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the Senate and committee hearings are available at

For searching purposes use
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SITTING DAYS—2012

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

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

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

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.

**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
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<td>The Hon Julia Gillard MP</td>
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<tr>
<td>Minister Assisting the Prime Minister on Digital Productivity</td>
<td>Senator the Hon Stephen Conroy</td>
</tr>
<tr>
<td>Minister for Social Inclusion</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister Assisting the Prime Minister on Mental Health Reform</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister for the Public Service and Integrity</td>
<td>The Hon Gary Gray AO MP</td>
</tr>
<tr>
<td>Minister Assisting the Prime Minister on the Centenary of ANZAC</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>
</tr>
<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>Senator the Hon Jan McLucas</td>
</tr>
<tr>
<td>Treasurer (Deputy Prime Minister)</td>
<td>The Hon Wayne Swan MP</td>
</tr>
<tr>
<td>Minister for Financial Services and Superannuation</td>
<td>The Hon Bill Shorten MP</td>
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<tr>
<td>Assistant Treasurer</td>
<td>The Hon David Bradbury MP</td>
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<tr>
<td>Parliamentary Secretary to the Treasurer</td>
<td>The Hon Bernie Ripoll MP</td>
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<tr>
<td>Minister for Tertiary Education, Skills, Science and Research</td>
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<tr>
<td>(Leader of the Government in the Senate)</td>
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<tr>
<td>Minister for Industry and Innovation</td>
<td>The Hon Greg Combet AM MP</td>
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<td>Minister for Small Business</td>
<td>The Hon Brendan O'Connor MP</td>
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<td>Minister Assisting for Industry and Innovation</td>
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<tr>
<td>Parliamentary Secretary for Industry and Innovation</td>
<td>The Hon Mark Dreyfus QC MP</td>
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<td>Parliamentary Secretary for Higher Education and Skills</td>
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<td>Minister for Broadband, Communications and the Digital Economy</td>
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<td>(Deputy Leader of the Government in the Senate)</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Senator the Hon Bob Carr</td>
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Monday, 20 August 2012

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 10:00, read prayers and made an acknowledgement of country.

BUSINESS

Rearrangement

Senator FEENEY (Victoria—Parliamentary Secretary for Defence)  (10:01): I move:

That government business order of the day no. 4 (Broadcasting Services Amendment (Anti-siphoning) Bill 2012) be postponed till the next day of sitting

Question agreed to.

BILLS

Higher Education Support Amendment (Student Contribution Amounts and Other Measures) 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)  (10:01): I rise to make some comments on the Higher Education Support Amendment (Student Contribution Amounts and Other Measures) Bill 2012. There are two main parts to this bill. Obviously, as many of my colleagues have spoken to already, the first is to reinstate the student contribution amounts for mathematics, statistics and science units of study to their pre-2009 levels for domestic students. It also removes the eligibility for Commonwealth supported places and the Higher Education Loan Program schemes for Australian citizens who commence study after 1 January 2013 but do not intend to live in Australia during their courses of study.

Following the MYEFO in 2011-12 Labor announced a reversal of the then-existing policy, and the reason given was that there had not been a noticeable difference as a result in the number of the country's maths and science graduates. Certainly, from this side of the chamber, there is an acknowledgement that indeed there was not the intended result from the lower contribution that had been required. The contribution will increase from $4,691 to $8,353, but it has to be noted that there seems to be a cost-saving measure attached to this particular piece of legislation that is going to create about $1 billion in savings over four years. That is a significant saving and, given the current nature of the government's fiscal situation, it is not a surprise to see this. The assumption that it is a cost-saving measure has to be taken into account.

There is a need for action in this area—there is no doubt. There is a real lack of science and maths graduates and a dearth of students who are moving to study in that area. There is agreement with the government from this side that we need to address this shortage in maths, science and statistics. On this side we acknowledge that we need to address that. Interestingly, just nine per cent of Australian university students enrol in physics, chemistry and maths compared with an OECD average of 13 per cent and a South-East Asian average of 26 per cent. University maths majors fell by 15 per cent between 2001 and 2008. University enrolments are just one area we need to look at.

To me, it simply does not make sense to try to target students as they are entering university if we want the levels of those students doing maths and science to increase. In my view, it is simply far too late. We need to be encouraging these students way earlier—right back in primary and secondary
It is also very interesting to note that this is a combination. It is not just about the students that we need to encourage—and we do need to encourage them from a very early age. It is also the difficulty in attracting and retaining maths and science teachers. In 2006, quite some time ago, a survey was done that pointed out quite alarmingly that 75 per cent of schools were finding it difficult to recruit qualified maths teachers. Things have not really improved since then.

We need to focus on this area—there are no two ways about that. The government have approached this far too simplistically. They are not thinking of the bigger picture. They are not thinking holistically about how to attract these young people and provide some incentives for them. We need to look at how to open these students' eyes to the great future in maths and science, because the current figures show that the policies in place at the moment simply are not working.

This is another example of the government's inability to properly formulate and implement policy. The Prime Minister likes to pride herself on being the 'education prime minister'. Indeed, for some time she has been talking about the education revolution:

We've started the journey for the Education Revolution. We need to complete that journey for every child, in every school.

That is what the Prime Minister said at the ALP campaign launch way back in August 2010. What we are seeing again from this government, as we have seen so often, is words and not actions that actually back up those words. They throw out all the words, throw out all the trite sayings about having an education revolution and yet we look at a policy misdirection, at best, with something like this HECS reduction to try and encourage these students into maths and science. But this policy simply did not work. When we look at the inability of this
government to properly formulate and deliver policy, the list is endless.

What is astonishing is that the government was trying to encourage more students to do maths and science yet, at the same time, the government cut the funding for PrimaryConnections. This is extraordinary because on the one hand the government is saying, 'We're trying to encourage students to do maths and science,' and on the other hand the government is cutting funding to one of the very programs that are instilling and inspiring a love of maths and science in young students. That is simply stupid, yet another stupid piece of policy from this Labor government. The PrimaryConnections program was initiated by the Australian Academy of Science. It established a professional learning program supported by a very strong curriculum to improve the quality and quantity of primary science teaching. In the middle of 2011, the Gillard government moved to cut funding to the program. At that time, 55 per cent of all Australian primary schools had adopted at least one of the PrimaryConnections teaching modules in their teaching programs. At the time the Australian Academy of Science said:

At a time when Australian students’ interest in science is declining and achievement standards are slipping, it makes no sense for the Government to cut funding for primary and high school science education programs that are proven to improve teacher quality and increase students’ science knowledge and skills.

How stupid was that? Here is a government with a perfectly good program currently in place, that is shown to work and is supported across the sector, and yet the government cuts funding to it. People quite rightly get extremely frustrated and annoyed when they look at the waste and mismanagement in so many areas by this government. Yet the government cuts funding to a program for young students that was shown to work and that was trying to deliver exactly what the government was trying to do by reducing HECS debt: instilling students' interest in and aspiration to move towards maths and science. It is breathtakingly stupid! We know that Professor Brian Schmidt, from the Australian Academy of Science and the 2011 Nobel laureate in physics, saw that the worth of the program was so great that he donated $100,000 from his Nobel prize to the program. And yet we have the Labor government under the so-called 'education prime minister' with the 'education revolution' cutting funding to the program. It simply does not make sense and reflects the inability of the Labor government to properly think things through and properly come up with a process and a policy that is going to work, can be implemented and is going to be substantive. There was also a lot of concern at the time about the initial lack of commitment by the government to fund the maths and science Olympiads. Finally, thankfully, after all this period of confusion and extreme concern across the sector the government reinstated the program. All of that confusion and uncertainty was completely avoidable and completely unnecessary. The government simply made a very bad decision in moving to cut that funding when it did not have to. It was a piece of ill-thought-through policy from this Labor government.

When it comes to maths and science, these are particular concerns for me for rural and regional areas. There is no doubt there is a real disparity in the struggle that rural and regional areas, particularly the more remote areas, have to maintain the same education standards as we see in the metropolitan areas. This is particularly so in the science and maths sector. Now we have seen, from the NAPLAN results and answers to some questions on notice that I asked earlier, that
regional and remote students are consistently and markedly outperformed by their metropolitan counterparts. We know it is a lot more difficult in the regions to access equity in education across a whole range of areas.

One particular inequity that still exists is for students who are trying to get independent youth allowance. The government have a $150 parental income test cap on that. Again, how stupid is that? These young students have proven themselves independent of their parents, but the government have a parental income test cap in place which precludes those students from even applying for independent youth allowance. This is one of the most stupid, inequitable pieces of policy I have seen in some time. I will continue to raise this issue until the government realise the incredibly bad impact that this is having on so many regional families.

When it comes to science and maths in the regions not only do we have to address this issue of inequity that we see in the results that are coming through; it is particularly difficult to attract and retain teachers in science and maths. In regard to filling vacant teaching positions in secondary science, ICT and maths, studies have found that schools in regional areas find it twice as likely, and remote areas four times as likely, that they will be unable to fill those vacancies compared to schools in metropolitan areas. Often this means in regional areas we are getting teachers—and I am sure they are very capable—who are not necessarily trained in maths and science to deliver those subjects. There is a whole range of areas we need to address when it comes to increasing the number of students going through the maths and science pathway. It is not as simple as just saying, 'We'll reduce the HECS fee.' That has been shown to have not been the appropriate decision to make.

The lack of attention by this government to education and university outcomes across a whole range of areas has become more and more obvious. It is not just maths and science; there is a significant lack of numbers studying agriculture and agribusiness. While the government obviously have a focus in this legislation on maths and science, I ask the government to put a similar amount of effort and focus on agriculture and agribusiness. At the moment, there are around 700 graduates in agriculture and related courses, but there are about 4,000 places in that sector that need to be filled. So the government need to start focusing on this area and making sure that this shortage is addressed. The fact that the government have not had a focus on this area just shows their complete disconnect from regional communities, whether it is what the government are doing when it comes to the Murray-Darling Basin plan or what the government are doing when it comes to the inequity for regional students trying to access university. We have seen a lack of focus from this government when it comes to education in agriculture and in agribusiness and related skills.

The government will argue they have things in place, and I do take the point that Senator Evans has made on occasion that the government have a range of things in place. But it is not good enough. The government need to do more and to recognise it is not just the skill side of things; we need to clearly encourage more students to go to university and do those courses, to take up agriculture and take up agribusiness so that we can ensure the sustainability of the sector into the future and ensure food security into the future. One of the greatest issues for us in the future is going to be the sustainability of rural Australia, the sustainability of agriculture and making sure that we have the future food security that we are going to
need. While the government are looking at maths and science, and the need to ensure that young people looking for that pathway through school and university to take on a profession in fields of maths and science, we need to be equally as focused on agriculture, agribusiness and the skills needed for that sector to thrive.

Rural and regional students are already doing it tough. While we do not oppose this legislation, we note that these students currently doing maths and science are going to face an increase from the beginning of 2013. That is particularly difficult for regional students and I make no apologies for being parochial about regional students, regional communities and regional Australia in general. But it is going to make it that bit harder for those students currently doing those courses having to face this increase because they already have to face the huge cost of relocation. It costs around $15,000 to $20,000 a year for regional students to relocate compared to city students, who do not have that financial impost. This is the point I make and have made in the past—probably to the annoyance of some because I do not stop talking about this. Regional students face this inequity because they have the cost of relocation that city students do not have to bear. For some of those students who have struggled to do that who will now face this increase in fees from early next year if they are doing those courses, we acknowledge that that is going to be difficult for them. That was unforeseen and it is something that they are now going to have to factor in.

Having said that, we do not oppose this legislation, but we do point out the very real difficulty it is going to create for those students who are currently doing those courses. While we agree with the government that more needs to be done in this area, we ask that the Labor government focus more strongly in a broader policy sense rather than just making simplistic policy responses and take into account the very good point Senator Mason made in his speech on Friday: it is about aspiration, it is about the whole picture and changing the mindset of our young people to understand the very real opportunities that are on offer if they take the maths and science pathway.

Senator XENOPHON (South Australia) (10:21): I rise to reluctantly support the Higher Education Support Amendment (Student Contribution Amounts and Other Measures) Bill 2012. I say 'reluctantly' because clearly there is a problem concerning the number of maths and science students. There is a problem but the solution that was advanced by the government several years ago, of rebates and HECS fees, has not worked. So the solution has not worked and we need to find an alternative solution, but it does not appear that there is a plan B with this bill. I make it clear at the outset, out of an abundance of caution, that my own son has been a beneficiary of the government's policy, which came into effect in January 2009, of a reduced unit of contributions for maths and science subjects.

It is a rare moment in politics when all sides of the political fence agree and we all agree that Australia needs more mathematics and science graduates. The government's policy, which this bill seeks to reverse, sought to address that shortage. Unfortunately, the policy proved ineffective and the government itself admits the program is not delivering value for money. My son, for example, had already planned on studying maths and science subjects as part of his double degree before the measure was introduced. The bottom line is that the policy has not seen a significant increase in enrolments in the maths and sciences.
For Australia to be able to compete in the global market, we need more mathematicians and scientists. Our skill sets in these areas are under threat if we do not find a way to attract more students to these disciplines. It is a complex issue which I believe needs a multifaceted approach, including better education at primary and secondary levels, incentives for tertiary students for tertiary studies and investment in research and development to ensure we not only have jobs for graduates in these fields but also put ourselves at the forefront of maths and science on the global stage.

A 2010 Group of Eight universities review—the Review of education in mathematics, data science and quantitative disciplines—found maths and quantitative sciences in Australia were at a 'dangerous level'. In May this year, Australian Chief Scientist Professor Ian Chubb told the National Press Club:

The future prosperity of Australia is dependent on having a strong supply of graduates in the right areas coming through the education system.

In launching the Health of Australian science report, he said:

There are some areas of expertise that are crucial to our national interest which are lacking what they need to prosper.

The report identified mathematics and chemistry as in this group, along with agricultural sciences and physics. I note that Senator Nash in her contribution did make mention of agricultural sciences.

As well as addressing funding systems, the report said the relationships between science and industry must be strengthened. How do we achieve this? I believe we need to start at the beginning—to crawl before we can walk—and that means getting young students—primary and secondary school students—excited about maths and science. We not only need to get them excited about maths and science; we also need to give them the skills they need to go on and be confident studying maths and science at a tertiary level. This means changing the way we approach education in relation to maths and science. Even if cash bonuses were involved, which I will get to later, we are unlikely to attract more maths and science university students unless we teach them the beauty of maths and science in their formative years. Committing to a three- or four-year university course can be a daunting prospect for a young person fresh out of secondary school and it is human nature that one would only invest such time and effort in a subject that interested them. If we do not invest now in preparing our young people for careers in maths and science, Australia will be the one to suffer.

We must look to our Asian neighbours in how to go about this. We know that Asian countries continue to forge ahead of us in maths and science, so how do they do it? According to a report released by the Grattan Institute in February this year, it is not about spending more money, nor about class size or whether the school is public or private. What it comes down to, the report said, is better teaching skills that improve how students learn. When the report was released, Grattan Institute program director of school education Ben Jensen said that the results of teacher bonuses and school funding touted by the Gonski review were negligible compared to a focus on improving teaching demonstrated in Asia. According to the Asian way of educating, there should be more focus on teaching skills during university training rather than subjects like philosophy—but I am not knocking philosophy; I think it is a question of emphasis. Mentoring of teachers is also critical and teacher training should continue after university study ends. We have to wonder if this focus on teaching is at all
linked to the high rates of maths and science graduates in Asia compared to Australia. In Australia in 2010, just 18 per cent of graduates came from the sciences, technologies, engineering and mathematics areas. Compare this with 64 per cent for Japan, 52 per cent in China and 41 per cent in South Korea.

Just a moment ago I mentioned the Gonski review. I reiterate that I believe the review is an important piece of work that is a critical piece of the puzzle to improve education in Australia. In its executive summary, the review says:

In 2000, only one country outperformed Australia in reading and scientific literacy and only two outperformed Australia in mathematical literacy. By 2009, six countries outperformed Australia in reading and scientific literacy and 12 outperformed Australia in mathematical literacy.

The picture is very clear. In international terms we are going downhill, particularly when it comes to maths. Especially significant in the Gonski review findings is the gap between low- and high-performance students and the link to socioeconomic status. It is imperative that all our young people get a fair go at education and access to teaching that gives them the opportunity to develop. This applies to all areas of education, including maths and science. I urge the government not to delay its special response to the review.

While preparing our young people for possible university study is critical, we must continue to think laterally about we can attract them to professions in mathematics and the sciences. Professor Ian Chubb this year suggested $10,000 cash incentives to maths and science graduates who commit to a few years of teaching at the end of their course. That could be the answer. I would be interested to hear whether the government has a view on what Professor Ian Chubb has said about cash incentives. There is nothing quite like cold hard cash to motivate people. The trick is motivating the right people. We want people who will contribute to the maths and sciences areas in Australia for years to come—people who will share their expertise to benefit Australia in an increasingly competitive global market.

The University of Canberra just last month revealed it was considering an Australian first: a multidisciplinary faculty which would bring education, applied science, mathematics and statistics under the one roof. According to the Canberra Times, the faculty would aim to produce more maths and science skilled teachers and graduates who have the communication skills to share their enthusiasm about maths and science with others.

Dr Louise Ryan is a professor of mathematical sciences at the University of Technology Sydney and was previously chief of the CSIRO's division of mathematics, information and statistics. I am very grateful for the information and advice she has given to my office on this issue. According to Professor Ryan, we need to look at modern ways of training students. She said maths and science courses should teach students the art and importance of communication so that they learn how to engage with the real world in their chosen field. Professor Ryan spoke very highly of the Australian Technology Network's industry doctoral training centre in mathematics and statistics, Australia's first industry-collaborative doctoral-training centre, which took its first students this year. Professor Ryan was previously on the program's advisory board and says it is industry based rather than academia based doctoral training—perfect for students to learn how to apply their skills in the workplace.
I note the work that my colleague Senator Madigan has done on the parliamentary manufacturing and farming program and the importance of tying in these young people with expertise in the maths and sciences in terms of innovation for manufacturing, which is so desperately needed for our manufacturing to be able to compete on the global stage—particularly in the context of a ridiculously high Australian dollar. We need that expertise. We need to be able to harness that knowledge and expertise and those skills into our manufacturing sector, and this is one particular way of doing it.

Professor Ryan believes that if there were more training like this we could attract more people to the maths and science disciplines. Professor Ryan said that a CSIRO graduate fellows program that has been running for three years is proving hugely successful with students. This program sees honours graduates in maths and statistics get a taste for researching before they decide whether to go on to study for a PhD or go into the workforce. It is aimed at tackling the low numbers of students studying maths in Australia. Professor Ryan said it was inspiring to hear the students in the program talking about how excited they were about their work.

It is programs just like these that we must continue to support. Research and development is critical to ensuring we continue to advance in these fields, which are essential to Australia being prosperous and competitive on the global stage into the future. As the Health of Australian science report of this year says:

Basic research adds to the bank of intellectual capital on which society draws in order to progress and transform. Applied research develops this intellectual capital into new technologies and innovative processes that directly improve the health, productivity and prosperity of Australia.

I do not think you could sum up the importance of research and development any better than that.

We must continue to invest in research and development of maths and sciences through the Australian Research Council, the National Health and Medical Research Council and the Cooperative Research Centres program. We should also remember the importance of international collaboration. We have great talent here in Australia and, where possible, we should see that talent work with international minds to see us at the forefront of maths and science knowledge instead of slipping further and further behind on the global stage. And let us not forget that investment in research and development will also help ensure that there are jobs waiting for graduates.

We must also consider, as I indicated, our high Australian dollar and the impact it is having on our manufacturing industry. If we had a thriving manufacturing industry it would create much-needed jobs for maths and science graduates. The issue of closing the ever-increasing gap in our mathematical and scientific expertise is complex, and I have only scratched the surface today.

The intent of the policy of this bill was good, but the outcome is not as we had hoped. The government quite rightly identified a problem. The solution it came up with has not worked. The government needs to come up with an alternative solution. There must be a plan B, and I am not so sure that there is. I would be very grateful if, in its response to contributions in the second reading debate on this bill, the government could indicate what practical, viable measures it is proposing as an alternative to this to try to get an increase in maths and science students and graduates.

I reluctantly support this bill, but I am adamant that the issue must stay on the
agenda and that we must consider other ways to redress the shortfall which, if ignored, will only get worse. Australia has many bright minds and, in the words of Professor Ian Chubb:

It is antithetical to our national interest to waste talent.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (10:34): I begin by thanking those senators who spoke on the Higher Education Support Amendment (Student Contribution Amounts and Other Measures) Bill 2012. The bill before the Senate amends the Higher Education Support Act 2003 to increase the maximum student contribution amount for units of study in mathematics, statistics and science. The bill removes eligibility for Commonwealth-supported places and the HELP schemes for Australian citizens who will not undertake any of their course of study in Australia. From 1 January 2013, all students will pay the increased maximum student contribution amount for units of study in maths and science, regardless of when they commenced their course of study.

The government believes the reduction in student contributions for maths and science that commenced for students starting a course of study from 1 January 2009 was not delivering value for money. The majority of students undertaking maths and science units in 2009 and 2010 were not enrolled in a maths or science course of study. Nor were they studying an education course. It is clear the policy was not substantially increasing the number of maths and science graduates in the workforce as intended, or improving the supply of quality maths and science teachers. Improving the supply of quality maths and science teachers is a priority for the government, which is why it announced a $54 million package in the 2012-13 budget to enhance student engagement in maths and science from primary to tertiary.

The government is removing eligibility for Commonwealth-supported places and the HELP schemes for Australian citizens who will not undertake any of their course of study in Australia. The amendment applies to Australian citizens who are living overseas on an ongoing basis. The government believes its funding priority should be to support those students who are most likely to pursue careers in Australia, repay their HELP debts and use their education to benefit Australia's workforce and economic needs. The small number of students who are not resident in Australia and who are currently enrolled in Commonwealth-supported places or who are accessing HELP will continue to be eligible for the schemes for the duration of their current course. This amendment complements last year's changes to the act, clarifying that Australian citizens are not entitled to Commonwealth support or to access HELP when they are undertaking courses of study primarily at an overseas campus.

Question agreed to.

Bill read a second time.

Third Reading

The DEPUTY PRESIDENT (10:37): As there have been no amendments circulated in relation to this bill, it is my intention to call the minister to move the third reading, unless any senator wishes to move into the Committee of the Whole. There being no such request, I call the parliamentary secretary.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (10:37): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Debate resumed on the motion:
That this bill be now read a second time.

Senator CORMANN (Western Australia) (10:37): The coalition will not oppose the Consumer Credit Legislation Amendment (Enhancements) Bill 2012, but this bill is yet another example and a clear demonstration of the government's incompetence and complete dysfunction in dealing with the most basic parliamentary processes. When Senator Feeney only a few days ago introduced this legislation in the Senate, he tabled a second reading speech that was outdated by just a year. He tabled a speech that was completely unrelated to the legislation that is before the Senate. He tabled a second reading speech which assumed that all of the corrections that were imposed on the government by the Parliamentary Joint Committee on Corporations and Financial Services had not happened.

This piece of legislation, like so many pieces of legislation in the portfolio of the Minister for Financial Services and Superannuation, Bill Shorten, was not properly thought through. It did not strike the right balance between consumer protection by making sure that relevant services for which there is strong public demand remain available, accessible and affordable. So the Parliamentary Joint Committee on Corporations and Financial Services made a unanimous report making strong recommendations on how Labor's original piece of legislation should and must be improved. When I say it was a unanimous recommendation, it was a recommendation that was made by government members of the committee alongside coalition members of the committee. The Parliamentary Joint Committee on Corporations and Financial Services came to the view that Minister Shorten did not get this right and introduced a piece of legislation that was going to have detrimental consequences for consumers of these sorts of services right across Australia. But Senator Feeney, either because he was unaware of what had happened over the last 12 months or because somebody in Minister Shorten's office had not quite caught up with what was happening, was tabling a second reading speech here in the Senate which was to make us believe that in fact the government had not taken any of the recommendations on board, even though the bill itself reflected all of those changes. It is just another example of the complete chaos and the complete dysfunction and incompetence of this bad Labor government that we are subjected to at this point in time.

Senator Feeney's speech as incorporated talked about an up-front fee of 10 per cent of the loan and a cap of two per cent interest each month. In fact, the government's bill allows for an up-front fee of 20 per cent of the loan, and four per cent interest each month. It is absolutely extraordinary that the government cannot even get these sorts of basic processes right. As I have said before, the government with its amendments to the legislation has already acknowledged the flaws in the bill as originally presented to parliament. The government was forced back to the drawing board by the unanimous recommendations of the PJC inquiry. Under pressure from that inquiry, the government has agreed to very specifically increase the caps for small amount credit contracts, shorten the term for small amount credit contracts from 24 months to 12 months, and increase the establishment fees from 10 per cent to 20 per cent and interest rates per month from 2 per cent to 4 per cent as well as allowing an additional $400 fee to be charged for mid-tier loans between $2,000
and $5,000, remove the multiple contract prohibition on lenders under certain circumstances and introduce a commitment to prohibit loans with a term of 15 days or less by regulation.

These changes represent a significant concession to the arguments put forward by the industry in the context of the inquiry by the Parliamentary Joint Committee on Corporations and Financial Services and expressed in relation to the original bill. The government's original proposals clearly did not strike the right balance between appropriate consumer protection and making sure that short-term lending remains available and accessible and is as affordable and competitive as possible. Yet again Minister Shorten, in his enthusiasm to increase the levels of red tape and increase levels of regulation, had not really thought things through. He had not gone through proper process. He had not listened carefully enough to the legitimate representations by people across the industry who actually know what they are talking about.

The proposed government amendments address many of the concerns raised by stakeholders during the parliamentary committee process—specifically the concerns that the proposed caps on fees and interest charged on payday and small amount of loans would be uneconomic and would lead to many current participants withdrawing from the market, that many of the businesses that could close down are small family owned and operated businesses, that the reduction in the availability of payday and small amount loans would result in many people not having access to existing finance they rely on to meet unexpected expenses, and that the banks, having not participated in payday and small amount lending for some time because it is uneconomic for them to do so, would not re-enter the market to fill the gap if existing providers went out of business. Also, the reduction in legitimate licensed payday and small amount lenders may encourage unlicensed and illegal operators to enter this market, which would have reduced consumer protection instead of increasing it.

The amendments address these issues in that they ensure that the new caps on fees and interest charges will ensure that the vast majority of short-term lenders will remain commercially viable, that small family owned and operated businesses will not be adversely impacted, and that people who rely on these types of loans, which are not provided by banks, will continue to be able to access the finance they rely on to meet unexpected expenses. The ongoing viability of legitimate, regulated providers will discourage the growth of unlicensed and illegal operators, whose entry into the market would have reduced consumer protection.

While some of the provisions may not have been implemented by the coalition in government in the form that they have been proffered by this government, the significant concessions obtained by the coalition have achieved a much better balance between the twin aims of providing appropriate consumer protection and ensuring that short-term lending remains available than was the case in the original version of the bill. That is why, with these amendments, the coalition will not oppose this bill. The bill also introduces statutory protections in the provision of reverse mortgages, including a statutory protection against negative equity, and more detailed and prescriptive disclosure requirements. These measures were in the original bill and are not opposed by the coalition, and they are supported by the industry.

I draw the attention of the Senate, in this context, to the additional comments that were made by coalition members and
senators as part of the parliamentary joint committee inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancement) Bill 2011. This is a pretty sizeable industry. Senators may be surprised to learn that this short-term lending industry provides cash advances of $800 million a year to about 500,000 customers. Half a million Australians access this service to the tune of $800 million a year. That was part of a submission that was made to our inquiry. This suggests that this industry, providing short term, small-amount loans, responds to and is meeting a substantial consumer need for those types of loans. Whenever we make regulatory changes, whenever we seek to impose additional regulatory restrictions, we must take account of the consumer impact and the potential consumer detriment which comes from reducing the availability of a product or the competitiveness in the industry that provides those sorts of services.

When Minister Shorten first announced the measures in the original version of this bill he asserted that this was all about protecting vulnerable consumers. In other words, this bill was based on an assumption that all short-term, small-amount loans are inherently harmful, and all those who take them out are inherently vulnerable. That is not correct, if you consider the evidence which ultimately was accepted by all Labor and coalition members of the committee. There was an acknowledgement there that the service goes much further.

I draw the attention of the Senate to some hard evidence. Rather than being used only by those who are vulnerable and desperate, many short-term, small-amount loans are provided to people in employment who have made a rational decision that the product meets their needs better than the alternatives. We heard evidence that many providers specifically require customers to be employed, or have a rule that they do not lend to those whose only income is government benefits. These providers included businesses like Money Plus, Money Centre, DollarsDirect, Cash Doctors and First Stop Money. Providers which do lend to welfare recipients, such as Cash Converters, gave evidence about their responsible lending practices in doing so. I quote a particular piece of evidence which was provided by Mr Day:

We at Cash Converters indicated that over 40 per cent of our customers are on welfare payments. We have a responsible lending structure in place that will lend a new customer a maximum of 10 per cent of net income and, out of that, we have a 97 per cent repayment rate. It does not necessarily happen at the end of the month. Some 30 per cent of them take longer, but there are no punitive penalties or additional costs involved in that. That evidence is not consistent with an assumption that short-term, small-amount lending inherently and necessarily involves vulnerable and disadvantaged customers who are being forced to agree to terms which make it impossible for them to repay the loans.

This is a policy area which raises difficult issues. Clearly, there are people who are incapable of making sensible financial decisions, be that due to addiction, substance abuse, limited decision-making capacity or a range of other factors. But the suggestion that, somehow, this industry exclusively focuses on preying on and taking advantage of the weak and vulnerable was not borne out by the evidence. That was part of the political argument that Minister Shorten was pursuing at the outset when this legislation was introduced, and he had to backpedal on that to a pretty large degree.

The evidence that we considered also highlighted several serious concerns about the approach taken in the original bill, which led coalition senators to conclude that this was a hastily cobbled-together attempt to
grab a headline rather than any meaningful attempt to come to terms with the difficult policy issues that arise from short-term, small-amount loans. We recognise that since then the government has sensibly come to the same conclusion as we have, and has responded to those concerns.

As I said at the outset, the coalition will not be opposing this bill. We welcome the fact that, on reflection, Minister Shorten has reconsidered his approach to this legislation, and that he has been prepared to consider the evidence which had been accepted by government members of the Parliamentary Joint Committee on Corporations and Financial Services as well. This bill started in a pretty unreasonable position but it has come a fair way. Given that the government has made significant concessions on all the issues that I have raised, the coalition will not be opposing this bill.

**Senator HANSON-YOUNG** (South Australia) (10:52): I rise to speak to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012. Thankfully, Senator Cormann has outlined most of the reasons for the Greens' major concerns about this piece of legislation. It is clear that—despite the original intent to try and regulate what has become an industry that sucks the life out of very vulnerable, very poor, very disadvantaged people and exploits them by allowing them to be trapped in cycles of debt—rather than going to the heart of those problems and overcoming them, this bill has come a fair way. Given that the government has made significant concessions on all the issues that I have raised, the coalition will not be opposing this bill.

Many of those who engage in these types of lending practices are caught in periods of excessive gambling, alcohol consumption or illegal drug taking. These people are already considerably disadvantaged and the loan sharks are out there waiting to snap them up. The majority of borrowers are borrowing less than $300 at a time. You have to be in a pretty desperate situation to borrow less than $300 because you desperately need to pay your essentials day in, day out. The reasons for taking up payday loans, according to the NAB report, were to pay rent and basic essential bills: electricity, gas, petrol, car registration, school fees for kids and putting food on the table for themselves and their families. People are taking a $300 loan just to be able to go to the supermarket and buy the groceries for that week. These are the vulnerable people that we are talking about and that this bill is meant to be helping by
addressing that cycle of poverty, that cycle of debt. Yet, unfortunately, the government has lined up side-by-side with the coalition and watered down this legislation in line with what the loan sharks wanted.

Cash Converters was one of the most prolific voices in relation to this bill, and yet since the legislation was first announced the Cash Converters share price has risen, despite the fact that the company went to the government and cried poor. Somehow, putting some proper regulation around these loan practices and making sure we can protect consumers was said to mean that its business practices were under threat. If loan sharks like Cash Converters and others are relying on the misfortune of people who have to borrow $100 or $200 to buy the groceries to feed their families, I do not think that is a very good business model for anyone to be relying on. I suggest that Cash Converters and other loan sharks consider what type of business they are in and stop preying on the very desperate needs of some of our country's most vulnerable people.

We know that borrowers continue to say the loans they take out are used to meet their daily living expenses. These are not one-off loans. The problem is that once they have taken out one of these loans they get caught in a cycle of debt and have to take out another loan in order to pay back the enormous interest, fees and charges that these loans incur. The loan sharks are able to tap straight into their bank accounts. They get paid, but all of a sudden people have no money left and they have to apply for a brand-new loan. That is how they get into this situation, where some people are taking out 10 or 20 loans in two-year period—that is, almost monthly for some people—just to keep up with the debt that they owe and put aside money for the rent, the bills and the groceries to feed themselves and their families.

People caught in this situation continue to say that they feel trapped in a vicious cycle and are continuously indebted to one or more of the short-term lending companies. Borrowers do not like needing to take out these loans in the first place. But we know that, when Centrelink payments are so low and the minimum wage continues to be far less than it should be, very vulnerable people continue to be exploited. Let us not even consider casual workers who, if they do not get shifts in a particular week, do not know what to do to pay their rent. Chances are that a lot of these people have to go to loan sharks, Cash Converters and others, to get the money to pay their rent. That is where the problem is in the beginning.

I want to take us back to when the legislation was first tabled. There was a lot of goodwill across the country from the consumer rights sector. There were a lot of people who thought that Bill Shorten and this government were going to do the right thing and that they were going to tackle this issue, take it with both hands and make sure we looked after the country's most disadvantaged people—those who are being taken for a ride because of the lack of regulation in place. We saw the coalition jump up and say that they would not support that. We saw lobbying campaigns—very well-paid lobbying campaigns from organisations, loan sharks, Cash Converters and others who paid thousands of dollars to organisations like Hawker Britton and others to directly lobby the government to get them to water down these reforms. As a result, this legislation does not have the teeth to really make a difference to Australia's most vulnerable people, who continue to be taken advantage of by these nasty schemes and who do not have the advocacy, the strength and support that this Labor government should be providing.
We have heard Treasurer Swan going on and on about how he wants to tackle this gap between the rich and the poor. This legislation proves that he is all words and no action. The Treasurer has no standing when you consider that, rather than doing the right thing and putting a hard cap on the number of loans that people can take out and putting in place regulation to ensure that people cannot have that money taken straight out of their bank accounts and cannot have their homes secured against loans as little as $5,000, he only talks about tackling the rich and looking after the poor. You have to wonder how serious Mr Wayne Swan is. This would have been the perfect legislation to prove that, yet the government have gone weak at the knees and fallen for the big lobby groups engaged by those who are making hundreds of thousands and millions of dollars of profits off the back of very, very poor, hardworking Australians, who just want to cover their living costs, make sure their kids can go on school camp and put food on the table.

I want to tell you one story about a young fellow from Melbourne who took out his first payday loan to pay for repairs on his car. It was intended to be a one-off loan, but quickly it turned into a pattern of repeat borrowing because one cannot keep up with the excessive interest charged. Somewhere in the vicinity of 200 and 400 per cent is put onto these loans, including the fees and charges. He got caught after just wanting to fix his car so he could continue to get to work to earn some money to pay his bills. He ended up finding himself in a cycle of debt and a cycle of poverty. Initial payments left this young man without enough money to live on. It forced him to choose between taking out another loan or going without food until his next pension day. In order to obtain some quick cash to eat, to feed his dog and to put fuel in his car, this young guy continued to take out loans. These are the stories of people who get caught and get taken advantage of by loan sharks.

I want to tell you another story of a woman with two kids who desperately wanted to make sure her children could attend the school camp. She took out a loan of $170 because that is what she needed. She did not have the money. She was on a pension. She did not have secure work. She is a mum trying to run a household and put her kids through school. In the end, it cost her over $14,000 just because she wanted her two daughters to attend school camp.

I suggest that this bill has become so weak and so far from its purpose that, rather than delivering the security and the protections that the most disadvantaged and vulnerable Australians need, instead we are seeing legislation that could have been written by the loan sharks themselves, helped along of course by the opposition, who have no desire to tackle this issue. For them, it is all about looking after big business; it is not about the vulnerable people who struggle to pay their rent and put food on the table, or send their kids to school camp.

The point here is that the government continue to talk about wanting reform, yet when the hard decision needs to be made, when they need to stand up and take the big lobby groups head-on, they fail. That is what has happened under this legislation. This is the legislation the coalition want. We saw Senator Cormann say he did not like the first bill but he is more than happy to back this one. That is because this bill does nothing for those people who are caught in a cycle of poverty.

The Greens will be moving several amendments to this legislation to try to redeem some aspects. What is the point of saying we know that people get caught in this cycle of debt with payday loan after...
payday loan if we do not put a hard cap on how many they can take out in a year? What is the purpose of it unless you are going to do that? We will move an amendment to ensure that we cap at four the maximum amount of payday loans that one person can receive in a 12-month period. In addition, we will make sure that there is a proper registration list so that you cannot be forced to go to the next lender down the road because the other lender has already given you four loans—because you are still struggling so you will move on to the next one.

In addition to all of this, the government really need to look at how we can support people so they do not fall into these traps in the first place. Where is the proper support for those who cannot pay their bills at the end of the month because they simply do not earn enough? We know that, for those on Centrelink payments, Newstart is far, far too low. Where is the commitment from this government to increase the levels of Newstart rather than condemning our country's most disadvantaged people, who just want a fair go and to pay for the petrol for the car to drive them to the next job interview or to buy that new jacket because looking good at a job interview is important if you really want it?

Where is the support for those parents on the pension, those single mothers who are about to be cut off, to make sure they can send their kids to school camp rather than having to be sucked in by the empty promises and hollow support from the loan sharks. Many consumer rights organisations across the country have said that the best way to support people is to give them non-interest loans to pay for these essentials, and proper financial support and counselling. You have to teach people ways to get out of cycles of debt, not find ways to get the loan sharks out of their responsibilities of preventing people who are in cycles of debt.

The Greens will move three key amendments: putting a cap on the amount of loans that people can lend; ensuring that loans up to $5,000 cannot be secured against items such as the family home or the family car or others, because we know what happens: those people end up having those items taken from them. And we need a proper way of regulating just how many loans people have. These are all reforms, regulations and workable solutions to this issue that have been taken up in places such as the United States. They have worked well. It obviously took a bit of courage by the government of the day to ensure that they were implemented properly but they have worked.

That is the type of solution-finding, reform-enacting leadership that we should expect from the government here in Australia when it says it cares about Australia's poor. Frankly, you would have to wonder what type of hollow rhetoric that is when, rather than doing what the consumer needs, rather than looking after the rights of the consumer, this government has stood up for the loan sharks and handed them everything they want on a platter.

The loan sharks cried poor when this legislation was announced, when it was actually still intended to tackle these issues. It was a good piece of legislation. They cried poor, despite the fact that some of them had increased their share price in the vicinity of 10 per cent since this legislation was first put on the table. They are not poor. They say, 'We can't put in proper protection for consumers because that will mess with our business model.' Stop preying on those who are most vulnerable, those who are the most desperate, those who are there waiting for the picking, as the loan sharks know, and get
a business model that is sustainable, ethical and is one that does not prey on the most disadvantaged and poorest in our community. This legislation is not the legislation that this government should be acting on if it is their will to tackle the gap between the rich and the poor.

Wayne Swan's words are hollow when you look at the details of this legislation. It is all very well and good to bang on about Gina Rinehart. What about the poor young fellow or the mother with two kids who cannot send her children to school camp without getting sucked into a cycle of debt? Where is the government's commitment to increase the Newstart allowance to ensure that essential service providers have to give proper grace periods for people and for those who are seen to be caught in cycles of debt can have proper supportive and empowering financial counselling? They are the things that, if Wayne Swan is serious about tackling the gap between the rich and the poor, he needs to do. He has failed dismally on this piece of legislation.

Senator SINGH (Tasmania) (11:12): I rise to speak to the Consumer Credit Legislation Amendment (Enhancements) Bill 2012. This bill is the next step in the government's important agenda of reform of consumer law across this country to enhance protections from predatory trading practices. This is a journey that I was happy to see commence at the national level during my time when, back in 2008, I was a minister for consumer protection in the state parliament in my home state of Tasmania. It is good to see that it has now come to the Senate and that I am now here to be able to contribute to its fruition at this point in time.

When it comes to finance and lending, predatory trading practices do not just rip people off, they also can fundamentally change the economic security and the situation of an individual's life, especially those who are already in a challenging financial circumstance. The lending practices to which I refer are those which offer small to medium amounts of money for a short term at a very high rate of interest, or a set fee—a market which I understand is worth some $500 million annually in Australia. These loans are typically designed for people who need to cover off on, maybe, bills at home or immediate debts to pay day-to-day expenses, or those coming up in the days to weeks ahead. They are then taken out on a security of anticipated income, hence the name 'payday loans'.

These debts are most typically unexpected expenses—things like car repairs or replacement of white goods and household essentials. In some cases, they are utilities expenses or rent costs, but in almost all cases they are taken out by people who live very much hand-to-mouth with as little capacity to absorb unexpected financial shocks down the line as they are at the time they take out the loan.

While payday loans help customers to deal with immediate financial issues, according to the Caught short report from the RMIT and the University of Queensland, only 20 per cent of borrowers considered themselves better off after using such short-term credit. Half actually considered themselves worse off, with a number caught in a vicious cycle of the extra expenses incurred in repaying the loan then requiring new finance to be sought. Worse, these loans have historically been marketed as cheap and easy access to money; we have all seen the signs. They either minimise or fail to mention the high level of interest, fees or other costs associated with taking out such a short-term loan. Lending assessment usually does not involve the kind of rigorous credit and means checking that one might expect from a robust finance sector.
In too many examples payday lending operations leave consumers with the impression that such loans are the best and the easiest option for them at that point in time. Rarely is this the case, and we are all aware of that. Indeed, about 80 per cent of payday loan customers are receiving Centrelink payments or pensions and would have access to alternative low- or no-cost options in the form of things like no-interest loans, applying for an advance payment on a regular payment from Centrelink, or something of that nature. The prevalence of consumer credit suppliers and the relative simplicity of the process, though, has meant that payday lending has very much become a first option rather than a last resort.

There is no doubt that the demand for consumer credit is high and that there are a number of legitimate and genuine purposes behind consumer credit operations. So long as they are informed about the market and their options, consumers should be entitled to choose the credit option that best suits their situation. But the main point of that, of course, is that it is so long as they are informed. There is an undeniable need to protect the most vulnerable in our community—those in vulnerable circumstances—from extraordinary costs and to provide information on alternatives to those who would turn to those types of payday lenders in the first place.

The bill before the Senate goes a long way to providing those people who have run into cash-flow difficulties and have the need for some form of short-term credit with access to a safe and fair industry. It will also help to ensure that consumers are fully informed of their options and the ramifications of taking out a short-term loan from a payday lender. This bill includes a national interest rate cap, which will limit the cost of credit for consumers. For loans of less than $2,000 and 12 months duration, which constitute the majority of short-term loans—I know that in my home state of Tasmania that is certainly the case—the cap will be costs of 20 per cent of the credit amount plus four per cent of the credit for each month of the loan contract. For mid-tier loans of $2,000 to $5,000 and of two years duration or less, a cap of $400 on establishment fee and 48 per cent per annum interest will also apply.

These caps fall in the mix of comparable international models, which range from Canada's 17 per cent cap to some US states which cap rates at 35 per cent. Therefore, lenders will no longer be able to charge exorbitant fees of one-third or one-half of the total amount of credit that is provided. No longer will people who borrow $300 for a week be hit with $100 in charges for a seven-day loan. Indeed, loans with terms of 15 days or fewer will be prohibited under this bill, and responsible lending requirements will be extended to brokers in this industry. Those obligations include a presumption that a credit contract would be unsuitable where it would be the borrower's third loan in the last three months, pushing the burden of proof for suitability to the contract parties. Lenders and borrowers will both have to demonstrate that lending is responsible. There is a presumption that the loan has to be suitable and responsible. Not only will lenders no longer be able to charge these exorbitant fees; they will have to demonstrate responsible lending requirements. These obligations include the presumption, as I mentioned, that a credit contract would be unsuitable where it would be the borrower's third loan in the last three months.

The reform package also introduces a regulation-making power to allow use of direct debit to be suspended, avoiding the risk of fees accruing to a debtor's account should repeated direct debits for loan recovery be unsuccessful. Direct debit fees have very much contributed to consumer
credit charges compounding and eventually spiralling out of control. We know how direct debit works. If the funds are not there in the bank account, on top of the continuing direct debit set-up that has been formed to pay out these exorbitant loans and fees, the consumer is then also whacked by their bank, who also then puts a fee on the fact that they did not have enough funds in the bank to cover those outgoing direct debit expenses.

Direct debit fees have very much contributed to consumer credit charges compound and eventually, as I said, spiralling. One example that was published in Anglicare Tasmania's Pay day lending in Tasmania report says:

A 54 year old man recently separated and on a carer’s pension had taken out two unsecured loans for $100 each in separate instances to help with food and fuel, as his rent of $320 did not leave enough to live on. With the first loan he was charged an extra $11 for a card with his photo. His repayments were $74 a fortnight for two fortights. The repayments for the second loan were $64 a fortnight over two fortights. Unfortunately he did not leave enough money in his account for the second payment on his second loan and was charged a $16 fee by the company and a $30 default fee by the bank. He has now found himself overdrawn by $125 and is having difficulty in repaying the loan. He needed to access an emergency relief agency for food and fuel.

That is a very real example of how the direct debit system under these payday loan arrangements can spiral out of control at both the payday loan end but also at the financial institution end. That is why this bill addresses that issue, as I referred to.

Some lenders will be more affected than others by this bill, depending on the extent to which their current practices and costs comply with this national law. Those who approach their task responsibly and do so with due diligence will continue to be able to offer the services at a reasonable cost to consumers and with a reasonable return for their business. But those lenders who tend in my view towards predatory practice will need to change their approach. Those are the types of lenders whose business model depends on repeat custom with borrowers taking out multiple or consecutive loans in order to pay off interest and fees from previous loans.

These reforms need to be coupled with ways to inform consumers that they have other low-cost options to assist them to meet their day-to-day expenses, and it is incumbent not only on government but also on the industry to make people aware of the fantastic work of schemes like the no-interest loan scheme in my state of Tasmania, which I might add have an extremely low default or non-payment rate. We must do better in promoting the electricity and telecommunications hardship programs, which are already a mandated part of the utilities markets. That is why under this legislation small amount lenders will be obliged to disclose alternative options to their customers, not just hide the fact that they are not the only option out there. We must do better to promote the notion of financial literacy, especially in response to the precarious and uncertain employment conditions of a casualised labour market. Strong and consistent budgeting must be a feature of people's lives. Managing money and anticipating costs is part of that challenge, very much so. Again, I know that there are a number of community organisations providing that assistance to assist people with budgeting their finances in their lives. But requiring small amount lenders to make customers aware of the ASIC financial literacy website is one way that they can support these customers. That is moneysmart.com.au. Again, that is an
I am proud to be part of a Labor government that is tackling this issue and protecting people from lending practices that are reckless or exploit people's financial hardships. I am proud to be part of a Labor government that took up the challenge to balance access to finance and protection for customers. When the opposition in government identified this issue as early as 2001, it still did nothing for the next seven years of government to assist those in this low-income predatory environment. It is only a Labor government which has been willing to do more than pay lip-service to this issue and actually address those difficult policy areas which lead to issues of inequity and unfairness. I think this is one of those policy areas that very much demonstrate inequity and unfairness involving some of the most vulnerable people in our community, those on low incomes trying to get by day to day and pay their bills and budget their finances, their finances being of a very low income, but at the same time facing the glitz of the payday lenders trying to entice them with a very easy, quick fix option which then ends up being a spiralling downwards once they enter the situation of having to pay the high fees and the high costs in repaying the loan. On top of that there is the setting up of a direct debit system which, as I demonstrated in the example from Anglicare Tasmania, can end up leaving them in a much worse position than when they started in the first place.

I commend this bill to the Senate and, as I said, I am very proud to be part of a Gillard Labor government that is tackling the payday lenders and addressing the needs of low-income consumers in Australia.

Senator XENOPHON (South Australia) (11:27): I will follow on from the considered comments of Senator Singh in relation to this matter. We need to look at the causes of why so many people are seeking payday lending. We need to look at why there has been an explosion in the payday lending market in recent years, particularly in my home state of South Australia. There is no doubt whatsoever that the introduction of poker machines in pubs and clubs has led to an increase in financial hardship and an increase in financial damage for individuals and families, and that is why I believe that poker machine reform, one-dollar bets in particular with a $120 an hour maximum loss, would make a real difference in the sort of business that these payday lenders generate. So I indicate my support for the Consumer Credit Legislation Amendment (Enhancements) Bill 2012. I have been discussing this issue, pushing for tighter restrictions on small credit loans and in particular payday lending for many years. There are significant concerns that these types of loans when offered by unscrupulous lenders can take advantage of people who are already in financial hardship. I think we need to look at the causes of poverty and the reason why so many people are now seeking to avail themselves of payday lending.

The debt cycle of using credit to pay off debts and therefore accumulating even greater debts is a vicious one. I believe the amendments proposed in this bill will go some way towards controlling unscrupulous providers and limiting harm. However, I am concerned about the enforcement of these provisions. The current bill relies on complaint reports to ASIC, which will then investigate breaches of the law. I see that Senator John Williams is in the chamber. I think he is a person who has had considerable experience in dealing with ASIC over the whole issue of liquidators and unscrupulous lenders, as noted in his contribution to the recent Senate inquiry into
this. Relying on ASIC is not the be-all and end-all, as I think Senator Williams has established.

Instead, I believe we should be focusing on a more proactive approach to enforcement. Last week I had discussions with Veritec Solutions, the company that developed an electronic database currently operating in Florida. I am very grateful for the time that I spent with the representatives from Veritec. The information that Veritec provided to the Senate committee that looked into this is worth reflecting on. In their submission, Veritec said that they were:

... specifically commenting how effective enforcement at little to no cost to Government can be achieved in order to produce the desired policy positions taken by the Amendment.

That is, these amendments to the consumer credit act. Veritec recommended:

... that the Committee consider a real-time verification system to efficiently and effectively ensure compliance before a covered transaction is entered into with an Australian consumer.

Veritec has gone into great detail on this. I believe that what Veritec has put forward has a lot of merit. That does not necessarily mean that we go down the path of getting Veritec to do this, but something of that nature—in other words, if not Veritec then another company that can provide the same sort of outcome or, if it can be provided, within government. But it seems that Veritec has a proven track record on this.

It is important to note that Florida has a tightly regulated and booming payday loans industry, with an average of 4.7 million transactions a year between 2004 and 2009. According to a paper by researchers Michael H. Anderson and Raymond Jackson at the University of Massachusetts, Dartmouth, headed 'Perspectives on payday loans: the evidence from Florida', this database real-time reporting solution was very effective. The paper focused on:

... the payday loan experience in Florida where the statute regulates the interest rate, fees, loan size and the protocol for resolving a loan that cannot be repaid at maturity.

According to this paper:
The Florida statute prohibits a consumer from having more than one payday loan at a time. Under state supervision, a real-time database is maintained of all outstanding transactions. When an application is submitted, the lender enters the database to verify that the borrower has no current open loan, is not in arrears on any past loan and is therefore eligible to be approved at this time. Once verification is successful, the borrower is still required to sign a statement confirming that no payday loan is outstanding and, in addition, give assurance that no loan was successfully terminated within the past 24 hours. The amount of the new loan, excluding all fees, is limited to $500. That is what they do in Florida. That is something that Veritec has been involved in, and it seems that this independent analysis from Anderson and Jackson at the University of Massachusetts indicates that it has worked. It has been effective. My concern with this legislation from the government, though a well-intentioned, useful piece of legislation, regards its efficacy in the absence of ensuring some real-time reporting and having a database.

Only about two per cent of the value of these loans—some $2 billion—is considered lost or not repaid each year. That is pretty good. The aim of an online database is to allow small credit providers to access real-time credit information to ensure that applicants satisfy the requirements for a small credit loan. It can also be used to ensure that the credit contract in question is in line with the regulations. There are clearly benefits to both sides under such a system. First, it allows providers to be certain that they are lending responsibly. The database
provides information not only on the applicant's credit history but also on whether the applicant currently has any outstanding loans, as Florida statute prohibits applicants holding more than one payday loan at a time, as set out in the paper.

Secondly, the system provides security for the applicant. They know that the terms they are receiving are in line with regulations, and they have the comfort of knowing that the sector is appropriately managed and controlled to cut down on illegal or immoral lenders. It is likely that a combination of good regulations and good enforcement has led to the strength of payday loans in Florida. These factors make them a much safer and more robust product overall, consistent with the intention of the legislation before us today.

A House of Commons report from February this year specifically recommended that the British government introduce legislation to establish an online database to monitor payday lending. That report was the House of Commons Business, Innovation and Skills Committee's Debt management: fourteenth report of session 2010-12, and it was ordered by the House of Commons to be printed on 21 February 2012. That report is very useful, and it says:

It is clear that credit checking is a key factor in ensuring appropriate lending to consumers. We are therefore deeply concerned with the evidence that payday providers are not recording all of their transactions. Examples of credit databases that do capture payday lending are available in other countries and we recommend that the Government require industry to introduce similar models in the UK as a matter of urgency.

That is what the House of Commons said. They looked at what Florida is doing.

I understand that this legislation has been a long time coming and that it has been the subject of much discussion and consultation. However, I believe the aspect of enforcement cannot be ignored, and I believe it has been ignored with this legislation. It was my intention to move a second reading amendment calling on the government to request ASIC undertake a study into the appropriateness of introducing such a database in Australia. After receiving an undertaking from the government to approach ASIC and request this report I will no longer be moving the second reading amendment that I have circulated. However, I seek to table a letter that I have received from the Minister for Employment and Workplace Relations, the Minister for Financial Services and Superannuation, the Hon. Bill Shorten. It is undated, but I received it last week, and it is in relation to this piece of legislation. I seek leave to table this document.

Leave granted.

Senator XENOPHON: The document from Minister Shorten refers to the proposed second reading amendment, which says that while the government does not support a second reading amendment to the bill the minister is prepared to write to ASIC requesting a report on similar terms. That is very pleasing, and I am very grateful for the engagement with the minister's office in relation to this.

The minister proposes that paragraph A of what I have requested be limited to the enforcement provisions in relation to small-amount credit contracts in the bill, and that is fair enough. He will also direct ASIC to consider in its response whether or not there are any limitations in the amendments that would prevent ASIC from taking court action or severely restrict its capacity to do so, including the inability to obtain evidence in order to establish the requirements necessary to prove an offence.

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Leave granted.
request within three months of the commencement of the provisions to the bill.

