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SITTING DAYS—2011

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- PERTH 585AM
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FORTY-THIRD PARLIAMENT
FIRST SESSION—FOURTH 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—Senators Judith Anne Adams, Christopher John Back, Thomas Mark Bishop, Suzanne Kay Boyce, Douglas Niven Cameron, Patricia Margaret Crossin, David Julian Fawcett, Mary Jo Fisher, Helen Evelyn Kroger, Scott Ludlam, Gavin Mark Marshall, Claire Mary Moore and Louise Clare Pratt, Ursula Mary Stephens and Mark Lionel Furner
Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy
Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate—Senator Hon. George Henry Brandis SC
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Mitchell Peter Fifield

Senate Party Leaders and Whips
Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC
Leader of The Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of The Nationals—Senator Fiona Nash
Leader of the Australian Greens—Senator Robert James Brown
Deputy Leader of the Australian Greens—Senator Christine Anne Milne
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 Judith Anne Adams and David Christopher Bushby
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert

Printed by authority 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 to be filled (vice H. Coonan, resigned 22.8.11), 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—A Thompson
### GILLARD MINISTRY

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<tr>
<td>Prime Minister</td>
<td>Hon. Julia Gillard MP</td>
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<tr>
<td>Deputy Prime Minister, Treasurer</td>
<td>Hon. Wayne Swan MP</td>
</tr>
<tr>
<td>Minister for Regional Australia, Regional Development and Local Government</td>
<td>Hon. Simon Crean MP</td>
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<tr>
<td>Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate</td>
<td>Senator Hon. Chris Evans</td>
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<tr>
<td>Minister for School Education, Early Childhood and Youth</td>
<td>Hon. Peter Garrett AM, MP</td>
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<tr>
<td>Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate</td>
<td>Senator Hon. Stephen Conroy</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Hon. Kevin Rudd MP</td>
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<td>Minister for Trade</td>
<td>Hon. Dr Craig Emerson MP</td>
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<tr>
<td>Minister for Defence and Deputy Leader of the House</td>
<td>Hon. Stephen Smith MP</td>
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<tr>
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<td>Hon. Chris Bowen MP</td>
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<tr>
<td>Minister for Infrastructure and Transport and Leader of the House</td>
<td>Hon. Anthony Albanese MP</td>
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<td>Minister for Health and Ageing</td>
<td>Hon. Nicola Roxon MP</td>
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<tr>
<td>Minister for Families, Housing, Community Services and Indigenous Affairs</td>
<td>Hon. Jenny Macklin MP</td>
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<tr>
<td>Minister for Sustainability, Environment, Water, Population and Communities</td>
<td>Hon. Tony Burke MP</td>
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<td>Senator Hon. Penny Wong</td>
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<tr>
<td>Minister for Innovation, Industry, Science and Research</td>
<td>Senator Hon. Kim Carr</td>
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<tr>
<td>Attorney-General and Vice President of the Executive Council</td>
<td>Hon. Robert McClelland MP</td>
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<td>Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate</td>
<td>Senator Hon. Joe Ludwig</td>
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<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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<tr>
<td>Minister for Climate Change and Energy Efficiency</td>
<td>Hon. Greg Combet AM, MP</td>
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[The above ministers constitute the cabinet]
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<td>Hon. Tanya Plibersek MP</td>
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<tr>
<td>Minister for Privacy and Freedom of Information</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Minister for Sport</td>
<td>Hon. Brendan O'Connor MP</td>
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<tr>
<td>Special Minister of State for the Public Service and Integrity</td>
<td>Hon. Gary Gray AO, MP</td>
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<tr>
<td>Assistant Treasurer and Minister for Financial Services and Supranannuation</td>
<td>Hon. Bill Shorten MP</td>
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<tr>
<td>Minister for Employment Participation and Childcare</td>
<td>Hon. Kate Ellis MP</td>
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<tr>
<td>Minister for Indigenous Employment and Economic Development</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Minister for Veterans' Affairs and Minister for Defence Science and Personnel</td>
<td>Hon. Warren Snowdon MP</td>
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<td>Hon. Jason Clare MP</td>
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<td>Hon. Mark Butler MP</td>
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<td>Hon. Kate Ellis MP</td>
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<td>Cabinet Secretary</td>
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<td>Hon. Catherine King MP</td>
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<td>Parliamentary Secretary for Health and Ageing</td>
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<td>Senator Hon. Joe Ludwig</td>
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<td>Hon. Mark Dreyfus QC, MP</td>
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<td>Leader of the Opposition</td>
<td>Hon. Tony Abbott MP</td>
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<td>Deputy Leader of the Opposition and Shadow Minister for Foreign Affairs</td>
<td>Hon. Julie Bishop MP</td>
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<td>Shadow Minister for Trade</td>
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<td>Leader of the Nationals and Shadow Minister for Infrastructure and Transport</td>
<td>Hon. Warren Truss MP</td>
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<td>Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations</td>
<td>Senator Hon. Eric Abetz</td>
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<td>Deputy Leader of the Opposition in the Senate and Shadow Minister for Attorney-General and Shadow Minister for the Arts</td>
<td>Senator Hon. George Brandis SC</td>
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<td>Shadow Treasurer</td>
<td>Hon. Joe Hockey MP</td>
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<td>Hon. Christopher Pyne MP</td>
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<td>Senator Hon. Nigel Scullion</td>
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<td>Shadow Minister for Regional Development, Local Government and Water and Leader of the Nationals in the Senate and Chairman, Coalition Policy Development Committee</td>
<td>Senator Barnaby Joyce</td>
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<td>Shadow Minister for Finance, Deregulation and Debt Reduction and Chairman, Coalition Policy Development Committee</td>
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<td>Mr Scott Morrison MP</td>
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<td>Shadow Minister for Innovation, Industry and Science</td>
<td>Mrs Sophie Mirabella MP</td>
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<td>Shadow Minister for Agriculture and Food Security</td>
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<td>Shadow Minister for Small Business, Competition Policy and Consumer Affairs</td>
<td>Hon. Bruce Billson MP</td>
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[The above constitute the shadow cabinet]
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Shadow Minister for Employment Participation
Hon. Sussan Ley MP

