted.

Senator WHISH-WILSON: Tasmania has become one of the most inspirational ecodestinations in the world. It is world famous for its wilderness landscapes and the diversity of its wildlife, having 19 national parks and reserves covering 45 per cent of the state. Around half of this area is located in the Tasmanian Wilderness, a World Heritage site and one of the last expanses of temperate wilderness in the world, which includes the Cradle Mountain-Lake St Clair National Park, home of the famous Overland Track, and the Franklin-Gordon Wild Rivers National Park. Tonight I focus on this last national park.

The pristine waters of the Franklin River flow from the snowy highlands in central Tasmania through lowland forests and a string of gorges, and then through Macquarie Harbour to the Southern Ocean. For those of you who have not been there, the Franklin River is a truly wild place. Its water is crystal
clear and it is abundant with wildlife. There are no roads, hotels, farms or factories on its banks. Next year marks the 30th anniversary of the Franklin River blockade and the 30th anniversary of the World Heritage listing. Without the blockade, the World Heritage listing and a change in Australia’s federal government one of the world’s most spectacular river basins would have been destroyed forever.

Respected US adventure magazine *Outdoor* recently named the Franklin River as No. 1 of its top 10 river journeys in the world. In 1982 this spectacular and wild river was put under serious threat when work began on the first of four dams which would flood the Franklin River to harness the energy of the water for hydroelectricity. In his role as Director of the Tasmanian Wilderness Society, Dr Bob Brown, in mid-1982 announced at a press conference that the group would mount a peaceful protest to defend the wild and spectacular Franklin.

The Franklin blockade began on 14 December 1982, and at the same time, in Paris, the World Heritage Committee walked past a large group of peaceful protestors holding banners saying, ‘Save the Franklin’. The World Heritage Committee eventually voted to list Tasmania’s wilderness and wild rivers, including the Franklin River, in the register for World Heritage properties.

Back in Tasmania the stakes were high and the odds were against protestors, who were sitting peacefully in cruise boats and red-and-yellow rubber rafts. They formed a chain of small boats across the Gordon River to prevent or block barges carrying bulldozers and other heavy machinery from reaching the proposed site of dam construction. Fifty people were arrested on the first day, and in the following six weeks a total of 1,300 people were arrested; many went to jail.

Throughout the campaign weekend workshops were held at the Liffey Baptist Youth Camp, where blockaders learned the theory of peaceful protest, and did role plays and practiced techniques on how to prevent violence and deal with potentially angry workers, police or politicians. There was a lot of fear amongst the blockaders, campaigners and organisers, as almost none of the approximate total of 6,000 people who came to Strahan to defend the Franklin River—let alone the 1,300 who were arrested—had ever been in trouble with the law previously. At the time they did know that their non-violent strategy, which they had learned from the Quakers and from Thoreau, Gandhi and Martin Luther King, was soon going to stop the dam and protect the wild Franklin River from destruction for future generations of Tasmanians—us and our children—and for the visitors from across the globe.

As this year marks the 30th anniversary of the Franklin River blockade, I would like to take this opportunity to thank the many people involved in the campaign. It is impossible to acknowledge everyone by name but I would like to acknowledge at least some of the key people involved, starting with Bob Brown, who spearheaded the campaign. Then there was Judy Mahon, who coordinated and looked after the business side of things; Karen Alexander, who engaged and recruited people on the mainland; Lilith Waud and Kathie Plowman, who were key blockade organisers; Denny Hamill, who captained the old tourist boat the *J-Lee-M* and brought people up and down the river; Reg Morrison, who owned the boat; Ian Cohen, who came down from northern New South Wales and was police liaison for the entire campaign; Mary Forage, a brave local who gave a bed and shelter to many; Harry McDermott; the local mayor, who stood his ground to protect the river and
the local tourism industry; and lastly Bob Hawke—without the change in government, as well as the World Heritage listing, the Franklin River would never have been saved.

I would particularly like to thank the 6,000 peaceful protesters who came from across the globe to protect the Franklin and the 1,300 people who put their lives on hold and who were arrested during this campaign. Although they were breaking the law of the day, it is interesting to reflect that in 2008, for the 25th anniversary, many of the campaigners came together for a big party in Tasmania and were joined in merriment by some of the police and dignitaries who had not only opposed but arrest ed them. Many laughs were had about old times that night. No-one was in doubt that the outcome had been a good one for Tasmania.

I thank all the protectors, and so should all Tasmanians. Why? Conservationists are often labelled economic vandals in my state. The truth is, given time to reflect on history, they are quite the opposite. They have turned out to be state builders. They have delivered positive, sustainable, structural change to the economy of my home state. With all the doom and gloom currently surrounding Tasmania's economy, our wild places and the tourism they attract is one bright light in the economy. Our protected, wild and rare World Heritage areas are critical to our Tasmanian economy and future prosperity.