I will be asking the government to set out what time line it would like for the reporting of this bill, because I think it is important. This bill, although it is well-intentioned, will not do the work it is meant to do unless there is enforcement. That is why the House of Commons debt management report was very clear on this matter. If I go back to the House of Commons report, on page 17 it says the consumer credit counselling service informed the committee that data coming into its social policy team raised questions 'about the level of credit checking that goes on' and why individuals who are struggling to repay their debts were still able to get payday loans. That is a very key issue. The House of Commons committee actually recommended that payday lenders be required by law to record all loan transactions on such a database, so that consumer credit histories can be accurately monitored. The House of Commons has got it right, the state of Florida has got it right, and academics at the University of Massachusetts have got it right; but this legislation has not quite got it right in terms of insisting on that. I am concerned that this will be a piece of feelgood legislation that sounds good, is well-intentioned, but will not do what it is meant to do without having that technological solution.

There is no doubt that, for many, payday loans or small-credit loans are not a good option. But the factors in this bill, if strongly enforced through an online database or similar system, will make them a viable financial option for many people. I look forward to seeing the report from ASIC. I hope it will make a valuable contribution to this debate and will give us another opportunity not only to discuss these issues but to seek to amend the legislation to ensure that the online database, that sort of reporting, becomes a key aspect of the enforcement of this legislation. One of the questions I will ask the government is whether, if there is a recommendation, this aspect of enforcement can be dealt with now without any further amendments to the legislation. That is a real issue that I want to explore in the committee stage.

**Senator THISTLETHWAITE** (New South Wales) (11:40): I am pleased to speak in support of the Consumer Credit Legislation Amendment (Enhancements) Bill 2012. In doing so, I think it outlines a fine example of the COAG process working well to offer better regulation for Australian consumers and businesses as well as, importantly, protection for the most vulnerable consumers in our society. The Consumer Credit Legislation Amendment (Enhancements) Bill is part of a second tranche of legislation that is being introduced by the government to reform our consumer credit laws to make them fairer and more accessible while protecting the most vulnerable in our society.

The background to the bill is that in July 2008 the Council of Australian Governments agreed that the Commonwealth would take over responsibility for the regulation of trustee companies, mortgage broking, margin lending and non-deposit-lending institutions, as well as certain areas of consumer credit laws. From the COAG meeting, the rationale for the decision was the need to ensure 'consumers were better protected in their dealings with credit products and credit providers'. In response to that COAG meeting and the agreement that was reached there was a phased approach to the introduction of legislation by the government. The first phase was the National Consumer Credit Protection Act that was passed by this parliament and agreed to by the various states. The second phase is this legislation that is before the Senate at the
moment. This legislation deals in particular with payday lending, credit cards, business lending and other forms of credit. These reforms were agreed to by COAG on 19 April 2010 and legislation containing the new requirements was brought before the parliament last year. That legislation was referred to a committee, and I was fortunate to be a member of the committee, the Corporations and Financial Services Joint Committee, that had a detailed look at the provisions of the original legislation and issued a report in December 2011.

I want to point out the position of the coalition in the lead-up to the action that the government has taken on this very important area of reform. In 2001, the now shadow Treasurer, Joe Hockey, said:

Payday lending is an insidious practice that targets the less prosperous men and women of our society, the less financially savvy and the people who can least handle spiralling debt.

It is not often that I agree with Joe Hockey, but on this occasion in respect of that quote he was spot on. He summarised some of the issues associated with the provision of payday lending credit in our country. The question remains, given that that quote was made in 2001, why for the remaining six years of the Howard government Mr Hockey and his colleagues did nothing about this issue. They did nothing at all when in government to protect the most vulnerable in our society and reform this area of consumer credit. Once again, it took a Labor government to take this issue up through the COAG process, get agreement of the states and introduce this legislation.

In respect of the Corporation and Financial Services Committee's deliberations regarding the original bill, it was a difficult task that the committee had. The task was to look at the legislation and to ensure that it struck the right balance and that it was appropriate legislation and regulation allowing people who were providing consumer credit to run a profitable business into the future. And, importantly, it was about allowing those who are in a position to access and repay such consumer credit to gain that access without an unreasonable burden on their right to access such credit and, also importantly—and this is where regulation in the past has not kept up with what has been occurring in society—protecting those who are most vulnerable, those who in some circumstances are not in a position to repay the payday loans that they take out and ensuring, given those circumstances, there is appropriate regulation and protection into the future.

We believe this legislation strikes the right balance. It does that by ensuring fairness in the protection of the most vulnerable accessing this credit; also by allowing those who are running businesses in this area to do so in a profitable manner and ensuring those who are in a position to repay these loans can access such credit.

This bill has four or five main aims: to enhance access to hardship provisions in the credit code; to introduce a protection against negative equity for holders of reverse mortgages; to introduce caps on costs for small-amount credit contracts, particularly in relation to upfront fees and ongoing interest charges; and to ensure greater consistency between the treatment of consumer leases and credit contracts.

With respect to short-term lending, or payday loans, a comprehensive amount of evidence and research data was presented to the committee during its inquiry. I would like to quote from what is probably the most comprehensive study conducted in recent years—that is, the joint study by RMIT and the University of Queensland, which was released in August 2011. That report provides probably the most up-to-date
analysis of the circumstances of consumers accessing short-term loan credit. As part of the study, 160 interviews were conducted with consumers across Queensland, Victoria and New South Wales who had borrowed between $50 and $1,500 from non-bank lenders for short periods of time. The data that was produced by this study is instructive of the characteristics of those people accessing this credit, the amount of credit that they are accessing and the terms and conditions under which they access that credit. It highlights why the government have taken this action in protecting the most vulnerable consumers with greater regulation in this area. The researchers concluded that:

... poverty pervades the lives of most borrowers interviewed.

The study indicated that the users of short-term loans are commonly unemployed, receive government assistance, have lower rates of home ownership and are likely to be in their 30s or 40s. Of the 112 interviewed, 78 per cent received Centrelink benefits, less than 25 per cent were in paid employment and 75 per cent lived in rental accommodation. Only nine of the people interviewed owned their own homes and, unfortunately, eight of them were homeless. Of the 112 borrowers interviewed, only seven had credit cards and 68 had a poor credit history. I think that really underlines and highlights the need for regulation in this area and why the government have taken the steps that they have.

Some of the evidence of the welfare organisations who appeared before the committee was instructive. St Luke's Anglicare summarised the situation of payday lending in this country at the time and said:

Payday lending is undoubtedly the most expensive form of credit. There is a real question mark over whether these loans alleviate financial hardship or in fact exacerbate it.

Balancing that there was also evidence from a number of corporations and companies that provide credit in this space, particularly about the original provisions of the bill that were before the committee and the parliament. I am not going to go into the details of the evidence presented by a number of payday lenders—the corporations that provide this sort of credit—but I draw the Senate's attention to pages 97 to 98 of the report where the financial figures associated with payday lending on behalf of Cash Converters, one of the biggest suppliers of payday loans in the country, were presented to the committee. They highlighted the fact that these loans make up on average 50 per cent of the income of an ordinary business operating in this space. Their evidence was that provisions were too harsh, they did not strike the right balance and, importantly, that evidence was not challenged. That evidence of the financial position of many of those corporations and the effects that the original bill would have on their financial position was not challenged. I think that undermines the position taken by Senator Hanson-Young and the Greens in relation to this debate. They did not present any alternative evidence to the committee to dispute the figures that were produced by a number of corporations regarding the effects that the original bill would have on their business.

In the wake of that, the government have considered the recommendations of the committee in its report—quite sensible, balanced recommendations, I believe, which did have the overwhelming majority support of committee members—and we have reformed the bill. The bill now strikes the right balance. In respect of payday loans, there are a number of elements in this legislation which deal not only with protecting the most vulnerable but also with ensuring that those who operate in this space can operate a profitable business.
The elements of the bill are to: increase the cap on short-term small amount contracts to a 20 per cent establishment fee and a four per cent monthly fee; shorten the term for small amount credit contracts from 24 months to 12 months; remove the prohibition on refinancing of small amount credit contracts; introduce a mid-tier cap of 48 per cent plus $400 for loans of between $2,000 and $5,000 with a term of two years or less; place a prohibition on loans with terms of more than 15 days; place a maximum of 200 per cent total cap on charges for all lending; require consumers accessing small amount credit contracts to provide three months of bank statements and assist ASIC in their investigation; enhance the responsible lending requirements for brokers in this industry, particularly those who operate payday lending facilities through websites, and link them to ASIC's MoneySmart website; as well as address the risks of fees associated with debtors' accounts through repeated unsuccessful use of direct debit to seek payments incurred under small amount contracts. These are a suite of provisions that give greater protection for the most vulnerable consumers.

I draw the Senate's attention to evidence that was presented to the committee by some of the welfare agencies that operate in this area, particularly the Redfern Legal Centre. It acknowledged in its submission to the inquiry that there was a requirement for caps on fees and administrative costs associated with this. The centre said:

We acknowledge that the payday lending market is characterised by certain features that make small amount loans more expensive, including the high risk of default, and the high fees and the administrative costs of short term loans. There should be a limit on the amount of fees and costs that can be charged under small amount credit contracts to protect vulnerable consumers. It is important to recognise the role that payday lending plays in indebtedness amongst socioeconomically disadvantaged individuals.

That perfectly summarises the position of the need for reform and the government's reasons for its action in this area.

The bill also introduces new protections for seniors in respect of reverse mortgages. Seniors often can be particularly vulnerable when the value of the mortgage is greater than the value of their home. This is known, of course, as negative equity and to address this issue the bill will implement Australia's first statutory protection against negative equity. Reverse mortgage lenders and brokers will be required to discuss with the borrower the different scenarios and show them how the equity in the home will reduce according to the amount borrowed and different movements in house prices. This will ensure that when seniors access reverse mortgages they have the necessary knowledge to make decisions that protect their best interests and ensure that they do not end up in a vulnerable position.

The bill further introduces several important enhancements to the national consumer credit laws, which are aimed at protecting borrowers from severe enforcement action that is often taken by lenders, including the confiscation of property. These changes mean that the borrower is given the best chance to reach an agreeable arrangement with a lender in circumstances that are balanced and fair without being subject to costly court action. The bill also provides for regulatory balance between credit contracts and consumer leases, which are largely regulated consistently with credit contracts, to reduce the incentive for some providers to provide leases in a way that can disadvantage consumers.

All in all, this is a balanced set of reforms that takes into consideration the
recommendations of the Joint Standing Committee on Corporations and Financial Services. It is a bill that will ensure the protection of the most vulnerable citizens accessing consumer credit in our country while also allowing those who have a requirement to access such credit to do so and for those running businesses in this important area to be able to do so in an ongoing profitable manner.

In respect of the foreshadowed amendments by the Greens, proposed by Senator Hanson-Young, I point out that to date in all of the deliberations that have occurred on this bill, through the committee process and through the debate in the House of Representatives, the Greens have not sought to move amendments to the legislation. The position put by Senator Hanson-Young this morning is the first that the parliament is aware of. I point out that the committee process, undertaken by the corporations and financial services committee, was a balanced approach. Senator Hanson-Young was involved in the hearings of that committee; she saw the evidence. None of the contrary evidence was presented in respect of the financial position of many of the corporations acting in this industry. For her to come in here now and say that the government has failed, when the government has taken a reasonable, balanced approach, assessing all of the evidence, ensuring that there is greater regulation in the industry, but at the same time allowing people to run profitable businesses in consumer credit, is simply misleading. It is another example, unfortunately, of the Greens dealing themselves out of the consideration of this important issue.

Their intransigence and inability to negotiate and compromise on this will mean that they have dealt themselves out of the debate on this issue. That is unfortunate because it is an area of regulation that requires a commitment from all sides to ensure that it works into the future.

This bill will enhance Australia’s consumer credit regime. It will ensure the protection of the most vulnerable citizens and it is with a great deal of pride that I commend the bill to the Senate.

**Senator WILLIAMS** (New South Wales—Nationals Whip in the Senate) (11:59): I rise to contribute to the debate on Consumer Credit Legislation Amendment (Enhancements) Bill 2012. Short-term lending is necessary when people are in serious financial trouble and it is there to help them out. But sadly, in some cases people dig themselves into a deeper hole. As Senator Xenophon asked: why are people desperate for short-term loans or, as we know them, payday loans? Sadly, some have a gambling addiction. Others simply cannot get through with the cost of living. Mr Acting Deputy President, I want to bring that point to your attention—that is, the cost of living.

We heard the Greens’ Senator Hanson-Young state her case today, but the cost of living is one of the biggest complaints I hear when I talk to people. It is mainly around rural and regional areas of New South Wales, but it is also right across the state and the country. Amazingly, the carbon tax is adding to that cost of living! This will mean more people will be in a desperate situation, seeking payday loans, short-term loans, to pay their bills, whether they be electricity accounts or the registration on their car. Those monthly bills come forward all the time and are never ending. That is where we see the most need for payday loans.

We need control over credit lending. The Senate Economics References Committee is currently inquiring into post-GFC banking practices, and my colleague Senator Bushby, who is here, is the capable chair of that
committee. We have been getting information about low-doc loans and how they have been approved. We have had witnesses saying that information was falsely put on application forms—whether by the brokers, the bank or whoever—and that they have been putting in cash flows of people applying for the loans as $75,000 or $80,000 a year in income when in fact they were pensioners. This is of concern, and no doubt when the committee, very capably chaired by Senator Bushby, hands down its recommendations on 31 October those lending practices will attract a lot of attention.

As I said, people become desperate. I remember a couple of months ago talking to my colleague Senator Cormann about the cost of these payday loans. Senator Cormann gave an example. He said, 'If I lent you $100 today and you paid me $101 back tomorrow, would that be fair?' I said, 'Yes, that sounds fair enough.' But, of course, if you paid $101 back tomorrow on a $100 loan, that is a 365 per cent interest rate, which we would all think is a very high interest rate.

The point I make about this legislation is that the committee has done its job and done its job well. Minister Shorten simply had it all wrong, hence the big backflip by the government to get it right. The government has acknowledged the flaws in the original bill it presented to parliament last year by amending the legislation from its original form. The government was forced back to the drawing board by the unanimous recommendations of the Parliamentary Joint Committee on Corporations and Financial Services. The committee, including government members, recommended that the government revisit the payday lending changes and undertake further consultation with industry. This is most important and I commend that committee for its cross-party recommendations. Obviously the government had it very wrong before with what it was proposing. We are pleased that, under pressure, the government has agreed to increase the caps for small amount credit contracts, shorten the terms for small amount credit contracts from 24 months to 12 months so as to restrict the time that interest is being paid, and increase establishment fees from 10 per cent to 20 per cent and interest rates per month from two per cent to four per cent for small amount credit contracts. Those are important changes.

There will also be allowed an additional $400 fee to be charged for mid-tier loans between $2,000 and $5,000, the removal of the multi-credit prohibition on lenders under certain circumstances and a commitment to prohibit loans with a term of 15 days or fewer. In other words, all short-term loans must be more than 15 days. These changes represent a significant concession to both industry and opposition concerns with the original bill, and strikes a much better balance between the bill's two key objectives—namely, to provide appropriate consumer protection so that consumers are not simply being blatantly ripped off, whilst making sure that short-term lending remains available, accessible and as affordable and competitive as possible.

I see so many people get in so much trouble with credit cards. I have had credit card debts myself during my life, and when you get your statement you think, 'How much can I afford to pay this month?' Of course, 20 to 22 per cent interest is charged for late payments and for the full amount not being paid. You ask yourself the question: 'Why is the interest rate so high?' I think the answer to that would be because of the level of bad debts that those who issue credit cards have to make up for. Sadly, we do not live in a country or a world where people are perfect managers of credit. That is simply not the case. Many are vulnerable.
Sadly, many have gambling problems. They will get access to money and think, 'I can double this money down at the club'—or at the racetrack, the TAB, online or wherever they choose to gamble. Everyone in the nation can now gamble online. It is an addiction, a disease. That is why we need credit control to protect those who are vulnerable and who cannot manage money. We see it all the time.

A lot of bank issues come to my office, and we say to people: 'You are in trouble now. You have mortgaged your home. You have borrowed this to invest in that. Why did you borrow the money in the first place? Can't you see that you didn't have the cash flow to pay for it?' They say that they trusted some clever adviser who said to invest in it and get a great return. Sadly, that ends up in misery in many cases. People can be irresponsible when it comes to borrowing money, especially the younger generation. I lecture my children. I always say, 'There are two ways you can learn in this life: listen to me, because I have made all the mistakes, or go and make the mistakes yourself, but the latter is a very expensive way to learn.'

I refer to those credit cards where hopefully the credit given out to people has tightened up a bit. I saw for years the willy-nilly lending, people having a credit card and maxing out with debt, late paying their payments, 20 to 22 per cent interest compounding month to month. Then I have seen people actually go and get another credit card and borrow on that credit card to make the payments on the previous credit card, and on it compounds. People are vulnerable, and that is why we need credit controls.

Back to this bill. I think the committee has done an excellent job. Obviously the government has made a monumental mess of its original plan. It is good to see that the government has rolled over on the original plan and has now gone with the committee's recommendations. We see that people do need money quickly. Many are desperate. As I said, when it comes to those bills to be paid, essential ones like electricity, even the Taxation Office in some cases, motor vehicle repairs, maintenance, registration, insurance—we know how the bills continue to come into the household all the time. I think this is a fair piece of legislation that will not be opposed by the opposition.

I come back to the cost of living. We are going to see more and more of this lending because the cost of living is going up so much. Electricity prices rose 18 per cent at 1 July in New South Wales, half of that attributed to the carbon tax. We are now seeing the flow-on to small business. Households have not got their electricity bills yet, they are a three-monthly bill. You wait until early October when they receive their first bill and we will see more of this payday lending where people are in financial trouble. The cost of living is escalating. I had a friend based in Uralla in the New England area who came back from overseas and he was amazed at the cost of living in Australia, the cost of food. He said, 'Why can I buy a T-bone steak from Australia in Europe cheaper than I can buy it in Australia?' A very good question. We know what the farmers and the primary producers are being paid. I have never been to Europe or America or anywhere like that. People tell me they go to America and they say you fill a shopping trolley in America and it might cost you $80 or $100. The same trolley in Australia costs $200. Why is this when many of these products, vegetables and other food, are produced here? So the cost of living will continue to go up. It will get even worse if the Gillard Labor government is elected at the next election and come 1 July 2014 we will see another half a billion dollars fuel tax
imposed on our truckies some reason. It simply will not reduce our CO₂ emissions. Are we going to just shut the trucks down and not transport our exports to the waterfront or bring the food and clothing etcetera into the country towns that do not have rail? This will be another cost and we will see more of this short-term payday lending being demanded and accessed.

In summary, I say congratulations to the committee for righting the wrongs of the previous legislation put forward by Minister Shorten. It is obviously a far better result—not perfect but far better. I come back to the point that we should be thinking why people are demanding payday loans. It is because they are desperate because of the cost of living. We know who we can look at around this chamber when it comes to increasing the cost of living over the last year or two.

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (12:11): I rise to make a brief contribution today and add my support to the Consumer Credit Legislation Amendment (Enhancements) Bill 2011. I would like to start by saying that I absolutely agree with Senator Williams when he talks about why people access payday lending. That is because they are desperate and vulnerable. And that is exactly why we need to put in safeguards to ensure that those people that are accessing these loans are not taken advantage of. The bill we have before us seeks to do that.

This bill continues the government's commitment to support the most vulnerable in our community, by protecting consumers who seek credit. It will also deliver part 1 of phase 2 of the COAG national credit reforms. The credit industry needs reform; for too long exorbitant costs have spiralled out of control. We must stop these uncontrolled costs and support those in our community who are most vulnerable. In supporting those who need it most we are moving to stop borrowers suffering from uncontrolled costs, help them reduce debt spirals and combat the current failure to utilise alternatives.

Short-term small amount lending, sometimes called payday lending, is an area that is long overdue for regulatory reform. People who take out short-term loans are generally low-income earners or are financially disadvantaged. They may require a small amount of money to pay a utility bill or to get a household appliance fixed. Thinking they have nowhere else to go, people often turn to payday lenders, who offer credit on a short-term basis, usually charging extremely exorbitant costs for the service. Under the stress of having to find some credit to meet a financial obligation, people do turn to payday lenders. However, there are other options already in the market that are available such as schemes through Centrelink or the highly successful No Interest Loan Scheme, the NILS scheme, that operates in my home state of Tasmania. I understand that all other states offer similar schemes.

The bill introduced by the Gillard Labor government will go some way to addressing this issue of payday lending to provide more protection for consumers who may need to engage in short-term credit. The high and largely uncontrolled costs associated with accessing short-term loans can exacerbate current financial problems that borrowers may already find themselves in. This means that people who access these payday lending services are more likely to suffer from uncontrolled costs and get caught up in debt spirals which are very difficult to get out of. So this bill will protect consumers and deliver in the area of credit reform. In making enhancements to protect consumers can I say that the government has engaged in
significant consultations to deliver the best package of reforms possible. We have conducted significant consultations of the issues under phase 2. Consultation began in July 2012 with the release of the green paper National Credit Reform: enhancing confidence and fairness in Australia's credit law. The bill builds upon the national consumer credit reform, which was introduced as part of the national partnership agreement to deliver a seamless national economy. The National Consumer Credit Protection Reform package is dependent on the states referring their powers to the Commonwealth under the COAG agreement. Tasmania was the first state to introduce the required legislation into parliament, where it was passed in 2009. This shows Tasmania's commitment to national consumer credit reform.

The government has also consulted directly with payday lenders and consumer groups, and coming out of these consultations we have changed provisions within the enhancements bill in response to issues raised by both. We have also made amendments as to the issues that have arisen out of inquiries into the bill conducted by the Parliamentary Joint Committee on Corporations and Financial Services and the Senate Economics Legislation Committee.

This bill may not be 100 per cent perfect or achieve everything that the Consumer Action Law Centre wanted, but it is a start and it provides significant protection for consumers. The bill will introduce a national interest rate cap that will limit the costs of credit for consumers so that they will no longer be charged relatively high rates and high costs for these types of credit. This is Australia's first ever national interest rate cap and will apply to loans of less than $2,000 and 12 months duration. For these short-term small loans a cap on costs of 20 per cent of the credit provided for each month of the credit contract, will apply.

In payday lending situations there have been cases where people borrowing $300 can be charged over $100 for a seven-day loan, and then can meet repayments on this loan only by not paying other bills, such as rent or power, relegating them to the cycle of debt that I touched on earlier. The bill also introduces other protections, including tailored response lending obligations that help support the position of borrowers who have already defaulted on payday lending services or who make repeated use of small, short-term lending. The bill will implement the government's election commitment on reverse mortgages, meaning that new laws will introduce appropriate protections against negative equity and will also provide better information for those seniors who are considering taking out a reverse mortgage.

Another element of the bill amends the National Consumer Credit Protection Act 2009 to deliver greater regulatory consistency between consumer leases and credit contracts. It will also deliver specific improvements to consumer law, including opportunities for borrowers to obtain variations to their repayments when they experience financial hardship.

I turn now to talk in more detail about the excellent service offered in Tasmania and its no-interest loans scheme which I mentioned earlier. The NILS Network in Tasmania provides interest-free loans for household essentials, car maintenance, education essentials and medical and dental services for individuals or families on low incomes. There are no interest charges or fees: borrowers pay back only the cost of the item or service. As the NILS Network says on its website:

NILS loans have the capacity to turn people's lives around. Loan recipients often find that for the first time in their lives they are able to own
something new and reliable. There is also a sense of pride and achievement associated with the completion of a loan.

The NILS Network also has many testimonials from users of the scheme, and I quote from one of those:

I was left with absolutely nothing but a suitcase full of clothes and care of my teenage daughter. I was residing in a women’s shelter. My husband had a bad gambling problem. He gambled away years of battling virtually in two years. I finally moved into a Housing home and of course, had nothing. I heard about NILS and applied for a washing machine as I have arthritis and am recovering from an illness. I washed by hand and could not afford to get credit or be accepted as a customer. I am so very grateful that NILS exists.

This story highlights very well the reason the government has taken this action. Many low-income consumers take out payday lending loans as a first point of call rather than using them as a last resort. Part of this reform is to make consumers think about other options, such as NILS, when they are faced with temporary financial shortages. Sometimes it may appear easy to take out a short-term loan but, for many, due to the costs involved, they are just delaying the inevitable and making their situation worse down the track.

I am pleased today to be supporting this bill that introduces a number of measures to protect consumers from the exorbitant costs associated with payday lending, and I commend the bill to the Senate.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (12:20): I thank all of those senators who made a contribution to this debate. The Consumer Credit Legislation Amendment (Enhancements) Bill 2012 continues the government’s commitment to ensuring that all Australians get a fair deal when they use credit. In particular, this bill is aimed at ensuring that vulnerable consumers, such as some seniors or those on low incomes or people who find themselves in financial hardship, are adequately protected when they borrow money. 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 HANSON-YOUNG (South Australia) (12:21): I have, as indicated in my speech earlier, circulated amendments to this legislation that go to the heart of the problems that this legislation now has after being watered down and curtailed by the government to the wishes of the coalition and the loan sharks alike. For the purpose of the chamber’s time I propose that the amendments be dealt with together.

The TEMPORARY CHAIRMAN (Senator Furner): Senator Hanson-Youn, you can seek leave. However, your amendment to schedule 1, amendment (2), will need to be put separately.

Senator HANSON-YOUNG: Must it be put separately?

The TEMPORARY CHAIRMAN: The proposed amendment (2) must be put separately to the other amendments.

Senator HANSON-YOUNG: The Greens oppose item 25, division 4, in schedule 1 in the following terms:

(1) Schedule 1, item 25, page 16 (lines 1 to 5), omit all the words from and including "Division 4" to the end of section 160A.

(3) Schedule 3, item 7, page 51 (after line 5), after section 124A, insert:

124AA Prohibition on providing credit assistance in relation to small amount credit contracts

Prohibition

(1) A licensee must not provide credit assistance to a consumer by suggesting that the consumer apply, or assisting the consumer to
apply, for a small amount credit contract if the licensee knows, or is reckless as to whether, in the 12 month period before the time the assistance would be provided, the consumer has been a debtor under 4 or more small amount credit contracts.

Civil penalty: 2,000 penalty units.

Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

(4) Schedule 3, item 13, page 54 (after line 17), after section 133CA, insert:

133CAA Prohibition on entering small amount credit contracts

Prohibition

(1) A licensee must not enter a small amount credit contract with a consumer who will be the debtor under the contract if the licensee knows, or is reckless as to whether, in the 12 month period before the time the contract would be entered, the consumer has been a debtor under 4 or more small amount credit contracts.

Civil penalty: 2,000 penalty units.

Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

(5) Schedule 3, item 14, page 56 (after line 4), after subparagraph 180(1)(b)(ii), insert:

(iia)section 124AA (which prohibits the provision of credit assistance in relation to small amount credit contracts);

(6) Schedule 3, item 14, page 56 (after line 6), after subparagraph 180(1)(b)(iii), insert:

(iv)section 133CAA (which prohibits credit providers from entering into small amount credit contracts);

(7) Schedule 4, item 22A, page 69 (after line 19), after paragraph (d) of the definition of medium amount credit contract, insert:

(da)the debtor's obligations under the contract are not secured; and

Let us work our way through them. I will speak to them and then we can move to deal with each as you see fit. I am more than happy for that to happen. They deal with the issues I outlined in my second reading speech—

The TEMPORARY CHAIRMAN:
Before you proceed, is leave granted?

Leave granted.

Senator HANSON-YOUNG: The first amendment, amendment (3), is in relation to making sure we can put a cap on the number of loans people take. The big problem is that, despite the fanfare, there is no hard cap on how many loans people can take. This amendment to schedule 3 suggests there would be a cap of four on the number of loans that people can take in a 12-month period. If we do not want people to get sucked into a cycle of poverty then we need to ensure that we have a hard limit on the number of loans that any individual can take out in one period. That is what consumer organisations have recommended. It is more in line with what the original legislation intended. It will go a long way to helping those who are the most disadvantaged in our community not to be caught out by these nasty practices of the loan sharks. It is the best way of protecting them. It has been proven internationally and it is what this bill should be aiming to do, rather than simply saying we do not want people to take too many loans. We need to put a hard limit on that. It would be four loans within the period of 12 months.
The second amendment is in relation to the issue of garnishing income and employer authorities. This is where people have the right to ensure that when they get sucked into these awful, nasty schemes, they do not have the loan sharks dipping straight into their bank accounts and leaving them with absolutely nothing. The repayment method should be direct debit. That differs from people working all week only to then realise they have nothing in their bank account because everything has gone to repaying the debt. We suggest that that area needs to be strengthened as well, which would be in relation to omitting section 160E item (14) of the government’s original amendments.

The third amendment deals with the issue of security over loans. I spoke about this briefly in my second reading speech. The bill has put some caveats and safeguards around loans up to $2,000—you cannot have a loan up to $2,000 secured against something else. We are suggesting, in line with what consumer action organisations have asked for and what the experts say must be in place if we are to have true reform in this area, allowing security to be taken for loans up to $5,000. This would mean that you could not have somebody taking a $5,000 loan and having it held against their house or their car, effectively leaving those people with nothing if that loan is called in. That is the point of that amendment, lifting the $2,000 non-security cap to $5,000, which is what the experts argue is needed.

The last point in our amendments deals with the issue of enforcement. There is no point in embarking on reforms in this area unless we are serious about enforcement: whether we have a hard cap on the number of loans at four per year, whether we have issues in relation to security or loan sharks just dipping into people’s bank accounts as they like or getting employers to pay them directly. These big businesses, Cash Converters and others, are making windfall gains such as increases in profits as high as 10 per cent over the last 12 months on the back of very desperate, very poor, very disadvantaged Australians. If we are to tackle all those things we need to have proper enforcement mechanisms as well. That is what our final amendment goes to. I will leave it there and I am in the hands of the chair as to which amendments will be put to the committee at which time.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (12:28): I indicate that the government does not support the seven amendments as proposed by the Australian Greens. We believe that the legislation that the minister has brought forward to the Senate gets the balance right amongst all the competing interests of people in this industry, including the consumers. Roughly 15 per cent of the population is unable to get credit, so regrettably those people are required to use payday lenders. We believe that the legislation that we have brought forward gets the balance right between protecting those people who find themselves in a position where they cannot do anything other than use payday lenders but does not go so far as to abolish the industry. We think the balance in legislation, after significant consultation, gets it right. It is worth bearing in mind that none of these amendments were introduced in the House of Representatives by the Greens.

To the best of my knowledge, the first time that the government has seen these amendments has been today. It is very late in the process to bring up these issues. We think that the balance is right. The minister has taken into account all of the issues that all of the stakeholders have raised. We are protecting those people who through no fault of their own are required to use payday
lenders, but we are not abolishing the industry.

Senator CORMANN (Western Australia) (12:30): On behalf of the coalition, I indicate that we also will not be supporting the Greens amendments. Those Greens amendments are broadly in line, if not entirely in line, with some suggested amendments that were circulated by various consumer action groups about 10 days ago. If I could, I will make some brief comments in relation to each of the three issues that Senator Hanson-Young raised.

In relation to the limits on repeat borrowing, this bill does impose statutory limits on repeat borrowing. The government's legislation does make some exceptions in the case of refinancing of another loan with the same provider. However, the bill also provides that the burden is on the lender with an assumption of hardship if the borrower has two or more short-term loans. In effect, this means that the lender would breach their responsible lending obligations with associated penalties if they did not take this into account. The use of presumptions rather than prohibitions, in our view, allows for greater flexibility and offers significant new protections for vulnerable borrowers.

In relation to garnisheeing income that Senator Hanson-Young has raised, the bill does provide protection for Centrelink dependent consumers with repayments capped at 20 per cent of their income. The complete removal of the ability of the lender to gain repayment via employer authorities when a borrower is employed would be counterproductive, offering a moral hazard where there would be an incentive for loans to be left unpaid.

Finally, in relation to the security over loans from $2,000 to $5,000, we believe it is reasonable that a loan of between $2,000 and $5,000 involves security. If security were prohibited, this segment of the lending market could well disappear or move into the black market. Both outcomes would be detrimental to potential borrowers and industry.

The TEMPORARY CHAIRMAN (Senator Furner): The question is that item 25, division 4, of schedule 1 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN: The next question is that Greens amendments (1) and (3) to (7) on sheet 7260 be agreed to.

The committee divided. [12:37]

(The Temporary Chairman—Senator Furner)

Ayes ...................... 10
Noes ...................... 30
Majority ............... 20

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

NOES
Birmingham, SJ
Boyce, SK
Brown, CL
Bushby, DC (teller)
Cameron, DN
Colbeck, R
Cormann, M
Crossin, P
Edwards, S
Farrell, D
Feeley, D
Furner, ML
Gallacher, AM
Heffernan, W
Ludwig, JW
Lundy, KA
Lundy, KA
McEwen, A
McLachlan, J
McLucas, J
Moore, CM
Polley, H
Pratt, LC
Singh, LM
Smith, D
Stephens, U
Sterle, G
Thistlethwaite, M
Thorp, LE
Unquart, AE

Question negatived.
Bill agreed to.
Bill reported without amendments; report adopted.

**Third Reading**

*Senator Farrell* (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (12:40): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012**

**Second Reading**

Debate resumed on the motion:

That this bill be now read a second time.

*Senator Cormann* (Western Australia) (12:41): This Labor government is a high-spending, high-taxing, high debt and deficit government which, over less than five short years in government, has lost complete control of our public finances, having inherited a position of no government net debt, a $22 billion surplus and $70 billion of net Commonwealth assets. This fiscally reckless, irresponsible and very wasteful government has turned that situation around very quickly. We find ourselves in a circumstance now where we have $174 billion worth of accumulated deficits over the last four budgets. We are heading again for $145 billion worth of government net debt and this government is planning to spend nearly $30 billion just to pay the interest on the debts that it has accumulated so far over the last 4½ years.

You have to contrast this with the situation in the final year of the Howard government when it received more than $1 billion in interest payments, given that there was no government net debt and that there were $70 billion worth of Commonwealth net assets which had been invested prudently by the former coalition government through the Future Fund.

People across Australia know that whenever Labor are in government for a period of time they stuff things up when it comes to the budget. Labor do not know how to handle money and after a period of Labor in government it always comes down to the coalition to come back and fix up Labor's fiscal mess. The reason we end up with bills like the one before us—the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012—is that Labor are always casting around for more cash. They do not care how reckless and how bad it is for our reputation as an investment destination when they come up with, for example, legislation like this, which imposes a tax burden retrospectively.

That is exactly what this bill seeks to do. This bill seeks to make changes retrospectively to cross-border transfer pricing arrangements. The reason it is bad for governments to make changes to tax laws retrospectively is, firstly, that it is fundamentally unfair. Retrospective changes to tax legislation also significantly damage our reputation as a safe destination for investment. I put this question: how can anyone be expected to have complied with tax laws back in 2004, 2005, 2006 or 2007 that did not exist at the time? How can anyone across Australia have been expected to comply with tax laws back to 2004 that we are only just debating in the parliament now?

This is very bad practice and the only reason we are having these sorts of debates in this parliament now is because this government is so desperate to put their hands on some more cash to plug the hole that they have created in less than five years of bad and irresponsible government.

The coalition cannot support this bill in its current form. It is a large retrospective tax
change which the coalition is opposed to in principle. The coalition will seek to amend the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 in order to give prospective effect to this bill. If this amendment is unsuccessful, the bill will be opposed by the coalition as the government has not made a strong enough public justification for the retrospective application of these changes. Transfer pricing rules exist to ensure that taxation is collected on the contribution of profits from Australian operations to multinational companies and to ensure that profits are not shifted between related parties across borders without appropriate taxation. Transfer pricing rules are contained within division 13 of the Income Tax Assessment Act 1936 and Australia has also incorporated various international tax treaties into Australian law.

The Commissioner of Taxation has historically considered these treaty transfer pricing rules contained in treaties as an alternative basis for transfer pricing adjustment in parallel with the relevant provisions of the Income Tax Assessment 1936. However, in 2011 the Full Federal Court cast doubt on the second basis for transfer pricing adjustments in Commissioner for Taxation v SNF Australia Pty Ltd. Whilst this case was argued only on the basis of division 13, the government now believes that as a result of this case division 13 does not always adequately reflect the contributions of profits from Australian operations to multinational groups and, as such, in some cases treaty transfer pricing rules may produce a higher level of taxation. This government essentially want to be able to pick and choose whether they are going to use Australian law or whether they are going to use the relevant treaty provisions, depending on what delivers a higher taxation outcome.

At the end of the day, if the law is as the taxation commissioner may have thought in past then there is no need to change it. If it is not the way the tax commissioner thought it was and has interpreted it to be then of course this is a massive change to tax laws retrospectively. The tax commissioner does not write laws. The tax commissioner implements, administers and executes the laws passed by this parliament. If the tax commissioner's interpretation of those tax laws is found to be inconsistent with the laws passed by this parliament, it is not right to then change the legislation retrospectively in order to bring the legislation in line with the tax commissioner's interpretation. What would be right is for the tax commissioner to change his interpretation to make it consistent with the laws passed by this parliament until such time as the parliament has decided to change those laws, and of course those changes ought to apply prospectively only.

On 1 November 2011 the government announced a review into the relevant division of the Income Tax Assessment Act 1936 and said it would legislate to clarify the transfer pricing rules in tax treaties and valid transfer pricing adjustments independent of the ITAA 1936. This change is to be retrospective from 1 July 2004. I have made the point, and I hope that the chamber is very clear on the fact, that the coalition has been opposing and continues to oppose retrospective tax changes which provide adverse consequences for taxpayers as a matter of principle. Retrospective changes that are beneficial to taxpayers are one thing, but retrospective tax changes which impose an adverse consequence on taxpayers and a beneficial outcome for government are not an appropriate way to legislate in the tax area.

The reasons the coalition is opposed to retrospective tax changes that are detrimental
to the taxpayer as a matter of principle are that they can change the substance of bargains struck between taxpayers who have made every effort to comply with the prevailing law as at the time the agreement was entered into; they can expose taxpayers to penalties in circumstances where taxpayers could not possibly have taken steps at the earlier time to mitigate the potential for penalties to be imposed; they may change a taxpayer's tax profile, which in turn can materially impact the financial viability of investment decisions and the pricing of those decisions, which were made in the context of the tax laws as they existed at the time; and they can increase Australia's level of perceived sovereign risk. In fact, that has already happened.

It is impossible for somebody in 2004 to have complied with a law that is yet to be passed by the parliament in 2012. That seems to be pretty obvious. How can anyone be expected to have complied with a law back in 2004 that the Senate is here now discussing on 20 August 2012? It is completely unreasonable and it exposes taxpayers to a completely unreasonable level of sovereign risk when tax laws and tax arrangements can be changed going back by eight years. Of course, a lot of investment and other decisions would have been made on what the understanding of the laws was at the time, and just because the tax commissioner takes one view and participants out in the economy take another view, it does not mean necessarily that the tax commissioner always gets it right. Of course, the proof is in the pudding; he does not always get it right.

On occasion, taxpayers contest the tax commissioner's views and interpretations before the courts because they believe that the law says something different from what the tax commissioner says. Here there is a very bad trend where this government, whenever it comes to the tax commissioner having been found to have applied the tax laws in an inappropriate way, rather than ensuring that the tax commissioner applies the law the way it was intended to be applied, turns around and says, 'Well, let's make sure that for all of the years that the tax commissioner has interpreted the law in a way that is inconsistent with the way the law was passed we will just change the law to make it retrospectively consistent with the tax commissioner's interpretation.' It will do this rather than force the tax commissioner to apply and comply with the laws passed by this parliament. It is the wrong way round. The reason the government are going the wrong way round on these things is because they are always so desperate for more cash given their absolute incapacity to handle money.

If the relevant treaty article, the associated enterprises article contained in Australia's existing double taxation agreements, operates to provide a separate taxing power, the question then becomes why the bill needs to have retrospective application. That is the proposition that has been put for the last however many years. However, if the associated enterprises article does not operate to provide a separate taxing power, can it be said that the proposed amendment is merely clarifying the law? If not, then it is surely the case that taxpayers who have complied in the past with the law as enacted are now retrospectively exposed to a new tax. In evidence to the Economics Legislation Committee on 26 July 2012, Mr Peter Collins, partner in PricewaterhouseCoopers, made a very concise exposition on this point in these terms:

… if the law is as clear as has been suggested in a lot of the debate today when we have been hearing about the tax office's point of view on
this, then there is no case for change. Why do we need to change the law if it is so clear?

That is a completely appropriate question. The reason we are having this debate is because the tax commissioner's interpretation of the law went beyond what the law actually said. The reason we are here clarifying things is because this government wants to lock in significant additional cash. The retrospectivity of this bill will remove a taxpayer's accrued right to dispute an amended assessment for income years as far back as 2004-05 where the Australian tax office has raised the amendment in reliance on the treaty transfer pricing powers. That is surely unfair. The opposition does not accept that the government has made its case that the retrospective legislation is appropriate or required. No detail of the size of the retrospective tax impost is currently available. The government claims that this has no impact on the budget at all as it is a revenue protection measure. In fact, despite repeated requests, the Assistant Treasurer’s office has been unable to fully quantify the cost of not passing this bill.

The coalition, as I mentioned at the outset, will be moving an amendment making the bill prospective rather than retrospective. This will ensure that the taxpayers are not forced to retrospectively comply with a tax regime they did not know existed at the time when they made business and investment decisions. This latest change comes on top of previous retrospective tax changes to the consolidation regime. It comes on top of the mining tax, the carbon tax and more than 20 other new or increased ad hoc Labor Party tax grabs. They have all got one thing in common: that they are driven by a desperate need for more cash in order to try to fill the holes. So far this government has been particularly unsuccessful in filling those holes. This government has been so unsuccessful in filling those holes but we were told initially that last year the deficit was going to be about $10 billion by the Treasurer when he was trying to make us believe that the government was on a return path to a fiscal surplus. Back in August 2010 the Treasurer, just before the last election, told us the deficit in the last financial year was expected to be $10 billion. When the budget came out a few months ago, we found that the deficit was $44.4 billion, a blowout in the deficit under this government of $34.4 billion in just one year. In the last financial year the government's deficit more than quadrupled compared to what the Australian people had been told before the last election. The government is running around and casting around for more cash because they cannot live within their means. Because they cannot live within the confines of the record revenues that the government has been collecting in recent years, the government is not able to live within its means so they are out there casting around for more cash by increased borrowings and increased levels of debt, and they are also casting around by coming up with new or increased taxes. They are even casting around by making retrospective changes to existing tax laws to force people to pay more tax than they were required to pay under the laws as they existed all the way back to 2004. This is a government that clearly has lost control of its finances. That is why they have to go ahead with these sorts of bills which have a very bad impact on our reputation internationally and a very bad impact on our economy domestically.

There is a better way. What we need is a government that is more prudent with taxpayers' money. We need a government that spends less. We need a government that is able to live within its means. We need a government that, because they live within their means, can tax less. We need a government that is focused on international
competitiveness, a government that is focused on implications bills like this have on the preparedness of investors from around the world to invest their money here in Australia so that we can continue to grow our economy more strongly. If we had a government which spent less, which was less reckless with taxpayers' money so we could tax less, so we could focus on our international competitiveness moving forward, a government that was focused on driving productivity improvements, a government that was focused on growing our economy more strongly, what would happen in that circumstance is that by growing our economy more strongly not only would we improve and enhance our economic prosperity as a nation but we would actually deliver increased revenue to government without the need for all these new and increased Labor Party taxes. If you are a government that encourages stronger economic growth on the back of being more predictable, on the back of delivering lower taxes, productivity improvement and so on, as the economy grows then the revenue to government will also grow without having to impose all these new taxes.

Over the last four or so budgets, billions and billions in additional tax revenue have been collected on the back of all these new and increased Labor Party taxes. But despite all these billions in additional revenue the government is still not able to balance the books. Despite having benefited in recent years from the best terms of trade in 140 years—terms of trade which are now coming off and look as if they might continue to moderate—this government has imposed more than 20 new or increased taxes over the last four or so years. They have borrowed about $145 billion—they have taken net debt to about $145 billion on the back of $174 billion of accumulated deficits. In these sorts of circumstances, it is not surprising that this government is recklessly exposing our international reputation as a safe destination to invest with bills like this. Unless this bill is amended in the terms I have indicated, the coalition will not be in a position to support it.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (13:01): I rise to speak on the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012. Transfer pricing is an issue that I have a lot of interest in, being an accountant and also from regional Australia.

I think the coalition is being extremely fair on this arrangement. We do not, as a principle, believe in retrospective changes because they make life impossible. How do you plan for a government that is making plans for you before you even know that the changes they would make would come about? So it is a very fair proposition to say that we will make changes on the prospective level—that is, from this point forward.

That does not diminish the requirement that we have to do something on transfer pricing. We must realise that nowadays 60 per cent of international trade—that is, trade that goes on between countries—is within companies. Transfer pricing is becoming a massive mechanism for the avoidance of tax in transactions between countries. The tax that companies avoid by transfer pricing has to be paid for by somebody, and that somebody is the individual—that is, the Australian taxpayer. The Australian taxpayer has to pick it up. If we believe the standard of social services we have should be maintained, then we must maintain the tax base to do it. It is interesting. It is something you probably do not want to try looking up on Google, because Google has been notorious for trying to get out of tax by transfer pricing. They use one of the mechanisms called the Double Irish
agreement where they create a quasi-operation in the Bermudas and use that as a mechanism for the taxable entity, and the concessional tax rate means they miss tax.

The whole world seems to be going along this path where it is somehow believed that it is morally right for organisations to avoid tax within their operations between countries, but we will come down like a ton of bricks on individuals inside a nation who try to avoid tax. So more and more of the taxation burden is falling on individuals.

Each country seems to be playing this game. They all have their way of doing it. On the demise of the British Empire, they managed to keep their fingers on the financial empire well and truly operating. We know that a vast number of the hedge funds in the world are domiciled on Jersey Island. I do not think they are actually there, but that is where you will find their operations. Jersey Island, the Cayman Islands, Bermuda—we even see the Chinese making sure they keep Hong Kong and Macau going so that organisations within China have the capacity to get a differential tax rate and keep things opaque by moving away from transparency or closing up altogether.

You say, 'What has this got to do with Australia?' I quote to you from an inquiry that was held by this parliament in the last week that revolved around transfer pricing. A Mr Hamilton said:

If they were acting as a not-for-profit they would not necessarily be within the income tax system

But in going on to a transfer-pricing issue, Senator Fawcett brought to their attention:

The end point that the chair is probably coming to is that if country X has a sovereign holding in Australia, grows wheat—and let us assume they do not claim anything; they just self-fund the whole operation and they grow however many tonnes of wheat—

Mr Hamilton, representing the tax office, said:

And they export it. Would they be taxable? No.

So who does pay the tax? If those companies in transfer pricing are not paying the tax, then it is the person out in the street from here that pays the tax.

We now have a major issue because we demand our services are maintained at the same level and our capacity to finance them is lost. How are we making it up? We are just borrowing the money, so the debt is escalating.

It is an issue in the prospective form that we need to go forward and start closing these loopholes. I do not think we are ever going to win the battle. It will be a continual movement of funds away. The unfortunate thing is that, as international companies avoid tax believing that they are somehow omnipotent bodies which do not have to pay the tax that individuals or anybody else has to pay, the government borrows money. When they run out of money to borrow, they start printing money. If where you are storing your wealth is ink on paper and a government starts borrowing money, then it is a self-defeating proposition. In the end, you have done yourself in because all the money you have managed to divest and hold in certain accounts throughout the globe becomes worthless. As countries go into programs of quantitative easing, it diminishes the value or worth of whatever funds you have in the book denominated in that currency.

One country that has had the most dramatic forms of quantitative easing in the past, and which will continue to do so, is the United States of America. If you have wealth denominated in US dollars that you have managed to squirrel way, stuck up a log somewhere, and the US starts printing currency, you have not really done yourself
any favours whatsoever. I do not know what you would do next—probably you would go back to hiding gold or something. So in relation to transfer pricing we have to make sure that, in the future, we are part of the global process to make sure that the advantages international corporations will always have are not so overwhelming that the tax burden falls unnecessarily on the shoulders of the individuals who are left here.

It has become even more opaque now with the advent of sovereign entities, sovereign wealth funds, state owned enterprises. If it is opaque for corporations trying to get transparency on transactions that run between countries, it is virtually impossible to get it when the entity making those transactions between countries is one of the countries themselves. If it is, we end up in a very awkward position if we ask that country to bring its books to our court to display to us what they are earning. It obviously works on the undeniable premise, the implied belief, that we think they are lying. If we drag another nation's government into a courtroom in the belief that they are lying, they may well read that as an insult and a loss of face for their country. So we end up in a very awkward position if we ask that country to bring its books to our court to display to us what they are earning. It obviously works on the undeniable premise, the implied belief, that we think they are lying. If we drag another nation's government into a courtroom in the belief that they are lying, they may well read that as an insult and a loss of face for their country. So we would get ourselves into an awfully convoluted position which, undoubtedly, people would balance up: 'What are the ramifications of a bad outcome diplomatically with this country if we proceed with this case? They are far and away worse than the tax revenue we are trying to get back so we will just let them get away with it.'

Once that happens, the Australian people will say, 'If you are creating one law which somebody who does not even live here can get away with but I have to deal with it, that is inherently, completely and utterly unfair.' We will lose the respect and confidence of our own people because of our inability to deal with them in a manner equivalent to that with which we deal with other people or the government of another nation. It is not a case of getting an unfair advantage; it is making sure that there is some sort of parity.

As I said, 60 per cent of international trade is within companies. To try to find out exactly what an organisation has earned relies on the internal documents, which relies on the internal valuation. We always think it is easy, but it is not. For instance, take a large cotton farm, how are you going to know how much they are going to grow? How do you dig down? It is the internal dynamics of another country, another corporation. I suppose you work on the premise that you probably are not going to get everything that you want but, if you can get a fair share, then that is what you will take. There are instances with transfer pricing now where you basically get nothing at all.

The basic concept of how it can work is that a product is said to be removed from Australia at a certain price—a bale of cotton, for instance. They will say that the bale of cotton is only worth $300 or $400 a bale. It has been transferred to a mill in another country, where they mill it. Surprisingly enough they make a lot of money at the mill where they mill it but they make no money in the country where the cotton came from, and if the country where it came from is our country we do not collect the tax revenue. However, it requires and demands the utilisation of road resources and police resources and the laws and health standards that we expect, but we do not get the capacity to get our fair return from that entity to support that infrastructure, which is ours.

The coalition supports prospective change to these laws, and Senator Cormann clearly spelled that out. To try to make sure that we get somewhere with this I hope that is truly
considered. The reason retrospectivity is not appropriate is that it becomes a very bad rule to work by. Once we start talking about retrospectivity, we do not know where on earth it changes. It draws into question the plans of basically any organisation that is operating at the moment. To be prudent and astute, manage to get the changes in straightaway. But retrospectivity, especially in tax law, creates massive uncertainty because people just do not know where you will strike next. But I think it is absolutely fair that, prospectively, these issues that have become clouded, that will always be running second to astute accountants working in St James Square in London or working in Manhattan, devising ways with the utilisation of the Cayman Islands, Bermuda, Singapore, Hong Kong, Macau and the Jersey Islands to move money around so as to minimise or, if possible, avoid tax—if people believe that they do not have to pay any tax at all, then that is the tax they want to pay: none.

There are ways, and there have been mechanisms even in this parliament—I have been present when laws have been passed—to basically allow people to get out of tax altogether. Tax exemptions for non-rural property assets is one that comes to mind in recent times. I remember quite clearly crossing the floor on that and found that the Labor Party got up and crossed the floor in the other direction to make sure it went through. I wonder who they got the phone call from? These are the issues. To keep integrity in the tax base we must make sure that we manage the country so that people have to pay as little as possible and to make sure that those who should pay do pay. I think that is only fair. If we do not manage these things, if we leave it open for the movement of funds away from our taxation net, then, quite obviously, anybody who is prudent will do precisely that.

So, in closing, it is well worth the read to find out the sort of money that currently is being lost through transfer prices globally, which people believe is in the vicinity of about $3 trillion. When we say it is 'lost', it is not actually lost; it just means somebody else somewhere else has to pay it. Generally, it is an individual, but if it is not an individual it becomes an overloading on debt, so prudent management means prudent collection. Underlining that we have no belief in retrospectivity, it is fair warning to say that, prospectively, it is the role of any government to make sure that people do not pay excessively, that they pay their fair share, and that mechanisms that are built deliberately not for minimisation but just complete and utter avoidance are removed. You cannot live with the benefaction that is before a nation if you are not willing to kick the tin in some way to pay for it.

Nor should you be allowed the right, the privilege of operating in the country if you have no interest whatsoever in supporting the mechanisms that are vital to that country and supporting the people who underpin that country. It goes without saying that, in this continual torrent of moving funds to different corners of the world, even in the corners where they move it to and through, there is no real benefaction there. It is not as if you go to the Bahamas or Bermuda and these people are opulent; it is just the avoidance of tax. Where the funds ultimately flow to, the benefaction—you always find it—is to some individual at the end who has decided to make it their purpose in life to rip off other people.

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (13:17): I rise today to also contribute to the debate on the government's Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012, which is a bill that coalition senators
do not support in its current form for a number of very good reasons.

Transfer pricing occurs when two parties, related or unrelated, supply goods and services to each other and transfer profits from one to the other. The parties to the transaction may be domestic entities or resident or non-resident entities. For taxation purposes, the main issue occurs when the transaction is between related parties and where one of those parties is a nonresident. For Australian taxation purposes, when one party is a nonresident, Australian tax can be minimised to apply in deductions to the Australian entity through the purchase of goods by the resident entity at an inflated price, or through allocating income to the Australian resident through the sale of goods from the resident entity at a discounted price.

This government bill seeks to ensure the transfer pricing articles contained in Australia's tax treaties are able to be applied and provide assessment authority independently of division 13 of the 1936 tax act. They are seeking to do this by creating express provisions within the Income Tax Assessment Act 1997. Of primary concern to the coalition is the retrospective implementation of this bill, with the bill currently proposed to commence retrospectively from 1 July 2004. So we are not talking here commencing 1 July 2012, two months retrospective, or 1 July 2011, or even 2010; we are talking 1 July 2004.

The argument for justifying this retrospective implementation is outlined in confusing terms within the explanatory memorandum to the bill as:

The 2004 income year commenced immediately after the Parliament’s most recent amendment to the income tax laws in 2003 which again evidenced the Parliament’s understanding that tax treaties could be used as a separate basis for making transfer pricing adjustments.

The minister has stated in the other place that a decision to change the law from a date before announcement is not taken lightly. However, the coalition knows that this is not true, because this government is a government that constantly moves the goalposts in terms of dates. It has consistently sought to introduce retrospective legislation into the parliament since first coming into office. In fact, as recently as last year, this government legislated a retrospective tax change which dated back as far as 1990.

The coalition is generally opposed to retrospective tax changes, particularly in instances such as this, where the retrospective implementation of the legislation will impose a significant and detrimental burden upon taxpayers.