Shadow Minister for Justice, Customs and Border Protection
Mr Michael Keenan MP

Shadow Assistant Treasurer and Shadow Minister for Financial Services and Superannuation
Senator Mathias Cormann

Shadow Minister for Childcare and Early Childhood Learning
Hon. Sussan Ley MP

Shadow Minister for Universities and Research
Senator Hon. Brett Mason

Shadow Minister for Youth and Sport and Deputy Manager of Opposition Business in the House
Mr Luke Hartsuyker MP

Shadow Minister for Indigenous Development and Employment
Senator Marise Payne

Shadow Minister for Regional Development
Hon. Bob Baldwin MP

Shadow Special Minister of State
Hon. Bronwyn Bishop MP

Shadow Minister for COAG
Senator Marise Payne

Shadow Minister for Tourism
Hon. Bob Baldwin MP

Shadow Minister for Defence Science, Technology and Personnel
Mr Stuart Robert MP

Shadow Minister for Veterans’ Affairs and Shadow Minister Assisting the Leader of the Opposition on the Centenary of ANZAC
Senator Hon. Michael Ronaldson

Shadow Minister for Regional Communications
Mr Luke Hartsuyker MP

Shadow Minister for Ageing and Shadow Minister for Mental Health
Senator Concetta Fierravanti-Wells

Shadow Minister for Seniors
Hon. Bronwyn Bishop MP

Shadow Minister for Disabilities, Carers and the Voluntary Sector and Manager of Opposition Business in the Senate
Senator Mitch Fifield