A report to the Department of the Environment, Water, Heritage and the Arts in 2008 confirmed this. Tasmania's World Heritage areas—not Tasmania in total but just the World Heritage areas—are estimated to contribute $721 million in annual direct and indirect state output or business turnover. It is worth noting that, if this figure is accurate, that is approximately half of the total tourism spend in Tasmania, which was $1.56 billion in the last financial year. They also contribute $313 million in annual direct and indirect state value added and $208 million in direct and indirect state household income and create 5,372 direct and indirect jobs. Compare this to the forestry industry in Tasmania, which currently employs around 3,400 people. I would like to state that no-one's job in any particular industry is more valuable than anyone else's. But this does give an interesting comparison in the conservation versus extraction debate in Tasmania and reflects on the transition underway in our economy.

Nearly 900,000 tourists visited Tasmania last year. A recent Tasmanian legislative council report confirmed that our iconic wild areas are the important tourism drawcards. Several respected studies, including one done by Tourism Tasmania, have also highlighted the value of nature based tourism to our state—tourism that is dependent on natural attributes, particularly those of national parks and wild areas. Tourism Tasmania, in their report Motivation triggers: appeal research and motivations for tourism in Tasmania, noted that Tasmania's natural assets and its wilderness and coastal experiences have the strongest emotional associations, the strongest appeal rankings and are the most potent motivators to shift travel intentions to Tasmania. Tasmania's wilderness is the key point of difference for our state in the rest of the country and represents to many potential visitors an opportunity to explore in peace and solitude. Other reports have also found that nature based tourism far outweighs other drawcards as a reason to visit Tasmania, including food, wine, history, and heritage. Tourism, driven by our World Heritage areas, is a great ambassador for Tasmania.

A strong tourism industry is one that emphasises not just our natural splendour but also our small-scale, high-quality food and wine producers and the great interest of our
cultural and historic attractions. Recent studies of business clusters, a critical mass of linked industries and institutions in one geographical location, suggest that cottage, artisan, hospitality, food and beverage, and other service industries can flourish around popular iconic tourism destinations. Linking all these elements together in Tasmania is our crucially important 'brand'. Many would argue that Tasmania's rare wild areas are our state's brand—if not entirely then certainly its beating heart. I feel that many Tasmanians take our World Heritage areas for granted and assume they have always existed, especially younger Tasmanians such as my children. But the truth is they have been hard fought for and won by the courage of many conservationists over a long period.

While taking the time tonight to acknowledge the 30th anniversary of the saving of the Franklin, its World Heritage listing—and I point out that this is a very opportune time to do this given the very real potential under the intergovernmental agreement, currently before the upper house in Tasmania's parliament, to list another 130,000 hectares of World-Heritage-value forest—and its economic importance to our state, it is interesting to see the comparisons with the present day when it comes to the campaign to protect our Tarkine, another area that we hope will soon be put up for heritage listing. Thinking back to the Franklin, the Tasmanian Premier at the time was Liberal Robin Gray. At a rally held in Queenstown during the campaign, he put on a set of boxing gloves to show his intentions to the Wilderness Society and members of the community committed to defending the pristine and wild Franklin River. Premier Gray described the Franklin as a 'brown, leech-ridden ditch'. During this time, big business, the unions and the Hydro-Electric Commission, and consequently the Liberal and Labor parties, ran a remarkable campaign—which is strangely familiar. They tried to convince Tasmanians that the dam was essential to their future wellbeing. The campaign ran on the slogan of 'Jobs, jobs, jobs'. Letters were circulated to workers warning them that their future was at stake and people were told that the dam was vital for the state's economic future. The media and community campaign was ratcheted up against conservationists.

This scaremongering is being repeated in Tasmania today and people are being told that, without mining in the Tarkine, their future is doomed. This was the message of a recent rally organised by Paul Howes from the Australian Workers Union, but Tasmanians have heard all of this before. One thing the rally did correctly highlight was the sorry state of the economy in north-west Tasmania, especially in areas such as Circular Head and Corinna. Looking at the latest tourism visitor statistics for the towns around the Tarkine region in north-west Tassie, the tourism visitations represent just 10 per cent of the iconic areas in Tasmania, such as Freycinet, Port Arthur or Cradle Mountain.

There is so much potential to develop the Tarkine itself into an iconic destination in the north-west of Tasmania, an area that desperately needs a new, diversified economic vision. The Greens feel this vision is threatened by proposals to explore and mine across the entire Tarkine region. People have the right to exercise their democratic right to protest and voice their opinions about decisions being made and actions being taken in the world around us, a world that we all share. After all, we all should have a say about what happens to the environment that sustains our collective and future existence on earth.