Retrospective tax changes not only impact the relationship between a taxpayer and the government but can also change the substance of bargains struck between taxpayers who have made every effort to comply with the prevailing law at the time the agreement was entered into. They can expose taxpayers to penalties in circumstances where they could not possibly have taken steps at an earlier time to mitigate the potential for penalties being imposed. And retrospective tax changes can alter a taxpayer's profile.

The Senate Economics Legislation Committee held an inquiry into this bill, and through that inquiry process the Senate Economics Legislation Committee heard from a number of stakeholders who all raised valid, serious and concerning issues in relation to the unjust nature of this bill and the impracticalities that will arise as a result of its retrospective implementation—and not surprisingly so. Many stakeholders expressed concern over the burden of proof for assessments that will arise as a result of the retrospective implementation of the bill. The
Law Council of Australia submitted the following:

The amendment provided for in the Bill gives the Commissioner an independent and additional taxing power and increases the scope for application of profit based analysis using information more readily available to the Commissioner than taxpayers. As already observed, the burden of compliance with the proposed new laws, as well as the existing domestic transfer pricing regime which will continue to apply, will be significant for taxpayers. Accordingly, the Committee considers that the burden of proof in relation to the new measures should properly lie with the Commissioner. In the alternative, either the taxpayer should bear no legal or evidential onus to prove that the assessment is excessive or, upon leading evidence in support of positions taken, it should be expressly incumbent on the Commissioner to demonstrate that the taxpayer’s position is manifestly wrong.

A number of submitters to the inquiry also expressed concern that no time limit had been specified for when retrospective adjustments can be made by the commissioner. The Law Council of Australia has stated that the absence of a time limit for retrospective changes is likely to cause significant issues for taxpayers. Mr Chris Peardon, a member of the Law Council of Australia, told the inquiry:

Taxpayers should be given certainty in relation to previous year's income so they can draw a line underneath it. There are also the issues about how long people keep records and keep all the relevant people around. If you go back further and further, it disadvantages taxpayers who have probably had a turnover of personnel and have probably moved their warehouses several times. How long do they need to keep the documentation? These are issues that crop up. It seems to us to be a very sensible reform just to insert a time limit, perhaps on the usual basis.

The Institute of Chartered Accountants submitted in relation to the retrospective nature of the bill:

A signal of the importance of freedom from retrospective laws has been held to be so critical to the basic rights of individuals and corporations that the constitutions of both the United States and Sweden have explicitly prohibited such a practice. Whilst Australia's constitution does not expressly prohibit the making of retrospective laws, the generally accepted practice of parliament has been to only exercise those powers sparingly, often only in extreme and exceptional circumstances ...

The coalition is not convinced that the government have provided suitable justification for the retrospective implementation of this bill. And, as is the norm with this government, they have not adequately consulted with stakeholders or addressed stakeholder concerns. Also of concern is that the government have not officially or publicly provided any detail on the size of the retrospective tax impost.

At the last round of Senate estimates, the Commissioner of Taxation said that 'they involve substantial sums, but not greatly substantial in the context of the broader picture'. So why then does this government feel the need to go back eight years to fix an issue that the commissioner deems 'not greatly substantial in the context of the broader picture'? As yet, the government has not released specific figures, despite asking the parliament to pass legislation that will have a retrospective commencement date causing significant burden for taxpayers although Treasury have indicated the dollar figure is likely to be in the vicinity of $1.9 billion.

Also of significant concern to the coalition is the threat retrospective legislation poses to Australia's sovereign risk profile. This bill will confirm that the transfer pricing rules contained in Australia's tax treaties provide a power through express incorporation into Australia's domestic law, to make transfer pricing adjustments independently of
Division 13. Deloitte submitted to the inquiry:
… this is not the approach to international tax law expected from a sophisticated trading nation and does considerable damage to Australia’s reputation for fair dealing in international trade and taxation …

Moore Stephens submitted to the inquiry that they are exceptionally concerned at the likely adverse impact and the reputational damage to the Australian Taxation Office and Australia as an investment destination that can be expected to follow in the event that the legislation is backdated as planned.

The coalition is also concerned that the government has not consulted with any partner countries to tax treaties with Australia, and we would like to know whether or not any partner countries have raised concerns as to the perceived impacts this bill will have on the negotiated agreements in such tax treaties.

The American Chamber of Commerce in Australia, which is the peak organisation for representing the interests of American companies undertaking business in Australia, noted in its submission to the inquiry that 'the most significant source of foreign investment in Australia is the United States' and further, that the retrospective nature of the bill will create 'unnecessary uncertainty and business risk, which in turn will negatively affect foreign investment in Australia.' And such comments were not isolated.

The committee also received submissions outlining similar concerns from large and reputable organisations such as the Australian Private Equity and Venture Capital Association, RSM Bird Cameron and the Business and Industry Advisory Committee to the OECD. I note that the passage of the bill was of sufficient interest that the embassy trade adviser of at least one of our major trading nations was present at the hearing, with a view to identifying issues for his nation’s businesses operating in Australia.

But, as we on this side of the chamber know, this government is not a government concerned with protecting Australia’s sovereign-risk profile or fostering a stable and attractive investment environment to encourage investment within Australia. We are seeing more international investment leave our shores with every bad policy decision it makes.

Another anomaly arising from this bill is that its changes apply only to countries that Australia has a tax treaty with, ignoring entities who are transacting with parties in tax havens such as the Cayman Islands. Taxpayers from countries without such a treaty will be subject to transfer pricing under Division 13—that is, a lower standard—while taxpayers transacting with an associated enterprise in a treaty country, those we should be closest to, will be subject to potential adjustments under this bill and its wider powers—that is, a higher standard. It defies belief, and is hugely concerning that the government would seek to penalise Australia’s treaty-partner countries in such a fashion. This bill will impact a range of industries at a time when they least need it. It is not enough for this government to impose on industry a great big mining tax and a carbon tax we were never going to have; no, Labor needs to compound that with the implementation of retrospective, very complex tax legislation.

The coalition strongly believes that the Gillard Labor government have failed to adequately justify the need for the retrospective implementation of this legislation. As Senator Cormann referred to earlier, there is only one possible reason they would be doing it—and that is that they need
to chase every rabbit down every hole looking for every last cent they can possibly get, to be able to deliver the so-called elusive 'surplus' they have promised for this financial year to offset the extravagant and wasteful spending that they have undertaken over the last four years, most of which has been ongoing spending which means that we need to have ongoing revenue to offset it.

If the government genuinely thought it needed the money to meet its ever-expanding spending base then it should look to taxes that are prospective and that can allow businesses and individuals to make appropriate plans, put in place appropriate arrangements to make sure that they do meet the tax laws as set up and as proposed and put into law. I think that Senator Cormann has made it clear that we would be more inclined to support this bill if it contained only prospective changes rather than retrospective changes. I agree with him on that, and say that that is what this place should look at, and make sure that we deal fairly with businesses and individuals who are subjected to tax laws in Australia. Stakeholder concerns in this case have not been sufficiently addressed, nor have concerns about the impact that this legislation will have in heightening Australia's perceived level of sovereign risk. This bill will create further uncertainty for our largest taxpayers at a time when they least need it. We on this side of the chamber believe that taxpayers have the right to rely on the law as it has been consistently interpreted by the courts for many years and, as such, we do not support this bill as it currently stands.

Senator IAN MACDONALD (Queensland) (13:29): I will make some small contribution to the debate on the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012, but before I do I note in passing how fortunate the parliament is, and indeed Australians are, to have people of the calibre of Senator Bushby and Senator Cormann speaking on such rather technical bills that require a professional understanding of what they are about. I could not help but be impressed by the knowledge of both Senator Cormann and Senator Bushby on these very technical issues. I have to say that, as a small town country lawyer of the past, I profess no expertise at all in taxation matters, particularly in relation to transfer pricing and, unlike Senator Joyce, who was a practising accountant, I do not have that intimate knowledge. But I join my colleagues in opposing legislation which is retrospective in a taxation and financial way. As Senator Cormann and Senator Bushby have clearly pointed out, were these proposals prospective then I suspect the coalition would have supported them. I certainly support the amendments that Senator Cormann will be moving to make them prospective. If they are adopted by the parliament or the Senate then I expect that we will be supporting the legislation. If they are refused, as has been indicated by the Labor Party however, then I would join my colleagues in opposing this legislation.

My principal reason for contributing to the debate on this bill relates to the broad position of foreign ownership, particularly of farming land in Australia. I do not want to go into that in any depth except to say that there is a very good discussion paper out which raises a lot of those issues and which I encourage people to contribute to. I recognise the need to be very cautious about who owns Australia's land and who owns Australia's farming enterprises. I am very conscious of a thought that is gaining precedence around the world. Whilst the last couple of decades have been the decades of the mining boom, there is this belief around parts of the world, which I share, that the next decade could be the decade of the food
boom and indeed I think the work being done by some Asian countries in securing their food supplies into the future supports the proposition that the world will more closely look in the years and decades ahead at how we are going to feed ourselves. Many Asian countries and other countries as well are looking to secure sources of food from countries beyond their borders and many are looking at Australia and that has engendered a debate.

Foreign ownership of Australia's farming assets is not new. In fact, in my area up in the north of Queensland, particularly in the sugar areas, I often remind people that the sugar industry was nurtured on foreign money, albeit British and Scottish money, back at the turn of the previous century. There have been big investments by those foreign countries in the sugar industry ever since. We remember the Rum Jungle and Lakelands Downs proposals of the fifties and sixties whereby a lot of foreign money was invested in Australia in agricultural pursuits and we know that many feedlots are owned by Japanese or Indonesian investors and Australia generally welcomes any investment in our agricultural output, be it foreign or local. But I agree with concerns that we have to be careful about just who owns our food and our means of producing food.

The first step, of course, is to find out who owns various pieces of land around Australia, a bit of data that, shamefully, has been missing from our public records for many years and I hope that something will be done at some time to ensure that at least we do know who owns Australia's land. But, generally speaking, I welcome investment in our food production from whatever source but, in some arguments with my very good and learned friend Senator Heffernan, he has alerted me to issues of transfer pricing. I know little about this, I confess, but if there were not some element of transfer pricing relief in the wind then I would also become very concerned about foreign investment in our land which then produces crops which are then taken, in situ almost, from Australia to the investors' homeland and not sold, so there is no price on the way through, meaning that out of the whole exercise Australia benefits little. I will put it the other way: if foreign investors come in and produce any sort of goods here, be they manufacturing or agricultural, and then they sell them in Australia at a price, they will—like everyone else—pay Australian income tax or company tax or payroll tax or any of all the other taxes that every other investor in Australia pays. If that is the case, I do not have a great deal of concern. I do not care whose money is helping to build Australia and build our food production as long as they pay their fair share of tax and as long as they abide by Australia's industrial relations laws and other laws that apply—but there is a suggestion which has been put to me.

I have no capacity to follow through and work out whether what has been suggested to me is accurate or not, but I accept what is said to me and understand that it has been the subject of evidence given at a Senate committee which my friend and colleague Senator Heffernan chaired just recently. If there is nothing in the Australian taxation system at the present time which allows for a transfer pricing component on food and agricultural products grown in Australia but sent overseas, then I think there should be. I think the Australian taxation system should be carefully looked at for that purpose.

I do not speak with a great deal of technical knowledge. My understanding of transfer pricing is confirmed from Wikipedia, a source I often go to. Wikipedia tells me that nearly all countries permit related parties to set prices in any manner with goods produced in the country but
permit tax authorities to adjust those prices where prices charged are outside an arms-length range. Rules are normally provided for determining what constitutes such arms-length prices and how any analysis should proceed. Prices actually charged are compared to prices or measures of profitability for unrelated transactions, and parties and the rules generally require that market level functions, risks and terms of sale of unrelated party transactions or activities be reasonably comparable to such items with respect to related party transactions or profitability being tested.

My very untechnical understanding is that in the 1940s and 1950s international carmakers used to make parts in Australia. Rather than sell them at a market price in Australia and pay Australian tax on them, they would ship them to their overseas parent at no cost at all. So the Australian company was making no profits, therefore paying no tax in Australia, but was sending the parts at a next-to-nothing price to the parent company overseas who would then assemble the motor vehicle, sell it and pay tax on the sale price in a country which had a much lower taxation regime than occurred in Australia. The Australian Taxation Office came in and said, 'Right, you can sell to your parent overseas at whatever price you like, but we are going to assume that you sold it at the market price and we are going to tax you accordingly.' So Australia got its fair share of tax on work and products produced in this country. That is what I understood transfer pricing to be.

I am surprised to hear that we do not have a similar regime for food. I am told if, as a foreign company you grow a bushel of wheat in Australia and then you ship it overseas without having a sale price in Australia, you do not pay any taxation in Australia. You do not pay any income tax or company tax in Australia because you have not sold at a profit. I would have thought that the Australian Taxation Office would have had a similar arrangement in place as I understand it does in car manufacturing and other manufacturing industries—that is an assumed price is fixed so that Australia can get a fair share of tax. If that does not apply in agriculture, I want to know why it does not. I suspect that if Senator Heffernan is encouraged to enter this debate he might be able to explain why. I hear from talking to Senator Heffernan in the corridors that there is a bit of discussion about this and so there should be.

My contribution to this debate on transfer pricing—in addition to agreeing with Senator Cormann on the bill before us—was to say to the Australian Taxation Office and to the government, if we do not have rules that apply transfer pricing principles to agriculture, then we should have. I hope that someone in the Australian Taxation Office may be listening to this or may read it in Hansard sometime later and write to me: 'You are completely wrong, Senator Macdonald. What you say is not accurate. We can do that.' I would be delighted if they did because, if they did, that then addresses one element of a very much broader question of foreign investment in Australia's land and farming production activities.

I repeat that, if there is no such transfer pricing arrangement in place, then there should be. The government should be giving that very close attention. I hope the taxation department or someone might say to me, 'Mate, you are wrong and we have got that covered.' If that is the case, then it fractionally confines the debate on investment in Australia's agricultural production. It is still a debate that has to be had. It is still a very interesting issue and one that a very good discussion paper is canvassing. But this element of taxation is one that concerns me and, if it has not been
addressed, it certainly does need to be addressed. I support the amendments to be moved by Senator Cormann. If they are not accepted by the government, I will be voting against this legislation.

Senator XENOPHON (South Australia) (13:44): I too have significant concerns about the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 in its current form. It seems that the nub of the argument here is in relation to the whole issue of retrospectivity. I note that Senator Macdonald has carefully canvassed that, as has Senator Bushby.

I understand and support the government's intention in relation to this bill in broad terms but I am very concerned about the retrospectivity clause. I acknowledge the government's explanation that the intention of the bill is merely to clarify what has been the parliament's and the ATO's position since 2004. But the government's argument seems to be quite circuitous, because if this has always been the acknowledged interpretation of these laws then why is there a need for this bill, unless the laws have not been enforced in the way that the government intended? If this is the case, if there is any room at all for misunderstanding or inconsistencies, then backdating these changes to 2004 is unfair. Businesses who acted in good faith and obeyed the law as it seemed to be then and who were not told differently by parliament or by the ATO do not deserve to be hit with what could be an excessive tax bill now. However, if there are corporations who have deliberately exploited loopholes or taken advantage of miscommunications then they need to be brought to account.

It is worth noting that it was the Fraser government who brought in retrospective legislation in relation to the bottom-of-the-harbour tax schemes. But that was a case where it was obvious from a public policy point of view that what was being done was an abuse of the tax system. It was clearly a rort. It was clearly a contrived mechanism to try to avoid tax, and so that retrospective legislation was justified. In this case, if the government is aware of any examples of deliberate exploitation or loopholes, it would go some way towards explaining the need for retrospectivity. But without any evidence to indicate that this is the case, it is hard to see how retrospectivity is either fair or in accordance with the spirit of the law.

I would like to put on the record that I have met with the Federal Chamber of Automotive Industries. They have made submissions to the inquiries into this bill and have approached Treasury with their concerns, and I think they have been quite well articulated by the chamber. The FCAI is concerned that the retrospectivity in this bill will provide uncertainty for the tax years since 2004 and will potentially not only land their member organisations with larger tax bills but also lead to issues with foreign taxation offices. So it will have a cascading effect in terms of its impact on other tax offices.

FCAI represents the automotive industry in Australia, which we all know is facing significant challenges—the high Australian dollar being one of them. The government has spoken many times about the importance of this industry to Australia, and I support those comments. But now the government is potentially placing that industry at risk with these amendments. In the FCAI's submission to the exposure draft of this bill, Chief Executive Ian Chalmers wrote:

FCAI members do not believe it is good tax policy to empower the Commissioner of Taxation to apply the new rules retrospectively to 2004, as advised in the Assistant Treasurer's Press Release. FCAI members have complied with tax legislation in accordance with the tax laws as
enacted at the time. Applying the proposed changes retrospectively may result in some members being placed in unfavourable tax positions through no fault of their own. In practice, revenue officials in the foreign jurisdiction may not agree to amend prior year assessments or those assessments may be out of time for amendment. This will result in double taxation without treaty relief.

These are legitimate concerns, and if the government has reasons to believe that businesses, particularly in manufacturing, will not be negatively affected by this legislation then it needs to be open and transparent about that and to share those reasons during this debate; otherwise, I cannot support the retrospective aspect of this bill without safeguards in place.

While I support in general terms what the bill is trying to achieve, the retrospectivity part of it is, for me, a deal breaker. I think it is something that needs to be taken into account. The government has not made a case for retrospectivity. If it is going to pass retrospective legislation then there needs to be a much heavier onus on that, and I do not think that onus has been discharged by the government to date.

Senator HEFFERNAN (New South Wales) (13:48): Following directly on from Senator Xenophon's remarks, the retrospectivity elements of the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 is an admission of fault by the legislators, not the taxpayers. If the thing is flawed then it means there are umpteen holes throughout the tax legislation. We have taken evidence on that in the Senate inquiry into foreign investment and the national interest test to the point where it is now patently obvious that a super fund or whatever has a serious profit advantage in taking capital out of Australia and then bringing it back. When we have got to that stage we have got serious problems. But why go back eight years because the people who drew up the legislation—and it does not matter who the government of the day was—got it wrong? So you punish the people who have obeyed the law, and the people who drew up the faulty legislation probably got a bonus. What sort of ratbagery is that?

Senator XENOPHON: Or a promotion.

Senator HEFFERNAN: Yes, or a promotion. It is well documented—and you can read the transcript of the various hearings we have had on this, with one as late as last Thursday—that the resources required to audit transfer pricing are not there. It is simply mission impossible. Hence, the article the other day where, globally, there are companies—and these characters are all likeable rogues; as Kerry Packer said, 'You're a mug if you don't try and minimise your tax; God bless him—avoid paying trillions of dollars in tax annually as a result of the mismanagement of transfer pricing.

We saw the Foreign Investment Review Board approve the sale of Myer. We asked FIRB, 'Would you have approved it if you knew that that Myer sale was going to avoid $700 million in tax that was due to Australian taxpayers?' They did not answer it. That is because they are simply not resourced. That sale went through Luxembourg. We missed out on $700 million. There is no end to this. What Senator Macdonald said was not quite correct; I can correct him now: there is tax on food sent out of the country by corporations if it is packaged for business. If it is packaged with the tax exemption for charities, it is not.

As the ABS have pointed out to us many times, what we have got to come to terms with, as much as this legislation is probably designed to try and end some of the leakage, is that there is a serious leakage of Australian...
revenue, which I have been banging on about for quite a while, through the generosity that we provide to foreign capital. Foreign capital is obviously very much an essential part of the working engine of Australia and has been for many years. It is well recorded over the years that a lot of foreign capital that comes into Australia does a good job and finances a lot of infrastructure. But in agriculture the people that bring it in usually do the investment, spend a lot on infrastructure, which is great for the area and the district it is in, and eventually go out with their tail between the legs because they did not allow for droughts or they did not understand that farmers do not pay themselves overtime and do not pay the board bonuses, and most of these companies have gone broke. But what we are talking about here is serious revenue leakage. The bit that Senator Macdonald spoke about can be captured by transfer pricing. The pieces that cannot be captured are the sovereign investors.

I note that over the weekend Mr Brian Wilson, the new Chairman of the Foreign Investment Review Board, referred to the fact that FIRB may have to reposition itself on the national interest test with regard to operations by sovereignties that are not commercial. If it is not commercial, you are not looking for a return on your money, you can distort the capital market, you can distort the commodity market if you bypass the commodity market, and you also avoid the tax system.

It has been confirmed by the tax office to the committee that passive investment by a foreign sovereign entity is not taxable. They talked about—and it took us an hour on Thursday night to get them to the point—the fact that they would first assess whether there is a business. They said you can be a sovereign business but when it comes to the tax you can get an exemption, even though you are in the business system. Then you can declare your production is for a humanitarian purpose—and we all realise that the coming food challenge barring a human catastrophe, unless we do not arrive at nine billion people by 2050 and 12 billion people by 2070, means we have got a huge problem. Some foreign countries are a wake-up to that and they are going to other countries, and in a lot of countries they are going to they pay as much for bribing government officials, which is the normal way of doing business in Asia, as they do for acquiring the asset. These people have told me that: 'What's wrong with you Australians? Don't you accept bribes the way the others do? Wake up!' We do not, and thank God this parliament does not have endemic corruption like a lot of other parliaments.

When AA Company, Australia's largest agriculturist, comes to the hearing—Senator Back was there at the time—and says, 'We are seriously disadvantaged with onshore financing of super funds into agriculture because we don't get the advantage of going around the loop and going out through some tax haven,' we have got a serious problem because I do not think legislation, however good it is, for transfer pricing is going to fix. If you set your books right and you declare your production in Australia from agriculture is for a humanitarian purpose, and if we know that a place like China, for instance—and you are supposed to be xenophobic to mention that—has to produce half its food by 2070 with 1.8 billion to two billion people from someone else's agricultural resource, and if you declare that is not a business transaction but a humanitarian task, then you can avoid the tax system. What sort of brain-dead proposition for Australia's revenue base is that?

My point is that it is all very well to try and play catch-up back eight or 10 years with retrospective legislation. It does not matter how much legislation you have and
how much you amend it, Senator Conroy, if you do not audit it and allow the resources to audit the transfer pricing then the likeable rogues out there are still going to get away with it. You would have to read the transcript of the hearing, and there obviously is not time here to go through the details of what it is all about, but I, like the rest of the opposition, say that retrospectivity is a confirmation of failure. But why would you punish the people that have obeyed the law when you should punish the legislators that legislated shonky legislation that requires us to go back eight or 10 years on transfer pricing?

As I said at the hearing about the guys that are buying the wool, God bless them all, down in the wool country and transferring it direct to a woollen mill overseas, we do not have the resources to know whether it is dags or crutchings or 3A combing. They did not give an answer but they said, 'Well, we'd have to find some average sort of thing.' An average sort of thing? We bought 34 containers of dirt in from China that was supposed to be fertiliser and it got through AQIS and Biosecurity and ended up on a farm at Condobolin. It was supposed to be fertiliser and it was dirt. It was bought on the approved Chinese government site and it took us six months to negotiate with China to get them to agree to take their dirt back home because we did not want it, it was full of rubbish—weeds and bloody seeds and all sorts of things. If you have not got the resources—I will not use the language I would use in the bush—you are kidding yourself if you think you can audit transfer pricing.

The United States have estimated they miss out on $700 billion to $900 million in tax through transfer pricing lack of auditing. It is estimated to amount to $3 trillion on the planet. Where is this to go? I think that we really need to rethink this. I accept there is a serious problem with Australia's leakage of revenue. I guess you employ a smart accountant every time they change the tax law if you are in the business of minimising your tax on the edge of the skating rink, unlike most Australian wage earners who have just simply got to cough up. But do not think that you can tick it off in a bureaucratic way with retrospective legislation on transfer pricing when it is well recorded that it is impossible to do the auditing. If we send out wheat and a foreign entity says that it is feed wheat or AUH2 or something when it is actually AGP1 or APW1, the tax office does not know what it is. It does not have the resources to go and look if they could not look in the containers that were supposed to be fertiliser. To their credit, the reason the Customs and AQIS people did not look was because the bookwork was written in such a way that they did not have to open the containers; in that case the bag sizes in the containers were such that they got a green light corridor through Customs. When the poor cocky up at Condobolin opened the thing and thought, 'Gee, I've saved $200 a tonne on this fertiliser'—

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Carbon Pricing

Senator CORMANN (Western Australia) (14:00): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to Budget Paper No. 1, which shows that the government will raise about $18 billion in carbon tax revenue over the first three years of the world's biggest carbon tax. Why will Australia's 23 million people pay an average $115 million per week over the next three years when the 502 million people in the 30-nation European Union ETS will pay only $23 million per week? Is the minister aware that the
government is imposing a carbon tax burden on Australians which is five times higher than that in the 30-nation European ETS, a regional grouping whose collective GDP is 14 times the size of ours here in Australia? Why is the government so intent on pushing up the cost of living and the cost of doing business in Australia by more than any other government in any other country in the world?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:01): I congratulate the senator for yet again managing to get the tactics committee to give him a head start. It does not appear to be very democratic over there, but he certainly does very well in terms of getting a number of questions.

Of course the question put to me is not really a question; it is another rant which includes a whole range of assertions, some of which may not be correct. There is really no question at the end of it, because the senator and the opposition are not interested in actually asking a question. They are simply interested in bringing into this place the same sort of dishonest scare campaign that we saw for months and months and months in the lead-up to 1 July and which we are still seeing.

Although I note that Mr Abbott is starting to backtrack ever so slightly in his comments today on electricity prices from the previous position where he denounced the Prime Minister's proposition that there are other things at play in electricity prices as an absolute furphy. So we are seeing even Mr Abbott starting to shift back when it comes to the scare campaign because he knows that it is no longer tenable to be telling people that the carbon price will shut down all industries. He knows that it is no longer tenable to be telling people that Whyalla will be wiped off the face of the map. This is the harsh reality that those opposite are dealing with.

As the senator knows, we have put in place a comprehensive package, a package which also addresses international competitiveness through the provision of free permits, something which is not addressed in the coalition's policy which would simply impose a tax on all Australian households of $1,300 a year. The highest carbon price on offer is that proposed by those opposite. (Time expired)

Senator CORMANN (Western Australia) (14:03): Mr President, I ask a supplementary question. Is the minister also aware that the Gillard government's carbon tax burden imposed on Australians is nearly 20 times larger than the Regional Greenhouse Gas Initiative scheme in the United States, which covers 10 American states with a population more than double the size of ours? Why is the Gillard government so intent on pushing up the cost of living and the cost of doing business in Australia by so much more than in the US?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:04): The first point I would make in terms of cost of living is that the CPI impact is substantially less than the GST when it was introduced. If those opposite are concerned about the cost of living, they can explain why a 2.5 per cent increase in the CPI was okay but a 0.7 per cent increase to the CPI with associated tax cuts and increases to the pension and family tax benefit is somehow not okay. It beggars belief.

In terms of the costs, I would make this point. The Climate Institute expect Britain to have a carbon price of $24 to $30 a tonne over the next few years; Sweden, $130 a tonne; Switzerland, $30 to $60; Norway, $53; and Ireland $24 to $37 a tonne—self-
evidently not what Senator Cormann is suggesting, but quite the opposite to what Senator Cormann is suggesting. Again I mention this: Senator Cormann always fails to consider the impact of free permits, which reduce the carbon impact for the most emission-intensive trade exposed industries to about $1.30 a tonne.

Senator CORMANN (Western Australia) (14:05): Mr President, I ask a further supplementary question. The minister of course is well aware that Europe also has free permits, and of course she always forgets to mention that. Why is the Gillard government introducing the world's biggest carbon tax, which will do nothing to reduce global emissions, when no other nation is imposing a similar burden on its export and import competing industries and households, because that is exactly what you are doing? You are imposing an economy-wide carbon tax which is the biggest in the world.

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:05): This the same tired old speech that we have heard ad nauseam from those opposite, the same tired old speech that we hear over and over again. Why are you so intent on rolling back the tax cuts and increasing the income tax rates for every Australian on under $80,000? Why do you hate small business so much that you want to take their tax breaks from them? Why have you been telling Australian pensioners that you are somehow going to remove the increase to the pension that this government has put in place? Why are you seeking to impose the largest carbon tax, $1,300 on every Australian household in additional tax, to achieve the same environmental outcome—more cost to the economy, more cost to households, more cost to business?

Education Funding

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:06): My question is to the Minister representing the Minister for School Education, Early Childhood and Youth, Senator Carr. In the latest inexplicable delay in the government's response to the Gonski review of schools, will the government give an unequivocal guarantee that legislation for a more equitable funding model will be presented to the parliament in time for passage through both houses before Christmas?

Senator KIM CARR (Victoria—Minister for Human Services) (14:07): I thank Senator Milne for her question. The minister for schools has indicated on a number of occasions that it is his intention to have legislation ready for consideration by the parliament before the end of this year. The government is determined to pursue the reforms as outlined in the Gonski review. We are committed to ensuring that every child has access to a world-class education so that each student can reach his or her potential, and that is why the government has doubled the funding for Australian schools compared to that under the Howard government. That is why this government has modernised facilities in every school. That is why this government is investing in better teacher training and that is why this government has provided information about children's education through the My School website. This is, of course, a very strong record of performance by the government and we are determined to ensure that the parliament has the opportunity to consider this legislation. We will announce our final response to the review very shortly. Until that time it is too early to talk about the various funding arrangements that are to be made with the states, but we have made a commitment from the outset to deliver on this review and we will continue to work
with the states and territories and the non-
government sectors to improve all Australian
schools.

Senator MILNE (Tasmania—Leader of the
Australian Greens) (14:08): Mr
President, I ask a supplementary question. I
thank the minister for his answer, but, with
respect, 'every intention' is not the same as
an unequivocal guarantee and, given the
latest inexplicable delay—with no
explanation of why—will the minister now
give us a guarantee we will get the
legislation by the end of the year and,
secondly, will the minister say how the
government intends to fund in full the
implementation of the Gonski review?

Senator KIM CARR (Victoria—Minister
for Human Services) (14:09): The minister
for schools has indicated he will have the
legislation ready for consideration by the
parliament before the end of the year. He has
indicated that he is working with the states
and territories as to the funding arrangements
that underpin that review and he has
indicated that the government's final
response to the review will be delivered
shortly. In those circumstances it is too early
to be able to determine what the funding
arrangements will be until such time as those
conversations are had with the states and
territories. The government is determined
that we can improve our education system
right across this country and the government
is determined to ensure that the states work
with the Commonwealth to see that that
happens.

Senator MILNE (Tasmania—Leader of the
Australian Greens) (14:10): Mr
President, I have a further supplementary
question. The states say they have no money
in this context, so will the minister say how
the federal government is going to raise the
additional $5 billion that is needed; and will
the government consider redirecting the $3.4
billion subsidy it is providing to facilitate
new coal railways in the Hunter Valley and
redirect that to school funding?

Senator KIM CARR (Victoria—Minister
for Human Services) (14:10): If I might
repeat, the government's intention is to talk
to the states and territories about the funding
arrangements to support the Gonski reforms.
We do have great schools in this country. We
want to see better schools in this country. We
are determined to ensure that our education
system continues to contribute to Australia
having a strong economy and we want to
ensure that everybody in this country gets a
fair go through that education system. It is
too important and too early for anybody to
be ruling out what processes will be followed
in regard to their conversations with the
states about the way in which we will
improve the school system in this country.
We will be releasing more details in the
coming weeks and we will be discussing
those details with the states and territories
and the non-government education
authorities. We expect that there will be a
genuine interest from all the parties to
education in this country about developing
better education outcomes for all
Australians. (Time expired)

Quarantine

Senator MOORE (Queensland) (14:11):
My question is to the Minister for
Agriculture, Fisheries and Forestry, Senator
Ludwig. Can the minister inform the Senate
what the government is doing to protect
Australia's strong biosecurity status and
agricultural productivity?

Senator LUDWIG (Queensland—
Minister for Agriculture, Fisheries and
Forestry and Minister Assisting on
Queensland Floods Recovery) (14:12): I
thank Senator Moore for her continuing
interest in biosecurity. Australia's
agricultural sector—the farm gate—
contributes up to $50 billion to our national economy. Australia's farmers not only provide us with primary production but they also underpin more than 300,000 jobs in rural Australia. This industry is worth protecting in a biosecurity environment. That is why the Gillard government is committed to have a strong biosecurity framework where decisions are made to protect Australia's biosecurity based on the best available science. Labor has worked since 2008 to improve an old biosecurity system that we inherited from those opposite. It was the Labor government that ordered a review of biosecurity in Australia. In December 2008, the Beale review—*One biosecurity: a working partnership*—was released. The government agreed in principle to all of those 84 recommendations. Since Beale, we have invested more than $1.6 billion to safeguard Australia's biosecurity status; protect Australian farmers and the environment; and underpin Australia's reputation as a reliable exporter of high-quality food and fibre.

The 2012-13 budget delivered well over half a billion dollars to maintain Australia's biosecurity system and improve the recommendations by Beale. The budget included almost $400 million over seven years to deliver a state-of-the-art post entry quarantine facility, reversing the short-sighted decision made by Mr Warren Truss, when he was in cabinet, to flog off Australia's five existing PEQ facilities, only to lease them back with no regard for changing land use, no maintenance plan and no plan for the future. We have already put forward $20 million over three years for biosecurity information. (Time expired)

**Senator MOORE** (Queensland) (14:14): Mr President, I ask a supplementary question. Can the minister advise whether the Newman government will impact on biosecurity?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:14): I thank Senator Moore. I have read with great concern the *Brisbane Times* article which reported that up to 550 Queensland Department of Agriculture, Fisheries and Forestry positions could be axed. That amounts to about one-fifth of the capacity of the department. While the Newman government, of course, has pledged to support front-line services, Premier Newman has changed the decade-old definition of 'front-line' with the purpose of only cutting jobs. I have been so concerned about the risk that Premier Newman's government's proposed cuts would pose to Australia's biosecurity status that over two weeks ago I wrote to my counterpart, Minister McVeigh, in Queensland, because biosecurity remains an important issue. It is not one to play politics with. Have I heard from Minister McVeigh about this issue? Have I heard a response from him? No, not one word. The Newman government is no longer funding biosecurity research at James Cook—(Time expired)

**Senator MOORE** (Queensland) (14:15): Mr President, I ask a further supplementary question. Can the minister also advise of what joint programs in agriculture would be undermined without adequate support from the Queensland Department of Agriculture, Fisheries and Forestry?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:16): In fact, Senator Macdonald should be embarrassed, because the Newman government has failed to support James...
Cook University funding for biosecurity, but there is not one word out of them about that issue. What we hear is silence from the coalition when their friends over in the state government in Queensland start cutting biosecurity. We do not hear a word from you about that. I said in my previous answer, on 3 August, that I wrote to the responsible minister to seek an assurance that Queensland remained committed to protecting biosecurity in Queensland and Australia, and Minister McVeigh has failed to respond to the Australian government on Queensland's ability to fulfil its obligations, because there are a range of areas. There are issues around fire ants that we have not heard about. But his failure to respond is really consistent with the coalition's record of neglect of Australia's biosecurity system.

Carbon Pricing

Senator SINODINOS (New South Wales) (14:17): My question is to the Minister representing the Treasurer, Senator Wong. I refer the minister to a survey reported in today's media which finds that 66 per cent of small businesses are absorbing the impact of the government's carbon tax rather than passing the impost on to consumers. Will the minister now concede that the carbon tax is having an adverse economic impact on small business? Does the minister agree with statements such as that by small business owner Doug Cush, the owner of Bellata Gold Pasta, that the carbon tax will force some small businesses to the wall?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:17): First I think it is important to get some facts on the table in relation to small business and the carbon price. The truth is that there is no small business which is directly liable for the carbon price. The truth also is that the electricity cost of a small retail business is estimated to make up less than two per cent of total costs. On the basis of Treasury modelling, therefore, the cost increase of the carbon price would be only 0.2 per cent of overall expenditure of a typical small business.

Obviously the government has also made provision in the previous budget for assistance to small business, and also in the clean energy package. We have increased the small business instant asset write-off from $1,000 to $6,500. This is a significant tax break for small business when they buy equipment for themselves. It is disappointing that the party of small business, those opposite, want to take back that tax break. If those on the opposition benches are not aware of that promise, that was a promise that Mr Robb, my counterpart, made. You are in the cart for making sure you take back the tax cut that this government is providing to small business. In addition, you would be aware that the government has included a new loss carry-back scheme in the previous budget. We estimate about 90 per cent of the beneficiaries of that to be small business.

I think it is important in this debate to recognise that there is a cost impact on small businesses as a result of electricity price impacts, but let us recall that the largest component of electricity price increases in this country has not been as a result of carbon. I know that is not something Senator Abetz wants to hear. (Time expired)

Senator SINODINOS (New South Wales) (14:20): Mr President, I ask a supplementary question. Given that the global economy is still suffering the effects of the global financial crisis and the current European debt crisis, does the minister concede that imposing heavy new burdens on small business like the carbon tax, for very small environmental gain, in a time of
such global uncertainty is poor public policy?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:20): What is poor public policy is a command-and-control, taxpayer funded, bureaucratically run scheme such as the one that Senator Sinodinos has regrettably had to sign up for. Senator Sinodinos has a sound public policy background. I might not always agree with him, but at least he understands the issues and he, in his heart of hearts, would know how ridiculous it is that those opposite have moved away from a price on carbon throughout the economy and have gone for a taxpayer funded, command-and-control, bureaucratically run carbon scheme with a higher cost to the economy and a higher cost to small business. The biggest impost that could be put on the Australian economy from a carbon policy is the carbon policy of those opposite. That is the reality. In addition, they are seeking to roll back the tax breaks that this government wants to give and is giving Australia's small business.

Senator SINODINOS (New South Wales) (14:21): Mr President, I ask a further supplementary question. Will the minister release the modelling that underpins the answer she just gave in relation to small business, including the pass-through factors that have been assumed about the capacity of small business to pass on price increases?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:22): The modelling to which I was referring in terms of the estimated increase of the carbon price is the Treasury modelling, which has been publicly released—as the senator well knows. I do not think that there is anything further there that I can add to it. I would also say to him in response to his previous question that I am pleased he does acknowledge there was a global financial crisis. That appears to be something that Mr Hockey and Mr Robb have forgotten about, but Senator Sinodinos has enough intellectual self-respect not to follow the talking points when it comes to airbrushing the global financial crisis out of any economic discussion. But back to the issue: in terms of the carbon price, we have put in place assistance measures and we have put in place some tax breaks for small business. The reality, and the senator would know this, is that the highest cost to a business of a carbon policy is for the one that his leader is advocating.

Future Fund: Tobacco Investment

Senator DI NATALE (Victoria) (14:23): My question is to the Minister for Finance and Deregulation, Senator Wong. I draw the minister's attention to the victory the Commonwealth won in the High Court last week against tobacco companies in defence of the plain-packaging legislation passed by this parliament in November last year. Given that the Commonwealth has over $200 million invested in companies such as British American Tobacco, Philip Morris and Imperial Tobacco through the Future Fund, does the minister agree with the Minister for Health and Ageing, who said over the weekend, 'I would prefer the Future Fund did not have tobacco shares'?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:24): I thank the senator for the question. Yes, it was a significant victory for the government, and I congratulate the Attorney-General—the former Minister for Health and Ageing—as well as the health minister for taking this matter forward and for Australia being a world leader on this issue.

In relation to the broader issue, which is the issue of the investments of the Future Fund: as the senator would know, because he
and I have had a lengthy discussion in the context of estimates, we as the government do not believe that it is appropriate for governments to be hands-on directing investments in the Future Fund. The reason for that is, as was the case both under the previous government and this government, that the Future Fund should exercise its discretion regarding investment independently of the government and independently of the wishes of particular ministers, senators or MPs.

If that were not the case, you could get to a rather odd position where, for example, you might have a politician—for example, Senator Boswell—saying that they should not invest in renewable energy because he does not believe in climate change, or a range of other matters that you can think of. So whatever one's personal views are in this debate—and there are politicians, including on this side, who have expressed their personal views about where those investments ought to be—I think that is a different thing to then making a decision, as the senator is advocating for through his legislation and I think by the tone of his question, to suggest that ministers and members of parliament should be directly directing investment decisions by the Future Fund. I do not think that is a sensible way to approach the management of that fund.

Senator DI NATALE (Victoria) (14:25): Mr President, I have a supplementary question. It is reported today that the ACT government will be the first government in Australia to stop investing in tobacco companies through its superannuation investments. Does the minister believe that this decision somehow compromises the independence of any future investment decisions in the ACT? And, if so, how does it compromise this independence?

The PRESIDENT: The minister can only answer that in so much as it relates to the portfolio.

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:26): That is a matter for the ACT government, not a matter for me. That should be a matter addressed to the ACT treasurer.

What I can say to the senator, consistent with what I previously said, is that, whatever one's personal views about investments, I do, and the government does, have a concern with a proposition that says the personal views of a politician should be the ones guiding investment decisions in the Future Fund. As I said, there is Senator Boswell and renewable energy; Senator Abetz might say something about trade unions; and Senator Joyce might say something about companies which have foreign investment in agricultural land. None of those things would be an appropriate way—

Senator Joyce: You can't talk about Nauru and Labor leaving out the doormat!

Senator WONG: Oh, stop talking in the hypothetical, Barnaby. You don't need to be sensitive.

The point is that what the right legal framework—the appropriate framework—is for these decisions, including the decisions about ESG principles, ought to be made by the Future Fund board. (Time expired)

Senator DI NATALE (Victoria) (14:27): Mr President, I ask a further supplementary question. I thank the minister for her answer, and I note that the same defence—the thin-end-of-the-wedge argument—was used by the tobacco companies in defence of plain-packaging legislation. But I will go on. Does the minister agree with the managing director of the Future Fund, Mark Burgess, that investment in tobacco is a 'sustainable investment'? And, if so, how can an investment in an industry that kills one in
every two of its customers be called sustainable?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:28): I am going to take issue with the little aside which preceded the question and the suggestion that somehow the government are akin to big tobacco in the argument we have used. This government has led the world when it comes to taking on big tobacco, and for once the Greens could actually acknowledge that instead of trying to play politics. For once you could actually acknowledge that, because that is the position that the government has taken; across the board, that has been the approach that the health minister has taken. It has gone and been fought all the way to the High Court. We are very pleased with the decision that was handed down and the position that this government has taken, which is to be a world leader when it comes to taking on this important public health issue.

Schools

Senator CROSSIN (Northern Territory) (14:29): My question is to Senator Kim Carr, representing the Minister for School Education, Early Childhood and Youth. I ask: can the minister inform the Senate of the government's priorities in planning for school improvements and in school funding reform?

Senator KIM CARR (Victoria—Minister for Human Services) (14:29): I thank Senator Crossin for her question and acknowledge her longstanding interest in education. Education is the foundation stone of our innovation system. It brings wealth to industries. It helps us build jobs—high-skill, high-wage jobs—for our people. It lays the foundations for this nation's prosperity and it unlocks the doors of inequality in this country. A fair go in education is fundamental in ensuring that we have a just society. We over here ask the question: 'What about your position?' The position of those opposite is to attack education spending; take money away from trades training; take money away from schools; and take money away from universities. That has been the position of those opposite. That is their stated priority: not to accept the Gonski reforms and the need for increases in Commonwealth investments in education. That is the position of those opposite.

Senator Brandis: Why are you making war on private schools then? Why do you hate the Catholic system so much?

Senator KIM CARR: Lord Brandis, you know the truth! You are not committed to supporting education in this country and you have made it very clear that, in your search for $70 billion, education will be your No. 1 priority. It will be your quest to smash the education system in this country and to ensure that schools are not able to provide the building blocks of a fair and just society. (Time expired)

Senator Brandis interjecting—

Senator CROSSIN (Northern Territory) (14:31): I will just wait for the lord highness to finish and then I will ask my question. Mr President, I ask a supplementary question. What commitments will this government make for parents in the reforms for school-funding regimes and the implications for school fees?
Senator KIM CARR (Victoria—Minister for Human Services) (14:32): Mr Garrett and the Prime Minister have made it very clear on many occasions now that no school will lose money under Labor's plan. Funding for every school, whether it be government, independent or Catholic, will continue to rise. Senator Brandis asked a question about cutting school funding. What he ought to tell the Senate is that the Liberal policy is to cut $2.8 billion from school funding. He ought to tell the Senate that they have a policy of taking money away from schools to fill their $70 billion black hole. Only a Luddite would pursue a policy that would attack education. Only people who are very primitive in their attitudes would take the view that you find savings of that dimension in the school education system. Our plan is to ensure that every child has the right to public support for their education. (Time expired)

Senator CROSSIN (Northern Territory) (14:33): Mr President, I ask a further supplementary question. Can the minister outline the responsibilities of state and territory governments in this national agenda of reform for schools?

Senator KIM CARR (Victoria—Minister for Human Services) (14:33): Thank you, Senator Crossin. In coming weeks, the government will enter discussions with the states and territories on the details of the new education plan. We will approach these discussions in good faith and we will expect that all premiers and chief ministers will do the same. In that context, as I have already indicated, no-one is in a position to be able to rule out what options are available in regard to the funding of the new school plan; but I would remind the premiers and chief ministers that the coalition policy is to remove $2.8 billion from the school system. These are cuts they have already announced; this is not the $70 billion that they have yet to make. We ask this simple question: where will that money come from? We will see working people directly affected. (Time expired)

Carbon Pricing

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:35): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to the additional costs imposed on Mr Col Quast, a turkey farmer in Tamworth, who will pay $582 per month more for electricity as a direct result of the government's carbon tax and could pay up to $7,000 more over the course of the year. This comes as IBISWorld recently estimated that farmers will be hit with a massive $3.2 billion increase in annual costs as a result of the carbon tax. Given that the carbon tax has now been in operation for a little over a month and a half, can the minister advise the Senate: by how much does the government expect global temperatures to be reduced by the extra costs being paid by Mr Quast and all Australian farmers?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:36): I trust that the senator has recovered from the vicious attack on him by Mr Costello recently. In relation to the last part of his question, the answer is: by the same amount as your policy but at lower cost to the economy, including to farmers and to households. That might be something Senator Williams might want to be aware of within the coalition party room—that he is actually signing up for a policy that has the same environmental outcome but at higher costs, with tax cuts for everyone earning $80,000 each year being taken back by the coalition. That is the policy he signed up for, and I suspect there would be a few constituents in his neck of the woods who would be interested in that.

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In terms of the Tamworth turkey farmer, the advice I have from the minister is that the farmer quoted in the newspaper today had a carbon price impact of around 6.5 per cent on his electricity bill. This is in fact under that anticipated by Treasury modelling. On that farmer's electricity bill, the New South Wales government's increase in network charges accounted for around double the carbon price. So I would hope that the senator would take up his argument with the New South Wales government with double the intensity with which he is taking up the argument in this chamber given that the majority of the increase, I am advised, in fact flows from state government component increases—that is, network increase charges. That same person, depending on their income, may well be eligible for the government's tax cuts and the small business tax cuts that I referred to in response to the question from Senator Sinodinos.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:38): Mr President, I ask a supplementary question. Given that the carbon tax will also increase the costs of fertiliser, feed, plastic bags and boxes and that it is very difficult to estimate by how much the carbon tax will increase these prices, by how much does the government expect the carbon tax to increase the annual costs of an Australian turkey farmer?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:40): I have answered that question in relation to the carbon price impact for the relevant turkey farmer on his electricity bill. If the senator is interested in the agricultural sector, I would remind him that the government has put in place the Carbon Farming Initiative. That is a $1.7 billion land sector package to reinvest carbon price revenue in our land sector, including through the Biodiversity Fund and the Carbon Farming Futures package.

I also note that the Treasury modelling shows that, with agricultural emissions excluded from the carbon price, gross output in the agricultural sector is projected to be higher with a carbon price than without, and the sector is projected to grow by over 130 per cent by 2050. That modelling does not, of course, include the programs for assistance to the sector in the clean energy future package.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:39): Mr President, I ask a further supplementary question. Given that Australia's farming sector is already working in a difficult environment, with rising costs, a high Australian dollar and red tape, can the minister explain why the government is so insistent upon making life tougher for Australian farmers by imposing the world's biggest and most expensive carbon tax for no environmental gain?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:40): With respect to the senator, he really is going through the motions. It is the same question I have been asked time and time again. I have responded and the government has responded. The reality is that the intensity of the scare campaign of Senator Williams, Senator Joyce, Mr Abbott and so many of those opposite is, frankly, fading with the reality that the carbon price impact is pretty much around where Treasury and the government said it would be. That is the reality. If the senator is concerned about regional Australia, I would hope that he would recognise that this government is in fact investing more in regional Australia than any other previous Australian government, with $1.8 billion over six years for the health and hospitals
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fund, two regional priority rounds—$500 million in the regional priority round for the Education Investment Fund—and so many others. (*Time expired*)

Manufacturing

Senator URQUHART (Tasmania) (14:41): My question is to the Minister representing the Minister for Industry and Innovation, Senator Lundy. Can the minister inform the Senate what the report of the Prime Minister's Manufacturing Taskforce, released last Thursday, recommends to government?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:41): The non-government members of the Prime Minister's Manufacturing Taskforce, representing business, unions and the research sector, have produced a comprehensive report entitled *Smarter manufacturing for a smarter Australia*. The report makes a strong case for the vital role that manufacturing plays in our economy, both now and in the long term. I quote from the report:

The non-government Taskforce leaders believe that Australia’s future will be brighter with a broad-based national economy, built on more than a few industries in more than a few regions. A broad based national economy is one that is stronger, more resilient, more innovative and ultimately more able to provide for the needs of Australia and Australians.

It is how we can break the cycle after the ‘lost decade’ in which apparent prosperity has boomed, while underlying productivity growth has stalled and competitiveness gone backwards.

The report acknowledges that the manufacturing sector currently faces challenges such as the high Australian dollar and more intensive global and regional competition. However, the task force makes it clear that manufacturing can prosper and grow by taking advantage of the significant emerging opportunities, especially in the Asia region. The task force report builds on the government's current policy settings, with a strong set of proposals to ensure that manufacturing is a dynamic contributor to Australia's prosperity and an important part of a diverse economy that creates skilled jobs.

Senator URQUHART (Tasmania) (14:43): Mr President, I ask a supplementary question. Can the minister outline the government's reaction to the report of the Prime Minister's Manufacturing Taskforce?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:43): I thank Senator Urquhart for her question. The Gillard government is committed to ensuring that Australia retains a strong manufacturing industry and welcomes this report. We will now carefully consider the findings of the task force and respond in detail with a major industry and innovation statement in the coming months. This will be our vision for the future of manufacturing and will set out our plans for supporting manufacturing to remain and improve its international competitiveness. The government is supported in principle of most of the report's recommendations. Specifically, the government accepts the recommendation of the task force to establish a manufacturing leaders group. We see an important role for this group in assisting the government to implement its response to the recommendations of the task force.

Senator URQUHART (Tasmania) (14:44): Mr President, I ask a further supplementary question. Can the minister advise the Senate what the government is doing to address the issues raised by the task force?
Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:44): It would be my pleasure. In addition to the leaders group, the government will immediately bring together the Industry Capability Network, the Buy Australian at Home and Abroad supply advocates, AusIndustry, and Enterprise Connect to share information on opportunities for Australian manufacturers in large domestic investment projects with a particular focus on the resources sector. The task force report builds on the government's current policy setting. The government has been implementing a range of reforms consistent with the direction of the report, including lifting Australian industry participation in major resources projects, encouraging innovation in manufacturing by introducing a new R&D incentive—

Opposition senators interjecting—

The PRESIDENT: Order! Senator Mason, you are entitled to be heard in silence.

Senator MASON: Given that the Cairns School of Distance Education in my home state of Queensland will, according to modelling by state government and non-government schools, lose $4.4 million, or over half of its annual funding, and 3,253 other government and non-government schools around Australia—

Government senators interjecting—

The PRESIDENT: Order! The minister is entitled to hear the question, as I am!

Senator MASON: I seek your direction, Mr President: should I start again?

The PRESIDENT: No, continue, Senator Mason.

Senator MASON: How about: given that the Cairns School of Distance Education in my home state of Queensland will, according to modelling by state government and non-government schools, lose $4.4 million, or over half its annual funding, and 3,253 other government and non-government schools around Australia are set to lose, on average, $500,000 in funding per year under the government's new funding model, can the minister make a firm and unequivocal commitment that no school will be worse off in real terms under its funding reforms?

Senator KIM CARR (Victoria—Minister for Human Services) (14:48): I thank Senator Mason for his question. It has been a long time. I look forward to many more questions from him. I will say that Senator Mason does actually care about this stuff. He is actually interested. That is very unusual on the other side.

Senator Mason, I would urge you not to rely upon newspaper reports about these figures because they are not the figures that
the government can confirm, they are not based on government proposals; they are assumptions that are made with figures that do not bear any resemblance to the government's policy. The school should not in any way take seriously those reports because this government is not about cutting funding. As I have indicated, this is now the third opportunity I have had today to indicate this, the government's view is that no school will lose money under our plan. In fact school funding for every school—for government, for independent, for Catholic—will continue to rise under our plan for school improvements.

We have always said that no school will lose a dollar of funding per student, and that is what this government will deliver. The government has indicated, and the minister and the Prime Minister have confirmed today, that no school will lose money under our plans, that in fact funding for every school—government, independent, Catholic—will continue to rise under our plan for school improvement. Any figures that Senator Mason is quoting from the weekend's press are figures that are not those of the government. The assumptions made in those figures do not bear any resemblance to any government policy, and schools should in no way take those—

Senator KIM CARR (Victoria—Minister for Human Services) (14:51): Mr President, I can now repeat, I think for the fifth time, that no school will lose money under our plans, that in fact funding for every school—government, independent, Catholic—will continue to rise under our plan for school improvement. Any figures that Senator Mason is quoting from the weekend's press are figures that are not those of the government. The assumptions made in those figures do not bear any resemblance to any government policy, and schools should in no way take those—

Senator Mason: Mr President, I asked a very specific question.

The PRESIDENT: Is this a point of order?

Senator Mason: Mr President, I asked a very specific question—now twice. And that is whether funding will be cut—

The PRESIDENT: Is this a point of order?

Senator Mason: Yes, it is—going to relevance. I have asked directly whether in fact there will be any cuts in real terms to school funding. It was a specific and direct question.

The PRESIDENT: The minister is answering the question, and I will ask the minister to continue. I will listen to the minister's answer.

Senator KIM CARR: Can I indicate to Senator Mason that the statements that I have made repeatedly are that no school will lose money. That is what the minister has said; that is what the Prime Minister has said. With regard to indexation we have said that
indexation will be a feature of the new school funding system.

Senator MASON (Queensland) (14:52): Mr President, I ask a further supplementary question. If, as the Prime Minister has repeatedly declared, no school will lose a dollar under the new funding arrangements, why has the government delayed the release of its response to the Gonski review from this week to a number of weeks from now? What does the government have to hide and what do Australian schools have to fear?

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence, we will proceed.

Senator KIM CARR (Victoria—Minister for Human Services) (14:53): We have secured new funding for important programs, and we will continue this government's record—in fact, record investments—in schools and early childhood education. What we have been talking about is an expansion to $13.9 billion compared to the $8.5 billion in the last Howard government budget.