Shadow Minister for Housing
Senator Marise Payne

Chairman, Scrutiny of Government Waste Committee
Mr Jamie Briggs MP

Shadow Cabinet Secretary
Hon. Philip Ruddock MP

Shadow Parliamentary Secretary Assisting the Leader of the Opposition
Senator Cory Bernardi

Shadow Parliamentary Secretary for International Development Assistance
Hon. Teresa Gambaro MP

Shadow Parliamentary Secretary for Roads and Regional Transport
Mr Darren Chester MP

Shadow Parliamentary Secretary to the Shadow Attorney-General
Senator Gary Humphries

Shadow Parliamentary Secretary for Tax Reform and Deputy Chairman, Coalition Policy Development Committee
Hon. Tony Smith MP

Shadow Parliamentary Secretary for Regional Education
Senator Fiona Nash

Shadow Parliamentary Secretary for Northern and Remote Australia
Senator Hon. Ian Macdonald

Shadow Parliamentary Secretary for Local Government
Mr Don Randall MP

Shadow Parliamentary Secretary for the Murray-Darling Basin
Senator Simon Birmingham

Shadow Parliamentary Secretary for Defence Materiel
Senator Gary Humphries

Shadow Parliamentary Secretary for the Defence Force and Defence Support
Senator Hon. Ian Macdonald
SHADOW MINISTRY—continued

Shadow Parliamentary Secretary for Primary Healthcare
   Dr Andrew Southcott MP
Shadow Parliamentary Secretary for Regional Health Services
   and Indigenous Health
   Mr Andrew Laming MP
Shadow Parliamentary Secretary for Supporting Families
   Senator Cory Bernardi
Shadow Parliamentary Secretary for the Status of Women
   Senator Michaelia Cash
Shadow Parliamentary Secretary for Environment
   Senator Simon Birmingham
Shadow Parliamentary Secretary for Citizenship and Settlement
   Hon. Teresa Gambaro MP
Shadow Parliamentary Secretary for Immigration
   Senator Michaelia Cash
Shadow Parliamentary Secretary for Innovation, Industry, and
   Science
   Senator Hon. Richard Colbeck
Shadow Parliamentary Secretary for Fisheries and Forestry
   Senator Hon. Richard Colbeck
Shadow Parliamentary Secretary for Small Business and Fair
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Thursday, 10 November 2011

The President (Senator the Hon. John Hogg) took the chair at 09:30, read prayers and made an acknowledgement of country.

BILLS
Quarantine Amendment (Disallowing Permits) Bill 2011
Second Reading
Debate resumed on the motion:
That this bill be now read a second time.

Senator Sterle (Western Australia) (09:31): I rise to make a contribution on Senator Xenophon's Quarantine Amendment (Disallowing Permits) Bill 2011. The bill aims to establish greater parliamentary scrutiny over import conditions for biological products. If the bill is passed, it has the potential, unfortunately, to damage Australian industry and productivity—and I am sure that is something the Senate would never ever agree to. It could, unfortunately, cancel the opportunity to have the turkey at Christmas. It will prevent health authorities from obtaining timely vaccines to emerging global health epidemics. The bill will create uncertainty for Australia's farmers and the mining sector, who rely on quarantine clearance for machinery imports and other inputs. Australia's winemakers, unfortunately, would be denied access to something as simple as imported oak casks. The legislation poses a bureaucratic bottleneck for importers that could take years and years to clear. The question is not whether this legislation will cost jobs but how many jobs and who, if anybody, will benefit. The legislation not only denies imports but hampers production. Australia's ports would grind to a halt amid the uncertainty that this bill would create.

In the time allotted to me I want to explain how the bill would work. The bill would prohibit the importation of any product of quarantine concern. When we talk about quarantine, the first thing the majority of Australians would think about is produce, food and the like. But quarantine goes to a whole host of other items. Mining equipment, transport equipment and anything that comes on to our shores would be affected by this bill. All conditions of imports would then have to be remade as a legislative instrument by the minister.