You will be quite pleased that I will finish early, Mr Deputy President, by reading a

The strength in peaceful protest lies in bringing an issue to public attention; to appealing to people at large so they will then in turn influence developers or politicians to alter their course. But just as foot soldiers are no match for tanks, citizens who put themselves in the path of barges or bulldozers in remote places rarely have the might, or the numbers, to stop the machines however great their right. Their power is moral rather than physical.

The Franklin and Tasmania's valuable World Heritage areas are testimony to this fact.

**Senate adjourned at 00:59 (Wednesday)**

**DOCUMENTS**

**Tabling**

The following documents were tabled:

Australian Human Rights Commission—Reports—
No. 56—Report of an inquiry into complaints by Sri Lankan refugees in immigration detention with adverse security assessments.
No. 57—ST v Endeavour Energy.
Australian Pesticides and Veterinary Medicines Authority (APVMA)—Report for 2011-12.
High Court of Australia—Report for 2011-12.
National Health Performance Authority (NHPA)—Report for the period 21 October 2011 to 30 June 2012.
Rural Industries Research and Development Corporation (RIRDC)—Report for 2011-12.
Sydney Airport Demand Management Act 1997—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 July to 30 September 2012.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Airservices Australia**
(Question No. 1864)

Senator Abetz asked the Minister representing the Minister for Infrastructure and Transport, upon notice, on 29 May 2012:

With reference to Airservices Australia (ASA), and given that the Chief Executive Officer (CEO) Mr Greg Russell recently resigned and the Chief Financial Officer (CFO) Mr Andrew Clark is now acting CEO:

(1) (a) As CFO, was Mr Clark responsible for signing off on the credit card expenditure of Mr Russell; if not: (i) why not; and (ii) who was; if so: did Mr Clark ever raise the appropriateness of the CFO or a CEO subordinate signing off on the credit card of a CEO; (b) what is the credit card policy of ASA; and (c) did Mr Clark ever question Mr Russell over expense items on the credit card; if not, why not; if so, what items were in question and what explanation was given.

(2) What is the role of the ASA Board in overseeing the CEO in the area of credit card use; and does the Board approve travel expenses for the CEO; if so, when are these expenses approved and how.

(3) Was any independent assessment of the article in The Sunday Telegraph dated 1 April 2012, titled 'Paid to live the high life – how this man spent $243,702 of your money' regarding Mr Russell and the claims within that article undertaken; if so, by whom; if not, why not.

(4) Have the: (a) Australian Federal Police; (b) Australian Public Service Commissioner; or (c) Merit Protection Commissioner had any involvement in the case surrounding Mr Russell.

(5) What investigations has ASA instigated, or will it instigate, into the alleged credit card expenditure of the recent CEO; if none, why.

(6) Has the Minister been briefed regarding the credit card expenditure of the recently departed CEO, Mr Russell.

(7) Can the Minister confirm if Mr Russell resigned or was dismissed, and what was the Minister's role in the resignation or dismissal of Mr Russell.

(8) Was the Minister briefed by ASA, its CEO, CFO or Board, or by the department regarding the matters surrounding the expenditure of Mr Russell.

(9) What are the general payout terms and conditions of ASA executive employment contract resignations.

(10) Did Mr Russell receive a payout; if so: (a) did that payout comply with the terms and conditions in the employment contract; (b) in what way did it comply; and (c) who authorised Mr Russell's payout.

(11) Can Mr Clark, the acting CEO, explain why the ASA cost base has increased by almost $200 million (34.3 per cent) since the 2006-07 financial year.

(12) To date, what is the: (a) cost commitment; and (b) amount spent, on the Cognos project, and what are the costs of each phase of the project.

(13) In relation to the ATC project in Melbourne: (a) when was the project completed; or (b) (i) if the project is still ongoing, when does the acting CEO expect that it will be completed, and (ii) can an explanation be provided at to why the project has not been completed, given that in December 2006 the then CFO, Mr Russell, stated that ASA's plan was to appoint a contractor by late 2007 and then to give approximately 6 months in design followed by a 16 month construction period.

Senator Kim Carr: The Minister for Infrastructure and Transport has provided the following answer to the honourable senator's question:
The Acting Chief Executive Officer (CEO) and CEO have answered all questions in relation to this issue at the previous Estimates hearings.