The opposition plans to cut $2.8 billion from school education—$2.8 billion. Senator Mason, this leaves you terminally exposed. You should send those sorts of questions straight back to the tactics committee, because they bear no relationship to the fact that you are going to cut $2.8 billion. And, of course, the Leader of the Opposition has made it perfectly clear he has no intention of acting on the Gonski reforms and has no intention of supporting extra money for schools and wants to cut—(Time expired)

National Broadband Network

Senator MARK BISHOP (Western Australia) (14:54): My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Can the minister advise the Senate how the National Broadband Network will grow the economy and enhance productivity? In particular, how will it support innovation and improve access to education for all Australians?

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) (14:55): I thank Senator Bishop for his question and his ongoing interest in education and the digital economy. Earlier this month the government announced funding for 12 education and skills projects for primary schools, high schools, TAFEs and universities around Australia, worth $27 million.

These pilot projects will use the NBN to demonstrate how access to education can be improved using high-speed broadband, particularly in regional areas. As a result, high school kids in regional towns, like Willunga and Smithton will get access to the latest remote laboratory and research instruments from Monash University and the University of New South Wales. I challenge those in that corner down there, in what used to be known as Cockies' Corner, but you would have to abbreviate that nowadays, because their defence of regional Australia is absolutely shameful. When opportunities like these are available for children in regional schools, you may well sit there silently, because you should be ashamed of yourselves—for you to be ruled over by the Liberals like this will see the children of regional and rural Australians missing out on the best possible education in this country.

Using the NBN from the home or classroom, students will have access to classes in science and engineering that would otherwise simply not be available. Asian languages and cultural studies will be taught to students in country schools, who will be
able to collaborate on projects with overseas students face to face— (Time expired)

Honourable senators interjecting—

The PRESIDENT: Order on both sides!

Senator MARK BISHOP (Western Australia) (14:57): Mr President, I ask a supplementary question. Can the minister advise the Senate of further measures the Gillard government is taking to develop skills so that Australians can maximise the benefits of the NBN?

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) (14:58): Mr President—

Opposition senators interjecting—

Senator CONROY: Aha! Right about time!

The PRESIDENT: Order! Senator Conroy, ignore the interjections and continue.

Senator CONROY: I wish they could shout as loudly in their own party room when it comes to arguing with the Liberals on this, because they are the cowards of the bush at the moment. The digital economy—

Senator Joyce interjecting—

Senator CONROY: Oh, you've got a lot to say now, Senator Joyce—but nothing to say in the party room!

The PRESIDENT: Order! Senator Conroy—

Senator Joyce interjecting—

The PRESIDENT: Order! Senator Joyce, you will cease interjecting. Senator Conroy, ignore the interjections and address your comments to the chair.

Senator CONROY: My apologies, Mr President. The digital economy and the broader economy are increasingly one and the same. To help develop the skills required in a super-fast broadband enabled economy, the Gillard government is rolling out training programs to 40 of the first communities to receive access to the NBN. The NBN digital hubs and enterprises are today delivering valuable skills, training to residents and small businesses in eight communities in Australia. They have conducted over 1,300 group and one-on-one training sessions. Last month I announced the latest recipients of $15 million in Commonwealth— (Time expired)

Senator MARK BISHOP (Western Australia) (14:59): Mr President, I ask a further supplementary question. Can the minister advise of any measures the Gillard government is taking to further grow the economy, enhance productivity and support innovation using the National Broadband Network? Can you please advise of those, Minister Conroy?

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) (15:00): The National Broadband Network will revolutionise the way government services are delivered. High-speed broadband allows more convenient access to government services while actually lowering the cost of delivery to the taxpayer. We are supporting 40 local governments around the country to develop innovative service delivery models using the NBN. For example, Circular Head council in Tasmania and Onkaparinga council in South Australia will enable residents to engage with council officers on development applications using high-definition videoconferencing from the home or office. These are the kinds of innovations that are only made possible if Australians have access to reliable, affordable high-speed
broadband. We on this side of the chamber understand this. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Electricity Pricing

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (15:01): I seek leave to incorporate an answer to a question that Senator Milne put to me in my responsibility as representing the Minister for Resources and Energy on 14 August.

Leave granted.

The answer read as follows—

MILNE (14:22): When can the community expect the implementation of a national energy savings initiative?

As agreed by the Multi-Party Climate Change Committee, the Government is presently undertaking investigations into the merits of a national Energy Savings Initiative.


A Progress Report is expected to be publicly released in the near future.

No decision to implement a national Energy Savings Initiative has been taken, nor have final design details been decided.

Any final decision to adopt a national Energy Savings Initiative will be conditional on the agreement of Council of Australian Governments (COAG) members and all existing states schemes folding into a national scheme.

MILNE (14:24): Why did Minister Ferguson claim that the NEM objective is universally supported, when the evidence is to the contrary? Minister, can you tell me which of the ongoing inquiries address the question of whether the national electricity objective should be amended to incorporate sustainability and climate change?

So what is the evidence for the statement and which review actually addresses the objectives of the NEM?

The National Electricity Market Objective promotes the long-term interests of energy consumers with regard to price, quality and reliability of electricity and gas services.

These are reflected within the National Electricity Law, the National Gas Law and the National Energy Retail Law.

While there are groups that have argued for change to the Objective, the prevailing outcome has always been that the Objective remains appropriate to the operation of Australia's National Electricity Market.

Most recently, the Ministerial Council on Energy considered the matter of the objective in its development of the National Energy Customer Framework.

It was noted in the Second Reading Speech for the template South Australian legislation for that framework that "adopting an equivalent objective [to that in the National Electricity Law] for the Customer Framework will ensure that the national energy regimes remain focussed on the long term interests of consumers. This is a fundamental principle agreed between governments in the Australian Energy Market Agreement."

In addition, the Australian Government's Draft Energy White Paper noted that "To change or expand these now risks distorting the market by introducing unnecessary confusion for market participants. It is also far from clear how non-energy policy goals could be coherently reflected in a single set of market rules. These issues are best dealt with outside the market settings, as this allows for more targeted, and therefore more effective action."

The Australian Government remains confident that the current Objective remains robust to provide for the effective operation of the NEM, with carbon policy and other environmental
issues appropriately addressed through separate legislation and mechanisms such as the Clean Energy Act.

**QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

**Carbon Pricing**

**Senator FIFIELD** (Victoria—Manager of Opposition Business in the Senate) (15:01): I rise to move:

That the Senate take note of the answers given by the Minister for Finance and Deregulation (Senator Wong) to questions without notice asked by Senators Cormann, Sinodinos and Williams today relating to the carbon tax.

There was something which was apparent in Senator Wong's answers to questions today, that she is finding our questioning on the carbon tax a little bit tedious and a little bit wearing. I have got to be honest and say we are actually finding asking those questions a little bit tedious and a little bit wearing because we continue to get no answers from the minister. It is also a little tedious because the facts remain unchanged, that this carbon tax is a massive hit on the Australian economy and that this carbon tax represents a breach of faith with the Australian people and represents a lie. So she had better get used to getting these questions because we will continue to ask them, no matter how tedious and no matter how repetitive, because answers to these questions deserve to be on the public record.

We want to continue to make the point, as Senator Cormann did in his question, that in the first three years of this carbon tax it is going to rake in $18 billion of revenue. We want to continue to make the point that Australia's 23 million people are going to be paying on average $115 million per week in comparison to the 502 million people in the EU who will only pay $23 million per week. The carbon tax burden is five times higher in Australia than that in the 13 nations of the EU ETS, a grouping whose GDP is 14 times that of Australia's. This is comparatively a massive burden compared to what Europe is being confronted with. We also had a question from Senator Sinodinos to Senator Wong pointing out that in a survey 66 per cent of small businesses indicated that they were absorbing the cost of the carbon tax rather than passing it on to their customers. Small business is in an invidious position. Do they take it on, absorb it, reduce their profitability and reduce their own viability or do they pass the carbon tax on to their customers, potentially driving customers away, pricing themselves out of the market that they operate in and, again, potentially affecting the profitability and viability of their business? It is a very invidious position to be in.

I want to give you a bit of an indication, Mr Deputy President, of the attitude of the Australian Labor Party to business. I was at a gathering in Dandenong of the South East Melbourne Manufacturers Association last year and the guest speaker was Mr Mark Dreyfus QC on the subject of 'why the carbon tax is good for your business'. I have got to tell you the people there, the manufacturers from Melbourne's south-east, were wanting to strip flesh from the body of Mr Dreyfus but they were very restrained and they were very polite in the question-and-answer session.

One manufacturer stood up and said, 'Mr Dreyfus, my business is that we are a manufacturer and my power bill is going to go up by $100,000 a year,' and Mark Dreyfus's response was, 'Well, that just proves my point, that the effect of the carbon tax is modest.' Mr Dreyfus was asked another question by a manufacturer of medical devices who said, 'Look, our main product costs $1,500 to produce and we only have a margin of about $15 on that and the carbon tax is going to completely wipe out
our profit on this product,' and Mark Dreyfus's response was, 'Well, I think what that tells me is that your business has other problems, doesn't it?' That was the response of Mark Dreyfus QC, man of the people, in touch with local business, in touch with his constituents! He has no idea. I think Mr Dreyfus probably takes some lessons from the Senator Wong school of empathy with the Australian business community.

Mr Deputy President, you only need to talk to Australian businesses, be they small or medium, to find out that in the real world, in the real economy where people actually employ individuals and try and make money to provide for their families, this carbon tax will have a devastating effect. We await with bated breath answers from Senator Wong to the questions we posed.

Senator CROSSIN (Northern Territory) (15:07): I rise in response to the taking note of the answers this afternoon. I have to say I am a little disappointed, Senator Fifield, that you are not taking note of the answer to Senator Mason's questions, but perhaps we will get on to debate about education at some other stage because we do it much better on this side of the chamber.

I am happy to talk about the impact of carbon pricing and particularly on small business. Senator Wong's contribution to this chamber day after day is diligent and thorough. What she does tire of is people on the opposition side continually asking her questions where the facts in their questions are inaccurate or they ask—as Senator Sinodinos did today for the modelling on small business to be tabled—and Senator Wong's response is, 'It has already been made public.' So again we get an opposition that are unprepared, have not done their research, are not really aware of what they are asking. If they had done just little bit of work with a little diligence they would have found that the modelling was a public document and perhaps would not have embarrassed themselves so badly by asking for it.

Senator Fifield stands up and gives us some examples of when he met businesses in the Dandenong region more than 12 months ago. It would be interesting, Senator Fifield, to go back and talk to those businesses now that the carbon legislation is through and those businesses are dealing with that legislation.

Senator Fifield: Mr Deputy President, this is not a point of order. I am just outrageously grabbing the microphone to say that I have revisited businesses and they are still unhappy.

The DEPUTY PRESIDENT: Order! You have no point of order, Senator Fifield. Senator Crossin, you have the call.

Senator CROSSIN: I think that just reiterates and reconfirms what I have been saying for the last two minutes—that the opposition are extremely irrelevant, are totally unprepared, provide no research and knowledge in this debate, but they do provide an alternative policy. Senator Fifield, I wonder if you had enough stamina to stand up at the forum that you were in last year and explain to those small businesses that in fact your policy position was that you wanted the same outcome that we want in terms of climate change. You have the same target and period of time—five per cent by 2020. But did you actually tell those small businesses that they would be paying a higher cost than they are now, that the consumers that walked through the door and bought product would be whacked with $1,300 a year in their household budget?

At the end of the day, what you do not tell the Australian people and do not front up to and are not honest about is that not only do you want the same target in the same yearly
outcome that we do but you going to do it so vastly differently that you will take from families and give that money to the big polluters in this country. You are entirely disingenuous when you talk about repealing this legislation. You are entirely disingenuous when you talk about the impact this is going to have on families and households. Perhaps Mr Windsor in the other chamber was absolutely honest and correct last week when he admitted that members of your party, Senator Fifield, came crawling to him begging to form a government, saying they would do anything whatsoever.

Senator Fifield interjecting—

Senator CROSSIN: You see, at the end of the day, Mr Windsor did not believe you would be honest enough. He did not put any trust in you and wanted to ensure that this country was going to be governed by a government that he could trust and work with. So a condition of his forming government was that he wanted to see climate change tackled through a price on carbon, then a move to a trading emissions scheme.

What you are on the other side is unprepared, unresearched and uninformed about what is in this debate. Your lines will continue despite the fact that people are now living with this on a day-to-day basis. Families are being compensated for their needs in terms of what is happening with the carbon pricing regime. What you also rely on is the front pages of the newspapers to write your questions each day for question time.

(Time expired)

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:12): You have to chuckle listening to that submission from Senator Crossin. You can see why she wanted us to take note of answers on education. She would not know one end of a business from another, having been a former union official for the National Tertiary Education Union in the Northern Territory. It does beg the question: has she ever worked a day in her life in a business, whether a small business or a medium enterprise? Has she ever worked a day in a business to ascertain what it is about?

It is just laughable for her to suggest that Senator Fifield and the coalition are disingenuous in their protestation over the introduction of a carbon tax and our pledge—which we will live up to—to repeal the tax. The Australian public know that we are deadset and we mean this. It is not something that we support in any context whatsoever and, should we be elected into government, as our leader the honourable Tony Abbott in the other place has said, the first thing we will do is repeal this carbon tax and so we will.

The other point that Senator Crossin was foolish enough to suggest was that we will not engage with the business community. Twelve months ago, Senator Fifield went to an event. He is engaged in Isaacs and many other electorates, as am I.

I would like to draw Senator Crossin's attention to a number of things that the local businesses in the electorates for which I am duty senator say about the carbon tax. If there is anything that the coalition does, it is that we are connected to the business community. We understand and know their challenges because many of us have not only worked in businesses but have actually run and managed them and know the challenges that are faced every day by them. I refer to a cabinet maker in Croydon, Deakin, who has worked in the industry for 18 years. I was there only two weeks ago with the Deakin candidate, Michael Sukkar. This is what we do: we actually go out and meet businesspeople when parliament is not sitting and talk to them about the things that are
making their life difficult. He told us that, after having been in the industry for over 18 years, he can no longer employ apprentices because of the escalating cost of doing an honest day's work, and it is becoming increasingly harder.

A greengrocer that I visited in Ringwood East is bracing for their next electricity bill, because the highest overhead, the most expensive overhead, in running their business is the cost of electricity. They are in fear of what that electricity bill will look like. In order to make that business viable they can no longer employ anyone. There is an incredibly fine line for a small business between not making any money, or actually making a loss, and having the books in the black. So, where they once employed casual staff, they are now reducing the number of staff whom they can employ and covering the hours themselves. This is what small business do. They set up enterprises not only to try and support their immediate families but also for their kids for times to come.

There are a many of these small businesses. Over the last fortnight, while we were not sitting, there would have been 12 businesses that I visited with John Nguyen, the candidate for Chisholm, and Michael Sukkar, the candidate for Deakin, and the message that we were told time and time again by businesses was that they will not be able to withstand the imposition of the carbon tax. There are so many examples that I could iterate. Senator Sinodinos raised some again today that are in New South Wales. A butcher at the Oakleigh markets has the same problem with the increasing costs of refrigerants. This tax is an imposition that we will repeal. (Time expired)

Senator MARK BISHOP (Western Australia) (15:17): Today we had a little cameo performance from Senator Fifield that was really a proof-positive demonstration of the intellectual wasteland, the intellectual desert, that the opposition chooses to inhabit with its position on the carbon tax. Senator Fifield popped up and said two things; he enunciated two sentences. Firstly, he said: 'I want to take a point of order. Then he said: 'There is no point of order.' Doesn't that exactly reflect the attitude of the opposition throughout this whole debate on the issue of carbon pricing and the introduction of a carbon price post June of this year?

Today's questions to Senator Wong from a range of opposition senators had a set, a seriatim, of big lies that the opposition chooses to peddle post the passage of the carbon pricing legislation in late June of this year. What were the lies that they managed to put out there today? There were four in particular: firstly, Australia is introducing the biggest carbon tax in the world; secondly, it will not achieve anything in terms of a cut in emissions; thirdly, it will not achieve anything anyway because we are only a fraction of global emissions in the world; and, finally, there was the continuing generalised set of misrepresentations that occur as to price. If I have time to come that, I will highlight the error in Senator Kroger's contribution.

The first myth that is peddled by a range of speakers is that Australia is introducing the biggest carbon tax in the world. Let me just say: not true; incorrect; factually unsound. People who make this claim, as Senator Cormann did in his lead-in to this debate, miss two things. Firstly, a whole range of countries already have carbon prices similar to but in most cases higher than that of Australia. Senator Wong took the trouble to go through eight of them in her response to Senator Cormann. I happen to have that list here, and I will again put it on the record. Norway's carbon tax on petrol is $61. Switzerland's carbon tax on certain fuels is
36 Swiss francs, which is the equivalent of A$36. Sweden has a fuel tax of $138. Ireland has a carbon tax of 20 euros, which equates to A$24. Finland's carbon tax is $36 to $72. In Canada, the carbon tax is up to $29. And the UK has introduced a floor price for the electricity sector.

Secondly, and the more critical point made by Senator Wong in her response, is that while Australia's carbon price starts at $23 a tonne, the government is giving extensive assistance to industries that compete in international markets. Industries like steel, aluminium, oil refining, paper making, flat glass manufacturing and cement—I just note in passing that nearly all of them are based on the east coast, in New South Wales and Victoria—will effectively get up to 94½ per cent—think about that: 94½ per cent—of their carbon permits from the government for free. So free carbon permits will be issued to a range of firms that work in those industries.

What does that mean in terms of the effective price that those firms will pay for the carbon tax? Presumably, to some degree, they will pass it on to their consumers, to their clients, to their customers. Those firms will be paying not $23 a tonne, not $15 a tonne, not $10 a tonne; they will effectively be paying $1.30 a tonne. That is the price impact on the major emitters in the major industries that I outlined on the east coast of Australia—$1.30 a tonne. For that we have had this huge debate over the last two or three years. I have only half a minute left for my contribution in this debate so I will go straight to Senator Kroger's point that the electricity cost for a retail grocer in Ringwood in Victoria is the highest cost in that grocer's business—conveniently forgetting the cost of stock, the cost of product, the cost of labour, the cost of the lease. Every time a small business organisation comes to speak to you, what do they want to talk about? 'We need labour market deregulation, the costs are high; we need you to attack the property trusts that own shopping centres; we need you to address the cost of stock that we have to purchase.' They do not mention carbon tax because it is about two per cent or less of their costs, but Senator Kroger thought it was the highest cost. (Time expired)

Senator SINODINOS (New South Wales) (15:22): Lies, lies and damn statistics. Honestly, what we have just heard from Senator Bishop itself constitutes lies because he is flying in the face of the field evidence that has been provided even this very day by the Australian Chamber of Commerce and Industry with their report on trading conditions in the small business. They talk about the trading conditions being below the average of the last five years, which also include the period of the global financial crisis. Their survey talks about the decline in various economic indicators of the health of small business. Also, Senator Bishop—through you, Mr Deputy President—the survey talks about how taxes and charges are the No. 1 issue for small business. You may be cynical and say people do not like taxes, but the fact of the matter is you are not shooting the opposition, you are shooting the messenger in small business. That shows what you think of small business. Instead of being out there giving succour to small business, instead of being out there asking, 'How can we help you to get through this?' you are blithely saying, 'Well, they're not actually subject to the carbon tax and in any case they can always pass this on.' The fact is that this survey is field evidence, it is facts not lies, and it shows that small businesses in Australia today are doing it tough—and that means they do not have the capacity to pass on big price rises.
We talk about the impact of the carbon price, including on gas refrigerant and other things that are going up quite markedly. The fact of the matter is that this is all coming at a time when other costs are going up for small businesses. They have the superannuation guarantee starting to go up. They have electricity prices also going up for other reasons, as has been mentioned. So small businesses are doing it tough at the moment. They see the carbon tax, something which is a discrete government decision, and they say to themselves, 'Why is government making it any worse for us than it already is? And government says, 'Well, you can just pass it on.' But, as Senator Kroger so eloquently indicated, if you do not understand small business you do not understand the competitive environment that small business faces. It is not easy to pass costs on. Your choices are these: lower your profits, lower your employment, lower your investment. Lower profits will ultimately lead to either lower employment or lower investment in small business, the engine room of the economy. This is the dilemma we face.

I want to take up the issue of what the modelling said or did not say about the impact of the carbon price on electricity costs and other costs facing small business. Contrary to what Senator Wong said, there was no discrete modelling of the impact on small business. I wish Senator Crossin was still here to hear that. There were estimates made through the modelling about the macroeconomic impact of the carbon tax, in terms of its impact on the CPI and the rest. There was modelling done on discrete sectors, but by firm size that modelling was not done, contrary to what Senator Wong said—and that was the point of my question.

We have to consider that small businesses are being hit by bigger businesses which are passing their cost increases back through the supply chain to their suppliers and people who are customers of theirs. That means that small businesses cop it in the neck because big businesses are asking them to take up the slack when it comes to the impact of the carbon tax. Of course, because small businesses are unable to do that or they are forced to do that in order to retain the custom of big businesses, you have this situation where small businesses are being squeezed.

I have been surprised in the time I have been here about the extent to which the government does not talk about small business in a positive way, only in a defensive way: 'We may have imposed X on them over here but we are giving this or that particular concession.' As I noted earlier, these concessions are occurring at a time when a broad range of costs are going up for small business, so the challenge that lies ahead for any future government is how to take the burden off small business in a sustainable way. The coalition have indicated that that will be done by, first and foremost, taking the carbon tax off the backs of business, including small business, but we need to go further. As my colleague in another place noted today, more than 18,000 regulations have come in since this government has been in office and fewer than 90 or so have been repealed. We have a deal of work to do in that whole regulatory space because small business does not have the overheads to deal with the burden of regulation. That regulation is at the Commonwealth, state and local levels and it is a real issue. It is not the merits of an individual regulation; it is the fact that each individual regulation comes on top of so much new regulation. The coalition are committed to finding a way through that. As I reiterate today, small business is being affected by the carbon tax. The government
should not have their head in the sand. *(Time expired)*

Question agreed to.

**Education Funding**

Senator MILNE (Tasmania—Leader of the Australian Greens) (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 Milne today relating to schools funding.

I was really alarmed today when the Prime Minister delayed the government's response to the Gonski review. The government has had this review for six months. There was a broad expectation in the whole education community across Australia that the government's response to the Gonski review would be out this week and yet we have had an unexplained delay. Not only is it an unexplained delay; we have the Prime Minister making another significant shift. Whereas before the government had said that no school will lose a dollar as a result of the Gonski review, the shift today was that every school will receive an increase in government funding. That is quite a different claim from saying no school will lose a dollar under the government's funding model.

The issue here is that there has been an inequitable funding model for schools for the last decades. Under the Howard government the most inequitable system was brought in whereby a formula was to be applied according to socioeconomic status but was distorted immediately by saying that those schools that were receiving more money than they were entitled to under a socioeconomic formula would be entitled to keep the additional money. That inequity has gone on to the point where we now have so many schools, particularly public schools, around Australia adversely affected. The majority of students are still educated in public schools and they are the schools where the children with the greatest disadvantage tend to be going. The Gonski review came out with a model that aimed to address that disadvantage by allocating a standard amount per student with loadings for students with a disability and those from low-income, Indigenous and non-English-speaking backgrounds, and the view was that it would cost at least $5 billion all up and the Commonwealth would put in $3 billion.

I was really alarmed when I heard the Prime Minister say today, 'I have never looked at a big independent school in an established suburb and thought that this is not fair.' I would put to her: has she ever looked at a big public school in an established suburb and thought that that is not fair, because she should have thought that as she walked around the country and travelled around the country. I will tell you what: compare two schools, two enrolments, some in very highly established and wealthy suburbs and other large public schools in lower socio-economic suburbs, and it is not fair.

The issue here is that we need an unequivocal guarantee that this legislation will come before the parliament and have enough time to get through before Christmas. We cannot sustain any more delays. We need to fix this inequitable funding model once and for all, and we need that certainty because schools need to plan for 2014. There cannot be any more delays. There has been delay, delay, delay since the 2007 election. It cannot go on. We want that legislation in here before Christmas.

Secondly, we want to know from the government—and the minister evaded the question again today—where is the Commonwealth getting the money from to be able to finance the Gonski implementation? We must find that money.
The Greens are prepared to put our shoulder to the wheel and work with the government to raise that money and to find ways to find the billions of dollars that are necessary. The one option that I put to the minister today—and it is one we have already put concerning the mining super profits tax—the government did not want to do. We have put on the table getting rid of fossil fuel subsidies—$7.2 billion a year we waste on fossil fuel subsidies. We could get rid of those. Equally, the government currently spends $3.4 billion on a coal railway for the Hunter Valley, which is singularly for coal trucks—nobody else uses that proposed railway—to facilitate the opening of a whole lot of new coalmines to make greenhouse gases more extensive than they are already.

Let us get on with it. We want the legislation before Christmas. We want it to be an equitable funding model that genuinely addresses the disadvantage of public education in Australia and, thirdly, we want a proposition from the government as to how it is going to be funded so that we do get it funded and there is not some excuse that it is tied to a whole range of other things. Whatever you want in performance standards in schools, they need to be funded. You cannot lift performance across the whole range of things you need for students without money. We need that funding and the Greens are prepared to deliver. But I am worried about the delays.

Question agreed to.

NOTICES

Presentation

Senator Bishop to move:

That the Joint Committee of Public Accounts and Audit be authorised to hold a private meeting otherwise than in accordance with standing order 33(1), including a private briefing, during the sitting of the Senate on Wednesday, 19 September 2012, from 11 am to 12.15 pm, followed by a public hearing to take evidence for the committee's inquiry into the review of Auditor-General's reports.

Senator Bilyk to move:

That the Joint Committee of Public Accounts and Audit be authorised to hold a private meeting otherwise than in accordance with standing order 33(1), including a private briefing, during the sitting of the Senate on Wednesday, 19 September 2012, from 11 am to 12.15 pm, followed by a public hearing to take evidence for the committee's inquiry into the review of Auditor-General's reports.

Senator Birmingham to move:

That the Joint Select Committee on Cyber Safety be authorised to hold public meetings to take evidence for the committee's inquiry into cyber-safety for senior Australians during the sittings of the Senate, from 4.15 pm, as follows:

(a) on Wednesday, 22 August 2012; and
(b) on Wednesday, 12 September 2012.

Senator Xenophon to move:

That the Senate—

(a) notes that:

(i) on Friday, 17 August 2012, Ms Yekaterina Samutsevich, Ms Nadezhda Tolokonnikova and Ms Maria Alyokhina, members of the Russian band Pussy Riot, were each sentenced to 2 years in jail after being found guilty by a Russian court of 'hooliganism motivated by religious hatred' following a performance which was critical of President Vladimir Putin in Moscow's Christ the Saviour Cathedral,

(ii) the Russian Orthodox Church described what the women did as 'sacrilege' but also requested clemency be shown to the convicted women,
Amnesty International has stated that, while the women's protest may have been offensive, their sentence was a 'bitter blow to freedom of expression'; and

(b) expresses its concern at the severity of the sentence and the seeming intolerance of freedom of expression in Russia.

Senator Di Natale to move:
That the Senate—
(a) recognises the achievements of Mr Peter Norman who won the silver medal in the 200 metre sprint at the 1968 Mexico City Olympics;
(b) acknowledges his brave action in the cause of racial equality by wearing an Olympic Project for Human Rights badge during the medal ceremony as African-American athletes Mr Tommie Smith and Mr John Carlos famously gave the 'black power' salute;
(c) apologises to Mr Norman and his family for his exclusion from the 1972 Olympics despite having qualified to do so; and
(d) regrets his passing on 3 October 2006 and that he was not sufficiently acknowledged for his brave action during his lifetime.

Senator Siewert to move:
That the Senate—
(a) acknowledges that the week beginning 19 August 2012 is Hearing Awareness Week and recognises that poor hearing health outcomes are a significant challenge to 'Closing the Gap' for Aboriginal and Torres Strait Islander peoples;
(b) notes that otitis media is a serious childhood disease that disproportionately affects Aboriginal and Torres Strait Islander children and, left unaddressed, can lead to poor life outcomes; and
(c) calls on the Government:
   (i) to take a cross-disciplinary approach to otitis media in young people, that encompasses, but is not limited to:
      (A) regular ear screening,
      (B) pathways to medical intervention and follow-up,
      (C) education and support for parents and teachers,
   (D) numeracy and literacy development, and
   (E) vaccinations and other efforts to reduce the prevalence of otitis media and other middle ear disease,
   (ii) to commit to tackling otitis media and its associated educational and social impacts as a national problem and working collaboratively with the states on a holistic, sustained, cross-disciplinary approach to addressing this issue and its effects, and
   (iii) to facilitate the interaction between health, education and family support programs that address the impacts of otitis media and focus funding toward programs that foster cross-disciplinary action.

Senator Milne to move:
That the Senate—
(a) notes:
   (i) three members of the Russian group Pussy Riot have been sentenced to 2 years imprisonment for 'hooliganism' and 'homosexual propaganda' following a non-violent performance,
   (ii) the Governments of the United States of America, Britain, France and Germany have denounced the sentences as disproportionate,
   (iii) several laws recently passed in Russia restrict freedom of expression, severely punish dissent, ban pride marches and restrict gay rights,
   and
   (iv) several Russian opposition leaders, including Mr Gary Kasparov and Mr Sergei Udaltsov, have been arrested for rallying in defence of Pussy Riot; and
(b) calls on the Government to make direct representations to Russian authorities regarding repeal of these restrictive laws, the intimidation and prosecution of opposition activists and the disproportionate sentence given to Pussy Riot.

Senator Farrell to move:
That the government business orders of the day relating to the Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011, the Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2012 and the Customs Tariff (Anti-Dumping) Amendment Bill
(No. 1) 2012 may be taken together for their remaining stages.

**BUSINESS**

**Leave of Absence**

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (15:33): by leave—I move:

That leave of absence be granted to Senator Bilyk from 20 August to 23 August 2012, for personal reasons.

Leave granted.

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:33): by leave—I move:

That leave of absence be granted to Senators Boswell and McKenzie for today, for personal reasons.

Leave granted.

**COMMITTEES**

**Foreign Affairs, Defence and Trade References Committee**

**Meeting**

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:34): by leave—At the request of Senator Eggleston, I move:

That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 8 pm.

Question agreed to.

**Legal and Constitutional Affairs Legislation Committee**

**Reporting Date**

Senator McEWEN (South Australia—Government Whip in the Senate) (15:35): by leave—At the request of Senator Crossin, I move:

That the time for the presentation of the report of the Legal and Constitutional Affairs Legislation Committee on the provisions of the Maritime Powers Bill 2012 and a related bill be extended to 12 September 2012.

Question agreed to.

**NOTICES**

**Presentation**

Senator Hanson-Young: Have I missed notices of motion already? I thought I was following Senator Kroger.

The DEPUTY PRESIDENT (15:35): You have. We have passed that, but I am sure with the concurrence of the chamber, we can return to that. There being no objection, please proceed.

Senator HANSON-Young: I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) calls on the Government to immediately:

(i) increase the Humanitarian Program to 20 000 as recommended by the Report of the expert panel on asylum seekers (Houston report), dated August 2012, in recommendation 2, and

(ii) make available an additional $70 million to fund programs in support of a regional framework for improved protections, registration, processing, integration, resettlement and returns as per recommendation 3; and

(b) calls for immediate disclosure of the Government's implementation timeframe for the remaining Houston report recommendations.

**Postponement**

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Australian Greens (Senator Milne) for today, proposing a reference to the Economics References Committee, postponed till 22 August 2012.

Business of the Senate notice of motion no. 2 standing in the name of Senator Whish-Wilson for today, proposing the disallowance of the Small Pelagic Fishery Total Allowable Catch
(Quota Species) Determination 2012, postponed till 21 August 2012.

General business notice of motion no. 606 standing in the name of Senator Madigan for 22 August 2012, proposing the introduction of the Fair Work Amendment (Arbitration) Bill 2012, postponed till 1 November 2012.

General business notice of motion no. 607 standing in the name of Senator Madigan for 22 August 2012, proposing the introduction of the Treaties (Parliamentary Approval) Bill 2012, postponed till 1 November 2012.

COMMITTEES

Electoral Matters Committee

Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (15:37): At the request of Senator Carol Brown, I move:

That the order of the Senate of 15 August 2012 authorising the Joint Standing Committee on Electoral Matters to hold public meetings, be varied by omitting "Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012" and substituting "Australian Electoral Commission analysis of the Fair Work Australia report on the Health Services Union".

Question agreed to.

MOTIONS

Murray-Darling Basin

Senator HANSON-YOUNG (South Australia) (15:37): I move:

That the Senate—

(a) notes the position statement on the Murray Darling Basin (MDB) draft plan launched by South Australian environmental groups, including the Conservation Council of South Australia, The Wilderness Society, Trees for Life, National Trust of South Australia, National Parks and Wildlife, Nature Conservation Society of South Australia and Friends of the Earth Adelaide, on 27 July 2012;

(b) notes that these groups identify that 4 000 GL must be returned to the river in accordance with the best available science to provide for healthy MDB communities and economies; and (c) calls on the Government to instruct the Murray-Darling Basin Authority to model at least 4 000 GL against the requirements of the Water Act 2007 and undertake feasibility studies on constraints to delivering 4 000 GL as requested by the South Australian environmental groups.

The DEPUTY PRESIDENT: The question is that the motion by Senator Hanson-Youn be agreed to.

The Senate divided. [15:42]

(The Deputy President—Senator Parry)

Ayes ...................... 10
Noes ...................... 37
Majority................ 27

AYES

Dj Natale, R
Ludlam, S
Rhiannon, L
Waters, LJ
Wright, PL

NOES

Back, CJ
Bernardi, C
Birmingham, SJ
Bishop, TM
Boyce, SK
Brown, CL
Cameron, DN
Cash, MC
Colbeck, R
Collins, JMA
Farrell, D
Faulkner, J
Feeney, D
Fifield, MP
Furner, ML
Gallacher, AM
Hogg, JJ
Kroger, H (teller)
Ludwig, JW
Lundy, KA
Madigan, JJ
Marshall, GM
McEwen, A
Moore, CM
Nash, F
Parry, S
Polley, H
Pratt, LC
Ryan, SM
Singh, LM
Smith, D
Stephens, U
Sterle, G
Thistlethwaite, M
Thorp, LE
Urquhart, AE
Williams, JR

Question negatived.

Health Services Union

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:45): At the request of Senator Abetz, I move:
That the Senate—
(a) notes:

(i) Mr Michael Williamson’s recent roles as President of the Australian Labor Party (ALP), member of the ALP Industrial Committee, Executive Member of the Australian Council of Trade Unions, Vice President of Unions NSW, Vice President of the ALP New South Wales Branch and Trustee of First State Super, and

(ii) findings by Mr Ian Temby, QC and Mr Dennis Robertson, FCA that, while Mr Williamson was General Secretary of the Health Services Union (HSU) East Branch, he, his family, his company and his close associates benefitted from $20 million in union members’ funds which was spent without proper financial control;

(b) condemns this use of union members’ funds at the HSU by Mr Williamson as found by Mr Temby and Mr Robertson; and

(c) calls for stronger penalties under the Fair Work (Registered Organisations) Act 2009 than the present $6,600 monetary penalty and to include penalties under the Corporations Act 2001.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:45): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator JACINTA COLLINS: The government does not support this motion. The government has been clear that we do not condone the misuse of members’ funds by trade unions. We have been clear that we consider the conduct outlined in the Temby report to be unacceptable. On these matters there is no question. That is why we have moved and passed legislation in this parliament to increase the financial accountability and transparency of trade unions and to triple penalties. That is why we applied to the Federal Court to appoint an independent administrator for the HSU. On both matters we got not one iota of support from the opposition.

This government also respects the independence of Australia’s tribunals and our courts. We understand that it is not our role to seek to unduly influence investigations or court processes. This simply is not our role. The opposition has been inconsistent on this matter from day one. They accused us of interference, then called on us to intervene and then wanted matters to be dealt with in the courts, but they want to act as judge and jury in the meantime. The hypocrisy is breathtaking. (Time expired)

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (15:46): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator ABETZ: Even the ACTU have condemned Mr Williamson. At present the penalty is a $6,600 fine for a possible $21 million fraud. Company directors in a similar circumstance face $220,000 fines and a potential five-year period of imprisonment. But, if you are a union official, under this government and with the Greens $6,600 will be the maximum penalty. We know that three-quarters of Labor senators are former union bosses, and one wonders whether that has any influence in relation to the way they vote given that Mr Temby and Mr Robertson have made these devastating findings against the former National President of the Australian Labor Party. (Time expired)

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:47): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MILNE: The Australian Greens certainly do not condone the behaviour that
occurred from Mr Michael Williamson and what went on in the union, and we support the government's move to treble the penalties under the legislation. What Senator Abetz is doing is failing to recognise that action has been taken, that condemnation has been all round and that nobody condones the behaviour that was set out in these particular cases.

Senator Abetz: Mr President, on a point of order: I request that the Greens indicate whether they would vote in favour of paragraphs (a) and (b) of the motion, as Senator Milne has just asserted, because if so I would ask that the motion be put in two parts: paragraphs (a) and (b) together and then paragraph (c). We will see whether Senator Milne actually is willing to vote as she spoke.

The PRESIDENT: In terms of the point of order, that is not a point of order, but you are quite entitled and it is your right to ask for different elements of the—if you want to vote different ways. You cannot pre-empt what someone else might be doing on the voting.

Senator Abetz: I am aware of that. I just want to give the Greens the opportunity to vote according to their conscience. If what Senator Milne has said is to be believed then I would imagine the Greens would vote with the coalition on paragraphs (a) and (b) but, of course, would vote against paragraph (c).

Senator MILNE: In the light of the fact that Senator Abetz took a point of order in order to make his point, I too make a point of order. If Senator Abetz wishes to amend his motion then I would ask him to amend it and bring it back tomorrow so that we can have a look.

The PRESIDENT: That is not a point of order either. The question is that the motion moved by Senator Kroger be agreed to.

The Senate divided. [15:54]
Senator McLucas did not vote, to compensate for the vacancy caused by the resignation of Senator Fisher.

Question negatived.

**MATTERS OF PUBLIC IMPORTANCE**

Carbon Pricing

The **ACTING DEPUTY PRESIDENT (Senator Crossin)** (15:56): I have received the following letter from Senator Fifield:

Pursuant to standing order 75, I propose that the following matter of public importance be submitted to the Senate for discussion:

The growing evidence of the effects of the Gillard Government's carbon tax on the viability of small business.

Is the proposal supported?

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

The **ACTING DEPUTY PRESIDENT:**

Who has the first bat, then? Senator Ryan, off you go.

**Senator Ryan** (Victoria) (15:57): It is a pleasure to rise today to support the motion put by Senator Fifield. But it is not a pleasure because of the issue itself.

What we have seen over the last month alone is a continuation of Labor's war on small business in this country. Today we had the finance minister, Senator Wong, here in question time answering questions from Senator Cormann and others about the cost of the carbon tax on small business. But Senator Wong constantly referred to who might allegedly pay the actual carbon tax bill—the sophistry of this government that says that just because it is only limited to a certain number of payers, the costs of the carbon tax might not being borne by the millions of Australian small businesses.

Senator Wong also talked about how there are compensation arrangements: apparently there should only be a less than one per cent impact on the cost to small businesses. Yet we know now that the reality is very different. We are all hearing stories from around the country about the impact of the cost of this carbon tax on small business; the impact of costs that they cannot necessarily pass on. That is saving consumers some of the costs, at least in the short term; but in the long term we know that if you build up the costs of doing business and if you build up the costs of business inputs that those costs will be passed onto the consumer. But it is small business at the moment that is bearing the crunch.

Senator Wong was talking today, with all the sophistry of this government, about who is actually paying the tax and the alleged Treasury modelling that shows there will only be a less than one per cent impact by the carbon tax on small business. She sounded like Sir Humphrey Appleby in *Yes Minister*, who famously asked his prime minister: 'Very well, Prime Minister. It all works very well in practice but does it work in theory?' The problem we have with this government is that it is relying on the way it wishes the world was rather than the way the world actually is. They may have modelling that talks about the alleged savings to business; they may have modelling that talks about alleged costs to small business—but reality is interfering with that. This Labor Party has never known how important small business is to our economy in providing local jobs and services and it has never understood how important small businesses are to our communities.

As I have said before, when we go around our nation to the suburbs of our major cities and the regional towns, what we find is that our community leaders are often our small business people. When we look at who runs
the Rotary and Apex clubs, who is sponsoring the local football or netball club, or who might be the captain of the local CFA or rural fire brigade, what we notice is that overwhelmingly our community leaders are our small business leaders. They are the fabric of our community as much as they are the fabric of our economy. What this government is doing to them through this carbon tax is yet another example of the assault on small business. Why is that? Because the Labor Party not only does not understand small business; it has never been interested in it. Despite all the verbiage and sophistry we hear, they do not understand what makes someone get out of bed in the morning, put their house on the line and take the risk of employing someone and expanding that business; what makes someone not see their family and do the paperwork, which this government in particular imposes, at home at the kitchen table. They do not understand what drives people to do that.

Why is that? It is the same reason we do not see a great deal of unionisation in the small business workplace. Whether it is independent contractors or the classic small business owner, they are not recruited into the union movement. They hold no interest for the ALP. I wonder whether there is anyone in the once-great Australian Labor Party that went into politics saying, 'I want to be Minister for Small Business.' I cannot imagine anyone on that side doing that. The job has been thrown around to four people in the last five years. The job of Minister for Small Business has been the leftover job that this Labor Party has thrown as a bone to someone else to fill part of another portfolio or just to keep someone busy. It is not something that someone has put their hand up for and said, 'This is the job I want.' On this side of the chamber it is what motivated so many people, whether from our regional centres, our rural businesses or our great cities, to go into business.

We have over 2½ million small business people in this country. Let us look at the record of this government when it comes to them—the record that this carbon tax is making worse. When the Howard government left office, the ABS estimated that just over five million people—5,061,000 people—were employed in small business around Australia. That was more than half of the private sector workforce or just over 51.3 per cent. Today, after nearly five years of the Labor Party, it is down to 47 per cent of the private sector economy. When I say that that is an important trend, it is because of what I mentioned earlier. It is an important trend because the small business people in our communities are our community leaders as much as they are our economic leaders.

Since Labor was elected in 2007 we are looking at more than a quarter of a million jobs gone in the small business sector. We know that over the last three or four years a substantial number of jobs created in this country have been public sector jobs. Public sector jobs are important but all public sector jobs, including ours in this very chamber, ride on the back of the private sector economy in this country. The private sector economy rides on the back of small business that once employed more than half the people in this country and now employs just under half.

Small business is the heart of innovation. It is the heart of our communities. It is often the place where someone gets their first job and their start in the labour market. I pushed trolleys around a suburban supermarket and worked in the freezer. How many people have started in their local milk bar, franchise, fast food restaurant or supermarket? That is one of the reasons that small businesses are important. Operating costs are at a 10-year
high under this government and they are constantly going up. Despite the smart words and the spin from the smart politicians opposite, they will not concede the obvious: when you make the cost of energy and the cost of doing business more expensive through the carbon tax, you are only driving those costs higher. The number of small businesses that have gone bankrupt in the last 12 months has gone up by 48 per cent.

This government crowed about the economy. It talks about how we are the envy of the world. It sits here in Canberra reading the latest statistics—

**Senator Furner:** We are!

**Senator Ryan:** I will take that interjection, Senator Furner, because, when you are seeing small business bankruptcies go up by 50 per cent in 12 months, you have got a problem. The reason is just as it was in 1991 during the recession we had to have. Small business is the canary in the coalmine of this economy. When small business starts struggling you know the economy has a problem. You know that the statistics you might be seeing around the cabinet table do not tell you the full story. Smart politicians and good governments know that. Good governments know that economic statistics, high-quality as they are, tell you part of the story. But when you are looking at survey after survey of collapses in small business confidence and businesses are telling you that they are seeing energy and freight costs—even for greengrocers, as we have seen in today's paper—go up by a third in two months, then you should actually take a look at the theory that is being presented to you and the modelling that you are claiming to rely upon and say, 'Where might this be wrong?'

But no: the government are like the three monkeys—see no evil, hear no evil; I just wish they spoke no evil! They sit there and say, 'No, that is not what our modelling said,' but we are seeing it out in the community. Walk along your local shopping strip and ask the people what it is costing them in their energy bills. Ask them what it is costing those who sell food—particularly those who have to run refrigerators. Ask them what it is costing them in freight deliveries and what you will see is that costs are going up. Anecdote after anecdote, story after story: reality is what is striking the government in the face. It is striking the government in the face because it is the result of the very policy they intentionally implemented. The government introduced a carbon tax. The intention of that carbon tax is to make energy more expensive. For a century we did everything we could to make energy cheaper. It was the basis of the industrial economy in my home state of Victoria.

We knew that cheap energy was a competitive advantage that this country had, that it is one of the reasons we do not have the similarly high taxes on fuels that you see in Europe. It helps everyone, from our regional economies, from our farmers, to those who are simply dropping off the kids at school or running a local courier business.

This is the intentional result of this government's policy: high energy costs, which means that the cost of doing business is higher than it would be. But, no, this government simply refuses. On the one hand it says, 'That's what we intended to do,' but, on the other hand, it says, 'It'll only be less than a per cent.' Reality is striking this government in the face. It is the same reality that we are seeing in the lack of small business confidence. I just wish this government would listen.

**Senator Furner** (Queensland) (16:07): There is no surprise that the peddling of the perpetual scare campaign from those opposite continues along the road of trying to
Scare businesses or anyone who will listen to their stories and trying to have them believed. We know, and the business community knows, that it is all spin. Telling everybody that the reason their bills are going up is as a result of the price on carbon and telling the electorate that the Labor government does not support small business could not be further from the truth.

We should reflect on the position that the Leader of the Opposition and many others in the other House have taken on this issue. Mr Tony Abbott said, 'This is an impact on the cost of living that would be almost unimaginable.' Mr Joe Hockey said that it would 'drive up the price of everything'. The Senate Leader of the Nationals, Senator Barnaby Joyce, said that it would 'force working mothers to pay over $100 for a roast'. These are all untruths, all complete lies peddled by those opposite. That is what they continue to do. They go out in public and, to whomever will listen, spin nonsense about the effects of the carbon price.

As a government we are fully committed to helping our small businesses, and this is evident through the various policies that we have introduced. With the minerals resource rent tax we delivered a $6,500 instant asset tax write-off. We have established a new loss carry back initiative which can provide tax refunds of up to $300,000 for eligible businesses to encourage them to invest and to adapt. We introduced this country's first Paid Parental Leave scheme, which enables new parents to keep their ties with their employers so that businesses do not lose skilled staff. We are rolling out the National Broadband Network, which will give small business access to quicker internet and lower phone and internet bills.

In the gym this morning, I was talking to a member from the other House. She indicated that, in her electorate in New South Wales, small businesses are crying out for the NBN. They just cannot wait for the opportunity to make sure that it is implemented so that they do not have to travel as far as Sydney and abroad to run their businesses. This is the sort of thing that those opposite will roll back and are opposed to.

The new broadband infrastructure will give business access to technology, including videoconferencing, cloud computing and virtual private networks. The clean energy future package is aimed at our biggest polluters, not at small business. That is where those opposite do not seem to get it. Whilst we acknowledge that those businesses may face indirect costs, documents presented to the government by the Council of Small Business Organisation of Australia said that electricity makes up less than two per cent of their business costs. So, there you go: you have the Council of Small Business Organisation of Australia indicating that electricity costs make up less than two per cent of their business costs.

Treasury modelling estimated that the impact of the carbon price may be about 10 per cent on a small retail business, which would be less than 0.2 per cent of its total costs. We are doing what we can to ensure that the price on carbon will not hugely impact small business. Some of the measures we have implemented include $27.5 million to extend the Small Business Advisory Service for another four years. We have also invested $40 million in an Energy Efficiency Information Grants Program, allowing small business and community groups to find out how to reduce their energy costs. We have invested $5 million over four years to provide clean energy advice to small business. We have also invested in a small business commission so as to give small business a line to the government and to ensure that the government implements policies which hold the best interests of the
small business community. A grant has also been provided to the Australian Institute of Refrigeration Air Conditioning and Heating to deliver seminars through Enterprise Connect workshops and industry intelligence networks. These will inform industry of the short- and long-term carbon price impacts and opportunities for energy efficiency improvements.

Not only has the opposition been spruiking the impact of the clean energy futures package on small business; it has been spruiking the impact on businesses in general. Once again, it is blatant scaremongering. Since 1 July businesses have been taking positive steps to make their companies more energy efficient, and they have been cutting their emissions and their power bills in the process. By taking action and driving down their electricity prices, they are reducing their emissions, reducing their energy intake and assisting the environment. De Bortoli Wines in Queensland, Victoria and New South Wales has undertaken a range of measures in all aspects of its business, from production to warehousing to improved energy efficiency and the upgrading of old equipment. The Gillard government is providing $5 million to the company, which will lead to an improvement in their energy efficiency by 36.3 per cent. New South Wales food processors Crafty Chef will install a new commercial blast freezer thanks to almost $500,000 from the federal government. This will reduce the carbon intensity of its operations by 54.1 per cent, reduce energy intensity by more than 56 per cent and boost its turnover by 150 per cent. Fonterra in Wagga Wagga will reduce its carbon emissions intensity in chilling and pasteurisation by 88.9 per cent and its energy intensity by nearly 89 per cent thanks to $152,881 from the government.

The list goes on: CSR Building Products in Ingleburn will receive funding to reduce carbon emissions intensity by 18.3 per cent and CSR Building Products in Vermont will take action leading to emissions intensity reduction by 19.6 per cent. Rickety Gate in Western Australia will reduce its emissions intensity by 69.7 per cent after installation of a battery backup solar power system. A project at Ferngrove Vineyards will see improvements of 62 per cent, Kenner Foods will see a 39.9 per cent improvement and Naturaliste Vintners Pty Ltd will reduce their emissions intensity by 51.1 per cent and improve their energy efficiency by almost 49 per cent.

Really, these numbers are quite staggering and are in stark contrast to the opposition's claim that businesses will be hard done by. It gives an excellent example of what businesses are doing across our country in respect of how they tackle climate change.

This Labor government has introduced a price on carbon, and it was the right thing to do. On reflection, we should go back in time and remember that the coalition's current opposition leader, Mr Tony Abbott, was caught out on Sky spruiking that the carbon tax is the right thing to do. In fact, he actually said:

*If you want to put a price on carbon, why not just do it with a simple tax?*

That is what he said on Sky *News* not long ago. He went on to say:

*Why not ask electricity consumers to pay more, then at the end of the year you can take your invoices to the tax office and get a rebate?*

So you can see the contradiction, the disingenuous arguments that those opposite are presenting here today when their leader, Mr Tony Abbott, said some time ago, 'Why not put a price on carbon through tax?' He went on further to say:
It would be burdensome, all taxes are burdensome, but it would certainly … raise the price of carbon, without increasing in any way the overall tax burden.

That interview was filmed in 2009, the same year he was given the title of the 'Weathervane'. And let us not forget that was the year he knifed his then leader, Malcolm Turnbull, in the back. So when it comes to contradiction, you only need to look to those opposite and you will find the true examples.

Not only are we salvaging a future for our next generation; we are also making sure that we will have an environment that they can enjoy. We have received huge criticism from the opposition about bringing it in, but it appears that if the coalition was in government it would have implemented one anyhow. In the past we have seen members admit that putting a price on carbon was the best way forward. This was even said by former Prime Minister John Howard and has also been said by the current Liberal leader, as I indicated when relating the Sky News interview.

Last week the member for New England, Mr Tony Windsor, said that Mr Abbott would have put a price on carbon. In the Australian on Friday, Mr Windsor is reported as saying:

The Leader of the Opposition knows that very well, because on a number of occasions he actually begged for the job.

Mr Windsor made the point:

… not only to me but to others in that negotiating period, that he would do anything to get that job.

Mr Windsor continued:

You would well remember—and your colleagues should be aware—that the only codicil that you put on that was: 'I will do anything, Tony, to get this job; the only thing I wouldn't do is sell my arse.'

That is what Mr Tony Abbott indicated to Mr Windsor at the time of trying to form government. How hypocritical can those opposite be when they sit here and wreck small business, putting stress on households when they are all prepared to put a price on carbon anyhow? That is the hypocrisy of this argument and of this motion here today from those opposite.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (16:17): Madam Acting Deputy President, I would like to add to Senator Furner's comments about the member for New England. No doubt some discussions were had in confidence just after the last election, in that 17-day period, and isn't it wonderful that here is Mr Windsor now putting it all out in the open when he says Mr Abbott would have gone with a carbon tax. I can tell you that is absolute rot. If Mr Abbott was Prime Minister in a hung parliament, how would he ever get it through the parliament? I know that virtually all of my colleagues in the Liberal Party would not have voted for it. Mr Windsor is not telling the truth, just like prior to the last election. Kelly Fuller was interviewing him on Tamworth radio, after Mr Windsor had put a bill into the House of Representatives wanting a 20 per cent reduction on emissions of 1990 levels by 2020 and a massive 80 per cent by 2050. Mr Windsor said: 'That wasn't my bill. No, I just put that in on behalf of some of my constituents.' It was his bill all right, and that is why he drove the carbon tax. That is why he proudly put a media release out saying, 'One of the conditions to support the Gillard government is that we form a multi-party climate change committee.'

What is the idea of a carbon tax? It is to increase the cost of electricity so that people use less. That is the whole idea of it. And now we have got the cost going around and small business—go to your local engineer, someone out in a little country town
knocking up machinery, augers, field bins, groupers for the agriculture or mining industry and ask them what effect it is going to have on their industry because electricity prices go up. They are going to have to charge more. So when they build something for, say, a farmer, then what does the farmer do? The farmer pays more. But tell me this: who does the farmer hand the costs on to? Can he go to the cattle yard and say, 'I demand you pay 5c extra for this steer because I've got to pay a carbon tax'? No, they are price takers, not price makers. The primary producers are price takers; they cannot pass it on.

We have raised this issue about the cost on small business. We have this crazy situation of adding another 6.75c a litre diesel tax to our truckies on 1 July 2014 and people on the other side say, 'Just pass it on.' For Martin Group transport, based up there at Scone in the Hunter Valley, it is going to cost them an extra $1 million a year for their fuel. That is the increase in fuel tax alone—$1 million. So they pass it on to the cow cocky, to the farmer. I ask the question again: who does the farmer pass it on to? They cannot pass it on; they just suffer. So what happens then? They have less money, less profit, less to spend in the country towns at those small businesses that rely on that agricultural money going through their communities, keeping those businesses strong, keeping the jobs in place—they cannot pass it on. But those on the other side will never learn that.

When you look at the 31 Labor senators in this chamber, I think it is either 25 or 26 come from the union movement. Have they ever run a small business? The odd one might have run a small business now and then, but they are out there representing the so-called workers.