I would like to dig down a bit further into that. The legislative instrument would be automatically referred to a parliamentary committee. If the committee did not move to disallow the instrument, the import permit and/or conditions of import would be considered valid. For example, if the committee or any other member of parliament—and that could be quite dangerous—moved to disallow the import permit and associated import conditions, it could result in a delay of a further 15 sitting days. I want to clarify that that is not normal Monday to Friday business days but sitting days. I have the parliamentary sitting calendar here in front of me. If this bill is passed, an importer could apply to import a product on 1 December 2011 and, going by the sitting calendar, the sad fact is that it could be well past Anzac Day next year before the importer would have certainty that no disallowance motion had been moved. If a disallowance motion was moved, the importer could be waiting until mid-August 2012 to have certainty about their permit. You do not have to be Einstein to work out that it is absolutely ludicrous that it could take that long when we have products sitting waiting to come into our country. If it is a bit of equipment that a mining company, or a transport company or a community may be...
hanging on, that is just crazy—let alone fresh produce, seafood or whatever it may be.

While the legislation only applies for the first time that import conditions are finalised, the AQIS import conditions database, known as ICON, specifies more than 14,000 import conditions. Import conditions for the same commodity can vary significantly depending on the risks associated with the country of export. If it only took 12 months to consider every set of import conditions, the Senate Standing Committee on Regulations and Ordinances would consider no less than 250 import conditions every parliamentary sitting day. It is quite frightening when we start talking like that. As we all know in this place, there are just not enough legislation drafters to draft all these legislative instruments. One can only imagine how long it would take to clear such a bottleneck. And because the legislative instruments automatically terminate 10 years after they are made, the parliament, after finally clearing the bottleneck caused by the bill, would be considering all of these import conditions all over again.

Roughly 36 million domestic and international passenger movements were recorded at Sydney airport in 2010—that is just Sydney alone. The swine flu epidemic demonstrated how quickly influenza, at first isolated to a few communities in Mexico, spread around the world including to Australia. Every year, Australian medical practitioners prescribe vaccines to combat flu and other diseases. Viruses and diseases evolve, and so too do the biological products the medical profession users to respond to them. But while passenger flights take off and land in real time, doctors and medical researchers could be waiting for months and months before their import permit was approved.

Just as importantly, the bill will hurt Australian farmers. The legislation will lead to challenges in the World Trade Organisation and trading partners will impose retaliatory actions. That leads to expensive legal disputes, and we have seen our fair share of them. That is not something anyone in this chamber would want to see. Changes to import conditions would be subject to parliamentary scrutiny—not that that is a bad thing, but it is not the quickest. Quarantine officials will be unable to impose measures that respond to emerging animal and plant health issues. This will in turn leave Australia exposed—let us hope not—to foot and mouth disease and plant diseases like citrus and kiwifruit canker.

Australian farmers rely on imported inputs to achieve better productivity. In the short time I have left to speak I want to give a couple of examples. Farmers import machinery second-hand. Because it has been used before and may contain traces of dirt, plant matter and insects, quarantine conditions apply—and so they should. Farming businesses import semen straws, embryos and plant products to improve productivity. Wine producers who import French oak to mature wine in will be unable to do so under this bill. Australia's turkey industry will be unable to import fertilised eggs, which are hatched and raised by Australian farmers. Any farmer who imports stockfeed or fertiliser will have to wait for the parliament to work through thousands of other import conditions. So the legislation encourages subversive and illegal activity. Illegal imports and non-regulated trade are the biggest risks to Australia's unique biosecurity status.

The Senate Rural Affairs and Transport Legislation Committee, which I proudly chair, considered this bill and recommended that it not be passed. The committee noted that the significant majority of submissions
argued that the bill had the potential to weaken Australia's quarantine and biosecurity framework. We cannot ever—ever—take the risk of doing that. The committee noted evidence which suggested that the bill would lead to the unwanted disclosure of commercially confidential information. The committee also expressed concerns that the bill has the potential to enable the parliament to override scientific evidence and determinations provided by Biosecurity Australia and the director of quarantine. With the greatest respect to my parliamentary colleagues, both in this House and the other place, the last thing we would want is for the odd politician to have the ability to put at risk our biosecurity measures in this great country. We cannot support the amendment bill.