**Climate Change and Energy Efficiency: Financial Management and Accountability**

*(Question No. 2254)*

**Senator Bernardi** asked the Minister representing the Minister for Climate Change and Energy Efficiency, upon notice, on 3 October 2012:

In regard to each department and agency under the Financial Management and Accountability Act 1997 and each Commonwealth authority under the Commonwealth Authorities and Companies Act 1997 within the Minister's portfolio:

1. Is information collected from stakeholders and the broader community; if so: (a) what forms or other methods are used to collect information; (b) how many of these forms are: (i) paper-based, (ii) electronic based; and (iii) both; (c) do these forms request an estimate of the time taken to complete; if not, why not; and (d) is data collected on how long it takes to complete each form; if so, can this data be provided.

2. For each proposed regulatory initiative since August 2010: (a) how many stakeholder consultations have been conducted; and (b) have there been any complaints from stakeholders about the consultation process; if so, from whom.

**Senator Ludwig:** The Minister for Climate Change and Energy Efficiency has provided the following answer to the honourable senator's question:

The Government accepts the science of climate change and has implemented a range of measures to reduce our greenhouse gas emissions.

A number of online and paper forms are used by the Department of Climate Change and Energy Efficiency and Clean Energy Regulator in the course of implementing the Government's climate change and energy efficiency programs. A list of forms is attached *(Attachment A)*.

The Government has consulted extensively in the development and implementation of its climate change and energy efficiency policies, particularly with respect to the Clean Energy Future plan. There have been over 70 such consultations since August 2010.

**Attachment A**

The following forms and other methods are used to collect information:

* **Jobs and Competitiveness Program**
  - Preliminary Assessment
  - Formal Assessment
  - Basis of Preparation Report

* **Greenhouse and Energy Minimum Standards**
  - Product Registration Application
  - Collection of Sales Data

* **Carbon Farming Initiative**
  - Applications for the positive and negative lists for the Carbon Farming Initiative
  - Carbon Farming Initiative Methodology Proposals
  - Applications for the Indigenous Carbon Farming Fund
  - Applications for the Methodology Development Program
Charities and Maritime and Aviation Support Program
- Forms to collect information of the maritime and aviation fuel usage of Deductible Gift Recipient endorsed charities for the purposes of assistance under the program

Energy Efficiency Information Grants Program
- Forms to collect information about the levels of cost efficiency awareness amongst small and medium enterprises and community organisations, as well as information about how small and medium enterprises and community organisations can improve their energy efficiency

Community Energy Efficiency Program
- Forms used to collect information from applicants as part of the first round of the competitive grant application process and information will be collected in relation to agreed project reporting
- Information is also captured through a survey of awareness of energy efficiency

Clean Development Mechanism
- Applications for a Letter of Approval to be involved in a Clean Development Mechanism or Joining Implementation project

Forms within the Clean Energy Regulator
- Greenhouse and Energy Auditor Registration online application form
- Greenhouse and Energy Audit Annual Report form
- Online System for Comprehensive Activity Reporting (OSCAR)
- Registered Person Application
- Registered Agent Application
- Solar Water Heater and Small Generation Unit Return
- Application to include a Solar Water Heater in the Register of Solar Water Heaters
- Application for the creation of small-scale technology certificates
- Application for access to the Clearing House
- Application for appointing a new account administrator
- Application for change of Registry account name
- Application to change Renewable Energy Certificate Registry email address
- Application to obtain a small generation unit accreditation code
- Certificate of entitlement and offsets report form
- Application for accreditation of a Power Station
- Electricity Generation Return
- Application for Certificates to become a large-scale generation certificates
- Application for the redistribution of 2008 waste coal mine gas limited between accredited power station certificate of entitlement and offsets report
- Annual energy acquisition statement/renewable energy shortfall statement
- 2011 Additional partial exemption certificates 2011 annual energy acquisition statement
- 2011 Additional relevant acquisitions 2011 Annual energy acquisition statement
- Application to have amount apply as if it were a previous years reduced acquisitions for quarters 1 - 3 (Section 38AG of the Renewable Energy (Electricity) Act)
• Application to have amount apply instead of previous years reduced acquisitions for quarters 1 -3 (Section 38AF of the Renewable Energy (Electricity) Act 2000)
• Applications for a partial exemption form
• Application for free carbon units under the Jobs and Competitiveness Program
• National Greenhouse and Energy Reporting Report
• National Greenhouse and Energy Reporting Report Resubmission
• National Greenhouse and Energy Reporting Application form
• Email and paper based processes for clarifying issues in National Greenhouse and Energy Reporting Reports
• Various application forms under the Australian National Registry of Emissions Units Act 2011 and Carbon Credits (Carbon Farming Initiative) Act 2011
• Hard copy form used by applicants to supply bank account details for receipt of buy-back funds