**Senator Jacinta Collins:** What, you think we've done anything else, do you?

**Senator WILLIAMS:** I could take the interjection of Senator Collins and we could go down the union road. Perhaps we might talk about the Health Services Union? We might get onto the Australian Workers Union. I was a member of the Australian Workers Union for one year. I was a member for one year, in January 1978, when I was shearing at Carriewerloo Station out from Port Augusta, where they made the film *Sunday Too Far Away*. It was just after the state election and the then Premier Don Dunstan said, 'Unionism is not compulsory.' The rep walked into the shed and he said, 'You have a ticket?' I said, 'No'. He said, 'Do you want me to take it out of your wages, or will we take it off the boss?'

I said, 'I don't want one'. He said, 'These are your options: you buy a ticket or you leave the shed.' That was the option after the '77 drought. This is how the thuggery of the unions works. And to think that when I gave them whatever the amount of money was in those days—the only time they ever got it off me, I can tell you—I wondered what happened to that money. We could ask questions about what happened to the AWU money; there is a lot of stuff out in the media now. But let's get back to the argument about small business.

**The ACTING DEPUTY PRESIDENT (Senator Crossin):** Senator Williams, I was just going to remind you of the matter under discussion.

**Senator WILLIAMS:** Getting right back to the matter, Madam Acting Deputy President—I'm sure you're keen to hear what I have to say!

**The ACTING DEPUTY PRESIDENT:** Thank you, Senator Williams; let's just focus.
Senator WILLIAMS: Back to small business. The biggest thing that is—

Government senators interjecting—

Senator WILLIAMS: I'm trying to focus, Madam Acting Deputy President—directly at you!

The ACTING DEPUTY PRESIDENT: Thank you.

Senator WILLIAMS: Getting back to small business: the biggest thing that is lacking is confidence. You talk to anyone. I went for a walk in my home town a couple of weeks ago, down the street talking to small businesses. The thing that is lacking is confidence. And why is confidence lacking? Why aren't people spending? Because they do not trust the government. They do not trust them when they have broken promises on adding costs to small business, on bringing in new taxes—and there is a list of new taxes. They do not trust the government on managing money. I had a look at the Australian Office of Financial Management website on Friday: the debt is now $241 billion—it has grown $3 billion in just two weeks! Fourteen days and we have borrowed $3 billion. Now, who is going to pay for that?

As we know, and as Senator Ryan said, the nation's wealth is derived through the business sector. Governments do not have money; they have sold off all the assets—now governments, sadly, just have debt. So that is where the nation's wealth is derived from: the business sector. And who is the greatest employer? The small-business sector. But this government is hell-bent on destroying small business, adding more costs to them. I will quote from the Australian Chamber of Commerce and Industry survey. Mr Greg Evans, Director of Economics and Industry Policy of the Australian Chamber of Commerce and Industry, commented:

The Survey clearly shows that trading conditions remain challenging for Australian businesses in non-mining related sectors, with small businesses reporting the worst performance.

... ... ... It is alarming that important small business growth indicators, including sales revenue, selling prices, profit growth and investment in plant and equipment, are approaching their historical low levels previously recorded during the height of the global financial crisis ...

Small businesses are concerned that while their selling prices have fallen to record low levels, their input costs remained elevated. While growth in labour costs has slowed in recent quarters, these costs remained at high levels and have resulted in a further fall in small business employment ... small business are likely to face further headwinds in coming months due to the continued economic and political uncertainties in Europe, the slowdown in China and subdued consumer sentiment. ...

Against this difficult backdrop, it is disappointing that the government has imposed further cost increases on small business with the introduction of the carbon tax, which is now particularly impacting on the more energy-intensive business operations.

Small business is the heart of our nation. There is not a large business that did not commence as a small business. They worked hard and they grew. But what we are seeing now—

Senator Birmingham: Now large businesses are being turned into small businesses!

Senator WILLIAMS: Exactly! I take your interjection, Senator Birmingham. That is how big businesses got big—they started off small and they grew big; now we are seeing big businesses winding back. We are seeing record liquidations and insolvencies. Why is that? We hear about this booming
The biggest issue is the lack of confidence.

Senator Jacinta Collins interjecting—

Senator WILLIAMS: As I said, people do not trust this government. They do not trust you with your promises on your carbon tax. They do not trust you to manage money. They do not trust you to run the economy. All you know is borrow, borrow, spend, spend, waste, waste. They do not trust you to put Pink Batts in buildings. You spent a billion and a half putting Pink Batts in and another billion pulling them out! There's two and half billion of taxpayers' money gone.

And here is the problem that small business is facing: extra costs of doing business. You go out and talk to them. I challenge any one of you: come with me for a stroll through a country town. Stick your head in the door of a small business and say, 'Hello, I'm a Labor senator. I've come to see how business is.' You would want to be wearing a hard-hat, because I know what the small businesses think of you lot. I know exactly what they think of you: they don't trust you, they know you don't care about them and that is why, every time I walk into a small business, they say, 'When is the election? Bring it on as soon as you can; we want to have a say', especially in the seat of New England, where we saw our federal member, Mr Windsor—I live in his seat—have his rant and rave the other day, saying Mr Abbott would bring in a carbon tax. What a joke. Mr Abbott would not bring in a carbon tax. It is a big 'if' anyway—that word 'if'. If the dog didn't stop for a little squat, he'd have caught the fox. That word 'if' means a fair bit. So the situation is this: if you cripple small business, you cripple the wealth-building sector of our nation—and that is exactly what you intend to do, and that is why they don't trust you. (Time expired)

The ACTING DEPUTY PRESIDENT: Senator Williams, your time has definitely expired. Senator Thistlethwaite.

Senator THISTLETHWAITE (New South Wales) (16:27): I wholeheartedly agree, Madam Acting Deputy President! Thank you for the call. This is another slack, below-par contribution to policy debate in this place from those opposite. This motion talks about the 'growing evidence of the effects of the Gillard government's carbon tax on the viability of small business', and it triggered me to think about where this 'growing evidence' is coming from. Is it some sort of new robust policy analysis that has been undertaken by the coalition? I thought about that, and quickly dismissed it, because those words 'robust policy analysis' and 'coalition' are like oil and water: you cannot mix them. Could it have come from policy consultations? Well, whenever representatives of those opposite do consult with small businesses, they get a rude shock—because often small businesses will say that they have never been going any better. I will elaborate on that in a moment.

So it could not have come from policy consultations. Does it come from new modelling? Perhaps some new modelling, new policy analyses have been undertaken by those opposite. Again, I quickly dismissed that, because that in itself would be a front-page headline: 'Modelling done by coalition'. It does not happen.

Then I happened to read today's Daily Telegraph and there it was on the front page. That is where this came from. That is where the questions that were asked in the chamber today, this policy amendment and this motion came from: the front page of the Daily Telegraph. That is the deep analysis on policy that we are getting from those
opposite: they read it on the front page of papers and then they seek to bring it into here! It proves how out of touch they are, particularly with respect to small business and the continuation of this policy of scaremongering with the prophets of doom trying to talk down our economy.

The facts about carbon pricing are illustrative of why we are doing this. The reason why we are doing this is basically for our children because all of the credible economic evidence and the environmental studies demonstrate that global warming will have a diverse and negative impact on our economy and, the longer we wait to take action about it, the greater the cost will be. So, effectively, if we as a generation of decision makers do not tackle this problem now and do not make decisions now, we are simply passing that cost on—and a greater cost at that—to the next generation of Australians.

I offer a second point. Labor and the coalition have the exact same policy and the exact same target for emissions reductions in our economy: five per cent by 2020. So, if it is the case that both major parties have the same target for emissions reductions, the question then becomes: how do we achieve that? How do we do that by the most efficient and effective method with, importantly, the least cost for households, small businesses and large businesses? There have been no less than 37 parliamentary inquiries into this issue in this place since 1992, including the Shergold inquiry which was set up by none other than former Prime Minister John Howard. Each and every single one of those inquiries—all of them bar none—has said that the cheapest and most effective way to reduce carbon emissions in our economy is to put a price on carbon and allow the price effect to dictate where capital will flow and so behaviours will change over time. So what are we supposed to do as a government? Ignore that advice? Are we supposed to ignore the advice of 37 parliamentary inquiries, including those established by the former coalition government, taking into consideration a lot of the comments that were made by senators in former lives when they were ministers and the like and they were supporting carbon pricing? What are we supposed to do—ignore that advice? We will not because the responsible thing to do is to act in the best interests of Australians.

The third point to make is that the carbon price will be paid by the biggest 300 polluters in our economy, not by small businesses. There will be indirect costs. We have never shied away from that fact but they will be 0.7 of one per cent on the consumer price index, less than one per cent and one-fifth of the cost of the introduction of the GST when it was undertaken in 1998. It has been modelled by Treasury, the same people who modelled the GST and found that the cost effect of the GST would be 2.5 per cent. They were spot on then and they will be spot on now. The cost effect will be less than one per cent on the consumer price index. Households, small businesses and taxpayers get compensation to help them make the transition into a clean energy future. The compensation comes in the form of tax cuts. They have already been delivered in the form of increases in pensions and in the form of increases to family payments.

In terms of support for small businesses, the best thing that this government or any government could do is provide a strong economy to do business in. Let us look at the facts about Australia’s economy at the moment. Take interest rates. The cash rate is at 3.5 per cent, lower than it was at any other time under the coalition government. Take inflation: 1.2 per cent, very low in relative terms. GDP is growing at 3.6 per cent. Unemployment is at 5.2 per cent. That is a
miracle set of numbers for any modern economy, yet those opposite would try and hoodwink the Australian public into believing that the Australian economy is doomed.

Our policies as to small businesses stand for themselves. There is a $6,500 instant asset write-off for small machinery for small businesses, making it easier to invest in more energy efficient equipment, and there is no limit on the number of pieces of equipment for which you can claim this small business asset write-off. It is to the value of $1 billion over 2012-13 coupled with a $5,000 write-off for new vehicle purchases. So there you have great assistance for small businesses.

In terms of reducing carbon emissions, we have an energy efficiency information grants program of $40 million to assist organisations that are working with small businesses to reduce their carbon emissions over time. Take the clean technology program: $1.2 billion of assistance available for small businesses and larger businesses to install new technology to reduce their carbon emissions over time, with $27.5 million for the Small Business Advisory Service, and that program has been extended to continue providing advice for small businesses in the management of their economics, their books and their economies.

We have tried to cut the company tax rates. We tried to last financial year—again, opposed by those opposite as they turned up with the Greens that time and knocked off a reduction in company tax rates for small businesses in this country. As I have listened to those opposition senators who have spoken in this debate I have noted the one thing I did not hear from any of those opposite—and I have just outlined the government's program to assist small business, but this is the one thing that I did not hear from any of the coalition senators—was one policy. I challenge those speaking after me to just announce one policy, to give us one policy that they have got to support small business. Let us have one positive policy that they have to support small business. There are not any, Mr Acting Deputy President; you will not hear any because they do not have any. The only policy of those opposite that we know about is the cutting of $70 billion from the government's budget and that is how they are going to achieve their savings.

Senator Williams, who spoke earlier, was encouraging senators to walk down the streets of local businesses in the country. I do this regularly. In fact, I was in Orange last Friday and I did just that. I walked through Orange and spoke to a number of small businesses. I must say I was following in the footsteps of a coalition representative, because the week before Joe Hockey happened to be in Orange. He was there for a fundraiser with the local member John Cobb and he decided, after making a few outlandish statements similar to those that have been made by the senators opposite today about the effect of the carbon price on small business, that he would go and visit a few small businesses. It was reported in the Central Western Daily:

Mr Hockey accompanied by the member for Calare, John Cobb, spoke with small business owners in the main street. Later at a press conference Mr Hockey said a combination of the carbon and mining taxes and rising electricity prices would invariably impact on the cost of living in this city.

The Central Western Daily then said;

However all the small business owners approached by the Central Western Daily declined to comment on Mr Hockey's view of the carbon tax … They would not support it. They could not even get one of the businesses in Orange to support the view of Joe Hockey. Have a look
at the photo. When he wipes the egg off his face, he has a big frown because he got stood up by the Orange small businesses. *(Time expired)*

**Senator EDWARDS** (South Australia) (16:37): I rise to speak on this matter of public importance: the growing evidence of the effects of the Gillard government's carbon tax on the viability of small business. Obviously, I must make some reference to Senator Thistlethwaite's contribution here today. He talks about his time in Orange. I would ask the senator if he would like to tell me a bit later how many empty shops he passed as he was walking down the street.

**Senator Thistlethwaite**: None actually.

**Senator EDWARDS**: Because retailers in this country are not exactly experiencing a buoyant time. I walk up and down the streets of many country towns and rural centres. In a recent food processing inquiry I walked down the streets of Shepparton in Victoria where there were some 84—and now are I believe some 130—shops vacant due to the fact that there is so much uncertainty in this electorate. Don't go now, Senator Thistlethwaite because I am going to tell you about the policy that we are going to bring to this place when the Australian people get an opportunity to go to the polls about the way in which you have been running this country for the last five to six years. We are going to axe this carbon tax which you have imposed upon the Australian people in what has to be one of the greatest electoral lies in this Federation's history.

Senator Thistlethwaite talked about a slack and below par argument. He said, 'Small business are all out there having an absolute wonderful time.' You, Senator Farrell, would know. The Clare Valley, Barossa Valley, McLaren Vale and Coonawarra great wine regions in South Australia are not having a very good time. There is the high Australian dollar. There is an inability to access capital for an industry which has been in a great deal of need for capital. Unfortunately, now what have they got? Rising energy costs because we have a carbon tax on energy. One of the biggest bottom line items for South Australia's greatest and most famous industry is energy costs going up some 18 per cent in what is a constricted market. These people work in an environment where those they sell to in this country—Coles, Metcash, Woolworths—have already said to people in these industries that they will not accept price rises on their product because of the carbon tax. So what happens?

The producers of wine in South Australia say, 'Okay, we cannot pass it on to our retailer because they have massive concentration of power, so what do we do with it now? What is the next thing? The only piece of elastic in this whole argument is the dear old farmer. Let's go and have a crack at the farmer.' Instead of getting $1,200 or $1,500 or $1,800 a tonne, the farmers are getting $800 or $600 a tonne because the wineries cannot go out of business, so they push back to the easiest possible price mechanism in their cost of goods which is the farmer. Senator Thistlethwaite, these are the small businesses you talk about? I think not.

What about the automotive parts manufacturers? Their energy costs have gone through the roof. In South Australia in my patron seat of Wakefield, where General Motors Holden and a plethora of other firms supply that important industry, an industry which your government over there has seen fit to supply with $220 million, but what compensation did the car parts manufacturers get? Nothing. They are an essential part of the chain but they did not get anything and they have just been hit with this carbon tax. Senator Thistlethwaite, is that one of the
small businesses that are flourishing on this wonderful set of numbers which in any other
time you would have to say are great? No,
there is no confidence out there.

You talk about not being able to operate
where the environment is going to take our
productivity. Your own man, the Climate
Change Commissioner Tim Flannery, has
been on the record to say it might be 500 or
it might be 1,000 years before we notice the
difference. The rest of the world gets that. I
have been fortunate enough to see industry in
Asia in recent times. They are opening coal-
fired and nuclear power stations—a power
generator to the tune of one a week through
those countries. What are they doing? Are
they applying an emissions cost impost on
business? No, they are not.

We stand out like a beacon of silliness in
what was and should have been a big
lesson coming from Copenhagen that the rest of
the world was not prepared to take it on. Yet we
stand out here because of this murky little
alliance with the Greens. I know a lot of you
on the other side sort of choke on this whole
carbon tax thing and all you reasonable ones
over there did not want it. But you had to
take it because that was the cost of
government. It is about trust, Senator Polley,
and you know it is about trust because all the
numbers look okay but business—

Senator Polley: Mr Acting Deputy
President, the comments should be made
through the chair, not directed at senators. I
call on you to explain that to this new
senator.

The ACTING DEPUTY PRESIDENT
(Senator Furner): I remind the senator to
direct his comments through the chair.

Senator EDWARDS: Through you, Mr
Acting Deputy President: you are quite right,
Senator Polley. I will do that. One day I
when I am not so new I will work through
those issues. It has been seven weeks since

the world's biggest carbon tax began under
the Gillard government. The headline on the
front page of today's *Advertiser*—that is our
home daily—reads: 'Our carbon pain: small
business reeling under strain of new tax.' It
states that a national survey of 186 small
firms found that 50 per cent are reporting
carbon tax related price hikes to power bills
and other supplies. But only 33 per cent are
passing their costs onto customers. Do you
know why? It is because they will not let
them. By the way, this paper is not exactly
renowned for being all that friendly to my
side of politics.

Certainly, the paper is putting it out there,
right on the front page, for everybody in my
state to see who is being burdened by the
rising prices in South Australia, which I
outlined before. They include 18 per cent on
energy; 40 per cent on power bills; and, in
the last generic CPI, 5.6 per cent on
groceries. Goodness gracious me! And we
are going to give people $10.10 in
compensation. This is why there is no
confidence. People are not spending their
money in the businesses. They are not
rushing out and buying new cars. They are
not doing that. I think it is somewhat ironic
that we are going to give a $5,000 benefit, an
instant write-off, to business while
Australian industry reels under this carbon
tax. All that will do is make it more
affordable for people to buy imported
vehicles. The unintended consequences of
this tax are profound.

Let us have a look at some of the figures
for South Australia. According to the ANZ
job statistics there were 18 per cent fewer job
adds last month compared to the same time
12 months ago. Last month's statistics are
particularly concerning, given that South
Australia's unemployment rate increased to
6.4 per cent—an increase of 1.2 per cent
from June. Those figures are even worse in
the seat of Wakefield. The member for
Wakefield, Nick Champion, presides over an unemployment rate of 9.4 per cent. In terms of anybody's maths, that is double the average for the number of Australians out of work. And what should we do? In the heavily industrialised area of the northern suburbs of Adelaide, let us put in a handbrake, let us put in a boat anchor, let us call it a carbon price and then let us see how many jobs we can create as a flow-on of that in the industrial area of the northern suburbs of Adelaide.

A Kalangadoo business in the south-east of South Australia, Pete's Fish Farm, produces rainbow trout. It will close in the next 12 months due to soaring electricity costs. His electricity rates jumped from 22.7c to 36.39c. This is just another nail in the coffin. The up-line buyers of his produce now say that they will not take any further price rise. This one is just a mess for Labor.

Senator FAULKNER (New South Wales) (16:48): I welcome the opportunity to participate in this matter of public importance discussion and to speak about the government's Clean Energy Future package. It goes without saying that I support the package. I support it because it will cut pollution and drive investment. It will help ensure that Australian businesses can compete and will remain prosperous into the future.

Of course, carbon pricing is not a tax on small business. Under the carbon price, around 300 of the biggest polluters in Australia will have to pay for their carbon pollution. No small business will have to pay it directly. It is true that when big polluters pass on their costs there may be some indirect cost impact on small businesses, such as higher electricity bills; but, as we know, these are projected to be modest.

Treasury modelling has indicated that the carbon price impact on electricity costs will be 10 per cent. The New South Wales Independent Pricing and Regulatory Tribunal estimates that for most small businesses this will be around $5 a week. This small increase has been accounted for in the carbon price's compensation program. The fact is that electricity prices have been rising for a number of years. Electricity infrastructure established in the postwar period is coming to the end of its life and it needs to be replaced.

We know the average electricity bill rose by at least 48 per cent in the last four years and we know that that price rise has been completely uncompensated. Mr Abbott of course calls this a 'fabrication' and 'an absolute furphy', but the fact remains that investment in infrastructure is the key driver behind electricity prices. Nothing can change that fact, regardless of Mr Abbott's wild claims that it is a fabrication and an absolute furphy.

The state based electricity regulators agree that the costs of replacing poles and wires are pushing up prices of electricity for small businesses. The national Energy Regulator agrees. These are the words I heard on the ABC's *PM* program on 9 August this year:

The National Energy Regulator says consumers are paying more than is necessary because of the amount that has been invested in infrastructure.

Mr Acting Deputy President, do you know who else agrees with that statement? Certainly a number of Liberal Party frontbenchers agree with that statement. One is Mr Turnbull, the member for Wentworth. I know that he has got a lot of form on disagreeing with Mr Abbott—he really disagrees with Mr Abbott any chance he can get. But let me quote what Mr Turnbull said recently:

There is no doubt the bulk of the reason for the 50 per cent, or thereabouts, increase in electricity prices for example in New South Wales over the
last few years has been because of investments in poles and wires …

And as the ABC again reported on 9 August:

… Opposition energy spokesman Ian Macfarlane has admitted state government spending on the poles and wires of electricity networks has pushed power prices higher.

But do you know who else has come to the party, Mr Acting Deputy President? Do you know who else now believes that the carbon price is not the primary driver of electricity prices in this country? It is no other than Mr Abbott himself, the Leader of the Opposition, who just this morning, in a bit of a calamity for the opposition in the Senate—an own goal, given that they had already lodged this matter of public importance—said:

It's true that the carbon tax is not the only factor in the dramatic rise in power prices …

Senator Polley interjecting—

Senator FAULKNER: Well, Senator Polley, at last a chink of light from Mr Abbott. Even Mr Abbott himself now admits that the carbon price is not the only inflationary factor.

Climate change presents a great challenge to our nation; a great challenge to our economy and our environment. I say it is the greatest global challenge we face, but with this challenge does come some opportunity. What the government is doing is creating the conditions in which Australian innovation can thrive, in which Australia's resourcefulness and resilience can be supported and channelled to tackle this enormous challenge, this great challenge in our history. The opposition says that is not our job; that it will not make a difference; that Australia should wait, let others do the innovating, let Asia create the new jobs. But I do not think that is us. I do not think it is really in the Australian spirit to limp in. I believe that the people of Australia have the ideas, the creativity and the courage to lead the world in tackling these great changes that we collectively face. I say that a carbon price will create new opportunities for a whole range of innovative entrepreneurs and small business owners across the whole wide range of industries, including renewable energy, carbon farming and sustainable design, as just some examples. I would urge the opposition to think again and get on board.

The ACTING DEPUTY PRESIDENT (Senator Furner): Order! The time for the discussion has expired.

MINISTERIAL STATEMENTS

Afghanistan

Asbestos Management Review

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (16:58): I present two ministerial statements relating to:

Afghanistan; and

the Asbestos Management Review.

Asbestos Management Review

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:58): by leave—I move:

That the Senate take note of the document.

The Asbestos Management Review ministerial statement of 16 August is welcomed by the opposition. It deals with an issue that has struck the consciousness of many Australians and, regrettably, has struck at many families and individuals in relation to issues of health. I commend the Australian trade union movement, which has taken a very proactive role in relation to dealing with the issues of the hazards of asbestos, and it would be fair to say that without their active campaigning in relation to this area things may not have progressed as far as they currently have with this review and now the government being willing to look at this
review and report in due course. As the minister said on page 12 of his statement: 
Be assured this Government will consider their recommendations carefully.
The coalition, similarly, is looking at the recommendations carefully, but with the benefits of the facilities that governments have available to it, we look forward to the government's response. Indeed, I wrote to Mr Shorten on 16 August indicating that it is the coalition's view that the issues raised in the review should be dealt with in a bipartisan manner, and that offer remains open from the coalition to government.

There is a surprisingly large number of cases of mesothelioma and asbestos related cancer. Often it can strike after 10, 20 or indeed 30 years of exposure. We in Australia have the highest reported per capita incidence of asbestos related disease in the world. Whether that is because we are better at diagnosing it than other countries is not necessarily known. Nevertheless, it is estimated that by 2020 there will be 13,000 cases of mesothelioma, and 40,000 Australians are likely to contract asbestos related cancers. So this is a very serious issue. It still is a serious issue potentially for the do-it-yourself home builder who might rip out certain sheeting from a shed or house without knowing the materials that they might actually be exposing themselves to. That is an issue that needs to be addressed, and I understand it is part and parcel of the government's response to this review as well.

Now that we are fully aware of all the dangers of asbestos and the effects that it has on people exposed to it, it makes good sense for all sides of politics, for unions and employers, to join together to try to overcome the legacy issues that are clearly out there, and those legacy issues may well remain with us as a country for another 30 years. More importantly, as a country we should try to ensure that no new cases or new exposures occur. That is where we as coalition welcome the report. We also welcome the ministerial statement made by Mr Shorten on 16 August and commit the coalition to a bipartisan approach on this important issue.

Question agreed to.

Afghanistan

Senator MILNE (Tasmania—Leader of the Australian Greens) (17:03): by leave—I move:

That the Senate take note of the document.

I rise to take note of the statement by the Minister for Defence Mr Stephen Smith on Afghanistan, and in so doing I wish to formally express my condolences in relation to the three members of the New Zealand Defence Forces in Afghanistan who were killed on Sunday when their vehicle was hit by a roadside bomb just two weeks after two other New Zealanders died in a firefight with insurgents. I also want to formally express my condolences—and I joined the motion recently—to the Australian, Sergeant Blaine Diddams from the Special Air Services Regiment, killed on 2 July during a small arms engagement with insurgents.

It really is time that Australia brought our troops home from Afghanistan. We need to bring them home as quickly as we can and as safely as we can. I note the minister's statements in relation to the progress of the mission in Oruzgan Province but, in spite of the work that the Australian troops have been doing there, Afghanistan remains an extremely dangerous environment, as has been evidenced by the deaths we have witnessed in recent times.

The New Zealand Prime Minister, in response to the appalling tragic news in terms of their own troops, has said that April was the most likely time for the withdrawal.
That is ahead of the time that had previously been cited. The only other option that New Zealand had talked about was September next year, which the Prime Minister of New Zealand cited as being the worst case scenario. He has talked about the fact that they want to have negotiations with their coalition partner and for the New Zealand troops to come home, as I indicated, in April next year.

In the minister's statement in relation to the Australian troops in Afghanistan there is constant reference throughout the statement to increased allocations of funds being made in Afghanistan; but, more worryingly, there is also reference to the consideration of a special forces contribution, notwithstanding it would have to be under an appropriate mandate. But there is also discussion throughout of ongoing involvement by Australian troops in Afghanistan for many years into the foreseeable future. I just want to reiterate that the government is out of step with the Australian community on this issue. Australians want our troops brought home. We want them brought home as safely as possible, as quickly as possible. I think that would enable the Australian funds that are available to support civilian efforts in Afghanistan to continue to provide services to the Afghan population post the engagement of the troops. There is certainly a desperate need for support for the civilian population in Afghanistan. Recent reports from aid organisations have been saying that they are concerned that there will not be sufficient support once the troops are withdrawn to be able to provide the health and education services and so on that are currently provided. The Greens certainly support Australia's engagement in supporting civilian populations, but we would like to see our troops brought home from active engagement in Afghanistan now.

Question agreed to.

DOCUMENTS

Departmental and Agency Contracts

Tabling

The ACTING DEPUTY PRESIDENT (Senator Furner) (17:09): I table responses to resolutions of the Senate listed on today's Order of Business:

Clerk of the Senate (Dr Rosemary Laing) to a resolution of the Senate of 25 June 2012 concerning women's suffrage in Australia.

Tabling

The Clerk: Documents are tabled pursuant to statute. Details will be recorded in the Journals of the Senate and on the Dynamic Red.

Details of the documents also appear at the end of today's Hansard.

COMMITTEES

Parliamentary Joint Committee on Human Rights

Membership

The ACTING DEPUTY PRESIDENT (Senator Furner) (17:09): I have received a letter from a party leader seeking variations to the membership of a committee.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:10): by leave—I move:

That Senator Edwards be discharged from and Senator Smith be appointed to the Parliamentary Joint Committee on Human Rights.

Question agreed to.
BILLS

Fisheries Legislation Amendment Bill (No. 1) 2012

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012

First Reading

Bills received from the House of Representatives.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:11): I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:11): I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

FISHERIES LEGISLATION AMENDMENT BILL (NO.1) 2012


The main amendments will introduce electronic monitoring (e-monitoring) to Australian boats that are authorised to fish under concessions and scientific permits granted by the Commonwealth. E-monitoring can include cameras, global positioning systems and sensors and can generate a range of visual and non-visual information for monitoring fishing and related activities.

Australian fisheries are a valuable natural resource and must be carefully managed to ensure sustainability. Commercial fish catch contributes more than $2 billion per year to the Australian economy. Processors, marketers, retailers, consumers and many allied small businesses benefit directly or indirectly from the industry and increase its contribution to the economy.

As well as protecting the economic value of commercial fish stocks, Australians expect species that are valuable to the economy will not be over-exploited. Accurate scientific data is essential to set catch limits on species to protect their status and maximise the economic returns to Australia. Furthermore, Australians expect that threatened, endangered and protected species, such as sea-lions, dolphins and albatrosses, as well as the marine environment, will be protected from damage. E-monitoring of fishing activities is a cost effective way to check that fishing activities are not damaging these species and habitats.

The Australian Fisheries Management Authority (AFMA) is responsible for managing Commonwealth fisheries, which, in general terms, are waters more than three nautical miles from the Australian coastline. The Commonwealth also manages some fisheries within three nautical miles, under agreements with the states and the Northern Territory.

It is vital that AFMA has access to accurate, comprehensive and timely data on the state of fish stocks, and on the impacts of fishing on both fish stocks and the marine environment, to manage fisheries. AFMA also needs to have accurate data to monitor whether fishing activities meet legal requirements.

E-monitoring will provide better, cheaper data. This has been proven by trials of e-monitoring in several Australian fisheries and overseas, and by implementing e-monitoring on some boats in waters off South Australia. Trials and cost-benefit analyses have shown that the more data that is required for a fishery, the cheaper it will become to use e-monitoring systems, rather than observers. E-monitoring also has the benefit of
generating more comprehensive data, which complements the information we get from observers, vessel monitoring systems and logbook reporting.

The bill formalises e-monitoring and its use as a fisheries management tool. Specifically, the bill gives AFMA an express power to impose e-monitoring obligations on Commonwealth fishing concession and scientific permit holders. In line with AFMA’s legislative objectives, AFMA will be able to require concession and scientific permit holders to monitor not only fishing, but also related activities, such as the impact of fishing on protected species and the broader marine environment.

The bill makes it an offence to hinder the operation of e-monitoring equipment, or to modify, damage, or destroy e-monitoring data. These offences reflect the need to protect the integrity of the e-monitoring scheme and ensure that the data is accurate and complete.

Further to this, the bill adds to the list of matters about which AFMA can issue an evidentiary certificate. The certificates act as prima facie evidence and therefore reduce the time and costs that might otherwise be spent in proving straightforward procedural or administrative matters in court.

Other amendments in the bill will make it clear that fishing concession holders are responsible for the actions of the masters and crew of their boats; will enable the AFMA to waive levies payable for statutory fishing rights that are surrendered; and will make provisions in the legislation about implementing fisheries closures clearer, more consistent and simpler to administer.

The bill will help to hold fishing concession or permit holders responsible for the actions of the masters or crew employed on their boats. Currently, it is too easy for corporations or other persons, such as those that hold concessions or permits for fishing, to claim they are not responsible for the actions of their directors, employees or agents. The amendments will place more responsibility on concession or permit holders to take reasonable precautions and exercise due diligence to ensure that the master and crew comply with their legal obligations.

The bill will allow AFMA to waive a levy payable in respect of a statutory fishing right if the right is surrendered without any fishing having taken place under it. This is already allowed in respect of fishing permits. In this situation, the holder has not and will not benefit from the statutory fishing right in the period to which the levy applies and should therefore be able to surrender it without payment.

The bill will also ensure that fishers are always notified in writing of decisions to close a fishery or part of a fishery to fishing, or to change or revoke such decisions. It will also clarify how a ‘part of a fishery’ can be defined; for example, by reference to a place, a time or a type or quantity of fishing gear. It will also allow AFMA to make emergency fishery closures without prior consultation, although, because they are legislative instruments, emergency closure directions will still be subject to parliamentary scrutiny.

The amendments in this bill will help ensure the sustainability of Australia’s fisheries and will provide greater certainty for fishers and the community that Australia’s fisheries are being very well managed.

I commend this bill to the Senate.

HEALTH INSURANCE AMENDMENT (EXTENDED MEDICARE SAFETY NET) BILL 2012

More than ever before, we are making the most of every precious health dollar.

We are being guided by the evidence and investing wisely.

We are finding efficiencies and returning the benefits to patients.

Where the evidence said things weren’t working, the Government’s done things differently. And the bill before the house is part of this. We’ve looked at the evidence on how the Extended Medicare Safety Net works, and it says we need to close a loophole to protect the integrity of the system.

This bill amends the Health Insurance Act 1973 to allow the application of Extended Medicare Safety Net benefit caps to apply where more than one Medicare service is performed on
the same patient on the same occasion and is deemed to be 'one professional service'.

This bill makes an amendment to the Extended Medicare Safety Net program that was introduced through the Health Legislation Amendment (Medicare) Act 2004.

The Extended Medicare Safety Net provides individuals and families with an additional rebate for their out-of-hospital Medicare services once an annual threshold of out-of-pocket costs for out-of-hospital services is reached.

Out-of-hospital services include GP and specialist attendances and services provided in private clinics and private emergency departments.

Once the relevant annual threshold has been met, Medicare will pay for 80 per cent of any future out-of-pocket costs for Medicare eligible out-of-hospital services for the remainder of the calendar year, except for a number of services where there is an upper limit on the benefit payable through the Extended Medicare Safety Net, known as the 'EMSN benefit cap'.

The Extended Medicare Safety Net program was amended through the Health Legislation Amendment (Extended Medicare Safety Net) Bill 2009, which amended the Health Insurance Act 1973 to enable the Minister to determine, by legislative instrument, the maximum benefit payable under the Extended Medicare Safety Net for a specified Medicare Benefits Schedule (MBS) item.

The items that carry an EMSN benefit cap and the cap amount for each item is set out in the Health Insurance (Extended Medicare Safety Net) Determination 2009. The Health Insurance Act 1973 specifies that a determination made by the Minister to place or amend an existing EMSN benefit cap must be approved by the resolution of each House of Parliament before it can become effective.

Since 1 January 2010, EMSN benefit caps have applied to selected MBS items. These include assisted reproductive technology services, obstetrics services, pregnancy related ultrasounds, cataract surgery, hair transplantation and varicose vein surgery. A further 16 items have since been introduced into the MBS with EMSN benefit caps. Caps were placed on these items to maintain consistency with the existing capped items, or based on recommendations made by the Medicare Services Advisory Committee regarding cost-effectiveness.

The current provisions of the Health Insurance Act 1973 do not allow EMSN benefit caps to apply where more than one item is claimed by the same patient on the same occasion and the items are deemed to constitute one professional service. An example of this occurs under Section 15 of the Health Insurance Act 1973 which describes the Multiple Operations Rule.

There are, of course, many instances where claiming for multiple operations on the same occasion is appropriate. For instance, patients can benefit from having more than one operation at the same time because they do not need to have second anaesthetic. An example is where a patient is having several skin cancers removed by surgical excision. Another is where varicose vein surgery is performed on both legs.

Under the Multiple Operations Rule there is a reduction in the amount of Medicare benefit payable where two or more operations are performed on the same patient on the same occasion, to recognise the efficiencies gained when several procedures are provided on the one occasion. Under legislation, where the Multiple Operations Rule applies, the operations are deemed to be one professional service, rather than a collection of MBS items. However, EMSN benefit caps can only apply to an MBS item and not a professional service.

This means that under the current legislation, where doctors perform multiple procedures on the same patient on the same occasion, any EMSN benefit caps that apply to the individual MBS items that are performed within the operation do not apply, and there is no limit to the Extended Medicare Safety Net benefits that are payable for that professional service. This is not what was originally intended when Parliament approved selected MBS items to have an EMSN benefit cap.

As announced in the 2012-13 Budget, it is proposed that EMSN benefit caps be applied to a further 39 selected MBS items and all consultation services from 1 November 2012.
These items have been selected to reduce the Government’s exposure to subsidising excessive fee inflation by some doctors, or where there is a risk that practitioners may shift fees on to uncapped items. Thirty-five of the items selected to be capped on 1 November 2012 fall under the definition of an operation for the purposes of the Multiple Operations Rule and therefore may be deemed to constitute 'one professional service'.

Currently a doctor can avoid EMSN benefit caps by performing other operations at the same time. If the Government cannot be certain that EMSN benefit caps will apply to selected items, it may not be in a position to introduce funding for important new high cost technologies.

This bill will ensure that where items are deemed to constitute 'one professional service' and all of the original MBS items that are part of that service are capped, the EMSN benefit caps will apply. This will ensure that the full savings announced in the Budget are realised.

Other provisions – family registration for the EMSN

This bill also includes the provision to reduce the administrative burden on patients by removing the requirement for families to confirm the members of their family for Extended Medicare Safety Net purposes in writing. Currently, when families are nearing the Extended Medicare Safety Net threshold, the Department of Human Services – Medicare, contacts the person who registered the family and asks them to confirm in writing the members of their family to ensure that the correct out-of-pocket costs have been attributed to the family Extended Medicare Safety Net threshold. Providing confirmation in writing increases the time families must wait to receive their Extended Medicare Safety Net benefits.

This amendment allows the Chief Executive of Medicare to determine the appropriate manner in which this information is provided and will allow families to confirm their family composition more quickly and easily. Patients will still be required to confirm their identity before this confirmation can take place to ensure the information provided is accurate.

This bill will allow Government to responsibly manage expenditure on Extended Medicare Safety Net and reduce the administrative burden on families. This is important for supporting the sustainability of the Extended Medicare Safety Net so singles and families can continue to receive additional assistance with their out-of-pocket costs.

I commend this bill to the Senate.

Debate adjourned.

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

**Maritime Powers Bill 2012**

**Maritime Powers (Consequential Amendments) Bill 2012**

**First Reading**

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:12): I move:

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

Question agreed to.

Bills read a first time.

**Second Reading**

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:12): I move:

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

Question agreed to.

Bills read a first time.

**The speech read as follows—**

**MARITIME POWERS BILL 2012**

The maritime domain poses particular challenges to the effective enforcement of laws. Enforcement operations in maritime areas frequently occur in remote locations, isolated
from the support normally available to land-based operations and constrained by the practicalities involved in sea-based work.

Commonwealth Officers across a range of portfolios work tirelessly on the community's behalf to enforce Australia's maritime laws. This work often takes place in treacherous conditions. We owe it to these hard working Australians to provide a legal framework that fully supports their commitment by being tailored to the conditions and recognising the inherent difficulties of the environment.

Under the current legislative structure, operational agencies use powers contained in at least 35 separate Commonwealth Acts. This structure is inefficient and can lead to operational difficulties for the primary on-water enforcement agencies.

The Government has undertaken an extensive review of existing arrangements. The product of that review is the Maritime Powers Bill. The Bill provides smarter and simpler approach to maritime enforcement through a single maritime enforcement law. This single law consolidates and harmonises the Commonwealth's existing maritime enforcement regime. The powers contained in the Bill are modelled on powers currently available to operational agencies.

Outline of Bill

The Bill contains a comprehensive framework for enforcing Australia's laws at sea.

The Bill establishes a system of authorisations under which a maritime officer may exercise enforcement powers in the maritime domain.

In addition to providing the necessary operational flexibility, this system of authorisations puts in place a range of safeguards to make sure maritime enforcement powers are authorised and exercised appropriately and for a proper purpose.

A key safeguard is the requirement for the exercise of powers to be authorised on specific grounds by a senior maritime officer or member of the Australian Federal Police.

This provides clarity around who must make decisions to take enforcement action and ensures appropriate oversight in relation to the exercise of powers.

The types of authorisations available under the Bill will cover the full variety of situations which arise in the maritime environment, including fishing, customs and migration matters.

Once an authorisation is in force, a maritime officer generally has access to the full suite of powers set out in the Bill.

The powers contained in the Bill are based on powers currently available to operational agencies and under the Bill the role and functions of these agencies will not change.

The powers include searching things and people, seizing and retaining things, boarding of vessels and requiring persons to cease conduct that contravenes Australian law.

Enforcement powers under the Bill will be exercised by officers of the Australian Defence Force, Customs, the Australian Federal Police, and other persons appointed to conduct enforcement and monitoring activities in the maritime environment.

Conclusion

The Australian Government is committed to ensuring that Australia's laws are monitored and enforced in the maritime domain. The unique aspects of the maritime environment merit a tailored approach to maritime powers, helping to ensure flexibility in their exercise and to assist maritime officers to deal with quickly changing circumstances and often difficult and dangerous situations.

As the Leader of the House noted recently, we are getting on with the business of government. These reforms are just one aspect of the Government's work to provide Australia with a modern legal framework.

This Bill will streamline and modernise Australia's legal framework for maritime enforcement and thereby support the hard working Australians who work on our behalf to uphold Australia's maritime laws.

MARITIME POWERS (CONSEQUENTIAL AMENDMENTS) BILL 2012

The Maritime Powers Bill 2012 and the Maritime Powers (Consequential Amendments) Bill 2012 provides a smarter and simpler
approach to maritime enforcement through streamlining the framework for use by our on-water enforcement agencies.

Where existing maritime enforcement powers overlap with powers in the Maritime Powers Bill, this Bill will reduce duplication.

The Bill has been the subject of an extensive consultation process with agencies to ensure that the consolidation exercise maintains current operational power for agencies.

Debate adjourned.

Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012

Second Reading

Senator MADIGAN (Victoria) (17:13): Since 1989 the ATO has obtained many billions of dollars of additional revenue for Australia as a consequence of legislation designed to make multinational companies pay their fair share of tax for the revenue and profits they earn in the Australian economy.

This retrospective amendment is intended to ensure that companies are not able to avoid their taxation obligations. In particular, transfer pricing between affiliates makes a joke out of our company tax rate of 30 per cent, which has been the subject of various promises by the major parties. The fact is that company tax falls heavily upon small- and medium-size Australian business and can be avoided through double tax treaties by major multinational companies.

The Age and the ABC reported some years ago about the Japanese strategy in the purchase of cattle feedlots. Basically, once they had purchased the feed lots they sold cattle from them at a loss to Japanese trading companies, who then resold to associated companies in Japan for sale to retailers. The profit was taken in Japan instead of Australia. This meant that Australian meat producers could not compete in export markets to Japan. Then there is the example of the closure of a major Japanese store in Melbourne, Daimaru, after 10 years of operation in Australia where they sourced all of their goods from their parent company. They made a loss every year and never paid tax, I believe. The closure of Nissan occurred with very significant tax losses, which again enabled Nissan to import motor vehicles and components and offset any profits against the losses that had occurred during the manufacturing period.

Whenever any company that is owned by a multinational parent shifts from local manufacture to imports, it creates an opportunity to manipulate transfer prices to maximise the taxation position of the corporation or another affiliate with a favourable taxation position. Multinational affiliates always have the opportunity to use double tax treaty rates of 10 per cent and 15 per cent instead of paying tax on profits of 30 per cent. This is done by simply characterising profits as payments for the purchase of intellectual property or payment of interest on loans rather than the remittance of profits to the parent company. This was a major reason for Ireland's manufacturing resurgence, which has now utterly collapsed. Multinational companies, particularly American companies, sold intellectual property such as manufacturing know-how, brand names and marketing systems to the Irish affiliate and then paid tax to Ireland at 12 per cent. I could go on and on. No matter what others might suggest, the world of taxation is not a level playing field and what we should remember is that Australia is home to 10,000-odd multinational affiliates.

Is the legislation detrimental to Australian manufacturing? I know some suggest it is, but I believe it is more detrimental to our manufacturers not to introduce these changes. After all, Australian manufacturers do not have the privilege of avoiding tax all over the world. That is what price transfer means. Retrospective legislation is normally
a very bad idea. However, when there are significant threats to the national revenue and budgets, such legislation is justifiable. The best example is the 'bottom of the harbour' legislation, which basically involved getting rid of accounting information, often thrown into the bottom of Sydney Harbour, and then giving the ATO insufficient information to mount a case. That event resulted in massive retrospective claims for taxation and the jailing of some accountants. Transfer pricing, if allowed to proceed without challenge from the ATO, would actually involve a much greater sum of revenue loss than occurred in the case of the 'bottom of the harbour' tax schemes. The attitude at that time was that retrospective legislation is bad in general except when it prevents the development of a major hole in the national revenue that was completely unintended.

This legislation follows a substantial legal case which the ATO lost and which requires the government to introduce legislation designed to ensure that the ATO follows traditional transfer pricing methodologies introduced after some 30 years of discussion and debate by the member countries of the OECD. It is good that we are establishing legal precedents for transfer pricing that create certainty for companies, for the ATO and for the Australian taxation revenue base. The legislation is an important element in Australia's armoury of taxation measures designed to ensure that our taxation system is competitive, fair and equitable.

This legislation is valuable because it ensures Australian businesses that are subsidiaries and affiliates of multinational companies know where they stand. We need this certainty if we are to be a major player in the world economy that does not disadvantage its own manufacturers and their service providers in what is probably the most important area of commercial taxation law. All around the world multinational companies gain a competitive advantage against local manufacture through transfer pricing. That is why the OECD and all the other major manufacturing countries have common rules against it. All the government is trying to do is to fix up a hole in the legislation that has been exposed by a Victorian Supreme Court decision. For this reason I will be supporting the legislation.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (17:19): I thank Senator Madigan for his contribution and support, and I thank all of those other senators who have spoken in respect of the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012. This bill ensures that Australia has an effective and internationally consistent transfer pricing rule. It confirms that transfer pricing rules contained in Australia's tax treaties and incorporated into our domestic law provide assessment and authority in treaty cases. These changes apply to income years commencing on or after 1 July 2004, that being the first income year following the parliament's last statement demonstrating the longstanding legislative intent that the law operate in this way. We have discussed the considerable evidence across the decades that parliament intended the treaty transfer pricing rules to operate in addition to our unilateral transfer pricing rules since at least 1982.

The amendments contained in this bill are also entirely consistent with the Commissioner of Taxation's long-held and public expressed view of the law. I want to emphasise that the potential impact on taxpayers has been very carefully considered. Importantly, these provisions can only apply where a tax treaty is applicable and therefore a party affected by these measures will be able to access the treaty mechanisms designed to relieve any double
taxation that could arise. Settled cases will not be opened as a result of these amendments, and the transitional rules will ensure that the penalty provisions of the income tax law apply as though this bill were never enacted. The government has engaged extensively with the business community in relation to this measure, and the measure is not wholly supported by multinationals and their advisers. Given that this is a robust integrity measure, this is not altogether unexpected.

That said, however, the bill has greatly benefited from the inclusion of some important features following the consultation by the minister. In particular, the bill clarifies the interaction between the transfer pricing and thin capitalisation rules. The bill also provides direct access to OECD guidance material in interpreting the rules, avoiding the need to get costly expert advice on whether such guidance may be used. This reflects the best international thinking on transfer pricing.

Other provisions of the bill support these key features and ensure the provisions work and interact appropriately with the rest of the income tax law. I therefore commend the bill to the Senate.

Question agreed to.

Bill read second time.

In Committee

Bill—by leave—taken as a whole.

Senator CORMANN (Western Australia) (17:23): The opposition opposes item 12 in schedule 1 in the following terms:

(2) Schedule 1, item 12, page 13 (line 16) to page 14 (line 29), TO BE OPPOSED.

This goes to the whole issue of the retrospectivity of this legislation. There is one reason that the government is moving this legislation here in the Senate today, and that is it is concerned that the Australian Tax Office has acted contrary to the legislation passed by this parliament. The government is concerned that the Australian Tax Office has collected revenue which it was not entitled to collect according to the legislation passed by this parliament in years gone by.

The government's solution to this is to change tax laws retrospectively, going back all the way to 1 July 2004. That is very bad practice for the range of reasons I outlined in my speech in the second reading debate. Fundamentally, taxpayers cannot be expected to have complied with tax laws that did not exist at the time certain decisions were made that are relevant to the tax liabilities those taxpayers are exposed to. It is very important for there to be certainty and predictability in the way our tax laws are administered on a day-to-day basis. Taxpayers have to be able to expect that they are only required to comply with the laws as they stand at the time they make certain decisions that will have a tax consequence for them. If we can make changes eight years after a particular investment decision has been made, if a government can make a decision in 2012 which will essentially increase the tax liability in relation to decisions made in 2004, 2005 and 2006, where will it end?

At the end of the day, what we are saying is that it does not matter how wrong the tax commissioner gets it; the tax commissioner can have whatever extensive interpretation of the tax laws that he likes and he can manifestly stretch as far as he wants. But instead of saying, 'No, the tax commissioner should actually administer the law the way it was passed by this parliament,' and instead of saying, 'The administration of the laws passed by this parliament should be consistent with the intent of what was passed through this parliament,' all we are going to do here in this parliament every time the tax commissioner—or any other public servant
for that matter—decides to go beyond what the legislation passed by this parliament intended is to fix these things retrospectively. We are going to make sure that the legislation plays catch-up with whatever decisions a particular public servant has decided to make on a particular day.

That is not the way for our legislative processes to operate. That is why we have said, very constructively, that if the government's intention is for the tax laws in relation to transfer pricing to operate consistent with what is in this legislation and what should happen appropriately, then that change should be a prospective change. It should not be a change that is applied going back eight years. Now, the discussion has been had. We have had the debate here in the Senate and, if it is the view of the parliament as a whole that the tax laws in relation to transfer pricing should be changed to reflect what is in this legislation, then everybody now understands what the circumstances are going to be moving forward from here. But people back in 2004 and back in 2005 could not possibly know that the Senate on 20 August 2012 would be having a debate where it wanted to change the tax laws all the way back to 2004 in relation to these sorts of matters. It is, quite frankly, a very bad way of progressing tax laws in this country.

Of course there is only one reason this is happening and that is the government are short of cash. They are desperately casting around for more cash wherever they can get hold of it. Of course, they do not want to lose out on any cash even if they are not entitled to it, consistent with the laws as they existed at the time. This is why we are having tax grab after tax grab, and we are now having retrospective tax grab after retrospective tax grab.

As I said in my second reading remarks, the retrospective tax changes are bad, as a matter of principle, because they have significant implications for bargains that were struck between taxpayers who made every effort to comply with the prevailing law as it existed at the time a particular agreement was entered into. They can expose taxpayers to penalties in circumstances where taxpayers could not possibly have taken steps at the earlier time to mitigate the potential for penalties to be imposed, and they may change a taxpayer's tax profile, which in turn can materially impact the financial viability of investment decisions and the pricing of those decisions. And, of course, they do increase Australia's level of perceived sovereign risk.

Every government and every parliament has the prerogative of changing tax laws. We can have political debates about the merits or otherwise. This is a very high-taxing government. We know that. We know that the Labor Party cannot manage money. We know that they are always short of cash. We know that they will always come up with one new ad hoc tax after the other. But, ultimately, these are matters for the democratic process to sort out. We have elections, and hopefully at the next election people will vote for a low-taxing, low-spending, fiscally responsible government. We hope that is going turn out for the betterment of all Australians. But that is to legislate for tax changes moving forward. When you have a government that retrospectively wants to put its hand into people's pockets—

*Senator Farrell interjecting—*

*Senator CORMANN:* Senator Farrell is interjecting and has mentioned the GST. There could not have been more warning in relation to the GST. Whatever your views on the merits or otherwise, the GST was
fundamental tax reform. Not only was it there for all to see before it was implemented but it was also announced before the then government went to an election. That was a government that felt so strongly about the merits of tax reform that it put it to the Australian people before the election—which reminds me of recent events in which the current Prime Minister, who makes a habit of this, went to the last election explicitly ruling out that there would be a carbon tax. 'There will be no carbon tax under the government I lead,' she said, only to turn around after the election and impose one on the unsuspecting Australian families and small businesses of Australia who will be facing increasing cost-of-living pressures and an increasing cost of doing business as a result.

But I am getting distracted by the interjections of Senator Farrell on behalf of the government. The fundamental point is this: Senator Farrell talks about the GST. The GST, whatever your views on the merits or otherwise of this substantial policy, was a best practice model of how to progress a piece of legislation in an accountable and democratically transparent way.

On behalf of the coalition I fundamentally object to this particular part of the legislation. The government is telling us: 'The tax office got it wrong in the way it has interpreted the tax laws in our land. The tax office, we believe, has erred in the way it has interpreted tax laws, and so we have, we believe, collected more revenue than we should have. The tax office has collected more revenue from Australian and other businesses than it should have, but rather than change the practice of the tax office we're going to say the legislation has got to be changed retrospectively.' That is not an appropriate way for government to act. If you want to encourage free enterprise, and if you want to encourage people to take risks, make investment decisions, invest in Australia, create jobs, create business opportunities and, essentially, help us grow our economy and create economic prosperity around Australia, then this is exactly the wrong way to go about it. Not only does this government put its hands into people's pockets via multibillion dollar new tax grabs moving forward, like the carbon tax, but it also puts its hands into people's pockets for events going back as far as 1 July 2004.

The vote will be very interesting. I and the coalition will be voting against the printing of schedule 1, item 12, page 13, line 16 to page 14, line 29, because we do not want that particular part of the bill to stand as printed. I flag that, should coalition amendment (2) be unsuccessful, amendment (1) will become redundant and I will seek to proceed with amendment (3). With those few words—unless Senator Farrell wants to provide further provocations on behalf of the government—I conclude my remarks.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (17:33): I cannot resist that invitation. Very briefly, from what I understand, Senator Cormann's position is that the opposition does not disagree with the cross-border transfer pricing position that existed as it went back to 1982, and so for the vast bulk of the period of the Howard government. Nor does the opposition disagree with it going forward into the future. The dispute here is really about the question of the retrospectivity of this particular piece of legislation.

Senator Cormann is right: I did intervene to mention the GST. This was not to talk about the GST generally but to talk about the fact that in the Tax Laws Amendment (2006 Measures No. 3) Act 2006 the previous Howard government did, in fact, make six years of retrospectivity with respect to a
particular aspect of the introduction of the GST. So this is not the first time a government—Liberal or Labor—has introduced retrospective legislation. It is done very much in the exception, but the government believes that this is one of those rare cases where it is appropriate in these circumstances to apply a retrospective approach.

Senator Cormann: Two in two months.

Senator FARRELL: That is still rare, Senator Cormann. Given the vast number of bills that this government has introduced and passed since it came to power in 2007, that continues to be a very rare event. I indicate that the government does not support the amendment and will be voting in favour of the resolution.

The TEMPORARY CHAIRMAN (Senator Furner): The question is that item 12 in schedule 1 stand as printed.

Question agreed to.

Senator CORMANN (Western Australia) (17:36): I move:

(3) Schedule 1, item 14, page 15 (lines 6 to 8), omit the item, substitute:

14 Application

The amendments made by this Schedule apply to income years starting on or after the Act commences.

I refer to the same argument that I put in talking to amendment (2), which is that the change to the taxation arrangements in relation to cross-border transfer pricing should be prospective only. Of course this amendment—which would amend schedule 1, item 14, page 15 (lines 6 to 8)—seeks to omit that particular item and substitute an application arrangement where the amendments made by this schedule apply to income years starting on or after the date this act commences. We think it is good and appropriate practice for governments and parliaments to make changes to tax laws that are prospective and not retrospective, in particular in these sorts of areas that are sensitive to Australia’s capacity to attract overseas investment. Attracting overseas investment is very important for us to continue to develop our economy to ensure we reach our full potential moving forward. With those few words, I commend this particular amendment to the Senate.