Senator COLBECK (Tasmania) (09:41): I also rise to make a contribution on Senator Xenophon's private senator's bill, the Quarantine Amendment (Disallowing Permits) Bill 2011. I can genuinely understand Senator Xenophon's concern in putting this piece of legislation before the parliament, particularly given the management of this issue by the government since early this year when the Prime Minister made her visit to New Zealand and effectively announced to the New Zealand parliament that we were going to take New Zealand apples. This issue has been before this parliament in a number of guises for a very long time. I am aware of at least two or three Senate inquiries into the importation of apples from New Zealand through various import risk assessment processes that have occurred since I have been here and I am aware of inquiries that occurred prior to that. But when the Prime Minister stood up in the New Zealand parliament and said effectively that we would take apples from New Zealand the industry were quite understandably very concerned about that statement, given that we were in the middle of a WTO process where the New Zealanders had referred our import risk assessment and the conditions attached to that to the WTO for arbitration. So the apparent pre-empting of that decision by the Prime Minister quite understandably got the industry very concerned.

One thing we need to be very aware of is the very fortunate situation we find ourselves in here in Australia with respect to our quarantine status. We make absolutely no apology for maintaining a very high level of protection for that quarantine status. It is more than appropriate that we do that. We are free of foot and mouth and a whole range of other diseases that impact on other countries around the world. In particular, in this case, fire blight is a disease that we are very fortunate we do not have to manage. It would have a huge impact on our apple and pear industries, completely devastating the pear sector, and there are a number of chemicals and management tools that are available particularly in New Zealand that are not available to our farmers here. Streptomycin is one that comes to mind. Senator Xenophon's motivation in putting this piece of legislation forward cannot be questioned. He is quite genuine in his concern to ensure that our biosecurity is at its strongest and that the disease status of our industries are protected to the absolute maximum possible. Unfortunately, the mechanism that he has designed in this piece of legislation would do more than harm than good in protecting our biosecurity status.

The issue of the importation of apples, as I have said, has been a vexed one for a very, very long time. I have to mention the New
Zealand minister who, when a delegation of coalition members were in New Zealand recently to inspect some of the processes and procedures occurring over there, acknowledged that the New Zealand industry had to lift their game in their sheds to ensure that they had a satisfactory outcome as far as their processes were concerned. The failure rate of close to 25 per cent that they have had since apples have been approved to come from New Zealand I do not think is acceptable and, if it had been an Australian product going overseas and we had that level of failure in our inspections, there would be an enormous hue and cry. I think the Australian apple and pear industry are more than reasonable in the concerns they have expressed about that level of failure rate. It is important to acknowledge that the New Zealand minister, who has been very, very good in the conversations that I have had with him in relation to this matter, has said to the industry that they need to lift their game and improve that rate. I think the New Zealand apple industry actually acknowledged that too, given the feedback that I have had from members of the delegation who went to New Zealand a couple of weeks ago. The fact that the New Zealanders were prepared to open their sheds to us to allow us to inspect their systems and to watch the way their processes worked is appreciated by the coalition, and I know that the industry appreciate the fact that we were able to go and have a look over there as well.

I come back to the government's management of this particular issue. They have created angst, particularly through the apple industry, where they did not need to. During the development of the import risk assessment the industry were very keen to get access to what is known as the New Zealanders' management systems of their orchards. They made a number of requests and were told by the government that the information was commercial-in-confidence. It was not until the coalition placed an order through this House that that information was provided to the industry. As it turned out, the information was actually available to the industry in the import risk assessment. All the government had to do was say to the industry, 'The information that you are looking for is accurately reflected in the import risk assessment document,' and that angst could have been removed. I believe that that is a completely and absolutely unnecessary concern that the industry had to go through and that the government could have resolved, if it had had the want to do so.