The TEMPORARY CHAIRMAN (Senator Mark Bishop): The question is that amendment (3) on sheet 7261 be agreed to.

Question negatived.

Senator CORMANN (Western Australia) (17:38): In order to assist the Senate, I have not been calling for divisions and I will not be calling for a division on the substantive bill either. I place on the record, given that those very sensible and constructive amendments that the coalition has moved in relation to this bill were unsuccessful, the coalition will be voting against this bill. But to assist the Senate, I will not be calling a division.

The TEMPORARY CHAIRMAN: Thank you for that advice, Senator Cormann.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (17:39): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010

Second Reading

Debate resumed on the motion:
That this bill be now read a second time.

_Senator BRANDIS_ (Queensland—Deputy Leader of the Opposition in the Senate) (17:42): The coalition supports the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 as another positive step in encouraging the action initiated by the Howard government. Australia was one of the original signatories to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. In 1998, the Australian parliament gave effect to the mine ban convention which required the Australian Defence Force to destroy Australia's stockpile of antipersonnel landmines, and the Howard government took this step several years before the necessary deadline. The Howard government also supported these initiatives with funding of $100 million over 10 years. This was backed up in 2005 with a further $75 million over five years.

The coalition believes that the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 is another positive step in continuing the action initiated by the Howard government. We welcome the fact that the Australian government was among the initial signatories to the convention on cluster munitions in Oslo in 2008. On 18 November 2009, the member for Curtin, the Hon. Julie Bishop, stated the coalition's support for the prompt ratification of the convention. The convention, she said:

… will expand international efforts to reduce the harmful impacts of explosives on civilians. It will also help promote the development of those countries worst affected, many of which are in our region. … It is a sad reality that the region in which Australia finds itself has fallen victim to the scourge of landmines and unexploded ordnance. Areas that could be used for agricultural or commercial activity, for example, continue to lie unused.

The coalition is pleased to note that the current bill addresses the concerns raised by the Department of Defence and the recommendations of the Senate Standing Committee on Foreign Affairs, Defence and Trade in its inquiry into the prohibition of cluster munitions. That inquiry took place in 2006.

It is crucial to our long-term national security interests and to the safety of Australian Defence Force personnel that we maintain the right to retain or acquire a limited number of munitions for the development of and training in cluster munition detection, clearance or destruction techniques, or the development of cluster munition countermeasures. Importantly, the bill also protects Australia's right to engage in joint military operations with non-state parties.

The coalition supported this bill in the House of Representatives. We do not plan to seek amendments in the Senate. The Senate Foreign Affairs, Defence and Trade Legislation Committee recommended that the bill be passed. The government's submission to the inquiry stated that the bill was consistent with the earlier recommendations of the Joint Standing Committee on Treaties.

I note that the Greens propose amendments to the bill in the belief that the bill does not reflect the spirit of the convention. In 2006, the Greens and Democrats co-sponsored the Cluster Munitions (Prohibition) Bill 2006 to prevent ADF members from deploying cluster munitions. It was referred to the Senate Standing Committee on Foreign Affairs, Defence and Trade, which recommended that the bill not be passed—that is, the Greens-Democrat bill. In its submission to
the committee concerning that bill, the Department of Defence noted, 'If enacted, the Greens bill will put Australia at a serious military disadvantage in future conflicts which would be detrimental to our national interest.'

It is the coalition's view that the bill now before the Senate addresses these concerns and that the purpose of the present bill would be substantially thwarted were the Greens amendments to be passed. For these reasons, the coalition support the bill and will oppose the proposed amendments.

**Senator LUDLAM** (Western Australia) (17:46): The Greens do not support this deceptive, misguided and outright offensive bill—the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010. I will address some of the comments that Senator Brandis has just made. It is interesting that, by way of supporting his argument about why the Senate should not look at the Greens amendments, he spoke of a bill that is not even before the parliament. When we get to the committee stage, I will address the detailed arguments and the reasons I believe this bill should pass this chamber if it is amended. But, in its present form, we are better off without the bill.

Considering the role that the Australian government has played, or the role it said it has played, in supporting the outlawing of these hideous weapons, that is a sad thing to have to come in here and say—that not just Australia but the global community and those who have worked for a decade to bring this convention into force are now saying that they would rather Australia did not ratify it because of the example this sets. This is not a point of view on a bill I strongly oppose, so that senators from other parties will understand why it is that we oppose the bill. In this instance, that is not why I am going to bother. I know very well that senators from both the old parties also deeply oppose this bill. One of the reasons that it has taken so long to bring this bill to the chamber is that there was substantial dissent both from the coalition and from the Labor caucus about what they had been hearing about the bill and its inherent flaws. So I do not feel as though I need to explain to other senators why we should not be voting for this bill in its present form. Nonetheless, I am going to do so to place it on the record so that others looking back at the *Hansard* in years to come will understand that this chamber voted for this bill in the full knowledge that it is badly flawed. Human Rights Watch and the Harvard Law School said:

The Bill creates a defense for many acts during such operations that on their face violate the convention.

Not only does the drafting of this bill violate the spirit of the convention; it violates its letter. In fact, the Australian government is attempting to pass legislation that would bring us into accord with the convention—and no doubt there will be a press release from the minister either very late tonight or sometime tomorrow morning, depending on when this bill passes, cheerleading the government's accession to the convention. The government should not be too surprised at the total absence of applause from the arms control community and those who have been shepherding and watch-dogging this convention from the day it was conceived to these sorry events. Former Prime Minister Fraser says:

... the government has drafted legislation scattered with alarming loopholes that, to my mind, directly undermine the spirit and intention of the convention.
General Peter Gration, former Chief of the Defence Force, said:

… the wording used in our legislation goes well beyond [that required for interoperability with US] and in fact it doesn't follow a couple of the key things that the convention is about …

That is a former CDF—someone who cares deeply about Australia's military capabilities.

Paul Barratt, former secretary of the defence department, said:

Legislation in these terms is clearly at odds with a convention whose central purpose is to prevent the use of cluster munitions …

Mr Acting Deputy President Bishop, you guided the Senate Foreign Affairs, Defence and Trade Legislation Committee, if I am not wrong, in its examination of this bill, which I guess was more than a year ago now. It was referred to that committee because the Scrutiny of Bills Committee said the legislation in its present form is actually strikingly at odds with what the Joint Standing Committee on Treaties had to come up with. Although we will be alone, I suspect, later tonight or tomorrow when this bill is put to the vote in terms of numbers in the chamber—I have not consulted with the crossbench—we are not alone in terms of the numbers of people whose hopes have been violated by the government choosing to bring this bill back in this unamended form.

Why is this important? I believe many senators, apart from me and some of my Greens colleagues, had the good fortune to meet Soraj Ghulam Habib, an Afghan boy who lost both his legs and part of one of his hands as a child and was left for dead. His cousin was killed in the same blast. His cousin was killed in the same blast. These weapons are indiscriminate. If you wanted to design a weapon that targeted civilian children, I am not sure you could come up with something better than these devices. When senators stand up and address this bill, they will claim a horror equal to mine in the fact that these weapons are deployed, and I suspect they will claim that they want to see the elimination of these weapons. Indeed that is why Australia is signing up to the convention.

The fact is that we are signing up to a convention in a way that fundamentally sabotages its objectives. It is not just me saying that. There are voices from here in Australia and around the world who have followed this convention from its initial drafting to today and they are saying, 'This is the wrong way. We must go back.' Soraj was left for dead. His cousin was dead. He was taken to the morgue where an uncle realised he was alive and pulled him out of there. He is now one of the world's foremost advocates for this convention, for the elimination of these horrific weapons from the arsenals of countries around the world.

Australia has a good record on this account in that it experimented with the use of cluster weapons quite some time ago. I believe it was not even a documented decision that originated from a policy level but, in fact, that the ADF did not want them. They had no use for weapons of this kind—indiscriminate weapons—that lie on the battlefield long after the conflict or the front has passed and continue to maim and kill people. So the ADF gave them up. We have never deployed them in our arsenal to any great degree. On the other hand, our great and powerful ally, the United States, takes the opposite view and has refused to become a party to the convention. That is where one of the great and most problematic issues around this legislation as currently drafted arises.

The bill, as it is drafted, allows Australian forces to store, transport and assist in the use of cluster weapons. It does not allow outlaw direct and indirect investment in companies producing these weapons. These are not
accidental loopholes or accidental flaws. Of course they are not.

We are one of 108 countries that signed the 2008 convention on cluster munitions. A large number of other countries also signed on the same day. We know the idea is going to sound, perhaps, a little extreme that Australia would simply adopt the negotiating tactics of a party that not only deployed cluster weapons but was refusing to sign onto the convention and was insisting that it will continue to deploy these weapons because, in its view, they still had some residual utility. Of course, I am referring to the United States.

Heaven forbid that Australia, as a party to the convention, would simply do the United States government's bidding on its way through the negotiations. I particularly refer to the drafting of article 21. We know that this is not some outlandish conspiracy theory. We know word for word exactly what the Australian government was up to and we know this because of the cable releases that were put into the public domain by the Wikileaks organisation. It is ironic that today—18 hours after its editor-in-chief, Julian Assange, has been granted political asylum and is speaking from the window of an embassy in London about his desire to call the dogs off on whistleblowers around the world—we are reminded of exactly why this organisation and those like it are so important, not just the Wikileaks organisation, of course, but also those mainstream media organisations that took those releases, understood their importance and ran them on the front pages of the world's newspapers.

We know, for example, through cable traffic between our US embassy in Washington and here in Canberra that Australia was doing just that. We were simply running sock-puppet arguments on behalf of the United States government, seeking to undermine the very objectives of the treaty. It was not just us alone; we worked with a number of other like-minded countries seeking to do the bidding of the United States government to effectively allow a number of key flaws in the bill. As far as these concern Australia, the two major ones are interoperability—that is, how do we participate and collaborate with United States military operations when we are a party to the convention and they are not?—and what the boundaries are.

The Australian Greens support the notion that, while we may in the future, and certainly have on many occasions in the past, seek to conduct joint operations with the US government, it should not in itself preclude us from joining the treaty. It should be possible to come up with a form of language that says we can participate in joint operations, as we are in Afghanistan, but we will have nothing to do with the deployment or use of cluster weapons. Therefore, the principle of interoperability is sound. It is drafted into the treaty in language that is reasonably sound and was tortuously negotiated and now it has been dramatically undermined and turned 180 degrees in the wrong direction by the drafting in this bill.

In this case, Wikileaks again showed why we need organisations like this. This kind of sick behaviour does not go on behind closed doors but is exposed to public scrutiny so that we know that, while government spokespeople on the one hand are saying, 'We are all for it; let's get signed up; let's make sure that these weapons are banned', on the other hand we are negotiating as though we deployed these things ourselves.

We were not successful in undermining the language in the treaty. In fact, that is not how the negotiations turned out at all. The convention is a ban, and the language is
universal—it is a ban. We have positive obligations as a signatory to the convention to encourage others to forgo the use of these horrific weapons as well. So Australia in that instance was unsuccessful in watering down the terms of the convention that it is now seeking to ratify. The fallback position, obviously, is to embed in domestic legislation precisely the grotesque loopholes that we were trying to write into the convention itself. We did not succeed in undermining the convention on behalf of all the states' parties that wanted to sign up the vast majority of the world's people. Instead, we have this rather grubby little attempt acting at drafting it into the domestic legislation. It is the job of this chamber to fix those flaws.

I had hoped, certainly in response to what I knew, that I would hear Senator Birmingham speak on the final passage of this bill, because I would have been very, very interested to hear his views. However, I understand he will not be present for the debate tonight, which is a great shame. From the Labor Party's point of view, there are many people I know who have grave concerns about this bill and that is one of the reasons it has been delayed for so long. Perhaps Senator Marshall can enlighten us when he is able to speak. Perhaps not. Perhaps everybody is happy. Perhaps you were persuaded by your briefings and the bill is fine and all of our concerns are overblown.

However, in my view the bill needs to be redrafted and we have amendments that will give this effect, to reflect the continued application of the convention's prohibitions, including the prohibition of assistance during situations of interoperability. The version of the thumbnail sketch that was put to me is that the way this bill is drafted—and I will take these issues up in detail when we get to the committee stage—is that we can carry the weapon onto the field, we can load it and we can help aim it as long as somebody else's finger is on the trigger when it is fired. That is in direct violation of the explicit drafting in the convention.

If that is the case, by all means back away and we can get a statement from the Minister for Defence tomorrow saying: 'As objectionable and horrific as these devices are, we still support their use by other parties.' Alternatively, come clean and say that this bill has been drafted with intentional loopholes to enable our ally to use them during joint operations which would directly implicate Australian forces. Also—and our second tranche of amendments will cover these issues—the bill needs to be amended in relation to jurisdiction issues which explicitly allow foreign forces to use Australian territory to stockpile and transit cluster bombs.

Perhaps two years ago, when this legislation was first conceived of, that all seemed to be somewhat academic. Now we have a US Marine Corps base gradually being assembled quite close to Darwin. We have a US Air Force base being established at Tyndall. No doubt government spokespeople will jump up later and have a go at me for using the word 'base'. But, to be honest, this looks like a duck and quacks like a duck: US Air Force bombers and fighter jets are being based at Tyndall in the Northern Territory. Persistent rumours blew out into the open a couple of weeks ago about a US naval facility in Cockburn Sound. That is my home port as well.

So the idea of US forces transiting themselves and these weapons through Australian ports, through Australian facilities, and stockpiling them is not academic at all. This bill explicitly allows the United States or other foreign military forces to stockpile these weapons about which the Australian government will later
tonight or tomorrow put out a press statement saying, 'Oh, we oppose their existence at all. We hope they are banned.' Yet we are okay with them being stockpiled here in Australia. If my reading of the drafting of the bill is incorrect, then I look forward to having that pointed out. Otherwise, I look forward to the support of senators on both sides when we put the amendments to the vote.

The third major area of amendment is something that I would have thought would have been the easiest to fix. It is the one that the Wikileaks revelations are silent upon and that I thought might be a genuine drafting error rather than a deliberate attempt to sabotage the objectives of the convention. This refers to investment. We have obligations under the treaty to ban all forms, both direct and indirect, of investment in cluster munitions. This echoes calls most persuasively put during the inquiry by the Australian Council of Super Investors on behalf of the Australian financial industry, who came to us and said, 'You have to tighten the provisions in this bill.'

To its great credit, the Future Fund was divested not just of companies that were directly implicated in making these weapons but of companies that were indirectly implicated—and the Future Fund is very well aware that the drafting of this legislation, which obviously was not in force at the time that it made its decision, would not have required it to do that. So there is another gigantic loophole. This one I hope is an error; this one may not have been intentional. There is no strategic reason for it. There is nothing about enabling investment in these weapons necessarily that involves sucking up to the United States, so if that is not what it is about then I very much look forward to hearing the reasons it has been drafted as it is.

The inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade, which our Acting Deputy President, Senator Bishop, chaired, heard from witnesses right across from the spectrum, such as the financial industry and the Cluster Munition Coalition, who have spent such a long period of time representing a very large number of civil society groups here in Australia and around the world. They gave compelling evidence on behalf of their membership. At that stage I do not believe we had seen those Wikileaks revelations, and it appeared to the committee that the evidence as presented was that this must have been a giant mistake—that they must have been drafting errors. So, as drafting errors, they could be fixed, and we came up with propositions for doing that.

Then, a short while after that, we were informed that in fact they were not errors at all. These loopholes were there for a reason. They have been drafted that way to make sure that the bill is essentially in violation of the objectives of the convention itself. We agreed with and shared the concerns of the Cluster Munition Coalition, who pointed to the fact that the Convention on Cluster Munitions states that parties should never, under any circumstances, engage in prohibited activities related to cluster weapons. That includes joint operations in which we are complicit in using these weapons—as we were during Operation Desert Storm on the way into Baghdad.

The convention also insists that you will not be stockpiling stores of these weapons for deployment by a non-state party. What possible rationale could there be for leaving that possibility wide open? What New Zealand has done in this regard in its implementation of legislation which went into force in 2009 allows for joint military operations while preserving the convention's prohibitions. There are ways of doing this.
Of course there are. New Zealand's law criminalises all activities prohibited by the convention's article 1. On the issue of foreign forces stockpiling these weapons on Australian soil, we need to take a look at the way Austria, Colombia, Guatemala and Slovenia brought the convention into domestic law and found ways of not undermining the basis objectives of the treaty.

In terms of investment, we have an amendment that would solve the investment issue—that would simply make it illegal to inadvertently perhaps, or intentionally, invest. As the country's financial community spoke about so compellingly at the committee hearing, this bill should not pass in its current form. I look forward to contributions from other senators explaining why they think the bill should pass in its current form, when it has been so dramatically critiqued by people who know a great deal more about the way that this convention was designed to operate. The convention is designed to be universal and it is designed for the eradication of these horrific weapons. There are no ifs or buts. Other countries have shown that there are ways of preserving interoperability without damaging the way that this convention was intended to come into force. Surely it is not beyond the wisdom of this legislature and this Senate—and people are watching this chamber tonight—to fix the flaws in this dramatically unfortunate bill that simply should never have seen the light of day. If it is the government's intention to sabotage the cluster weapons convention then at least have the guts to come out and say so. I thank the chamber.

Senator SINGH (Tasmania) (18:06): I rise to speak to the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010. This bill ratifies the Convention on Cluster Munitions, which Australia signed on 3 December 2008. Such a convention, and its implementation across the globe, are well overdue. Under the convention, a cluster munition is defined as a conventional munition that is designed to disperse or release explosive submunitions. In reality, cluster munitions are canisters dropped by aircraft and open in midair, scattering numerous small explosive devices over huge distances. Their use in areas inhabited by civilians usually results in large numbers of civilian injuries and deaths, and hinders development by making areas of agricultural land inaccessible and generally limiting movement.

I strongly believe that the use of cluster munitions is reprehensible. Their military utility in preventing the movement of troops pales in comparison to the devastating effect they have on civilian populations. The casualties of cluster munitions are indiscriminate, and the victims are disproportionately innocent people caught up in and around conflict zones. Cluster munitions continue to cause untold pain and tragedy in theatres of war in which open conflict has long since ended. The persistence of bomblets and munition remnants long after deployment has ended makes the effects and legacy of war almost impossible to leave behind.

The effects are seen in our own neighbourhood. Between 1964 and 1973, over 260 million munitions were dropped on Laos, comprising over two million tonnes of ordnance. Of those, around 80 million munitions failed to explode, resulting in approximately 300 new casualties from unexploded ordnance each year. Despite constant efforts by a number of government and non-government organisations in Laos, the vast majority of those munitions remain; many undocumented, many undiscovered. They are often discovered too late, when children dig them up, lured by the shiny, toy-
like appearance of the small bomblets, or when they are unearthed in land clearing or ploughing on farmland. This is something I discussed last week with a delegation of parliamentarians from Laos who joined us here in our parliament. It is one of the main issues that are still in discussion: how to have that ongoing use of agricultural land in Laos but at the same time ensure the safety of their people when so many cluster munitions remain under the ground. The story of one young Laotian man speaks very much to the circumstances of thousands of families across Laos. He said:

We were walking down the road on the way to the school when my friend saw a small bulb. He didn't know what it was. He picked it up and passed it to me. I didn't know that it was a bomblet. I took it from him and tried to open it to see what it was. It detonated immediately. My friends ran back to our village to get help, and left me where I was, unconscious.

After I don't know how long, my family arrived. They put me in a car and took me to the Vientiane Province hospital in Louksamboi. I woke there, fourteen hours later.

Eventually, the doctors amputated both my hands, because they had been so severely injured in the accident. My eyes were injured also. At first I could not see at all, but within time, fifty per cent of my eyesight returned, only to deteriorate again. Now I am blind.

I spent one and a half months at the hospital. My family had to sell two buffalo for 120,000 kip, borrow 6,000,000 kip and use their entire life savings (about 16,000,000 kip) to pay for my medical care.

Phongsavath Manithong is now a Ban Advocate for Handicap International, where his story is recorded. Phongsavath's accident occurred on his 16th birthday, robbing him of the life he had expected. This young man has turned his tragedy to advocacy, though, becoming a champion for the abolition of cluster munitions. But many victims do not survive their encounters with bomblets; still others do not have the capacity or support to rebuild their lives after the carnage that has been brought upon them.

Further afield, cluster munitions were used by the Russian Federation in their 2008 conflict with Georgia over South Ossetia. That conflict lasted just a single week, but of course munitions cannot heed the call to stand down. Those weapons ensure that war continues to be waged well into peacetime. In 2006, the month-long conflict between Israel and Lebanon saw no less than four million cluster munitions dropped into southern Lebanon, resulting in 654 casualties up to December 2011; one in five of which have been children. And, most recently, in only the past few weeks, Human Rights Watch has been able to confirm that the Assad regime has employed cluster munitions against Syrian civilians in Jabal Shahshabu. There should be no doubting that, more than any other conventional armament, these are weapons of ill-conscience. That is why the cluster munitions convention is so important: to prevent future tragedies and future casualties of these terrible weapons.

This bill is designed to give effect to the convention under Australian law, introducing criminal offences relating to the use, development, production, acquisition, stockpiling, retention and transfer of cluster munitions, as specified in the convention. I regard the bill as a starting point for Australia's support for the goal of ending the use of cluster munitions, complemented by diplomatic efforts and our international aid program.

I do want to recognise the role of civil society in pushing for both the convention and the strongest form of legislation to prevent the use of cluster munitions. I have received representations from individuals and groups from across the country, all of
whom are driven to their advocacy in order to prevent damage to the most vulnerable people caught up in war zones. I especially want to recognise the Cluster Munition Coalition of Australia and their members, including the Medical Association for the Prevention of War, Soroptimist International UK programme Action Committee and the Women's International League for Peace and Freedom, who have all endeavoured to make me aware of the complexities of the cluster munitions and disarmament issues.

As a number of those non-government organisations have noted, this bill also includes defences for a range of conduct permitted under the convention to allow Australia to continue to work with our allies, and to train in the detection and disarmament of cluster munitions. These defences are designed to protect Australian soldiers from prosecution for inadvertent assistance with cluster munitions when deployed with the forces of nonparties to the convention. These defences are not designed to enable Australian forces to actively participate or assist with the use of cluster munitions, and the legal prohibition on Australian forces making the decision to use cluster munitions will definitely remain.

Moreover, Australian Defence Force doctrine, procedures, rules and directives, which are properly not included in this legislative process, will reflect the notion that Australian forces should not be involved in operations involving cluster munitions. Indeed, this notion must be, and is, reflected across the government's priorities in ways that are not restricted to the ratification of this convention in law. The Australian government's investment fund, the Future Fund, has divested itself of holdings in 10 companies related to the production of cluster munitions. As a matter of foreign policy the Australian government will continue to urge foreign governments, especially our partners in the United States, not to use cluster munitions and to accede to this convention. As part of our effort towards cluster munitions disarmament, Australia has already committed $100 million of support to countries affected by landmines, cluster munitions and other explosive remnants of war under the Mine action strategy for the Australian aid program 2010-2014.

As well as working with partners across the world, including institutions across the UN system, Australia has been a committee donor to partner governments in 16 affected countries in the Asia-Pacific, Middle East and Africa. These include places like the Kingdom of Cambodia, where Australia is also helping to implement the National plan of action for persons with disabilities, including landmine/ERW survivors, and Afghanistan, where the number of people falling victim to landmines thankfully continues to fall.

It also includes supporting organisations like the MiVAC Trust, an organisation started by Australian veterans of the Vietnam War which trains locals, especially women, to safely clear mines from fields and helps to repair some of the damage to infrastructure brought about by war and weaponry. MiVAC receives AusAID funding but equally it receives donations of time, money and energy from the Tasmanian community, and the rest of the Australian community, for its work. Once again, it is this contribution from civil society that has kept this issue on the agenda. I am grateful that my work in the past with MiVAC, the United Nations Association of Australia, the Women's International League for Peace and Freedom and other organisations involved in the peace movement have brought me into contact with some of the people working closely in this area.
This bill is an important part of implementing the cluster munitions convention and bringing pressure to bear on those states which are not yet party to it. I understand the reservations of some of the community on this bill but I believe it is an important piece of legislation. I want to thank my colleagues who so vigorously pursued the non-legislative assurances the government has put in place and which I understand Senator Ludwig will outline in his second reading speech. Ultimately it is my hope that both the international and domestic framework against cluster munitions and other reckless armaments can be strengthened, and that all nations will share our view that cluster munitions should not form part of the arsenal of any defence force that is conscious of its impact on civilians and international law. I commend the bill to the Senate.

Senator MARSHALL (Victoria) (18:18): I rise to speak on the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010. As weapons go, cluster bombs are particularly obnoxious. It is unfortunate that they were ever invented in the first place and it is even more unfortunate that they have ever been used.

Cluster bombs are a large weapon system containing multiple smaller bomblets—often hundreds of them. They can be dropped from the air or fired from the ground. Cluster bombs are wide-effect weapons. This means that their impact is not limited to one precise target such as a tank. They are housed like peas in a pod. The container opens in the air and scatters the bomblets over a wide area, sometimes the size of several football fields, and this impact is referred to as the footprint. A cluster bomb has an outer bomb casing which breaks open in midair, raining down hundreds of smaller bombs over a large area—as I have said this can be several football fields in size and as far as a kilometre away. According to Handicap International's 2006 study, approximately 98 per cent of all victims of unexploded cluster munitions are civilians; and of that 98 per cent almost one-third are children.

It is unfortunate that there is still armed conflict in many parts of the world. It is unfortunate that there has been armed conflict in many parts of the world. But inevitably whenever there is armed conflict there will be a resolution—often at the cost of many millions of lives, and that is an enormous human tragedy. It is unfortunate that human beings tend to do these things to each other. Once the conflict is over the people involved need to get on with rebuilding their lives, rebuilding their countries and, sometimes, rebuilding their nations.

The legacy of cluster bombs, landmines and other obnoxious weapons place a significant handicap on the country’s ability to rebuild after armed conflict. As an example, between 1964 and 1973—I was a young child at that time—the United States dropped 260 million cluster submunitions on Laos in a covert mission to destroy North Vietnamese supply lines. Not only did that mission ultimately fail in its strategic aim, bringing into question the need for cluster munitions at all; it also left a deadly legacy. It is estimated that there are 80 million unexploded bombs scattered across the Laos countryside today. The United States bombing campaign on Laos involved 580,000 missions and two million tons of bombs—an average of one bomb every eight minutes for nine years. Those bombs have killed or maimed more than 20,000 people since the war ended and they are a major obstacle to the economic development of one of Asia’s poorest nations. Not only was this country not directly involved in that particular armed conflict but now, many decades later, it is still suffering the
enormous consequences—with huge tracts of land unusable because of the amount of cluster munitions still unexploded. It is children in particular who are attracted to these munitions. Often munitions of that age are brightly coloured. They look like toys and are attractive to people from rural and poor communities, who touch them.

In Laos today there are still 200 people wounded or killed by unexploded cluster munitions every year—again, 40 years after they were dropped. Given this deadly heritage, it is not surprising that Laos recently added the ninth millennium development goal, which is to clear its land of unexploded ordnances. It is something with which Australia assists many countries in our region. Australia works with the international community to remediate regions and communities affected by explosive remnants of war, including cluster munitions. The government has allocated $100 million over five years to undertake that work. It is painstaking and dangerous work, and it has left an enormous legacy.

The Convention on Cluster Munitions is a wonderful and important thing for Australia to be involved in, and Australia was key to getting the convention up in the first place. A lot has been made of the disappointment of some the advocates for this convention, and I have met with many of them on numerous occasions. I have taken their concerns very seriously and, as a consequence, I have met with the Attorney-General on a number of occasions, the Minister for Foreign Affairs on many occasions and the Minister for Defence on many occasions about the issue; there have been numerous meetings and discussions. Senator Ludlam said that we might be convinced by the briefings and he would be interested to know that, yes, I have been.

There are a number of concerns about why the nature of the legislation differs from the nature of the legislation in New Zealand and in Great Britain. Clearly, in every country there are different frameworks that underpin different forms of legislation. Legislation needs to be looked at purely in an Australian context to meet the needs of faithfully implementing the convention in the Australian context. Much was made of proposed section 72.42 in the bill. I want to make my assessment very clear. After the multiple briefings I have had—I understand the minister will clarify all these matters and put them into the second reading speech to put it beyond doubt—it is my view that this bill is an essential step to becoming a state party to the Convention on Cluster Munitions and that the bill faithfully implements that convention.

Notwithstanding proposed section 72.42, visiting forces would not be excused from prosecution if they use, develop, produce or acquire cluster munitions in Australia. Proposed section 72.42 is, in my view, consistent with the provisions of the convention and does not amount to the government’s authorisation to engage in the specified conduct. The bill does not require Australia to accept stockpiles of cluster munitions on its territory from countries that are not party to the convention. I am advised that, currently, there are no foreign stockpiles of cluster munitions in Australia and, as a matter of policy, I am advised that the government has not and will not authorise such stockpiling. I am further advised that the government will confirm this commitment in a public statement at the time of Australia’s ratification of the convention and in Australia’s annual transparency report under the convention. I am advised that both those public statements will be very clear.
It is also important to understand that ADF personnel will not be permitted to use, develop, produce or otherwise acquire cluster munitions, or make the decision to use, develop, produce or otherwise acquire cluster munitions, including while serving on combined operations with defence forces of other countries, in combined headquarters or on exchange with a foreign force. So I understand and advise that there is nothing in this bill that permits Australians to engage in any breach of the convention, and the bill delivers on those commitments. ADF personnel serving alongside defence forces of other countries remain subject to Australian domestic and international legal obligations and national policy requirements. The national policy requirements are applied through ADF doctrine, procedures, rules and directives. As a consequence of the convention, all of those doctrines, procedures, rules and directives will faithfully implement the legislation, which faithfully implements the convention.

It is important to retain proposed section 72.41 and 72.42 to ensure the continuation of Australia’s military cooperation and engagement with countries that are not party to the convention. This is permitted by article 21 of the convention. The ability to maintain interoperability is central to the protection of Australia’s national security. I would be as happy as everyone else if all countries were prepared to sign on to the convention and ban cluster munitions, but one of our key allies, the United States, at this point has not banned cluster munitions. They are integral to our national defence. We are in alliance with them and our defence forces work all the time with the forces of the United States but, let me just repeat: ADF personnel serving alongside defence forces of other countries still remain subject to Australian domestic and international legal obligations and national policy requirements. So nothing in the legislation permits an Australian who is working with other forces who have not signed the convention to breach this legislation or the convention.

In line with our positive obligations under the convention Australia will continue to discourage the use of cluster munitions by countries that are not party to the convention. So, if we are in the position, which we will be when we are working alongside forces from the US, it is our positive obligation to discourage the use of cluster munitions by that country, and I am advised that we will be active in doing so on an ongoing basis. So, I am happy to support this bill. Initially I did have some concerns with it but, as I have outlined, I am satisfied that the bill has faithfully met our convention obligations.

Proceedings suspended from 18:30 to 19:30

Senator MARSHALL: Before the dinner suspension I had virtually finished what I needed to say about this bill. However, I am looking forward to the minister explaining Australia’s policy on interoperability and stockpiling and putting some of those issues to rest.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:30): I thank the various senators who have made contributions to this debate. In fact, I had the good fortune to hear all of them. The Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 is a significant step towards Australia meeting its obligations under this important convention and will strengthen Australia’s legal framework regarding weapons that cause significant and indiscriminate harm to civilians.

I wish to respond to some comments made by Senator Ludlam. The senator alleged that while the convention is sound, the bill does
not faithfully reflect the convention. In fact, the bill uses the same language as the convention in order to ensure that all conduct that is prohibited by that convention is the subject of a criminal offence under Australian law, unlike the amendments proposed by the Greens party. In particular, section 72.41 of the bill on the interoperability defence uses the language of article 21 of the convention. Senator Ludlam has also raised the notion that Australia sought to undermine the negotiations on the convention. Australia's position both during the negotiations and today is that the ability to maintain interoperability with countries not party to the convention is central to the protection of Australia's national security as well as international security.

This bill includes the legislative measures necessary to give effect to the convention on cluster munitions, a convention which the Australian government strongly supports. Australia is committed to ensuring the strongest possible ban on cluster munitions. As set out in the government's policy statement, this bill is an essential step in Australia becoming a state party to the convention on cluster munitions and faithfully implements the convention. As a state party, Australia will be prohibited from stockpiling cluster munitions. Section 72.42 of the bill provides that certain acts by foreign military personnel of countries that are not party to the convention are not offences under section 72.38 of the bill when the act is done in connection with the use of a base, foreign aircraft or foreign ship in Australian territory. These acts include stockpiling or retaining a cluster munition or transferring a cluster munition.

Notwithstanding section 72.42, visiting forces would not be excused from prosecution if they use, develop, produce or acquire cluster munitions in Australia. Section 72.42 is consistent with the provisions of the convention and does not amount to the government's authorisation to engage in the specified conduct. The bill does not require Australia to accept stockpiles of cluster munitions on its territory from countries that are not party to the convention.

There are currently no foreign stockpiles of cluster munitions in Australia. As a matter of policy, the government has not and will not authorise such stockpiling. The government will confirm this commitment in a public statement at the time of Australia's ratification of the convention and in Australia's annual transparency report under the convention.

Section 72.41 of the bill provides that certain acts by Australian citizens, Australian Defence Force members or Commonwealth contractors are not offences against section 72.38 of the bill if the act is done in the course of military cooperation or operations with a country that is not a party to the convention. ADF personnel will not be permitted to use, develop, produce or otherwise acquire cluster munitions or make the decision to use, develop, produce or otherwise acquire cluster munitions, including while serving on combined operations with defence forces of other countries, in combined headquarters or on exchange with a foreign force. ADF personnel serving alongside defence forces of other countries remain subject to Australian domestic and international legal obligations and national policy requirements, which are applied through ADF doctrine, procedures, rules and directives.

It is important to retain sections 72.41 and 72.42 to ensure the continuation of Australia's military cooperation and engagement with the countries that are not party to the convention, as permitted by article 21 of that convention. The ability to
maintain interoperability is central to the protection of Australia's national security. In line with our positive obligations under the convention, Australia will continue to discourage the use of cluster munitions by countries that are not a party to the convention. Australia will continue to work with the international community to remediate regions and communities affected by explosive remnants of war, including cluster munitions. The government has allocated $100 million over five years to undertake that very important work.

The bill creates a new range of offences to reflect the conduct that is prohibited by the convention. These offences include using, developing, producing, acquiring, stockpiling, retaining or transferring a cluster munition. These offences ensure that using a cluster munition is a crime both in Australia and for Australians overseas. The bill does not provide any defence for a person who uses a cluster munition. This reflects the convention's primary objective of prohibiting states' parties from using cluster munitions in all circumstances.

The offences in the bill carry a maximum penalty of 10 years imprisonment for individuals, or $330,000 for bodies corporate. This tough penalty reflects the serious nature of the offences created by the bill. The bill also creates defences to the offences, reflecting the range of conduct that is permitted by the convention. The convention permits continued military cooperation and operations between states parties and countries not party to the convention, subject to some restrictions. Continued cooperation between states parties and countries not party to the convention is central to the protection of Australia's national security as well as international security. For example, maintaining such interoperability is essential for Australia to be able to participate in United Nations mandated missions involving countries not party to the convention. This was a view shared by many countries during the negotiation of the convention. Therefore, consistent with the convention, the bill allows Australia to continue to maintain cooperative military relationships with countries that are not parties to the convention.

The bill is one of the measures necessary to give effect to the convention. In line with the convention, Australia will continue to urge countries not party to the convention not to use cluster munitions and encourage them to sign the convention. Australia will also continue to work with non-government organisations, which make a significant contribution to the universalisation of the convention. Once Australia ratifies the convention, the government will comply with the reporting obligations under the convention, which will ensure transparency in how Australia is implementing it. Consistent with Australian treaty practice, Australia's reporting obligations under the convention will be implemented through administrative means. Australia has a strong record in disarmament and international action to ban weapons that are excessively injurious or that have indiscriminate effects. Although Australia has not yet ratified the convention, it is already playing a constructive role to support the convention's humanitarian objectives. The convention is a remarkable humanitarian achievement, and this bill is a significant step towards Australia meeting its obligations under this important convention. I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Boyce): The question is that the bill be now read a second time.

Question agreed to.

Bill read a second time.
In Committee

Bill—by leave—taken as a whole.

Senator LUDLAM (Western Australia) (19:39): I would like to note the fact that I did not seek to call a division or a vote on the second reading, as is customary in this place, because I support the objectives of the bill, I support the reasons why the government has brought it forward and I support everything that has been said in here tonight in terms of why we would want to take these weapons out of the arsenals of the world's militaries. And I believe that I have circulated amendments that would allow me, in good conscience, to advise my colleagues to vote for the bill. I will not be, however, voting for the bill on the third reading if none of the amendments pass, for reasons that I made reasonably clear.

Before I put some general questions on the bill to the minister—and I suspect this is going to end up feeling somewhat like deja vu before we are done—I would like to make two acknowledgements. Firstly, I acknowledge the funding commitments that the minister announced. I ran out of time during my second reading contribution to acknowledge the funding commitment that the government has announced for mine-clearing activities and so on. That is extremely welcome, and I am sure that it is welcome in the places where those funds are to be expended. I note also that Australia does have a good record in the areas of mine clearance and so on. Even in some of the work that I have done in this area, it is obvious that Australia has played a very constructive role. Obviously, the reason we will be bringing these amendments forward—and, you could say, the primary reason for developing this convention and then enacting it in domestic legislation—is that prevention is a lot better than mine clearing. Preventing these appalling weapons from being dropped and discarded in the first place is vastly better than spending tens and then hundreds of millions of dollars to dispose of the bomblets.

The second acknowledgement—and I hope the debate can continue tonight as it has begun—is that I believe that everybody who has spoken in this debate so far genuinely wants to rid the world of these weapons. So the comments that I make in critique of the government's approach do not go to the general motivations behind senators in this place tonight, none of whom, I presume, have been directly involved in the negotiations. I did not hear anybody suggesting hesitancy or doubt, I suppose is the point that I am trying to make. There is cross-party consensus in this chamber, and in the House of Representatives, that these weapons should be eradicated.

To briefly mention something that I was going to mention in my second reading contribution, I want to ground the remainder of this debate in an understanding of what it is that we are seeking to abolish, and the reasons why we would do so. This is from a US columnist, writing in 2004, by the name of Paul Rockwell, who provided one of the more concise definitions of these weapons:

A cluster bomb is a 14-foot weapon that weighs about 1,000 pounds—or 455 kilograms—when it explodes it sprays hundreds of smaller bomblets over an area the size of two or three football fields. The bomblets are bright yellow and look like beer cans. And because they look like playthings, thousands of children have been killed by dormant bomblets in Afghanistan, Kuwait and Iraq. Each bomblet sprays flying shards of metal that can tear through a quarter inch of steel.

The failure rate, the unexploded rate, is very high, often around 15 to 20 percent. When bomblets fail to detonate on the first round, they
become land mines that explode on simple touch at any time.

So, these are the things, these hideous and indiscriminate legacy weapons that lie on battlefields long after the front has moved on, that are the reason we are here tonight.

I would like to put a couple of questions to the minister at the outset. I will put these ones on notice unless, in a flash of brilliance, your advisers have this material on hand. But I would like to bank these questions for—oh yes, nods from the advisors' box! We will see. I am interested to know, quite specifically: firstly, the military forces with whom we have cooperative agreements who are, or have in the last period of time—and I don't mind how we define that—transited through Australian ports or airfields. For example, the United States Navy, probably the French Navy and the Singaporean Air Force.

So it is the number of parties, being foreign military forces, who would potentially be caught by this bill and who also deploy cluster munitions in their armouries. So, if I may, I would like to put that question on notice, through you, Minister, to the department so that we can get a sense of whom we are talking about. Obviously, my remarks this evening will focus on the United States military. We have the closest defence ties with the US government. They have the largest amount of hardware transiting through Australian facilities. That is where I will focus my remarks, but I am interested at the outset to know who else these provisions might impact upon.

The second question that I will put on notice, and I can take some advice as to how complex this will be, is this: which weapons systems and on which platforms does the United States military deploy cluster weapons? The minister is shrugging. I do not know whether this is a 'piece of string' question. If we could take this from 2002, from the invasion of Iraq, which I will come back to and refer to again in a moment, which US platforms deploy cluster weapons—army, navy, air force and marine corps? That is extremely important and the agenda moved on so rapidly, beginning with President Obama's visit late last year that actually outlined a deployment timetable for the US Marine Corps and then for the US Air Force and now it is potentially for the US Navy in the south-west. So the debate becomes not abstract at all and the debate becomes profoundly concrete. To get the facts on the table, which military forces transit through our ports and may be caught by, for example, the provisions relating or not relating to stockpiling and which platforms actually deploy these weapons and which can we disregard for the purposes of the bill? I will give the minister the opportunity to respond as to whether those are seen as being reasonable requests.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:46): I think we will take both of those on notice. Let me provide an interim preliminary answer that will be subject, I am sure, to further deliberations. As I comprehend it off the cuff, those militaries that are not a party to the convention and that might have cause to be in Australia or Australia's territorial waters would be confined to the United States of America and France. Obviously, I would not expect to see other major holders or manufacturers and deployers of these sorts of munitions who are not party to the agreement, such as China, Russia, Iran and Brazil, transiting through Australia. So, Senator, I ask if you would be so good as to take that as a preliminary view and we will confirm that.

With respect to your second question, please afford this the same status as
obviously there will be professionals inside the Department of Defence who will be able to provide a more forensic answer. As I understand it, cluster munitions in terms of US practice would typically be deployed by either aircraft—and aircraft of course are found across the United States Air Force, the US Navy and the US Marine Corps, as I comprehend it—or artillery. Artillery are found across at least the United States Marine Corps and the United States Army. Please take that as a preliminary view and I will see if we can provide a more refined answer.

Senator LUDLAM (Western Australia) (19:48): That was more or less exactly the sort of answer I was expecting, so that is appreciated. I can let the chamber know now that before I move the amendments I do intend to dwell at some length and go through some reasonably detailed questions on why the government has chosen to draft the bill in the way that it has. So I indicate that potentially, depending on the way the debate flows, we may have to go until tomorrow morning and I will understand if the officers from the department are unable to provide that information tonight. I am seeking more fine-grained information than that it is simply deployed by the US Air Force or the US Marine Corps because we are now getting to the point where information is becoming available as to the kinds of aircraft that would be temporarily posted to Tindal, for example, and I would like to know whether they are the sorts of aircraft that could potentially be capable of deploying these weapons.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:49): This is to assist the senator in order to provide a more detailed answer. Senator, it sounds like you want to get into the specifics of which platforms, which types of munitions and so forth. That is information I assume we would have to procure from the US, and that is a question we would have to ask of them. So I guess I am just foreshadowing that that might be a challenge in meeting your expectations about when an answer would be provided.

Senator LUDLAM (Western Australia) (19:50): The United States, to give it its due, does publish a large amount of this sort of information even in the Jane's series of reviews into different kinds of hardware, so I would be surprised if somebody needs to ring the US Department of Defense to find out that information, but I will leave it to you as you have taken that on notice and I was not expecting an answer tonight. Minister, both you and, I think, Senator Marshall—I am not sure whether Senator Singh did or not—referred to the passage of this legislation as 'a first step', which I think is the phrase that you both used, to uphold our obligations under the convention, which to me suggests that it is in fact partial. I wonder what other steps the government is proposing in order to fully uphold our obligations under the convention if indeed this is only seen as a step.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:51): I am advised that there are non-legislative steps that we will be taking to make sure that the convention is understood and enforced. Those sorts of non-legislative steps would include, for instance and as I alluded to in my second reading speech, appropriate adjustments to ADF doctrine and teaching, regulations, directions and rules of engagement—those kinds of non-legislative steps that are required so that we can be confident that the convention is being upheld in every respect.

Senator LUDLAM (Western Australia) (19:51): I thank the minister. Minister, I think you indicated in your closing remarks...
that Defence Minister Smith will make some kind of statement to the parliament or to the general public when—is this it?—we lodge instruments of ratification or something of that sort. Firstly, could you please describe for me if that is the sort of non-legislative measure that you mean. Secondly, why is that not being provided to the parliament as we are debating the bill?

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (19:52): As is custom and practice for us under other international legal instruments, Australia will comply with its reporting obligations under the Convention on Cluster Munitions without the need for these obligations to be set out in legislation. The obligations contained in paragraph 8 of articles 3 and 7 of the convention do not require legislative implementation and will be implemented through administrative means.

The bill contains the legislative measures necessary to ensure consistency between Australian law and the convention and is a necessary step before Australia can ratify the convention, but the bill forms one part of the measures necessary for Australia to implement its obligations under this convention. These provisions contain requirements aimed at promoting transparency on states parties implementation of the convention. Paragraph 8 of article 3 requires states parties to submit annual reports regarding cluster munitions that they have acquired or retained for the permitted purposes set out in paragraph 6 of that article—namely, the development of and training in detection, clearance or destruction techniques for the destruction of cluster munitions or for the development of cluster munitions countermeasures. This paragraph also requires states parties to report annually on any cluster munitions that have been transferred to another state party for the permitted purposes under paragraph 6 or for the purpose of destruction. Article 7 of the convention contains further reporting requirements. This article requires states parties to submit annual reports on their implementation of the convention. And, in addition to complying with the reported obligations under the convention, the government will in each annual transparency report reaffirm its commitment to not allow foreign stockpiles of cluster munitions in Australia.

**Senator LUDLAM** (Western Australia) (19:54): Minister, could you describe for us why the government has taken the approach of embedding that as a policy decision rather than embedding it in the bill? You will be aware that some of the very strong criticism that has been made of this bill is that it is effectively a 'trust us' approach, in that the bill allows behaviour to which the government then says, 'No, our policy is not for that to be allowed.' That is the fundamental problem that I have with the drafting of the bill. I will go to those when we go through it clause by clause, because my amendments are explicitly around closing these loopholes. Minister, you have just stood up and said: 'But of course that is not our intention. Of course, we will not do that.' I am not seeking to verbal you, but that would be inconsistent with the operation of the convention.

I should put Senator Nash on notice that I will be seeking her view on whether this is also coalition policy or whether this policy might change subsequent, for example, to a change of government. That is why we embed these things in law: so we do not have to worry about arbitrary policy decisions that could change according to contingency. So, Minister, I will return to this at length unless your answer is profound and brilliant. Why don't we just enshrine this in law instead of
trusting ministerial statement that may come at some future time?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:56): The government's intention, and the purpose of the bill, is to give effect to the provisions of the Convention on Cluster Munitions which reflect international agreement on the prohibition of those munitions. The convention was negotiated by approximately 49 countries and adopted by 107 countries, including Australia, and it was developed in close consultation with representatives of civil society. The primary purpose of the bill is to create criminal offences in Australian law for the conduct that the international community has agreed should be permitted. The bill uses the language of the convention wherever possible in order to ensure that all conduct that is prohibited by the convention is the subject of a criminal offence under Australian law. In conclusion, the government's view is that the bill is accomplishing the task set out for it, and it could be described as the centrepiece of a number of measures which keep faith with Australia's support for the convention.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (19:57): The opposition is obviously broadly supportive of the government in this. I think the shadow minister clearly outlined the position on this in his speech earlier, and that would indicate our intent.

Senator LUDLAM (Western Australia) (19:57): Senator Nash, I will forgive you because this bill is not within your portfolio responsibilities and you probably had no part in it. However, Senator Brandis spoke for a grand total of about four minutes and simply lined the coalition up with the government and then sat down—

Senator Feeney: That was a profound contribution.

Senator LUDLAM: It was a concise but profoundly disappointing contribution from the coalition and it gave us no comfort whatsoever. Senator Marshall and Senator Singh also mentioned the civil society groups that I listed in my second reading contribution. They all paid respect to the huge amount of work that has gone into getting this convention off the ground and getting parties to sign up to it but are now advising this chamber against voting for the bill. Is it the government's view that those groups are wrong, when they say—and I can provide more detailed quotations if that would be helpful—this bill is not at all consistent with the language of the convention which has a universal obligation not to have anything to do with these weapons at all within certain carve outs that we have all described thus far around interoperability and so on? Is it your view in fact that those groups are simply wrong? Are they misled?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:59): I suppose, Senator, I would say we have a difference of opinion. I think, as you have said in your remarks, there is broad consensus about the convention, its aims and Australia's support for those aims. There is simply a difference of opinion about how we have set about the task of enacting them.

You did warn, as we went into committee stage, that parts of tonight might seem like a re-enactment of estimates and, of course, we have had the discussion there about the interoperability provisions, which I am sure we will revisit shortly. There are obviously points of difference. The government has listened to those points of difference, as of course we have listened to the points made by the Greens. There is simply a difference
of opinion about the efficacy of what you are proposing. But it is the government's firm view that these provisions, together with the other measures I have described, ensure that Australia will be upholding that convention in every material respect.

Senator LUDLAM (Western Australia) (20:00): Let us go to a specific case study around interoperability, and perhaps we will dwell here for a while and then come back to the issue of stockpiling and transiting through Australian airspace, waters and territory at a later time. I want to start with the question of interoperability, because I suspect it is the key sticking point. Would the minister care to comment on the very serious allegations, which were documented in a startling amount of detail in cables released through the Fairfax press by the Wikileaks publishing organisation, that Australia worked behind the scenes to undermine the objectives of the convention. When it was unable to do that on behalf of the United States, it resorted to implementing this bill in a way is essentially structurally flawed. The allegations which I refer to were reported on 2 May 2011, so I guess the government has had plenty of time to contemplate those allegations. I will quote very briefly from a piece by Philip Dorling that ran in the Age on that day:

Diplomatic cables ... reveal that, in 2007, Kevin Rudd's newly elected government immediately told the US it was prepared to withdraw from the negotiations if key 'red line' issues were not addressed - especially the inclusion of a loophole to allow signatories to the convention to co-operate with military forces still using cluster bombs.

Minister, the reason that this is significant is that Australia—and I deeply believe this—has no intention of kitting out the ADF with cluster weapons. This is not to do with us at all. I had an exchange with Defence, probably during that session that you were representing the government at the estimates table, about the ADF retaining a small quantity of these weapons—just a sample of live weapons—to train our troops. I have actually seen this happen at al-Minhad in the UAE. I have seen the kind of training that they undergo on how to recognise these things, particularly when they find their way into IEDs and so on. I completely understand and support the retention of a small representative sample of these sorts of things so that the ADF can train and know how to disarm them and so on. I do not propose to dwell there. My question is: if we have no further use for these weapons ourselves, apart from training, why would we be prepared to withdraw from the treaty if these red line issues were not addressed?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:02): The first point I would make is that I do not accept the proposition that Australia sought to weaken or undermine the convention. Secondly, I would not think it reasonable to describe the interoperability provisions as a loophole. The view of the Australian government regarding the interoperability provisions in the convention is a matter of public knowledge. It is well understood. It is something that, indeed, you and I have discussed at estimates, I think, on several occasions.

Australia's position during the negotiations, and it remains so today, is that the ability to maintain interoperability with countries not party to the convention—and obviously the United States is a signal one of those—is central to the protection of Australia's national security as well as international security. Australia drafted the draft provision underpinning the current text of article 21, and the government is confident of the interpretation of the text which it was closely involved in formulating. The Australian government co-authored a
discussion paper that was circulated at the Wellington negotiating conference in 2008, and that paper advocated for an interoperability provision in order to address the concerns of countries who, in the short-to-medium term, intended to continue to cooperate with countries who had no intention of becoming a party to the convention—and of course that includes the United States.

I suppose, in summary, Senator, we differ about your use of language in terms of 'undermining' the treaty or in 'developing loopholes'. We do not believe that is what we have done, and that is not reflected in either our utterances or our accomplishment to date. It is plain and, I think, generally understood that Australia continues to have an alliance relationship with the United States, and the interoperability provision is a key part of ensuring that we can keep faith with the convention and that alliance.

Senator LUDLAM (Western Australia) (20:05): Minister, can you confirm for us—and I will quote directly from one of the US embassy cables dated 27 February 2008—whether or not: Australia would welcome U.S. assistance in identifying African countries with potential interoperability issues who can be recruited to vote with the Like-minded and in reviewing the proposed interoperability text.

Unless this is being mistranslated or misreported by the US embassy here in Canberra—is Australia seeking US advice on which African countries we should lobby in order to find countries that we might be able to line up to weaken the treaty. Is it true? And what advice was provided by the US, if that is the case?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:06): Firstly, let me say, I am familiar with the Wikileaks cable which you are referring to, so bear that in mind in my answer. But it seems to me that what you are essentially describing is a perfectly mundane process, and that mundane process is, firstly, the Australian government forms a view about the importance of an interoperability provision. Obviously, the United States would share our view insofar as it affects our alliance and the work our militaries do together.

Having formed an Australian government view about the worth of an interoperability provision—and there is no secret in that; we have argued for it long and hard—we then set about the task of building international support for our view. I do not see that as a revelation. I think really you are referring to the mundane conduct of diplomacy and the political task in international forums of Australia, once it has formed a view, then explaining it and building support for it.

Senator LUDLAM (Western Australia) (20:07): Minister, if it would help—I know it will take a little while and we can come back to this—I am more than happy to table the document that I am reading from that contains verbatim quotes from the cables, because I do propose to refer to them from time to time. Would that assist?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:07): I have no objection.

Senator LUDLAM (Western Australia) (20:07): I seek leave to table the document.

Leave granted.

Senator LUDLAM: Just to be clear, what I sought leave to table is an article by NAJ Taylor. There is a certain amount of editorialising at the top that you will just have to forgive and you will probably profoundly disagree with it. The remainder of the four-page document is simply verbatim transcripts of the State Department cables. I will table that now, Minister, and
then I might come back to this topic once you have had a chance to look at it.

I want to come to another matter that we have had a brief engagement with. I am not sure whether or not you were at the table, Minister. It is around Australian air support during the Iraq conflict. One of our most important contributions to the shock and awe campaign that took us into Baghdad in that year were FA18 Hornet aircraft on air combat patrol and strike missions. We also flew Orion surveillance aircraft, C130 Hercules and B707 lift operations, but it is the FA18 missions that I want to refer to specifically. My understanding is that our FA18 aircraft did not use cluster munitions in Iraq but that we did fly close support for US ground forces who were firing these weapons indiscriminately into urban areas. Could you please confirm whether or not that is the case?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:09): If I need to correct anything I say in this answer I will obviously do that on notice, but my strong understanding and recollection is that our air forces and, indeed, all of our forces did not use, deploy or engage in operations with cluster munitions. My recollection is that you were given that undertaking at estimates by the Chief of Air Force, but I stand corrected if—

Senator XENOPHON (South Australia) (20:10): With Senator Ludlam's indulgence, I would like the Parliamentary Secretary for Defence to clarify. When you say you reject the characterisation that those weapons were used indiscriminately by the United States but they were used, isn't there an argument that the very use of cluster munitions is itself an indiscriminate act?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:10): Senator, I guess we now run the risk of you and I having an 'enthusiastic amateurs' conversation about the military deployment of these—

Senator Xenophon: You're not an amateur; you're the representative of the government.

Senator FEENEY: Is the deployment of a cluster munition indiscriminate by definition? I guess the United States would characterise the deployment of munitions when they are deployed against enemy armoured formations or in a counterartillery role—but I am not here to debate the US deployment of these weapons and I am not here to debate the effect of those weapons, and not for a moment am I going to put myself forward as an expert in how these things are deployed. I guess I am taking issue with the use of inflammatory language that I think does not do justice to the longstanding commitment of the United States to using minimal force and precision weapons wherever possible. I think their record in trying to avoid collateral damage is a worthy one and stands in contrast to many other nations and, indeed, many other nations who deploy cluster munitions.

Senator LUDLAM (Western Australia) (20:12): At the risk of changing the subject, because I fully intend to come directly back to this, I am interested to know, because I am going to refer to this document a fair bit,
whether or not the minister or the officers have a copy of the supplementary information that the Department of Defence provided to the Foreign Affairs, Defence and Trade Committee? We banked a number of questions on notice to the department during the course of our inquiry. Do you have those at the table?

Senator Feeney: Yes.

Senator Ludlam: That is fine; it saves me from tabling them, although I can do that if the opposition or Senator Xenophon would appreciate a copy.

Minister, to come back to the shock and awe aerial bombing campaign, like Senator Xenophon I thought the reason we were staying up late to debate this bill is because these weapons, like chemical weapons, biological weapons and nuclear weapons, are indiscriminate by nature. Perhaps it was just careless language on your part, Minister, to use that word but I found it unfortunate. These weapons are indiscriminate. That is why we are here; that is why we are seeking to ban them. The reason I take you up on the instance of the shock and awe campaign and the close support missions that our RAAF pilots flew as we were invading Iraq is that this is precisely a use case for interoperability that is not in the abstract — this is a real one.

I am drawing on an article by Chris Doran dated 3 March last year in which he makes the case, quoting Human Rights Watch work, that United States ground forces on their way into Baghdad in the shock and awe campaign and the close support missions that our RAAF pilots flew as we were invading Iraq is that this is precisely a use case for interoperability that is not in the abstract — this is a real one.

An extensive Human Rights Watch investigation conducted in Iraq found that 'Unlike Coalition air forces, American and British ground forces used cluster munitions extensively in populated areas... use of these weapons... was widespread along the battle route to Baghdad... with significant numbers of civilian casualties in southern Iraq including al Hilla, Najaf, Kerbala, Nasiriyah, and Baghdad. Human Rights Watch found that the 'targeting of residential neighbourhoods with these area effect weapons... represented one of the leading causes of civilian casualties in the war'. A USA Today four-month study conducted in Iraq found that the US dropped or fired nearly 11,000 cluster bombs or cluster weapons during the invasion — the 14-foot monsters that we were talking about before — containing between 1.7 and 2 million bomblets. Britain used 2,000 more.

This is the article I was quoting from before, the Paul Rockwell piece, where I describe what these things are. Minister, would you describe this as an instance of interoperability?

Senator Feeney (Victoria — Parliamentary Secretary for Defence) (20:15): I guess the first thought I have is that weapons used indiscriminately are automatically in breach of humanitarian law as it presently exists. I am saying that weapons used indiscriminately in any circumstance is a breach of humanitarian law.

Senator Ludlam interjecting —

The Temporary Chairman: Order, Senator Ludlam! Just listen to the answer perhaps.

Senator Feeney: I guess my second point is that Australia and Australian forces would never cooperate with military forces that are using weapons indiscriminately.

Senator Ludlam (Western Australia) (20:16): Is the minister familiar with the Human Rights Watch Report that I was citing a moment ago?
Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:16): No, I am not.

Senator LUDLAM (Western Australia) (20:16): Does the minister believe that that report, which he has obviously not had time to review—not being aware of it, which is fair enough—is in error? If not, what is the basis for his confidence? Can the minister confirm one way or the other whether the RAAF flew close support missions for US ground forces that deployed cluster weapons on the way into Baghdad?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:16): The answer is no, I do not know what arrangements were made. We are talking about the air campaign of 2003 and no, I do not know.

Senator LUDLAM (Western Australia) (20:17): Minister, will you take that question on notice? I would have thought that it is of central importance to the debate tonight. Just to be clear, so that you know, and the officers know, what the question is that I am putting to you: during the 'shock and awe' campaign in 2003, did the RAAF provide air support for US ground forces that used cluster weapons on the way into Iraq?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:17): Yes, I am very happy to take that on notice. Senator Ludlam, I have a dim recollection that you asked that question of the Royal Australian Air Force in estimates and they provided you with a definitive answer. But it is a dim recollection, so with no more greater confidence than that I will take the question on notice.

Senator LUDLAM (Western Australia) (20:17): I thank the minister. I have got the transcript here and the department at the time did take the question on notice. I have the answer in front of me, but in no way would I describe it as definitive. So I look forward to the minister's provision of an answer. No doubt you will be aware of why I am pursuing this line of questioning. The US does not treat these weapons as exotic or extraordinary; they are standard part of kit a little bit like depleted uranium, and I guess the ADF use that in the same way. We tried it and we decided that we wanted nothing to do with it, but we still work very closely with military forces that do, and I guess we agree to disagree as to the indiscriminate nature of weapons of that kind. But here for me is a very, very important case of what we mean when we flip the word 'interoperability' around. What it means is that the Australian government can collaborate closely with military forces using these weapons that we are seeking to ban. I guess the threshold question that we are here to debate tonight is: how close or how distant does the ADF have to be before it meets the objective of the treaty?

To take a slightly different tack, one of our positive obligations under the text of the treaty is that we are meant to be out now advocating that the military forces around the world, including our allies who use these weapons, stand them down. I think the minister gave me the example of the United States and France as those that will transit Australia, so let us start with them. Can the minister provide us with any evidence of what the Australian government has done to persuade the US to cease deployment of cluster weapons?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:19): Firstly, I suppose, I should set out that this legislation and the principles underpinning it are obviously before us and the government has articulated those. It is not open to me nor is it conducive, in my opinion, for us to then embark on an analysis of hypotheticals.
Senator Ludlam: No, it's a real case.

Senator FEENEY: It is a hypothetical.

The TEMPORARY CHAIRMAN: Just ignore the interjections, Senator Feeney.

Senator FEENEY: I am such a helpful person, Chair.

Senator Ludlam: And I'm trying to be a helpful interjector.

Senator FEENEY: A helpful interjector, that is right, Senator. I guess I should say at the outset that the government will confine itself to dealing with these issues in terms of the principles and their intent, and then, looking forward, the government would be assisted by the detail of what is transpiring case by case and obviously legal advice to inform it.

Having said that, let me then turn to how Australia will promote the principles established by the convention and work to discourage countries not party to the convention from using cluster munitions. I suppose it is fair to say that in this matter, as in so many others, Australia sees itself as promoting and seeking to promote international norms that move all of us, the whole of the international community, towards a better state. Obviously there are a number of major powers—indeed, one might say most of the major powers—that are not signatories to this convention, but not for a moment does that deter the government from its resolve to abide by the convention and to promote the international norms that it seeks to internationalise and normalise.

In dealing with our obligations under the treaty, we may discharge them in either bilateral or multilateral forums, through oral or written communications, in the conduct of the government and its work across the whole gamut of international fora aimed at dissuading or advising countries not party to the convention against using cluster munitions.

Senator LUDLAM (Western Australia) (20:22): I thank the minister for responding with the general principles around the way in which the government sees that it could exercise its positive obligations. I just draw you back to what my actual question was. What have we done in the instance of the United States government? Can the minister provide the chamber with any tangible evidence of any action that it has taken in order to attempt to persuade—in any matter, great or small—the United States government to stand these weapons down?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:23): To date, what has transpired is that the Australian government has formally and officially advised the United States government that it has signed the convention. Australian officials have met with the US embassy to advise them of our support for the convention. To the best of my knowledge, that is as far as the matter has advanced to date.

Senator LUDLAM (Western Australia) (20:23): Is the minister able to provide us on notice with a copy of the advice that was posted or delivered to the United States?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:23): Let me take that on notice. We need to find out whether it was correspondence. I am certainly advised that the matter was discussed between officials. I will ascertain what documentation there is around that meeting.

Senator LUDLAM (Western Australia) (20:24): I thank the minister. Australia and the United States are at odds in this matter, you would have to say, if you were going to put it diplomatically. We believe these weapons should be abolished and we do not
believe they should be used or stockpiled by the ADF. The United States government believes—not in the abstract—that these weapons should be deployed, that they have military utility and that they intend to continue to use them and not sign up. The evidence—and I wonder whether by now, Minister, you have had a chance to take a quick look at the cables that I put on the table a short while ago—makes it abundantly evident that the Australian government is running the agenda of the United States in the negotiations. How exactly does Australia reconcile the fact that we are coming from two vastly different positions—if that is to be believed, and let us naively assume just for the moment that it is? How does the government run the agenda of the US in those negotiations when in fact our intentions are diametrically opposed?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:25): I just do not accept the foundations of your question. I do not accept that there is anything going on here other than the Australian government having formed the view that the convention is appropriate for us and an appropriate instrument for us to support, with us conveying to our United States friends that our commitment to the military alliance remains undiminished. I have not read through those WikiLeaks documents you have given me, but you are right to say the United States is not intending to desist from using these weapons, as I comprehend it. You might very well say the same about a range of other powers, and I note you do not speak of those, but I think they are worthy of attention too.

The United States policy on cluster munitions—as we understand it—is that the United States are likely to continue to retain cluster munitions in their military inventory and reserve the right to use those in future conflicts. They have articulated the notion that cluster munitions would most likely be used in high-intensity conventional warfare, particularly against armoured forces, and, of course, that is typical of state-on-state conflict. Notwithstanding this, the United States have adopted a cluster munitions policy which aims to minimise the potential unintended harm to civilians and civilian infrastructure. That is the sort of move that the Australian government welcomes as a good beginning. The US policy includes a commitment to cease use by 2018 of cluster munitions that, after arming, result in more than one per cent unexploded ordinance across the range of intended operational environments.

We have made our views plain. We have made them plain to our United States friends. The United States obviously has its policy, as, of course, so too do China, Russia, Iran and others. We will continue to advocate in international fora that this convention represents an international norm that the whole community of nations should observe.

Senator XENOPHON (South Australia) (20:27): I would like to follow up on what Senator Feeney, representing the government, said in his response to Senator Ludlam. He makes reference to the United States policy that by 2018 less than one per cent of these cluster munitions will have that failure. We know that one of the reasons why cluster munitions are so vile, not just in their operation, is in the cases when they do not work. We know they often fail to detonate on impact and they contaminate large areas of land with highly dangerous, unexploded submunitions—and I am relying on information provided to us in the Bills Digest—and that this contamination has both immediate and longer term impacts on civilian populations and on the rehabilitation of vital infrastructure including roads, schools, markets and farms. We also know that incredibly expensive and arduous
clearance activities are taking place—again, I am referring to material provided in the Bills Digest. Can Senator Feeney indicate what his understanding is of the current failure rate of cluster munitions overall, given that the United States is aiming for one per cent by 2018? That is my first question.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:29): Senator, I agree with how you have characterised this issue in the framing of your question. From the literature I have read, I think the current failure rate for the United States munitions is something in the order of five per cent. One per cent is their target by 2018. Of course, it goes without saying that any failure rate is a grievous thing. I understand that cluster munitions deployed by other countries, manufactured from other places, can have failure rates of up to 30 per cent.

Senator XENOPHON (South Australia) (20:29): I am grateful to Senator Feeney for his response. Even a five per cent figure—even a one per cent figure—is very concerning, because the very nature of cluster munitions is that one cluster munition can spread to hundreds of submunitions, with the damage that that can inflict. Given that the failure rate can be up to 30 per cent, which is quite staggering and quite frightening when you consider the terrifying impact that it has, can Senator Feeney advise to what extent he is satisfied, or the government is satisfied, that the United States position that the failure rate will go from five per cent, as referred to by the United States, to one per cent will be achieved. How will that be achieved? How can that be achieved in the six-year period?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:31): The short answer is no. The Australian government view is plain: we are opposed to the use of cluster munitions, the stockpiling of cluster munitions and the deployment of cluster munitions. The view of the Australian government is plainly that these weapons are inappropriate and that there is no acceptable failure rate. I gave you the statistics reflecting the position of the United States. Has the United States explained to Australia how it intends to achieve the one per cent target? Not to my knowledge, but I will take that on notice. But it is obviously a matter for the United States. Our position is not to negotiate with the United States or discuss with the United States its plans to reduce the failure rate. I think the position of the Australian government in international forums very plainly is to call upon all of the significant weapons manufacturers and stockpilers—of course, I speak of the United States as well as Russia, China, Iran and others—to abide by the international norm of not using these weapons and of applying the convention.

Senator XENOPHON (South Australia) (20:32): Further to that, does the parliamentary secretary consider it not unreasonable that Australia, given its pivotal, key strategic relationship with the United States of America—I do not think there is any question that it is our most strategic and important relationship, particularly in relation to defence, with the close cooperation between the two nations and the announcement made in November last year by the Prime Minister and President Obama of marines being stationed or deployed on a rotating basis, if you like, in the Northern Territory—could at least ask the United States, given their continuing heavy reliance
on cluster munitions, the five per cent failure rate, our treaty obligations and the fact that this bill itself has been introduced by the government, what they are doing to at least reduce the failure rate of these munitions? I am surprised that that is not something that on a government-to-government level, given our close and pivotal relationship with the United States, we would be asking. Isn't that a reasonable question to ask the United States about how they will get from five per cent to one per cent?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:34): The Australian government is not embarking on a process of trying to normalise or sanitise the production and deployment of these weapons. In supporting the convention, we are not saying that there is a reasonable and an unreasonable extent to which these weapons can be used or deployed. Australia is making its position plain. We support the convention. We support the articles of the convention and the obligations therein. So, no, I do not think it is unusual that we have not negotiated or discussed with the United States its plans in this area. As I say, I will take it on notice. Perhaps that has happened at official level. I am not aware of it. Obviously what we are striving for—what I think all of us are striving for here—is to establish an international norm where the use of these weapons by anyone is unacceptable. Obviously the United States, like the other powers that I have referred to, has to weigh those judgments, and it obviously is doing that. But the Australian position is very plain: we support the convention. We are not going to embark on a process of trying to say there are good cluster munitions and bad cluster munitions. We support the convention.

Senator XENOPHON (South Australia) (20:35): Senator Feeney's answer raises an issue about the effectiveness of this legislation in the absence of the amendments proposed by the Australian Greens. My understanding from material that I have been provided is that, in report No. 103 of the Joint Standing Committee on Treaties in May 2009, JSCOT recommended ratification of the convention. However, it expressed concern 'that some of the terms contained in the convention are not clearly defined and may provide an avenue by which Australia could participate in actions which may contravene the humanitarian aims of the convention'. It went on:

The Committee therefore considers that the Australian Government and the ADF should address these issues when drafting the domestic legislation required to implement the Convention, and when developing policies by which the personnel of the Australian Defence Force operate.

I am relying on the Bills Digest in relation to this. JSCOT recommended that particular regard should be given to 'preventing inadvertent participation in the use, or assistance in the use, of cluster munitions by Australia'. Given what the parliamentary secretary has said in relation to the whole issue of the aims of the convention and the concerns expressed by the Joint Standing Committee on Treaties in May 2009—when there were, I think, some quite heavy caveats given, or perhaps warnings sounded, by the committee about there being a potential avenue by which Australia could participate in actions which could contravene the humanitarian aims of the convention—to what extent does the government say that those matters have been addressed in this legislation so that there is not a potential contravention of the humanitarian aims of the convention?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:37): The government gave careful
consideration to JSCOT's recommendation regarding inadvertent participation and assistance in the use of cluster munitions. In its response to JSCOT's report the government noted that the convention does not prohibit inadvertent participation in the use, or assistance in the use, of cluster munitions. Rather, article 1 of the convention prohibits states parties from using cluster munitions and also prohibits assistance in the use of cluster munitions. This prohibition is subject to the exceptions contained in article 21 of the convention. Paragraph 3 of article 21 states:

Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.

Paragraph 4 of article 21 states that states parties are nonetheless prohibited from themselves using, developing, producing or otherwise acquiring, stockpiling or transferring cluster munitions, or expressly requesting the use of cluster munitions in cases where the choice of munitions used is within their exclusive control. In this context the bill does not include an offence of inadvertently participating in the use, or assistance in the use, of cluster munitions.

The bill uses the same language as the convention, and this ensures that the bill accurately reflects the provisions of the convention. Sections 72.38 and 72.41 of the bill give effect to article 1 and paragraphs 3 and 4 of article 21 of the convention. Section 72.38 contains offences that cover the range of conduct prohibited in article 1, including the use and assistance in the use of cluster munitions. The physical elements of the offences found in section 72.38 must be done intentionally.

Section 72.41 provides that a person who is an Australian citizen, ADF member or Commonwealth contractor does not commit an offence under section 72.38 if the act is done in the course of military cooperation or operations with a foreign country that is not a party to the convention, and as long as the act is not connected with Australia using, developing, producing or otherwise acquiring, stockpiling, retaining or transferring a cluster munition or expressly requesting the use of cluster munitions where the choice of munitions used is within Australia's exclusive control.

The limitations contained in this provision, known as the interoperability provision, will ensure that Australia and Australians will continue to act consistently with the objects and the purpose of the convention even when undertaking cooperative activities with countries that are not obliged to comply with the convention. Obviously, the United States is the example of the moment.

Senator LUDLAM (Western Australia) (20:40): I am glad you have started quoting sections of the bill to us. I will continue in kind. We will just step through this, and I will invite the minister now to jump at the point where he hears me misinterpret a section of the act. I just want to step through the sections that the minister just quoted to us: 72.38 of the bill—offences relating to cluster munitions. It appears to me to have been drafted more and less using exactly the same language as the convention. It is comprehensive. There is nothing there that I would consider has been left out. That is what Australia will henceforth be bound to. Is that a correct reading of section 72.38?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:41): Yes. Obviously, it applies to individuals and not to countries.
Senator LUDLAM (Western Australia) (20:41): Thanks, Minister. With that caveat attached, that is fair enough. This is formalising what will in fact be unlawful for a person to undertake henceforth. That is my reading of it.

However, we come to section 72.41—and this is where I think this debate hinges in its entirety, so I am just going to quote what 72.41 does. It says:

A person who is an Australian citizen, is a member of the Australian Defence Force or is performing services under a Commonwealth contract does not commit an offence—

In other words, is exempt from the section that I quoted to you previously—

... against section 72.38 by doing an act if:

(a) the act is done in the course of military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions;—

For the time being, let us let the US government stand in—

... and

(b) the act is not connected with the Commonwealth:

(i) using a cluster munition; or

(ii) developing, producing or otherwise acquiring a cluster munition; or

(iii) stockpiling or retaining a cluster munition; or

(iv) transferring a cluster munition; and ...

My understanding of that is that if I am an FA18 pilot, it is 2003 and I am flying close support on my way into Baghdad; and units of the US Army or Marine Corps below me are firing cluster weapons indiscriminately into urban areas; and I have not called on them to do that but I am flying close support for those units, then I would be protected, even if this bill had been in force in 2003. Minister, is that a correct reading of this bill?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:43): Let me perhaps take you to how the government comprehends this issue. I will resist the invitation to deal with the hypothetical you have—

Senator Ludlam: No, it's a real instance.

Senator FEENEY: You are talking about 2003 and we are talking about a convention here of 2012. Bear with me and then, of course, we will fight to the death to defend your democratic right to keep questioning me.

Senator Ludlam: Thank you.

Senator FEENEY: Very good. So what conduct would be excused by the defence found in section 72.41? The bill includes a defence which corresponds to the range of conduct that is permitted by article 21 of the convention. The defence applies to persons whose conduct is done in the course of military cooperation or operations with countries that are not party to the convention. Of course, in those respects your understanding conforms with our own.

However, notwithstanding this defence, it will be an offence for a person to use, develop, produce, acquire, stockpile or retain cluster munitions, even in the course of combined operations with countries that are not party to the convention. The defence will also not apply if a person expressly requests the use of cluster munitions in a situation where the choice of munitions used is within Australia's exclusive control.

As a consequence of this provision, ADF personnel will be able to continue to participate in a variety of roles when involved in combined operations with countries not party to the convention who may use cluster munitions, as is permitted by article 21 of the convention. For example, ADF personnel will be able to hold senior positions in combined headquarters and
participate in mission planning with countries not party to the convention. ADF personnel could still be employed in intelligence, logistics or other combat support roles during combined operations. ADF personnel may also be deployed to operate with countries not party to the convention or to provide logistical support to non-state party forces. Where necessary, deployed ADF combat units would also be able to call for fire support—from air, artillery or naval gunfire—from countries not party to the convention, so long as the ADF personnel do not expressly request the use of cluster munitions in a situation where the choice of munitions to be used is within their exclusive control. The ability to call for fire support is essential to protection of ADF lives in the field. Protective fire support would be called for to ensure the protection and safety of ADF personnel and assets in the field when faced with imminent threat from enemy forces.

The fact that the convention and the bill permit ADF personnel to undertake certain roles in combined operations does not mean that the ADF personnel will necessarily be doing those jobs. The ADF may place additional restrictions on ADF personnel through directives, rules of engagement and some of those other devices we have already discussed. Australia's rules of engagement may place limits upon the kinds of roles and tasks that our personnel carry out in accordance with the government's strategic direction. Agencies are working to ensure that ADF doctrine, procedures, rules and directives will be consistent with the convention. This process will be completed before Australia ratifies the convention and this legislation commences.

It is also important to remember that, consistent with article 21 and the interoperability defence in the bill, when undertaking these roles ADF personnel will be prohibited from using, transferring, stockpiling, developing, producing or acquiring cluster munitions, or expressly requesting the use of cluster munitions where the choice of munitions used is within Australia's exclusive control. Specifically, ADF personnel will not be permitted to use cluster munitions themselves, even when deployed with the forces of countries not party to the convention.

Senator LUDLAM (Western Australia) (20:47): Minister, for once I am finding the committee stage of this bill extremely helpful. It is not every debate that I get to stand up and say that. This is actually highly instructive. In fact, you have confirmed the point that I have taken. If I may make this request just to save time in the debate: can we set aside any further assurances from the minister that Australian forces will be permitted to deploy or use cluster weapons? I completely and fully understand that we have no intention of doing that. I have heard that from you; I have heard that from the department; I have heard that from men and women in uniform who have put it on the record. The case that I am interested in—and the minister referred to this repeatedly on his way through that explanation—is our ability to work with forces who are non-state parties to the convention.

I also understand why article 21 got in there. I might disagree with it but there were arguments made at the time that without some form of words, which eventually landed at article 21, this convention would not have got up at all. I understand. Perhaps from Australia's point of view the government might argue, 'No article 21—then we cannot play because we still feel we may perhaps in the future want to invade more countries at the behest of the United States.' We have some form in that; maybe we will want to continue to do that in future.
Who knows? Perhaps we will be called on to invade Iran. But let us not get distracted.

If I could remind you gently, Minister, the reason we go into the committee stage is to establish how these bills will work. I attempted not to use a hypothetical; I attempted to use a very timely real-world case. Minister, with respect to the fact that you have not yet been able to return with some answers as to whether the RAAF flew close support for US ground forces using these weapons, as we obviously have not been going all that long—would that behaviour be prohibited under this bill? My explicit reading of it is that it would not. None of the exceptions in section 72.41 would prevent an Australian RAAF pilot, who had not called in the cluster weapon strike, nonetheless supporting an operation in which they are used. If there is an exception in section 72.41 which would prevent that behaviour—in other words, if it is the government's point of view that, if that conduct occurred in 2003, it would certainly be expressly prohibited in any future military operation—could the minister point me to the exclusion that would cause a material difference?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:49): Unfortunately I am not really able to assist you, Senator. There are too many hypotheticals in your scenario. But I should think that the detail I just provided would give you adequate comfort, because there we have described the conduct of Australian personnel and the requirements upon them when they operate with non-states parties. That is as much detail as we are in a position to give.

Senator LUDLAM (Western Australia) (20:50): Maybe I could have expressed the question more clearly. I respect the reason we do not like to drift off into hypotheticals because of the way these debates will be interpreted later. Would this bill, should it become an act—and I am still holding out some faint hope that sense will prevail but we will see—prevent the ADF from participating in operations with non-states parties who are using cluster munitions? At the moment you have framed your answers like so: 'Look, maybe they have them in the arsenal but we are assuming they are not actually using them,' but there is nothing in my reading of the parts of the bill that we are referring to tonight—expressly sections 72.41 and 72.38—that would prevent the scenario I am describing. Call it hypothetical if you will. Human Rights Watch, the International Red Cross and a number of other observers believe this occurred in 2003. With respect to the fact that the United States government intends to remain a non-states party to this convention, can you tell us what would preclude a RAAF squadron performing exactly the kind of thing that I have described in 2003—or would that be permitted? It is not really hypothetical. It is about your interpretation of the bill.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:51): Again, all I can really do is commend the wording of proposed section 72.41 to you. As I said in my answer earlier, notwithstanding the interoperability provisions, it will be an offence for a person to use, develop, produce, acquire, stockpile or retain cluster munitions even when engaged in combined operations. The interoperability defence will also not apply if a person expressly requests the use of cluster munitions in a situation where the
choice of munitions used is within Australia's exclusive control.

Senator LUDLAM (Western Australia) (20:52): Minister, what if the ADF unit is supporting a US military unit that is using cluster weapons, as was the case—you can refer to it if you wish; I do not mind—with the invasion of Iraq, where we were doing none of the things that you have just listed? We were not using, we were not deploying, we were not stockpiling, retaining, developing or producing. We were not doing any of those things. We were flying support for units using cluster munitions. It is a really simple question. The minister is across this stuff. You are in a representational capacity but you do know this bill inside out. You also know the sector very well in your ministerial capacity. This is exactly the kind of case. Would this prevent the ADF from operating in direct support of a unit using cluster weapons? It is just a yes or no.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:53): Alas, it is never as simple as a yes or no, Senator. I think we would be deeply remiss if we started to go through imaginary and hypothetical military circumstances and a group of civilians like us started to try to define these matters. Senator, let me take you to the convention and say that it is important that the convention is read as a whole and given its ordinary meaning, as it is appropriate to when speaking of international treaties. It is important to note that subarticle 3 of article 21 creates an exception to article 1, but then subarticle 4 limits the scope of the exception. By limiting the scope of the exception it makes it clear that certain things that would be prohibited, but for the fact of the exception created by subarticle 3, are not prohibited because subarticle 4 picks up some of the conduct in article 1 and makes it clear that, notwithstanding the general exception, a country cannot engage in that conduct. So, when the convention is read and taken as a whole, it is the government's view that the convention itself does permit certain conduct and that what is prohibited is more narrow than the general prohibition in article 1. That is faithfully picked up in the bill. So it is the government's view that that means that the conduct found in subarticle 4 of article 21 remains prohibited, notwithstanding the otherwise general exception, but that other conduct is not prohibited.

Senator LUDLAM (Western Australia) (20:55): Minister, I cannot take anything away from this exchange other than, if Australia were again to find itself in the position of supporting US units firing cluster weapons into civilian areas, we would not be prevented and that this accession to the convention would not prohibit or preclude us from doing just that.

Senator XENOPHON (South Australia) (20:56): I do not want the parliamentary secretary to traverse areas that have already been traversed but I do want to pin down this issue, if he would clarify it. I think it is always dangerous for someone of legal training to ask a question about which they have no idea what the answer will be. Just to recap in terms of some first principles so that the premise of this question is not misunderstood. We have the offence in proposed section 72.38 about doing acts with cluster munitions, in particular with respect to subclause (2) that a person commits an offence if the first person 'assists, encourages or induces' another person to do any of the following acts with cluster munition: use it, develop it, stockpile it, transfer it to anyone;
the other person does the act and the first person intends that the act be done. The key words there are 'assists, encourages or induces'. You have the defence in proposed section 72.41, where it is a defence if 'the act is done in the course of military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions'. If we then go to the convention we see that the preamble to the convention makes this reference:

_Determined_ to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned.

So that failure rate is clearly referred to in the preamble. Article 1 makes specific reference to the general obligations. It states:

_Each State Party undertakes never under any circumstances to:_

(a) Use cluster munitions;

(b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;

(c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.

From a general drafting principle, and it has been 36 years since I did statutory interpretation at law school—

**Senator Ludlam:** I was in primary school.

**Senator XENOPHON:** Senator Ludlam was in primary school. It has been 36 years since I did statutory law interpretation—and not a word from Senator Back on that either—but, in terms of general principles, if this piece of legislation is intended to ratify the terms of this convention, which is quite explicit as to its key obligation, which relates to 'never under any circumstances should a state party assist, encourage or induce anyone to engage in any activity', leaving aside any issues of hypotheticals of Iraq, and I do not think anyone can say that the Iraq war was a hypothetical event—

**Senator Feeney:** I was not the Parliamentary Secretary for Defence.

**Senator XENOPHON:** I will not hold Senator Feeney responsible for Australia's involvement in the Iraq war, where we as a nation were joined at the hip with George W Bush. I will give him that.

Isn't there a difficulty here that, by virtue of the defence in 72.41, it is fundamentally inconsistent with part 1(c) of article 1 of the convention? That is the first question. I have a second question, in order to save time and be helpful to the committee. Reference was made to JSCOT, to the Joint Standing Committee on Treaties, and it expressed concern that some of the terms in the convention are not clearly defined and may provide an avenue by which Australia could participate in actions which may contravene the humanitarian aims of the convention. Did the government seek advice from JSCOT once this bill was drafted? I have no idea what the answer is, but was there a subsequent JSCOT inquiry into the provisions of this bill, particularly in relation to the interplay between 72.41, 72.38, part 1(c) of article 1 of the convention, and the preamble to the convention, which says:

… put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (21:01): Firstly, Senator Xenophon, with regard to your first question, I hope I can give you comfort insofar as the wording found in paragraphs 3 and 4 of article 21 of the convention is concerned. The wording of those parts of the convention is then reproduced in the bill, in 72.41. The
government would submit that we have kept faith with the convention by using the same wording and the same phraseology.

With regard to your second question, JSCOT did not have a subsequent inquiry as I understand it, but the government did pay careful attention and consideration to JSCOT’s recommendation regarding the definition of certain terms used in the convention. The government's view is that these terms should be read according to their plain English meaning. These terms are used in the convention but are not defined. In accordance with principles of treaty interpretation and as stated in the explanatory memorandum to this bill, these terms must be read in accordance with their ordinary meaning. Consequently, it was not necessary to define these terms in here.

Senator XENOPHON (South Australia) (21:02): I thank the parliamentary secretary for his answer, but isn’t it the case that the government—and I will be guided by Senator Ludlam to some degree on this—did not want JSCOT to look at this bill. Is that the case? Can you confirm that?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:03): I think, Senator, you might be hearkening back to a motion moved in the Senate by the Greens party recommending that this matter be looked at again by JSCOT. You are looking at me quizzically, so perhaps you were not hearkening back to that, but I am guessing you were.

I would say, no, the government did not see the need for a further inquiry, but of course in no way do we shy away from or seek that JSCOT desist from analysing this material. JSCOT has its responsibilities. Its members remain faithful to its mandate, and I do not see any difficulty for us in the work of JSCOT or its deliberations here.

Senator LUDLAM (Western Australia) (21:03): Just to clarify the record, I have the transcript here from 7 July 2011—that is how long this phase of the debate has been running. On the basis of the contradictions that the Scrutiny of Bills Committee pointed out, and on the basis of the very direct and unequivocal evidence that was provided to the Senate Foreign Affairs, Defence and Trade Legislation Committee a short time after I sought to refer the bill back to the treaties committee—the motion, which I spoke to, was moved on 7 July and I moved for a report by 7 September—I made a brief statement reflecting on the fact that this situation was still resolvable. At that stage I was actually taking the government on good faith that it did not intend to write loopholes into the bill, but perhaps there had been some careless drafting, particularly in the area of investment, which we have not really touched on yet tonight.

The treaties committee is diligent. It is a large committee; it has the expertise; it deals with these kinds of things all the time. It also had prior experience with the matter as a result of its earlier inquiry. I do not have the record of the vote here. I suspect Senator Xenophon was probably sitting on this side of the chamber. Senator Feeney, you were sitting over there with the coalition. You prevented that from going back to the treaties committee. It could have headed off a great deal of grief if we had taken the opportunity then to send this matter back to the treaties committee. I will just test the will of the chamber: if I were to spontaneously move a referral of this matter now to the treaties committee for one last second thought—

Senator Xenophon: I second it.

Senator LUDLAM: I understand I have a seconder in Senator Xenophon. If the minister would like to indicate on which side of the chamber he would advise his
colleagues to sit, perhaps we can all go home early?

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (21:05): Thank you, Senator Ludlam. Of course, I take your remarks in good faith. I understand, and you understand, that you are well acquainted with sitting on that side of the chamber with the coalition. I have seen it on several tumultuous moments, recently and of course with the CPRS legislation in 2010. Such is the nature of the workings of this chamber that I know you are not a stranger to sitting over there with the coalition to defeat critical reforms.

Let me now, perhaps more temperately, consider your points. Firstly, as I comprehend it, the foreign affairs committee recommended that this legislation be passed by the Senate without amendment, and of course I understand that you wrote a dissenting report to that recommendation. So, from the government's perspective, we would say that that committee has looked at the legislation and discharged its function and produced a report which, on this occasion, the government is in accord with.

With respect to JSCOT, it is not typical for JSCOT to look at legislation; it is of course a treaties committee and its expertise is generally in looking at the wording and implications of treaties. On this occasion, given the uniqueness of this work, it did look at legislation, but I think it is worth the chamber noting that that is atypical of the work of JSCOT.

**Senator XENOPHON** (South Australia) (21:07): Notwithstanding that it is atypical for JSCOT to look at the wording of legislation, the fact is that there is a precedent here with respect to this piece of legislation in relation to cluster munitions, and the convention on cluster munitions, that JSCOT did look at it. Given the importance—and I say this without any sense of irony—that the government places on our treaty obligations to ensure that we comply with treaties, what harm would there be for this matter to be referred in the next six or 12 months to JSCOT to carefully analyse the wording in the legislation to see whether there is any scope for it to be in any way further amended, subject to further scrutiny for the legislative amendments, given the work that JSCOT has already undertaken in relation to this legislation?

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (21:08): I think, as you have heard tonight from Senator Marshall and Senator Singh, that there is no shortage of passionate advocates in the government party room for this legislation and the effect that it will bring about. So ultimately my answer to you, Senator, is that the government come here now, with a bill which we believe is, as I said at the outset, the centrepiece of Australia keeping faith with this convention—a convention that is strongly supported by the government—and I fear that your course of action would ultimately represent delay, and what we are interested in doing is having this legislation pass the parliament and for its very important work to commence as quickly as practicable.

**Senator XENOPHON** (South Australia) (21:09): I am afraid the parliamentary secretary has misunderstood me—and that is perhaps not a difficult thing to do; it is understandable! But what I was suggesting was not to delay the passage of this bill. I can count, but I think there are some issues of accountability here that need to be dealt with. What I am suggesting is that, given JSCOT's role in looking at the legislation—as atypical as it is, as Senator Feeney has pointed out; but, notwithstanding that, it has occurred: there has been a precedent set for this piece of very important legislation—will
the government commit itself, after the passage of this legislation, as appears highly likely, to JSCOT having another look at this, to another referral to JSCOT about this bill, in the context of the concerns raised during the committee stages of this bill?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:10): I think the short answer is no. Ultimately, the decision is above my pay grade, and I am perhaps anticipating the answer of my betters, but plainly the government's view would be that this legislation should be passed and that how the legislation is giving effect to the convention is a matter that will be considered by ministers and government down the track. So I am not in a position to give you an undertaking tonight.

Senator XENOPHON (South Australia) (21:10): Is this something that you are in a position to obtain some advice from the government on? It would save a fair degree of the Senate's time if this matter in the next 12 months were referred to JSCOT for a further review and to report back within, say, a period of six months. In other words, it would not be something you would do straightaway, but, once the legislation has been proclaimed, there will be a reasonable period to allow for JSCOT to assess it and for the matters that have been raised, so ably by Senator Ludlam in particular, to be the subject of further scrutiny—given the Joint Standing Committee on Treaties' previous role, atypical as it was, to examine this legislation. I do not think it is an unreasonable request. As you know, I am always reasonable in my requests, Senator Feeney.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:11): Senator, I will take the matter on notice and ask the minister. I would draw your attention to my earlier comments about the transparency report and the fact that the work of this convention and its effect in Australia will be regularly reported. I cannot do any better than that for you, I am afraid.

Senator LUDLAM (Western Australia) (21:12): Minister, before we move on—and still on the subject of interoperability—I want to take us back briefly to some of the questions I put to you before. I can recall fairly clearly asking you to take on notice whether or not the RAAF had flown support missions for US ground troops that were using these weapons during the invasion of Iraq.

I also seek your advice, on notice, whether overnight the department could examine the Human Rights Watch report that I am citing and describe for us whether they support its conclusions or whether they believe those conclusions are in error. Those were the figures I cited before about the number of weapons that were used, and I gave you a list of places—metropolitan areas and regional cities—into which the weapons were fired on the way towards Baghdad. I am seeking your advice as to whether the government supports the basic premise of that report or whether it rejects the conclusions that were made there.

In particular, I seek the minister's advice as to whether the Australian government agrees with a four-month study by USA Today—perhaps at the conclusion of this debate I can provide the precise citations for the documents that I am reading from, which may assist the officers—that nearly 11,000 of these weapons were used during the invasion, containing between 1.7 million and two million submunitions, and the use by the British government of another 2,000. I will take all of those in sequence on notice, if I could. What I am seeking, unless it is more complex than I am making it sound, is
simply a yes or no as to whether the Australian government believes that these reports are credible.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:13): When you speak of 'the department' I assume you are talking about the Department of Defence, and this is obviously an Attorney-General's bill—but I will take that as read. Senator, let me take those on notice. I am not in a position to answer either of them now. So, with regard to the Human Rights Watch report you have cited, and the statistics from USA Today, I will see if the department is in a position to provide any further clarity.

Senator XENOPHON (South Australia) (21:14): I go to the convention's article 21, which has been referred to by Senator Feeney, and to its clauses 3 and 4. Article 21(3) states:

… Notwithstanding the provisions of Article 1 of this Convention—

and that is the general prohibition of cost of munitions—

and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.

My question to Senator Feeney and, by extension, to the Attorney-General's Department is: how does the government interpret that? Does it interpret that you can engage in military cooperation with a party that is not a party to this convention in circumstances where that party is using cluster munitions? But, in terms of how I read the primary aims of this very convention—the key aims, being the fundamental premise of this convention—what they mean is that you can have military cooperation with a party that is not a party to the convention as long as that party is not engaging in the use of cluster munitions. That seems to be an interpretation that would be quite reasonable in the circumstances. So that is a key issue as to the basis of the advice that the government has received in relation to this bill. How does it interpret that particular clause, which I think is fundamental to the shaping of this bill?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:16): I am happy to retrace these steps, but I really do not have anything further to add to what I said in answer to a very similar question from Senator Ludlam.

Senator Xenophon: It was not identical?

Senator FEENEY: No, very similar, and I did protect your dignity with my characterisation of your question there. Notwithstanding the interoperability defence, it will be an offence for a person to use, develop, produce, acquire, stockpile or retain cluster munitions, even in the course of combined operations with countries that are not a party to the convention. This interoperability defence will also not apply if a person expressly requests the use of cluster munitions in a situation where the choice of munitions used is within Australia's exclusive control. Senator, you might recall I used some examples, to the extent that I was able to, where ADF personnel will be able to participate in a variety of roles when involved in combined operations with countries not party to the convention who may use cluster munitions as is permitted by article 21 of the convention. I talked about ADF personnel being able to hold senior positions in combined headquarters and participate in mission planning. ADF personnel would still be able to be used in intelligence, logistics and other support roles in combined operations. ADF personnel may also be deployed to operate with countries.
not party to the convention or to provide logistical support to non-state party forces. Where necessary, deployed ADF combat units would also be able to call for fire support—air, artillery or naval gunfire—from countries not party to the convention as long as the ADF personnel do not expressly request the use of cluster munitions in a situation where the choice of munitions to be used is within their exclusive control. So aside from those undertakings I am afraid I cannot assist you further.

Senator XENOPHON (South Australia) (21:18): I am grateful to Senator Feeney for his response. So does that mean that the government is reading article 21's clause 3 of the convention in the context of allowing those sorts of activities? I am just trying to understand this. I am not an expert on treaties. I have the background of a suburban personal injuries lawyer and I am just trying to understand what this means because my reading of clause 3, by implication when you read it with the other parts of the convention and the preamble to the convention, is that what is being proposed in 72.41—the defence in the bill—is fundamentally inconsistent with the terms of the convention and indeed inconsistent with clause 3, which I think, from a statutory interpretation point of view, needs to be read in conjunction with the preamble and the principle aims and objectives of the convention.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:19): Senator, the government's view, when looking at the convention and article 21's clause 3, is that 21(3) is the exception and then clause 4 has the limits upon that exception. That is our view and that is how we read the convention.

Senator XENOPHON (South Australia) (21:20): My question to Senator Feeney is: does the government concede that there is an inherent tension between the preamble to the convention, article 1 of the convention and the defence contained in clause 77.41 of the bill? At the very least it raises questions of an inherent tension between the aims of the convention and the defence. There is an inherent tension in there and it goes back to the quite prescient warning of the Joint Standing Committee on Treaties, which stated:

… some of the terms in the Convention are not clearly defined and may provide an avenue by which Australia could participate in actions which may contravene the humanitarian aims of the Convention.

Doesn't 72.41 actually provide an out and actually provide the basis by which the humanitarian aims of the convention, to which Australia as a nation has signed up, could be undermined at the very least by virtue of 72.41?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:21): No, we do not believe that there is such a tension. I think the matter is dispelled by the opening words of 21(3), which says 'notwithstanding the provisions of article 1 of this convention' and then it continues. I think 'notwithstanding the provisions of article 1 of this convention' makes plain that 21(3) is describing an exception and, as I said before, 21(4) is then limiting that exception. I would also make the point, one I made earlier, that in the legislation the bill's 72.41 is of course using the same language as is found in the convention.

Senator XENOPHON (South Australia) (21:22): Madam Chair, doesn't the government concede that the humanitarian aims of the convention, which are clear in the preamble and article 1, could well be undermined by 72.41, notwithstanding what Senator Feeney has said in relation to clause 3 of article 21 which says, 'Notwithstanding the provisions of article 1'?
Can't that be read quite narrowly to relate to military cooperation with a party that has not signed the convention but is not using cluster munitions in a particular exercise? I will bring this to an end shortly, to the relief of Senator Feeney. Senator Feeney said something about 15 or 20 minutes ago about rules of engagement. That would be relevant, would it not? If you can deal with that issue, I want then to go to the issue of rules of engagement because that goes to the application of the defence and the application of this bill.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:23): Senator, I do not think we have a disagreement. The convention is an international agreement. It has been struck and the words are before us. Australia has signed that convention and is obviously now in the process of ratifying it. This bill gives life to the convention for the purposes of Australian law but the convention is an international instrument and we are one of 49 signatories.

Senator XENOPHON (South Australia) (21:25): And to what extent are those non-legislative measures, the rules of engagement, the ADF doctrines dealt with? I understand that we are dealing with highly professional members of the ADF who have as their primary responsibility the defence of our nation and the safety of our serving men and women, particularly in a front-line situation. To what extent before they are deployed in an operational sense will this convention and this piece of legislation be considered? To what extent is it first and foremost in their minds before our troops are engaged in an operation where cluster munitions may be used?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:26): Yes, absolutely. Rules of engagement are the mechanism that the government uses to provide strategic guidance to ADF forces and to ensure that they are complying with the various national and international obligations upon Australia. This convention and this bill would absolutely have to form a part of the consideration of the ADF and, where appropriate, rules of engagement. No question.

Senator XENOPHON (South Australia) (21:27): Hopefully finally in relation to that—and I am very grateful for the patience of Senator Feeney and that of the officers of the department—before troops are put in an operation, will questions be asked of our ally who could be using cluster munitions whether cluster munitions are likely to be used? In other words, is one of the rules of engagement that we ask that question and then consider our treaty obligations in that context? Or is it a question of being in the middle of an operation and cluster munitions suddenly are being used when it was not even asked as to whether they were going to be used or not or if there was a likelihood...
that they were going to be used? I think that would be a relevant issue to raise.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:28): I think this matter is very plain. Australian forces when deployed on operations go through an extensive force preparation process and obviously there is a critically important series of planning and logistical processes around that. In all of that work, as has always been the case, those operations are required to conform with Australia's national and international treaty obligations. So the planning of future operations involving ADF personnel would, as a matter of course, consider our treaty obligations under this convention.

Senator XENOPHON (South Australia) (21:28): Does that mean before an operation the question will be asked as to whether cluster munitions may be used or are likely to be used?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:29): Yes.

Senator LUDLAM (Western Australia) (21:29): Minister, I indicated before that I was going to provide you with citations for some of the figures that I quoted before. I wonder whether it might not be helpful, by leave, to table the document that I am referring to. It is the article that cites three studies and, in particular, I draw the minister's and the department's attention to citations 3, 4 and 24. I know it is a little unorthodox to seek leave to table it before the minister and Senator Joyce have had a chance to view it, but I will test the view of the chamber now.

Leave granted.

Senator LUDLAM: Thank you very much. We can maybe come back to the questions that I have raised. The three documents that I have cited from this study go to the government's view as to the veracity of the figures and the situations described in those three documents. The reason that I have spent so much time dwelling on this is that, despite the attempt by the minister to paint the conflict in Iraq as hypothetical, the war did in fact happen. The invasion of Iraq did in fact happen. It is the view of the authors of the International Red Cross and Human Rights Watch as well as that of a number of the other authors who are cited in this study that not only did that conflict occur but that up to two million submunitions were scattered across metropolitan and regional areas of Iraq in an operation in which the Royal Australian Air Force flew close support for US military units that were firing those weapons into those areas. That is the reason I have dwelt here.

I also want to come to the reason why I asked the minister before whether he had a copy to hand of the responses that the Department of Defence provided to the Foreign Affairs, Defence and Trade Committee when we put some of these very same questions to the department during the committee's inquiry. I will quote from Defence responses (c) and (d). These were responses to questions directed from the chair relating to section 72.41, where we spent most of the evening discussing the matter of interoperability. I seek the minister's views on whether Defence has been correctly quoted here:

In particular, Article 21 will allow Non-States Parties—

and this is Defence's view—

Senator Feeney: Whereabouts are you quoting from?

Senator LUDLAM: I am quoting from answer 1(c); it is in the bottom half of the paragraph, where Defence states:

In particular, Article 21—

CHAMBER
This is referring to the convention rather than the bill—
will allow Non-States Parties (such as the United States) to defend the lives of ADF personnel through close air support, even when cluster munitions might be used.

In part (d), the view of the Defence is:
The bill does not prevent ADF personnel from working in coalition headquarters (conducting planning, providing intelligence and logistics support), in operations where cluster munitions may be used.

So it is the view of the ADF in their answers in 1(c) and (d) that we could still be intimately involved in military operations with a party that is not a state to the convention—which is where I think the minister would kind of like the full stop to occur in the sentence—in military operations with non-states parties where cluster weapons are planned and then used. I ask the minister, as we are running the clock down in the debate this evening, how on earth that conception of the operation of this bill in any way accords with the universal intention of this convention to ban these weapons from the face of the earth?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:33): Firstly, I can confirm that that is the Department of Defence's position and that it was put accurately. It is consistent with the explanations I gave earlier in the evening to your questions. So I think insofar as that is concerned we are all on the same page. As to your point about operations, I would say only two things. The first perhaps is a little speculative but it is this: in order for this convention to have secured the international support that it has—and obviously that international support enlivens it as an instrument for effecting real reform around the world—it needed to be a convention that was practicable. As you yourself have pointed out on many occasions tonight, there are a great number of significant nations of which the United States is one and China, Russia, Iran and Brazil are others who are not signatories to this convention. That is obviously a matter of regret and will be a matter for continuing campaigning.

But I guess to follow that reasoning and to make my second point, the interoperability provision, which is ultimately what you are complaining about, is a requirement of the Australian government because, as well as supporting this convention and keeping faith with it and its terms, we are also resolved to maintain our military alliance with the United States and to develop arrangements which mean that that alliance is not prejudiced. There are obviously questions of detail, and you have gone to them tonight, and they are important questions of detail. But the fundamental reality is this: we were not going to support this convention and dismantle the US alliance. I fear that the logical conclusion of your reasoning is that we should apply this convention in a way that destroys that alliance. That is perhaps something you can speak to; but, for our part, this is a convention that we have supported and that we will advocate for, and we are making sure that our alliance arrangements with the United States conform with it.

Senator LUDLAM (Western Australia) (21:36): Minister, I thank you for your detailed answer and also the patience and grace with which you have responded to the questions that Senator Xenophon and I have been asking. I do not know that we are going to get too much further, but I strongly object to the counterargument that we are somehow seeking to rip up the military alliance with the United States or prevent us from invading countries on the other side of the world at the behest of the United States, if they should call on us to do so again—heaven forbid. But I wonder whether the
The minister may or may not be aware that the huge number of civil society groups that are up in arms over what this chamber is perpetuating tonight were very happy with how the government of New Zealand upheld its obligations. It found a different way of balancing the two obligations that the minister is seeking to represent. I respect, Senator Feeney, that you believe that we have struck an appropriate balance between the articles of the convention and our commitments to joint actions with the United States military. Somehow the New Zealand government managed to criminalise all activities prohibited by the convention's article 1, but also created the kind of balancing provisions that, for example, allow the government of New Zealand to have a deployment in Afghanistan at the moment that no doubt undertakes joint operations with the United States forces, as our contingent in Oruzgan does.

The drafting did not raise concerns by groups like the ICRC, on the cluster weapons convention and so on. Will the minister consider evaluating the drafting of the provisions around interoperability that found their way into New Zealand legislation to see if there is a compromise way forward that could satisfy the civil society groups that Senator Singh spoke so eloquently about and that you yourself, Senator Feeney, have acknowledged in the debate tonight? Will the minister consider looking at ways that other countries have managed to get the balance right?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:38): The short answer is no. I will now ask you to endure the longer answer. The government does not consider that a defence that applies to mere participation accurately gives effect to the convention. Such an amendment would therefore be inconsistent with the purpose of the bill, which is to give effect to the convention. The convention does not prohibit mere participation or unintended or inadvertent participation in acts by a non-state party that would be prohibited to a state party. The bill uses the same language as the convention to ensure that all conduct that is prohibited by the convention is the subject of a criminal offence under Australian law. Further, the term 'mere participation' is not defined and would be subject to interpretation.

Creating a defence for mere participation ignores the limitations placed by the convention on the kinds of activities that can be undertaken in the course of military cooperation and operations with countries not party to the convention. Creating a defence for mere participation also risks removing criminal liability for a broader range of conduct than is permitted by the convention.

Senator, when considering your point about the civil society contribution here, I would only say this. Clearly, those civil society entities that you refer to have campaigned on this issue with zeal and passion for a long time. The government, in supporting the convention and bringing this legislation to the parliament, does, for the most part, support both their intent and their efforts. I guess it is not a surprise that groups like that might take a more, dare I say it, puritanical view about this legislation. But, fundamentally, it is my view that this legislation has struck the right balance and that, working in partnership with those civil society elements into the future, we will together do all we can to make this
convention the international norm for all states.

Senator LUDLAM (Western Australia) (21:40): Minister, maybe I have a different understanding of the use of the word 'puritanical'. Would you consider the International Committee of the Red Cross as an example of one of the 'puritanical' civil society organisations that I was referring to? I explicitly named the ICRC in my opening remarks.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:41): Senator, I am trying to have an honest political discourse with you, not engage in point scoring. I am not in a position, nor would I seek to be, where I would make comment or judgement about that organisation or any other that has done good work in this area. I am simply saying that the expressed views of some of those parties about the interoperability provision is not a surprise. Notwithstanding that, the government believes it has struck the right balance and progressed this issue very critically.

Senator LUDLAM (Western Australia) (21:41): Minister, you can be assured that I intend to retain the respectful tone of the debate so far tonight. I was not seeking to score a point. You described the organisations that I introduced to the debate a moment ago as making contributions that were 'puritanical', but I am happy to set that aside. Minister, do you acknowledge that the ICRC is the international authority on international humanitarian law—that is, the laws of war—and they do occupy a unique position in the legal ecology around the laws of war? I just wonder whether the minister would acknowledge that that is the case.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:42): The government well understands the role of that entity and of course, as the senator would appreciate, played a critical role in advocating for its establishment.

Senator LUDLAM (Western Australia) (21:42): I thank the minister for that response. I think we have got the debate back on the rails. Minister, I draw your attention to the submission by the ICRC to the Senate Foreign Affairs, Defence and Trade Legislation Committee regarding the amendments that we are debating tonight. At the bottom of page 1 of the ICRC submission—I am happy to table this document as well if that would assist—they say the following:

While Article 21 permits military cooperation and operations between States Parties and States not party, it is equally important to note that the article also seeks to further the goals of the Convention. Paragraphs 1 and 2 of Article 21 require each State Party to promote the norms of the Convention, encourage States not party to adhere to the instrument and to use its best efforts to discourage such States from using cluster munitions.

I will pause there at the end of that paragraph because it is my understanding, based on information that you gave to us before, that to date, as at this stage, the Australian government has not sought to do that. It has notified the United States of our intentions, but at no time that the minister was able to cite have we been promoting the norms or encouraging—I guess the operative word here is 'encouraging'—states not party to adhere to the instrument and to use our best efforts et cetera. We do not appear to have done that. Then, and perhaps even more troubling, the ICRC go on to say the following:

In the view of the ICRC these two aspects of Article 21 (furthering the goals of the treaty and permitting continued military cooperation and operations with States not party) must be read together and taken into account when developing national implementing legislation. Excessively
broad exceptions or defences created under paragraphs 3 and 4 of Article 21—
which I believe are the ones the minister has been citing this evening—
would conflict with and undermine the purpose of paragraphs 1 and 2.

I guess it all depends on the emphasis that you place on the different parts of the convention. The submission goes on:
The ICRC believes that any exceptions or defences to the Convention's prohibitions based on paragraphs 3 and 4 of Article 21, must be construed narrowly so as not to contravene the Convention or undermine the objective of Article 21 and the objectives of the Convention itself.

Minister, I have quoted from their submissions at some length partly because of their standing in the international community regarding matters relating to the laws of war. They put up a strong submission that said they had not had the opportunity to see or comment on the bill before it entered parliament. They made some comments that we can address later in the debate around stockpiling and transiting through Australian territory. But their submission on interoperability is that these clauses, as drafted, read those sections 3 and 4 much too widely and that they are in fact undermining the basic premise of the convention itself. As you have just acknowledged, the ADF's view is correct that Australia can plan operations in which cluster weapons are used with a state that is not a party to this convention and can participate in military operations in which cluster munitions are used.

Minister, surely this is reading the concept of interoperability so broadly as to undermine the basic objectives of the treaty. I apologise for dwelling on this point, but it is the fundamental hinge on which the dissent expressed by so many organisations including the Greens and Senator Xenophon rests. We can plan operations in which they will be deployed; we can conduct operations in which cluster weapons will be used: why are we bothering to sign the treaty? Why are we here?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:46): Let me try to take you through. There are a few questions in that, so let me try to deal with them sequentially. Firstly, with respect to the convention, you made the point that we have not yet lobbied, for want of a better word, the United States. My understanding is that that is right, but I guess it is noteworthy that this bill represents the ratification of the convention and, until this bill has been passed, the obligations of the convention do not apply. I guess they will apply thereafter—well, I hope they will. I trust the bill will be passed. At least tonight, I do not think that you are able to say that Australia has not lived up to that part of its obligations under the convention.

In terms of paragraphs 1 and 2, and indeed 3 and 4, of article 21, I guess our view is that we have interpreted the convention narrowly. Indeed, the proof of that is the fact that we have used the very language of the convention in the bill. Thirdly, to your point, 'Why bother signing it?' I think the answer to that is very plain. Australia is signing this convention and declaring its commitment to not stockpile, use, deploy and so forth these weapons. We are joining that body in the international community that says that these weapons are unacceptable. But there are obviously nations—and there are many—who have not yet reached that conclusion and our resolve is not yet matched by their resolve. What this bill does and what we have done in this debate is make clear how Australia will deport itself—and I do not think that a nothing, Senator. I think that is an issue of some significance, and the fact that we cannot speak for the actions of other sovereign nations, whether they be the United States, Russia, China, Iran or
whatever, should be no surprise to anyone. I believe that Australia is standing behind this convention, and having it apply to itself and its military operations is of importance.

**Senator LUDLAM** (Western Australia) (21:55): If I can get an indication from the chair that this debate will close in 47 seconds—

The TEMPORARY CHAIRMAN: Indeed!

Senator LUDLAM: As much as the minister knows I love to have the last word, the reason I have detained us until this hour and not moved through the Greens amendments—but I indicate that I will start moving through the amendments in the morning—is that we are about to sign onto a convention that promotes the total global elimination of cluster weapons and we are directly and deliberately including clauses that allow us to plan military operations in which they are used and conduct military operations in which they are used, not by Australia but by units supported by Australia. To my view, that is a vast misreading of the intention of the convention, and that is why we will oppose the bill if our amendments are not supported.

Debate interrupted; progress reported.

**ADJOURNMENT**

The TEMPORARY CHAIRMAN (Senator Stephens) (21:55): Order! I propose the question:

That the Senate do now adjourn.

Heussner, Mr Dennis OAM

**Senator THISTLETHWAITE** (New South Wales) (21:55): I rise tonight to pay tribute to a legend of the Australian Surf Life Saving and sporting community, Dennis Heussner. Dennis passed away on 6 July 2012 after an ongoing battle with leukaemia, and I wish to offer my heartfelt sympathies to his family and friends.

I have been fortunate in my time as a surf lifesaver, and indeed as a senator, to meet and befriend some wonderful Australians—heroes of local communities who have made our nation such a great place to live; people who dedicate their lives to beach safety, sport and healthy lifestyles; those who will risk their own life to save another; and people who coach and guide young Australians in sport and make them better people. None was finer than Dennis Norman Heussner. Dennis was a champion athlete, an Olympian, a coach and a mentor—someone who was a positive influence on people. He was also a very good mate and someone who will be sadly missed in the eastern suburbs of Sydney community.

Dennis was born in Albury on 20 October 1943. His father was in the military and was positioned in Albury at the time. The family naturally moved around somewhat and when Dennis was a child his family moved to the eastern suburbs of Sydney. When he was a teenager, Dennis, with his brother John, joined Maroubra Surf Lifesaving Club, and
so began a lifelong affinity with surf lifesaving and kayaking. When Dennis began paddling longboards at Maroubra, he was quite a young fellow and quite small in stature. Consequently, often when he was carrying the very long surfboards—wooden, as they were in those days—to and from the surf, he did so by carrying them on his head. Someone once remarked that he looked like an ant carrying a piece of food—so began his nickname, 'The Ant'. That nickname would remain with him for the rest of his life.

But an ant he certainly was not. He would go on to become a giant of surf lifesaving, both in stature and in his remarkable achievements. He would become Maroubra Surf Lifesaving Club's most prolific competitor, winning more titles and club championships than any single member of Maroubra in its over a century of competition in surf lifesaving. His record speaks for itself. In the surf he was a brilliant board and ski competitor, winning 15 Australian championships and 23 state championships. Dennis won six separate Australian longboard championships and was a New South Wales ironman champion. When he had done all that he could in surf lifesaving on a board and a surf ski, he thought that he would try his hand at canoeing. He went on to win 14 Australian canoeing championships and he represented Australia twice at the Olympics.

His national representative honours include: representative of the Australian surf lifesaving team in 1965 to the United States and in 1968 to South Africa; in 1970, captain of the Australian surf lifesaving team to New Zealand; and, in 1971, captain of the Australian surf lifesaving team to South Africa. He represented Australia in canoeing at the 1972 and 1976 Olympics. He was an active participant in the administration and affairs of Maroubra Surf Lifesaving Club. He was the club's captain from 1969 to 1970 and the recipient of the Honour Blazer in 1970 to 1971.

He was also awarded a meritorious award for his involvement in the rescue of a fisherman off Lurline Bay in 1959. I would like to read to the Senate the citation associated with the award of that meritorious award:

At about 4:30 pm on 17 October 1959 a telephone call was made to Maroubra Surf Lifesaving Club to the effect that a spear fisherman, J. Boss, had been washed off the rocks at Lurline Bay near Maroubra Beach. Club members Ron Siddons, Dennis Heussner and Brian Trouville immediately proceeded by car to Lurline Bay where J Boss was 400 yards from the shore in mountainous seas. Without hesitation these three men entered the water and after an exacting and trying swim eventually reached Boss and supported him until picked up by members of Maroubra Surf Lifesaving Club on boards and skis. After about three-quarters of an hour the Coogee Surf Lifesaving Club boat crew arrived on the scene and the patient and members who participated in the rescue were escorted to Coogee Beach. The actions of Ron Siddons and particularly Dennis Heussner and Brian Trouville, who are both junior members, were of the highest standard and, having no regard for their personal safety, undoubtedly saved a life.

The remarkable thing about that award was that at the time Dennis Heussner was only 16 years old; yet in mountainous seas he risked his life to save that of another person. He was inducted into the Randwick Sporting Hall of Fame in 1979 and the Surf Lifesaving Australia Hall of Fame in 2004 and in 2009 he was awarded the Order of Australia medal for his services to surf lifesaving and canoeing.

Interestingly, in 1974 he was appointed the personal bodyguard to Prince Charles when the prince visited Sydney and went swimming at Bondi and Coogee beaches. It was up to Dennis Heussner to provide
personal protection in the surf and basically make sure that the prince did not drown.

When he finished his competition years he continued to be active in surf lifesaving, particularly coaching board and ski competitors, imparting his knowledge of surf and fitness to the next generation of Australians. Two of those competitors were none other than his son Kane and his daughter Holly. Both went on to win New South Wales and Australian championships. Unfortunately I was never of the champion calibre, as many others were that Dennis coached, but in my years as a ski paddler under his tutelage, he imparted more than knowledge about surf lifesaving to me.

Dennis was also a preacher of character and discipline, lessons that apply to any walk of life and something I now appreciate, even if I did not at the time realise how important those messages he taught me were. He would often say to me and others that there are three types of people in this world: those who make things happen, those who watch things happen and those who let things happen. He would end that by saying, "What sort of person are you?" and challenging someone to be a person who made things happen.

Dennis, like most in the eastern suburbs community, was an avid South Sydney Rabbitohs fan, and I used to enjoy seeing him on a Sunday morning at Maroubra surf club. Like typical armchair critics, we would analyse what Souths had done wrong in the game over the weekend and how we would fix it. He was always one to offer quirky advice, like how to keep the perfect head on a beer: by putting a little bit of water in the beer cup before you placed it in the freezer to freeze it. That little bit of water at the bottom would oxidise the beer and keep the perfect head on the beer whilst you drank it. He also often had logical observations about policy issues—in particular climate change and his belief that pollution was harming our environment. He could tell that by his relationship with the ocean and the horizon on a clean day.

Dennis Heussner was such a fine person—a strong person, a role model, a mentor and a good bloke. Maroubra Surf Lifesaving Club will not be the same without him. My sympathies go to his wife, Diane, and children, Kelly, Heidi, Kane and Holly.

**Dogs**

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (22:01): I rise this evening to present a policy document released this month by the Australian Veterinary Association, entitled *Dangerous dogs—a sensible solution: policy and model legislative framework*. This is a highly emotional issue and commands media and community attention, especially when the often horrific attacks occur, and in fact even deaths, particularly of children in our community. I congratulate the Veterinary Association for the work they have done in proposing this new legislative approach, in reviewing international policy relating to dangerous dogs and in recommending both policy and model legislation which could be adopted by the states and territories. The work was undertaken principally by Dr Michael Hayward from the Centre for Companion Animals in the Community, together with the policy development group and media communications group of the AVA and members of the executive of the South Australian branch. It summarises current classification of dangerous dogs in each of the Australian jurisdictions and refers to legislation relating to both dog and cat management—and, of course, they are very different approaches in the different scenarios in the different jurisdictions. The paper provides an insight into equivalent
legislation in 13 countries around the world and cites in the bibliography some 83 peer-reviewed references in presenting the arguments and in formulating the recommendations of a common approach which could be taken by the states and territories. It draws also on the American Veterinary Medical Association's experience and that of the British Veterinary Association.

In summary, the Australian Veterinary Association makes these points. First of all, contrary to popular opinion and views and direction undertaken by most jurisdictions, a breed-specific approach to legislation and regulation of dangerous dogs is not an efficient, effective or legally accurate approach to take. Within Australia and around the world, where this approach has been taken it has failed, and the legislation has typically been revoked. There are of course, as common sense would dictate, a number of factors to be taken into account when considering the potential for an individual dog or indeed a breed of dogs to exhibit dangerous behaviour. The first would be heredity or the breed. The second would be the environment, particularly with reference to the characteristic of ownership of the animal or animals, the sex and age of the dog, its training and socialisation and, indeed, victim behaviour. It is the fact that most dog bites occur in the home, where the animal is known to the victim. Owned dogs are far more dangerous than strays in public when considering dog bites. In fact, something like 65 per cent of the recorded dog bites to children in our country are from within the home by dogs that they know, and only one-third occur in public. Of course, we also regrettably understand that young children have as much as a two per cent chance per annum of being bitten by a dog. Child behaviour is critically important. To quote from the work of Beaver and his colleagues in the United States in 2001:

Children’s natural behaviours, including running, yelling, grabbing, hitting, quick and darting movements, and maintaining eye contact, put them at risk for dog bite injuries. Proximity of a child’s face to the dog also increases the risk that facial injuries will occur.

When speaking of dog behaviour, I think all of us anecdotally are aware of the fact that owners and their animals quite often look alike. Indeed, if they do not look alike when the animal is first purchased or taken on board, each grows to look more like the other. But, on the serious side of this, work done in the United States and the UK supports the fact with regard to dangerous dogs that high-risk animals fit into the picture of high-risk lifestyles. In other words, typically dangerous or potentially dangerous dogs are owned by young men, very often of aggressive behaviour. Regrettably, socioeconomic circumstances come in in the sense that the predominant numbers are from low socioeconomic areas, and they themselves quite often come to the attention of the law by virtue of crime, drugs and, of course, a macho image. It then becomes the logical point that the overwhelming message is owner responsibility. We know from our studies in genetics and other fields that behaviour is a function of both genotype—the heredity of the animal—and its environment. Of course, never is this more true than in relation to dangerous dogs.

I come to breed-specific legislation, which is the direction jurisdictions have followed—that is, to place a ban or stringent restrictions on certain breeds. Evidence shows that it does not work and cannot work. Breed on its own is not an effective indicator or predictor of aggression. In fact, it is difficult to actually determine from DNA analysis what the breed of an animal is. In one study overseas 88 per cent of dogs identified as
being of a certain breed were not, once DNA analysis was undertaken. Veterinarians are reluctant to declare an animal a breed or a cross for fear of being sued by owners, should they be aggrieved in the judicial process.

In fact, if logic is applied to this study, it becomes obvious that the number of animals that would have to be removed is so high that removing any one breed would have a negligible effect. There is nothing then, of course, to stop the sort of person I described earlier turning around and purchasing an animal of another breed.

The legislation was tried in New South Wales—this is breed-specific legislation—and it failed. It has also failed spectacularly in the UK, in Spain, in Germany, in Holland and in Italy. In fact, in Italy, when they started to look at breeds that should be removed due to aggression, included amongst those that you would expect were also corgis and border collies. So where do you stop?

The simple fact of the matter—as Senator Joyce, coming from a rural background, and all of us, would know—is that all dogs have a capability of biting. In South Australia five particular breeds, representing a third of the dog population, accounted for three-quarters of attacks where victims in that state were hospitalised. Along with Rottweilers, German shepherds and Dobermans, Jack Russells and blue heelers were included. As council officers will tell you, of course breeds other than those that we normally regard as the most aggressive will bite.

I turn briefly to this draft model legislation which has been proposed by the Australian Veterinary Association. It is based, as logic would hope, on early identification of and intervention for potentially dangerous dogs, not only having regard to the breed or breed mix. The paper in its entirety speaks to regulations relating to dogs and their owners, and places considerable burden of responsibility on the owner to control the socialisation, the training, the behaviour and the restraint of the dog.

The legislation as it is proposed by the association calls for a permanent form of identification, for example, RFID chips, which are so commonly used in identifying animals and other assets. It calls for a national identification and registration system because of the free movement now of animals across state and territory borders. Importantly, the draft legislation points to the need for a national reporting system, not only of people hospitalised as a result of dog bites but going further through surveys to medical practices, to veterinary practices and to local councils to get a handle on those accidents or bites occurring and not requiring hospitalisation.

The document also speaks of temperament testing, which is being undertaken universally now. It speaks to the need for education, particularly of children; but most importantly, for legislation that would ensure that the regulations in the act are enforced.

In conclusion, I seek leave to table the document by the Australian Veterinarian Association, Dangerous dogs—a sensible solution.

Leave granted.

The ACTING DEPUTY PRESIDENT (Senator Stephens): Thank you, Senator Back. I will never think about my Jack Russell in the same way again!

Justice Reinvestment

Senator WRIGHT (South Australia) (22:11): Tonight I am speaking about a justice reinvestment approach to reducing crime in Australia, the growing community call for the adoption of this approach and the
good work that is happening all around the country in this area.

I have previously spoken about justice reinvestment and why it is needed here in Australia, but I will recap briefly. Justice reinvestment is about reducing crime. It embodies the old common-sense idea that 'prevention is better than cure', but it comes with a fresh, modern face based on rigorous data and evaluation. Justice reinvestment is designed to achieve three good outcomes in one. Firstly, reducing excessive and costly imprisonment; secondly, improving public safety; and, thirdly, making communities stronger.

Essentially, justice reinvestment works by taking a portion of the public funds which have been earmarked for future imprisonment costs and diverting that money back into communities with a high concentration of offenders. That is because the evidence is clear that a large number of offenders come from, and then return to, a relatively small number of disadvantaged communities.

This money funds programs and services which then work to overcome the underlying causes of crime in those communities. Mapping, using demographic information, determines the neighbourhoods that will benefit most from additional investment in early intervention, diversionary and rehabilitation programs. The communities in question, including victims of crime and families of offenders, have a central role in the design and implementation of these local initiatives. It is crucial that they can own these local programs. Lastly, these services and programs are subject to rigorous and ongoing evaluation to make sure they actually work to reduce crime. The end result of a justice reinvestment approach is less crime and improved public safety, with more money spent on those communities which need it most and less money spent on locking people up.

And now let me come to what justice reinvestment is not, which is equally important to understand. Justice reinvestment is not about getting rid of prisons altogether. Prisons must, of course, be retained as a necessary tool to protect the community from serious and dangerous offenders. Justice reinvestment must also not be used as a cover for de-investment in what are often already underfunded prison services and programs.

We must provide appropriate in-prison treatment, education and vocational training if we are going to break the cycle of offending and reoffending that has led to our prisons being described as a revolving door.

Finally, justice reinvestment is not soft on crime. Justice reinvestment is actually smart on crime. It is not smart to build more and more prisons, to spend more and more public money and to jail more and more people only to see many of them return to prison after a short time. That is a clear policy failure. But justice reinvestment is smart. It uses criminal justice policies based on evidence, which are most likely to improve public safety over the long term. It is simple: less crime equals less victims. To assist victims we must focus both on providing services to victims when crime occurs—and I know that these kinds of services are extremely important—and on long-term crime reduction and prevention, bearing in mind that many offenders have at one time or another also been victims.

None of this is new to the many dedicated community groups and individuals out there who have been working hard every day to make justice reinvestment in Australia a reality. A quick whip around the country shows us just what momentum is gathering. In New South Wales we have a Justice

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CHAMBER
Reinvestment Campaign for Aboriginal Young People. It was launched in May this year by the Governor of New South Wales, Marie Bashir, and the response has been phenomenal. The campaign has a long list of high-profile supporters, including the former New South Wales Director of Public Prosecutions, Mr Nick Cowdery; former Prime Minister, Malcolm Fraser; former Justice of the High Court, the Hon. Michael Kirby; and there is an equally long list of grassroots organisations behind it as well. It seeks to change the shameful over-representation of Aboriginal young people in custody in New South Wales by increasing community based and culturally-specific prevention, early intervention and treatment services.

In my home state of South Australia, we now have a community working group to advocate for the adoption of a justice reinvestment approach in those communities which need it most. Members include the Law Society of South Australia, the South Australian Victim Support Service, Aboriginal elders, the South Australian Commissioner for Aboriginal Engagement and university academics. The members of this working group share a vision of strong, safe and thriving communities with less crime and low incarceration rates, and they believe a justice reinvestment approach will get us there.

In the Northern Territory, the Making Justice Work campaign also brings together a wide range of groups with a common interest in effective responses to crime. Their guiding principles include: more resources for measures that reduce crime by dealing with its underlying causes; keeping young people out of the criminal justice system where possible; and working with offenders to set them up for success, not failure.

In Western Australia, a coalition of groups, including Outcare, the Deaths in Custody Watch Committee, UnitingCare Australia, the Western Australian Council of Social Service and the Western Australian Network of Alcohol and other Drug Agencies has been advocating for a justice reinvestment approach in that state for a number of years. In 2010, the work of these groups led the Community Development and Justice Committee of the Western Australian parliament to recommend that a justice reinvestment approach be piloted in Western Australia. This recommendation has not yet been acted upon and the groups are working hard to progress this.

In Queensland, Project 10% is a community campaign led by the Murri Watch Aboriginal and Torres Strait Islander Corporation, the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, and Australians for Native Title and Reconciliation, or ANTaR, Queensland. Project 10% aims to reduce the over-representation of Aboriginal and Torres Strait Islander people in Queensland prisons, and justice reinvestment is one of its key strategies.

In Victoria, the Smart Justice project, led by the Federation of Community Legal Centres, seeks to enhance the safety of Victorians by promoting understanding of criminal justice policies which are effective, based on good evidence and comply with human rights. Justice reinvestment is one such policy. Smart Justice has called for research, evaluation and pilot programs to determine the viability and impact of justice reinvestment in Victoria.

In the ACT, researchers at the ANU's National Centre for Indigenous Studies are taking the lead and recently held a forum exploring the need for justice reinvestment in Australia. I will speak in the future about that
forum and some fascinating insights from the international guests who attended.

At the national level, both the National Congress of Australia's First Peoples and ANTaR are playing an active role in advocating for justice reinvestment as a way to address the shameful over-representation of Aboriginal and Torres Strait Islander people in Australian prisons.

In conclusion, the take-home message from all this is pretty clear. Politicians of all persuasions and at all levels of government need to look up and take note of the urgent need for a new approach to criminal justice in this country. Community momentum for justice reinvestment is building, and it cannot and must not be ignored.

If Democrats and Republicans in the United States can find it within themselves to put aside their differences and offer bipartisan support for justice reinvestment, then surely we here in Australia can do it too.

As a federal senator, I am committed to finding and working with like-minded politicians across the country, no matter what their political allegiance, to progress a justice reinvestment approach in Australia. The stakes are too high to play politics on this issue. The economic and social costs of soaring incarceration rates are too great, and the lives of our young people too precious, to blithely continue along a criminal justice path—the abject policy failure we have been following for the last 25 years.

I urge the federal government to demonstrate strong national leadership on this issue and commit to working with the states and territories to encourage the uptake of a justice reinvestment approach across the country. This is the surest way to empty our jails and, paradoxically, make our communities safer.

### Vidal, Mr Gore

**Senator FAULKNER** (New South Wales) (22:21): On 31 July this year, Gore Vidal died aged 86. In tonight's and tomorrow's adjournment debates I want to speak about this extraordinary man. Gore Vidal was provocative, sometimes spiteful, but never boring. Through his novels, essays and plays he maintained a ferocious independence of thought fuelled by an unwavering belief in his intellect. He once argued that 'there is no human problem which could not be solved if people would simply do as I advise'. He was, perhaps, the last of a generation of American writers, along with the likes of Mailer, Capote and Thompson, whose personalities and politics were as entertaining as their prose and whose magnetism and wit demanded public attention. The world of those who value the written word, who yearn for intelligent debate, is a less exciting place for his passing.

Eugene Louis Vidal was born on 2 October 1925 at West Point Military Academy, where his father was an aviation instructor. Much of his youth was spent at the side of his grandfather Thomas Gore, a Democratic senator from the state of Oklahoma. Senator Gore had been blind since childhood, so young Vidal often acted as his guide on the Senate floor. Vidal inherited his grandfather's oratorical artistry, his reverence for words and much of his politics. After graduating from the prestigious Philips Exeter Academy in 1943, Vidal shunned the well-worn paths leading to Harvard, Princeton and Yale. Instead, he enlisted in the US Navy, serving aboard a supply ship in the Aleutian Islands. At just 19 years of age he wrote *Williwaw*, which was based on his experience. It was a bestseller and established Vidal's reputation as one of the most promising writers of his generation.
His next novel, *The City and the Pillar*, earned him notoriety and enmity in equal measure. Tame by our standards, its frank portrayal of homosexuality was considered corrupting and pornographic by some. Vidal was convinced its publication had been blacklisted from the day's major newspapers. Australian academic and activist Dennis Altman had a copy of the book seized at Sydney Airport. The judge declared the work obscene while voicing some concerns about its confiscation. In response to being blacklisted, Vidal wrote three popular novels under the pseudonym Edgar Box and then turned to the screen and stage to keep himself in the manner to which he was accustomed. His political melodrama *The Best Man*, written in this period, was nominated for six Tony awards. Notably, Ronald Reagan auditioned for the lead role without success—Vidal thought him an unconvincing presidential candidate. Later, when Reagan got the chance to play the President for real, Vidal heralded it as 'a triumph of the embalmer's art'. As well as writing extensively for television Vidal, along with Christopher Fry, redrafted the screenplay of *Ben-Hur*, but neither was credited for their contribution.

Vidal's work on Broadway, in Hollywood and with television, brought financial security and allowed him to focus again on writing for his own purpose. In the early 1960s, he published a number of works dedicated to historical fiction. The first and arguably the greatest of these, *Julian*, was published in 1964. Similar in style to Robert Graves's *I, Claudius*, it paints a vivid picture of life in the Roman Empire in the time of the fourth century emperor Flavius Claudius Julianus. Vidal uses the work to explore the notion of the social construction of religious belief and its relationship with politics.

Politics would serve again as a central theme for a series of novels dedicated to the development of what he saw as a once great American republic. The first and arguably the greatest of these, *Washington D.C.*, was published shortly after *Julian* and the last, *The Golden Age*, was published in 2000. Together they traced the arc of American history from its idealistic beginnings to what Vidal considered the decadent imperial now. His purpose was to remind his audience of the founding principles of the United States and to remedy what he saw as its collective amnesia. His critique of contemporary American politics was unrelenting but, as the literary critic Peter Craven wrote:

He may have hated his native America as only a lover can hate it … everything he wrote was a passionate dramatisation of the power of the American dream.

Along with these historical works, Vidal published a series of searing satires such as *Myra Breckinridge, Duluth* and *Live from Golgotha*. These really did display Vidal's irreverence. Nothing was sacred—in fact the more sacred it was the more likely it was to be lampooned. Later, he published two critically acclaimed memoirs, *Palimpsest* in 1995 and *Point to Point Navigation* in 2006.

Because of the time this evening, I do plan tomorrow evening in the Senate to speak further about the late Gore Vidal, writer, wit, commentator and activist.
Broadcasting Services Act—
Broadcasting Services (Simulcast Period for Darwin TV1) Determination (No. 1) 2012 [F2012L01687].
Broadcasting Services (Simulcast Period for Tasmania TV1) Determination (No. 1) 2012 [F2012L01686].
Civil Aviation Act—Civil Aviation Safety Regulations—
Airworthiness Directives—
AD/TRENT 700/1—Engine – IP Turbine Bearing Oil Vent & Scavenge Tube [F2012L01699].
AD/TRENT 700/2—Engine – IP Turbine Bearing Oil Feed Tube [F2012L01700].
AD/TRENT 700/3—Engine – HP/IP Turbine Bearing Oil Feed Tubes [F2012L01701].
Criminal Code Act—Select Legislative Instruments 2012 Nos—
191—Criminal Code Amendment Regulation 2012 (No. 7) [F2012L01693].
192—Criminal Code Amendment Regulation 2012 (No. 8) [F2012L01694].
193—Criminal Code Amendment Regulation 2012 (No. 9) [F2012L01695].
194—Criminal Code Amendment Regulation 2012 (No. 10) [F2012L01696].
195—Criminal Code Amendment Regulation 2012 (No. 11) [F2012L01697].
Health Insurance Act—Health Insurance (Section 19AB Exemptions) Guidelines 2012 [F2012L01691].
Personally Controlled Electronic Health Records Act—
PCEHR (Participation Agreements) Rules 2012 [F2012L01704].
PCEHR Rules 2012 [F2012L01703].

Departmental and Agency Contracts
The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended:
Departmental and agency contracts for 2011-12—Letters of advice—
Broadband, Communications and the Digital Economy portfolio.
Finance and Deregulation portfolio.
QUESTIONS ON NOTICE

Departmental and Agency Offices
(Question Nos 1752, 1761, 1768, 1769 and 1780)

Senator Abetz asked the Minister representing the Minister for School Education, Early Childhood and Youth, the Minister representing the Minister for Employment and Workplace Relations, the Minister representing the Minister for Early Childhood and Childcare, the Minister representing the Minister for Employment Participation and the Minister representing the Minister for Indigenous Employment and Economic Development, upon notice, on 22 March 2012:

(1) Can a list be provided of all office locations for each department or agency within the Minister’s portfolio, detailing:

   (a) the department or agency;
   (b) the location;
   (c) the size;
   (d) the number of staff at each location and their classification;
   (e) if the office location is rented, the amount and breakdown of rent paid per square metre;
   (f) if the location is owned by the department or agency, the:
      (i) value, and
      (ii) depreciation, of the building; and
   (g) the type of functions and work undertaken.

(2) For each department and agency within the Minister’s portfolio, can details be provided of all public relations, communications and media staff, listed by department or agency, including:

   (a) the number of ongoing staff, specifying:
      (i) their classification,
      (ii) the type of work they undertake, and
      (iii) their location;
   (b) the number of non ongoing staff, specifying:
      (i) their classification,
      (ii) the type of work they undertake, and
      (iii) their location; and
   (c) the number of contracted staff, specifying:
      (i) their classification,
      (ii) the type of work they undertake, and
      (iii) their location.

Senator Kim Carr: The Minister for School Education, Early Childhood and Youth has provided the following answer to the honourable senator’s question

(1) (a) – (c) and (e) DEEWR Property Data Summary appears as Attachment A, available from the Senate Table Office.

   (d) The number of staff by location and classification are at Attachment B, available from the Senate Table Office.

QUESTIONS ON NOTICE
(f) Not applicable - Please note all buildings are leased.
(g) Refer to the 2011-12 Portfolio Additional Estimates statements.

(2) Details of public relations, communications and media staff in DEEWR and Agencies is at Attachment C, available from the Senate Table Office.

**Health Services Union**

*(Question No. 1857)*

*Senator Abetz* asked the Minister for Employment and Workplace Relations, upon notice, on 18 May 2012:

(1) Has the Minister or anyone in the Minister’s office discussed the issues surrounding the Health Services Union with:

a. Mr Craig Thomson;

b. Mr Thomson’s staff; or

c. Mr Thomson’s legal representatives.

(2) For each instance referred to in paragraph (1), can a list be provided detailing:

a. The date of contact;

b. Whether the contact was by phone, in writing or a meeting;

c. The nature of the discussion; and

d. Whether the discussion was disclosed to others; if so, to whom.

*Senator Ludwig:* The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator’s question:

Neither the Minister nor his staff have had any contact with Mr Thomson or his staff or legal representatives in relation to the conduct of the Fair Work Australia investigations into the Health Services Union.

**Health Services Union**

*(Question No. 1862)*

*Senator Abetz* asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 18 May April 2012:

With reference to the Minister’s announcement regarding the appointment of an administrator to the Health Services Union:

(1) When did the:

a. Minister first seek advice on this decision;

b. department first provide advice on this decision;

c. Minister make this decision.

(2) Can details be provided relating to with whom the Minister, Minister’s office and department consulted prior to this decision, including the:

a. date;

b. time;

c. parties involved in; and

d. nature of the contact.

(3) Did the Minister consult with the Prime Minister prior to making this decision; if so, when; if not, why not.
(4) Did the Minister consult with the Prime Minister’s office prior to making this decision; if so, when and what was the nature of the consultation.

(5) Prior to making this decision, was the Minister or the Minister’s office approached by any union officials, union office bearers or any other person with indications that it would be helpful to appoint an administrator; if so, what was the:

(a) date;
(b) nature of the contact; and
(c) individual or organisation’s name.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator’s question:

The Minister’s Department has provided regular advice on this issue from 27 March 2012 and during the conduct of the Federal Court proceedings.

The Minister and his Office communicates with the Prime Minister and the Prime Minister’s Office on a regular basis.

The Minister and his Office communicates with a range of stakeholders on a regular basis.

The Minister’s decision to intervene in the Federal Court proceedings was to ensure that the interests of HSU members across Victoria, New South Wales and the ACT were being properly served by their union.

Infrastructure and Transport
(Question Nos 1877 and 1878)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 12 June 2012:

With reference to the statement made by the Minister representing the Minister for Infrastructure and Transport (Senator Kim Carr) during question time on Wednesday, 8 February 2012 (Senate Hansard, p. 367):

(1) Can a definition of ‘poverty wages’ be provided.
(2) Does the Minister stand by the statement.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator’s question:

I am not aware of any definition of a ‘poverty wage’. Senator Carr used the term to refer to a situation where truck drivers are paid at such a low rate that they have to drive long hours to make a living. Increasing their pay would therefore improve road safety by reducing the risk of driving for long periods.

Fair Work Australia
(Question No. 1900)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

Can a list be provided detailing on how many occasions costs have been awarded by Fair Work Australia, including for each:

(a) the reason why costs were awarded; and
(b) whether they were awarded to the:
(i) applicant or defendant; and
(ii) employer or employee.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

Between 1 July, 2009 and 30 June, 2012 Fair Work Australia made eleven orders for costs, as detailed below:

<table>
<thead>
<tr>
<th>(a) Reason for costs order</th>
<th>(b)(i) Applicant for costs order</th>
<th>(b)(ii) Costs awarded to</th>
<th>Number of orders made</th>
</tr>
</thead>
<tbody>
<tr>
<td>s658(3)(b) Workplace Relations Act</td>
<td>Applicant to s643 application (unfair dismissal)</td>
<td>Employee</td>
<td>1</td>
</tr>
<tr>
<td>s611(2)(a) Fair Work Act</td>
<td>Applicant to s394 application (unfair dismissal)</td>
<td>Employee</td>
<td>3</td>
</tr>
<tr>
<td>s611(2)(b) Fair Work Act</td>
<td>Respondent to s365 application (general protections)</td>
<td>Employer</td>
<td>1</td>
</tr>
<tr>
<td>s611(2)(b) Fair Work Act</td>
<td>Respondent to s394 application (unfair dismissal)</td>
<td>Employer</td>
<td>3</td>
</tr>
<tr>
<td>s611(2)(a) &amp; (b) Fair Work Act</td>
<td>Respondent to s394 application (unfair dismissal)</td>
<td>Employer</td>
<td>2</td>
</tr>
<tr>
<td>s611(2)(b) Fair Work Act</td>
<td>Respondent to s604 appeal against decision granting unfair dismissal remedy</td>
<td>Employee</td>
<td>1</td>
</tr>
</tbody>
</table>

Note: This information was obtained through an interrogation of the case management system. Because of the database infrastructure, the above answer does not include costs orders if any have been made concurrently with other orders in the same matter.

Education, Employment and Workplace Relations

(Question No. 1904)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

Given that the Minister's office rewrote the terms of reference for the review of the Fair Work Act 2009, removing references to flexibility and the impact on 'red tape', why did the Government: (a) rewrite the terms of reference; and (b) ignore the Department of Finance and Deregulation's recommendation to include 'productivity'.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

The Minister's Office did not re-write the terms of reference. The office of the former Minister made minor amendments to the draft terms of reference proposed by the Department of Education, Employment and Workplace Relations. The net effect of these changes was to emphasise that the review must consider whether the effects of the Fair Work Act 2009 had been consistent with the Object set out in section 3 of the Act, which encompasses consideration of both productivity and flexibility for business.

The terms of reference were assessed by the Office of Best Practice Regulation (OBPR) as meeting its requirements for a post-implementation review. These requirements include an assessment of the productivity impacts and compliance burden on businesses. At no point did the OBPR recommend or suggest that productivity be explicitly included in the terms of reference.
Health Services Union
(Question No. 1908)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

(1) Why did the Minister refuse to meet with the Secretary of the Health Services Union.
(2) Are there any other union executives with whom the Minister has refused to meet.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

A request was made by Ms Kathy Jackson to meet with the Minister but no such meeting ever took place.

The Minister receives requests to meet with representatives of registered organisations on a regular basis. Whilst the Minister endeavours to agree to meeting but is unable to agree to such requests on every occasion.

Fair Work Australia
(Question No. 1917)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

Given that there have been a number of media reports of ambit claims, with union executives in the university sector seeking a 27 per cent pay increase; in addition, there have been claims for hangars, paid shower time and lockers, are such claims a reflection that the Fair Work Act 2009 is not operating as intended.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

No. Claims made by bargaining representatives during enterprise agreement negotiations are a matter for the parties involved.

The good faith bargaining requirements of the Fair Work Act 2009 do not require parties to agree to all claims presented during bargaining as terms to be included in an enterprise agreement.

Education, Employment and Workplace Relations
(Question No. 1920)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 June 2012:

‘In regard to Individual Flexibility Agreements (IFAs), does the Minister stand by the former Minister's comments that the 28-day-rule is an ‘impediment to the use of IFAs’.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

The Minister is not in a position to comment on reported remarks by the former Minister for Tertiary Education, Skills, Jobs and Workplace Relations without the benefit of the context in which the reported remarks were made.

The Minister does note, however, that the 28-day rule was canvassed in a number of submissions to the Fair Work Review.
Australia Post
(Question No. 1926)

Senator Abetz asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 27 June 2012:

With reference to Australia Post franchises:

(1) Does Australia Post supply a separate management stream for franchises, or are they now grouped under the Licensed Post Office (LPO) management stream.

(2) Was a separate management structure promised by Australia Post.

(3) Did Australia Post:

   (a) approach financiers with a business model; and

   (b) receive ‘Accredited Franchise Status’ from major banks; if so, which banks, and what process did Australia Post go through to receive that accreditation.

(4) Is Australia Post required to go through an annual review with the banks in question to continue that accreditation.

(5) Has the corporation sought to continue these accreditations.

(6) Since the signing of the current Fair Work Agreement, have further franchises opened; if so, can a detailed explanation be provided about what agreements, either formal or informal, exist with employee unions in regard to franchising.

(7) Has Australia Post provided information to franchisees regarding agreement negotiations and their outcomes.

(8) Can a copy of the current Retail Conversion Policy with employee unions be provided, as well as an explanation of how this policy affects the franchised PostShop model.

(9) When did the previous formal agreement between Australia Post and employee unions, in place prior to the current Fair Work Agreement, expire.

(10) Were there any clauses in the previous agreement that related specifically to the franchised PostShop model.

(11) Did Australia Post provide information to prospective franchisees through the interview and application process that it had formal agreements in place with its employee unions, and that these may prevent expansion of the franchise network to 150 outlets.

(12) Have Australia Post managers tasked with the sale of these franchises received any performance bonuses or other benefits on the sale of a franchise.

(13) Under the Future Ready program, are Australia Post managers in receipt of any performance bonuses in relation to cost savings achieved.

(14) Given that there appears to be increasing doubt among franchisees over the intentions of Australia Post for the end of the franchise agreements, can an elaboration be provided on the answer supplied by Ms Corbett at the 2011-12 Senate additional estimates hearing of the Environment and Communications Committee.

(15) Will franchisees be offered a renewal of their agreements.

Senator Conroy: The answer to the honourable senator's question is as follows:

(1) Franchisees are supported through a network manager within each State. Depending on the number of franchisees this network manager may also have other functional responsibilities.

(2) Australia Post committed to providing franchisees with ongoing dedicated support. Franchisees receive this support through their network manager.
(3) (a) Yes, Australia Post sought accreditation of its franchise model from the major banks.
(b) Westpac, the Commonwealth Bank and the ANZ bank have all given the Australia Post franchise business model "accredited franchise status". Australia Post provides a variety of documentation and other information to each financial institution as part of their assessment and decision with respect to business model accreditation for their purposes.

(4) These banks will periodically seek advice from Australia Post around both the licensed post office and franchised post office business models as part of continuing their accreditation for models.

(5) Australia Post has sought to maintain these accreditations for both the licensed post office and franchised post office business models.

(6) No further franchises have opened since the signing of the current Fair Work Agreement.

(7) Australia Post has not provided information to franchisees around our industrial agreement negotiations and their outcomes.

(8) A copy of the current Retail Post Conversion Policy is attached. This policy does not affect the franchised PostShop model.

(9) The previous formal agreement (EBA) expired on 31 December 2006.

(10) Yes, specific clauses relating to the franchise model were included in the previous agreement (EBA). In summary these provided:
- That the existing retail outlet conversion policy would not be used to convert a corporate outlet to a franchise; and
- A commitment from Australia Post that during the life of the Agreement it would not convert more than 20 corporate outlets to a franchise, and stipulated a set of guiding criteria upon which Australia Post would base any decision to convert to a franchise.

(11) Australia Post advised prospective franchisees that its plans for establishing a network of around 150 franchised outlets would be achieved through a combination of the conversion of existing corporate outlets, conversion of licensed outlets and the establishment of new sites.

(12) The successful implementation of the franchise business model formed part of the performance objectives for a number of Australia Post managers.

(13) The management of costs is integral to any successful business. Australia Post managers who are responsible for business costs are rewarded on achieving business objectives around these costs.

(14) The franchise business model and associated agreement will at the end of the current franchise terms have been in place for some 10 years.

The significant changes which are taking place within Australia Post, as well as developments within the franchise sector generally, will need to be considered in determining the future of the franchise model beyond the terms of the current individual agreements.

A determination has not been made on the operating model that will be in place at existing franchised post offices beyond the term of the current individual agreements.

Existing franchisees have taken up the franchise opportunity on the basis that the agreement is for a 10 year term only and that there is no provision within the agreement for an extension of this term.

(15) Existing franchisees have taken up the franchise opportunity on the basis that the agreement is for a 10 year term only and that there is no provision within the agreement for an extension of this term.

At the end of the term, payment is made to the exiting franchisee in accordance with an agreed formula. This is fully disclosed to the franchisee prior to entering into the franchise agreement and is in accordance with the franchising code of conduct.
Australia Post would however consider exiting franchisees for a further term where the future business model allows and the franchisee is deemed suitable.

**Australia Post: Coorparoo**

(Question No. 1927)

Senator Abetz asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 27 June 2012:

With reference to the Australia Post franchise in Coorparoo, Brisbane:

(1) Did the Coorparoo franchise close in 2011; if so: (a) what were the circumstances surrounding the closure; (b) did Australia Post relocate and re-establish the franchised PostShop; and (c) if there is a new, relocated site, how far is it from the original location.

(2) During two meetings, did the franchise management team in Queensland advise that Australia Post had decided to close the franchise due to the unavailability of suitable premises.

(3) At the second meeting, did the state franchise coordinator say that the decision to close the post office had been made by management in Melbourne, and that they had determined that the franchise model was no longer appropriate for the Coorparoo area.

(4) Can copies of any minutes or correspondence relating to the above meetings be provided.

(5) Was the franchisee advised that Australia Post had determined to operate a fixed term Licensed Post Office in the area.

(6) Can a detailed explanation be provided of what transpired in relation to postal services in Coorparoo.

(7) In what business format is the Coorparoo post office currently operating and, if this differs from the previous format, what was the reasoning behind the change.

(8) Was any definitive analysis undertaken by Australia Post of issues such as pedestrian traffic flow, accessibility, and any other pertinent matters relevant to the site, in relation to the current Coorparoo site prior to the relocation; if so, can the analysis be provided.

(9) Was this information shared with the franchisee; if so, when and what specific information was provided.

(10) Did Australia Post consult with the Coorparoo community in regard to this closure and subsequent relocation; if so, with whom and when did the consultation occur.

(11) Did the franchisee make numerous requests for documentation, which may have assisted them in making a decision about relocations, and was Australia Post in a position to supply such documents.

(12) Does Australia Post usually expect agreements to be entered into without availing the other party or parties an opportunity to view the contract.

(13) On what basis did Australia Post include in the Termination Notice for the particular franchise a clause whereby acceptance of the exit payment indemnified Australia Post from any further legal action, which may be open to this franchisee; and is this: (a) usual practice; and (b) mandated across all franchises in similar positions.

(14) Can a copy of the Termination Notice be provided.

(15) With reference to the document titled ‘A PostShop Franchise: Your Key to Business Success’, in particular p. 14 under the heading Franchise Advisory Council, which sets out the intentions of Australia Post, and given that this was supplied to the Coorparoo franchisee in the early stages of their expressions of interest in this model: (a) in what forum was the Coorparoo franchisee able to raise issues surrounding the closure of the Coorparoo franchise; and (b) given that the establishment of such a Council was indicated during the sale process, why has the Council not been established.
Have any explanations and apologies been provided to the individuals who may have been induced, in part or in whole, to enter the franchise agreement based on this representation.

Did any senior managers of Australia Post receive any correspondence from franchisees in Queensland raising concerns over the Coorparoo franchise situation and the action that was taken.

Did Australia Post receive any ministerial direction regarding its franchise businesses; if so, what was the direction and when was it received.

**Senator Conroy:** The answer to the honourable senator's question is as follows:

1. (a) Australia Post relocated the Coorparoo Post Office in May 2011 in order to maintain postal services for local business and private customers. The relocation was forced by the shopping centre owner who wished to redevelop the centre where the post office was originally located. Under the redevelopment proposal there was no option for the Post Office to stay at the existing location.

   (b) The Coorparoo Post Office was relocated as a Licensed Post Office. This change in business format was required due to the limited time available, the need to maintain customer service and the franchisee's decision to terminate their franchise agreement with Australia Post in lieu of relocating to the new premises.

   The outlet was moved approximately 700 metres from its previous location.

2. It was always Australia Post's intention to relocate the franchised post office subject to the availability of suitable premises. The franchisee declined the opportunity to relocate the franchised post office to the new premises which lead to the outlet being relocated as a licensed post office.

3. Australia Post sought to relocate the Coorparoo Post Office as a franchised post office. The franchisee declined the opportunity to relocate the franchised post office to the new premises leading to the outlet being relocated as a licensed post office.

4. Australia Post and the franchisee exchanged numerous pieces of correspondence relating to the proposed relocation of the franchised post office and their ultimate decision to terminate their franchise agreement with Australia Post in lieu of relocating to the new premises.

   As this correspondence involves a party external to Australia Post and relates to our dealings under a commercial agreement, we are not at liberty to provide copies.

5. Australia Post had extensive communications with the franchisee relating to the proposed relocation of the franchised post office and their ultimate decision to terminate their franchise agreement with Australia Post in lieu of relocating to the new premises.

   It is understood that the franchisee was advised subsequent to electing to terminate their franchise agreement of the decision to establish a licensed post office at the new location.

6. Refer to Response for Question 1 above.

7. The Coorparoo Post Office was relocated as a Licensed Post Office. This change in business format was required due to the limited time available, the need to maintain customer service and the franchisee's decision to terminate their franchise agreement with Australia Post in lieu of relocating to the new premises.

8. Prior to relocating, available sites in the Coorparoo area were assessed for suitability with consideration to a range of factors.

   The current site was assessed by Australia Post as being the most suitable available premises.

   Due to the redevelopment of the shopping centre there was no option to remain at the existing location.

9. Australia Post maintained ongoing communication with the franchisee regarding the relocation with available information being provided regarding the proposed site and their options under the terms of the franchise agreement.
(10) During the period of relocation the Federal Member for the area was kept advised on our progress for locating a new site. Australia Post was sensitive to the community's concern over any potential closure of the Coorparoo post office and accordingly advised customers as soon as possible when the decision on the new post office location was made.

Due to the redevelopment of the shopping centre there was no option to remain at the existing location.

(11) Australia Post and the franchisee exchanged numerous pieces of correspondence relating to the proposed relocation of the franchised post office and their ultimate decision to terminate their franchise agreement with Australia Post in lieu of relocating to the new premises. Available information was provided to the franchisee regarding the proposed site and their options under the terms of the franchise agreement.

(12) Australia Post understands this question refers to its licensed post office and/or franchised post office agreements. With regard to these agreements, copies are provided to prospective operators during the course of the assessment/selection process in advance of the agreement being entered into.

(13) Australia Post understands this question refers to the Confirmation of Termination of Postshop Franchise Agreement notice provided by Australia Post to the franchisee.

This notice to the Coorparoo franchisee was issued in confirmation of their election to terminate the franchise agreement and provided details of relevant terms and conditions relating to this termination. It indicated that Australia Post would deem the acceptance of the exit payment as being, in respect to the franchise agreement, full and final settlement and constitute a release and discharge from all and any claims.

A notice consistent with that provided to the Coorparoo franchisee would be provided to other outgoing franchisees in the event of a termination of a franchise agreement in similar circumstances to Coorparoo.

(14) As this notice involves a party external to Australia Post and relates to its dealings under a commercial agreement, Australia Post is unable to provide a copy.

(15) (a) Advisory councils have the general purposes of enhancing communications between a franchisor and their franchisees and for the development and exchange of ideas for the betterment of the network as a whole. They do not act as a forum for resolving issues relating to individual franchisees.

Australia Post and the Coorparoo franchisee had extensive communications relating to the proposed relocation of the franchised post office and their ultimate decision to terminate their franchise agreement with Australia Post in lieu of relocating to the new premises. In addition to this communication directly with Australia Post, the franchisee also had available to them the dispute resolution process as provided by the Franchising Code of Conduct and specified in the franchise agreement.

(b) Australia Post advised prospective franchisees that a Franchisee Advisory Council would be established only when the number of franchised outlets in operation was sufficient to allow this forum to operate effectively. As Australia Post has not reached this number of outlets it believes the most effective way to manage its relationship with franchisees is through the current one-to-one interaction with their dedicated network manager.

(16) Existing Australia Post franchisees were advised during their assessment/selection process that a Franchisee Advisory Council would be formed only when the number of franchised outlets in operation was sufficient to allow this forum to operate effectively.

(17) Yes, Australia Post received correspondence from Queensland based franchisees regarding the situation with the Coorparoo franchise. Australia Post took steps at that time to address the concerns of these franchisees.
(18) No. Australia Post has not received ministerial direction regarding its franchise businesses.

**Australian Communications and Media Authority**

*(Question No. 1967)*

**Senator Ludlam** asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 20 July 2012:

Given that during the recent inquiry into the Telecommunications Amendment (Mobile Phone Towers) Bill 2011 it was revealed that the telecommunications regulator, the Australian Communications and Media Authority, does not regulate emissions of radiofrequency radiation from mobile phone base stations, will emissions of radiofrequency radiation from mobile phone base stations be now monitored to ensure they comply with the Australian standard; if so, how; if not, why not.

**Senator Conroy:** The answer to the honourable senator's question is as follows:

The Australian Communications and Media Authority (ACMA) regulates the emission of radiofrequency radiation from mobile phone base stations through the Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003. The Determination obligates licensees of mobile phone base stations in Australia to ensure the operation of their facilities do not exceed the general public exposure limits of the Australian Radiation Protection and Nuclear Safety Agency radiofrequency standard. The issue the Committee raised during its hearing was not a regulation issue, but a monitoring issue in respect of compliance with the electromagnetic energy limits set out in the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) radiofrequency standard.

In answer to the issue raised at the hearing, the ACMA said that, based on available information, it was not of the view there was a compliance issue. The ACMA also said that it was not aware of any case where subsequent ACMA inquiries and measurements in response to complaints or inquiries received about specific installations resulted in identifying a site operating beyond the limits specified in the radiofrequency standard.

In its subsequent response to a Senate Committee question about site audits, taken on notice, the ACMA explained that it conducts audits of radiocommunications installations on a risk informed basis. The ACMA noted it conducted an audit program between 2006 and 2008 of 474 sets of electromagnetic energy (EME) records held by licensees, and the audit program did not identify any issues with licensees exceeding EME limits at locations accessible by the public.

Notwithstanding this, in light of the Senate Committee report into the Bill, the ACMA has advised that it is taking the views of the Senate Committee into account as it establishes priority compliance areas and compliance programs for radiocommunications transmitter licensing arrangements over the new financial year. The ACMA is also considering strategies to ensure compliance with the electromagnetic energy limits set out in the ARPANSA radiofrequency standard, such as site audits.

Predictive reports show that the predicted level of EME outputs from mobile phone base stations are a low percentage of the EME exposure limits set out in the radiofrequency standard. Measurements of EME exposures from mobile phone base stations conducted or commissioned by ARPANSA have found that actual exposures from mobile phone base stations are a small fraction of the EME public exposure limits.

**Australia Post**

*(Question No. 1970)*

**Senator Birmingham** asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 31 July 2012:

By year since 2002, can a list be provided of the number of Australia Post retail outlets, including the estimated total annual number of customer visits.
Senator Conroy: The answer to the honourable senator's question is as follows:

The following table details the number of retail outlets and customer visits by year since 2002.

<table>
<thead>
<tr>
<th>Year (at 30 June)</th>
<th>Retail Outlets</th>
<th>Customer visits (m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>4497</td>
<td>279.8*</td>
</tr>
<tr>
<td>2003</td>
<td>4493</td>
<td>284.2</td>
</tr>
<tr>
<td>2004</td>
<td>4477</td>
<td>282.4</td>
</tr>
<tr>
<td>2005</td>
<td>4474</td>
<td>280.9</td>
</tr>
<tr>
<td>2006</td>
<td>4462</td>
<td>273.9</td>
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<tr>
<td>2007</td>
<td>4449</td>
<td>264.7</td>
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<tr>
<td>2008</td>
<td>4453</td>
<td>257.1</td>
</tr>
<tr>
<td>2009</td>
<td>4433</td>
<td>252.4</td>
</tr>
<tr>
<td>2010</td>
<td>4415</td>
<td>237.1</td>
</tr>
<tr>
<td>2011</td>
<td>4419</td>
<td>227.7</td>
</tr>
</tbody>
</table>

[* Rolling 12 months to 31 July 2002]

Australia Post

(Question No. 1979)

Senator Abetz asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 2 August 2012:

With reference to the Budget estimates hearings of the Environment and Communications Legislation Committee in May 2012 and evidence given by Ms Corbett, Executive General Manager for Retail Services, Australia Post:

(1) In relation to the exercise of Clause 22 for both the Vaucluse and the Campbelltown licensed post offices (LPOs):
   (a) did Australia Post follow the process that Ms Corbett outlined; and
   (b) in each case:
      (i) was counselling offered; if so, can details be provided; if not, why not,
      (ii) was mediation offered; if so, can details be provided; if not, why not, and
      (iii) was consultation; if so, can details be provided; if not, why not.

(2) What notice did the two LPOs in paragraph (1) receive from Australia Post in relation to the issuing of a termination notice.

(3) In relation to each notice of termination, were the LPOs offered a right of appeal or mediation.

(4) Given that under the National and State Process and Procedure Manager roles, LPOs were able to have decisions reviewed in line with the rights and entitlements licensees have under the LPO agreement, does this facility still exist; if so, can an explanation be provided of how this works; if not, why not.

Senator Conroy: The answer to the honourable senator's question is as follows:

(1)(a) Yes, Australia Post followed the process as outlined by Ms Corbett.

   (b) (i) By counselling, Australia Post understands this to mean did it seek to identify whether the matters of concern were training and/ or relationship related and take steps to resolve these directly with the licensee.

   Yes, Australia Post took steps to identify the causes of the matters of concern and worked directly with the licensees in an effort to resolve these issues over an extended period of time.
(ii) Yes, Australia Post sought to mediate on the matters of concern with the licensees through the dispute resolution processes of the LPO Agreement and/or the Franchising Code of Conduct.

In both cases the licensees declined to participate in the dispute resolution process.

(iii) By consultation, Australia Post understands this to mean did it maintain ongoing communications with the licensees on the matters of concern.

Yes, Australia Post ensured that it maintained ongoing communication with the licensees as part of its efforts to resolve the matters of concern with them.

(2) In both cases Australia Post hand delivered to the licensees the formal notice of termination of the LPO Agreement. The notice provided a date of effect 90 days from issue.

(3) The licensees were able to engage in mediation with Australia Post regarding the decision to terminate the LPO Agreement through the formal dispute resolution processes provided under both the LPO Agreement and the Franchising Code of Conduct.

(4) Australia Post understands this question to refer to the dispute resolution process available to licensees under the LPO Agreement. A dispute resolution process is also separately provided under the Franchising Code of Conduct.

The dispute resolution process provided under the LPO Agreement is a tiered process allowing for matters to be progressed from a local level to a formal dispute resolution committee in the event that they cannot be resolved. The dispute resolution committee comprises an independent chairperson (typically chosen from nominees provided by the Institute of Arbitrators and Mediators of Australia) and a representative from the Post Office Agents Association Limited and Australia Post.

The committee will endeavour to assist the licensee and Australia Post to find a resolution to the matter in dispute which is suitable to both parties. In the event that an agreement on resolving the dispute cannot be reached, both parties maintain their rights to pursue other options including legal action.