There is a lot of information in the New Zealanders' procedures manual that is commercial-in-confidence. It goes to marketing and it goes to a whole range of other matters. Had the government spoken to the New Zealanders and said, 'We want to give the Australian industry access to the information around the management of fire blight in particular in the orchards during the season and through the packing sheds,' that could have saved an enormous amount of angst. There were serious concerns that moved through the industry and I think they were quite justified because they believed information that was going to be used in the management of Australia's biosecurity—and I go back to the importance of our biosecurity status—was being withheld from them. Quite frankly, if the New Zealanders wanted to use their orchard management system as a mechanism for the management of their biosecurity, they should have been prepared to put that information on the table right from the outset. I think our industry deserved to have access to that information. It was more than reasonable.

There has been a lot of argument about the science of fire blight and the potential transmission of that disease into this country on mature apples. That has gone backwards.
and forwards over a long period of time. The
decision has now been made that we will
import apples from New Zealand into
Australia. The most genuine concern that I
came across was the capacity of the New
Zealand industry to prevent the disease from
being transmitted particularly on litter that
might come with the apples in the packed
boxes. The fact that in the first consignments
there was an almost 25 per cent failure rate
of either leaf litter or leaf curling midge in
those consignments, I think, vindicates the
concern that the industry had about the
capacity of the New Zealand industry to
meet those protocols.

The growers in Australia know about
growing apples, they know about packing
apples and they know about the potential
threats and concerns that might arise in that
process, particularly in the packaging and
export of apples. Why they were not given
access to the information that related to that
process and why they were not consulted
more genuinely in that process, I do not
know. But the fact that they were not created
an enormous amount of angst and created an
enormous amount of concern in the industry
about the efficacy of the system. I have to
say that the failure rate to date has justified
their concerns. Now that we have decided to
import apples from New Zealand—again I
acknowledge the comments of the New
Zealand minister, who has been very good in
relation to this—a real effort needs to be
made to ensure that New Zealand has a
satisfactory process in place. It needs to be
acknowledged that it needs to lift its game,
because one thing that we do not want, do
not need and cannot afford is a serious
breach in Australia's quarantine system in
relation to the particular diseases that are of
concern in apple imports.

We have seen in recent times an incursion
of Asian bees and there has been significant
concern from the beekeeping industry about
our management of that incursion. A
decision was made late last year or early this
year that the Asian bee was no longer
eradicable. There were sincere and real
concerns throughout the beekeeping sector
that the decision-making process around that
decision did not take into account all of the
information. In fact, even as late as a couple
of weeks ago, Senator Milne and I were at an
event in Sydney where concerns remained
about the gathering of data and the decision-
making process around the potential
eradication or otherwise of the Asian bee.

We have also seen the incursion of myrtle
rust into the country. Again, there have been
concerns coming back from some elements
of the scientific community about the
management of that process. We do not want
the same thing happening to other
agricultural industries, particularly our apple
and pear industry, from fire blight. We do
not want to have to go through that process.
So it was more than reasonable that our
industry spent a considerable amount of time
to ensure that the processes put in place had
the required efficacy. People in the industry
need to be assured that their businesses are
protected from the threat of diseases that do
not exist in this country.

Because of our quarantine status, my
home state of Tasmania has access to a
number of markets that other states do not
have access to due to the fact that they are,
for example, free of fruit fly. They get into
some very valuable markets because of their
quarantine status and we do not want to put
at risk our access to those high-value markets
by not having a strong biosecurity system.
So I do not apologise for the processes that
the coalition has ensured this import risk
assessment went through. I do not apologise,
for a minute, for the questions that we have
asked of the government, but I do criticise
the government's management of this.
As I said, when the Prime Minister went to New Zealand earlier this year and basically said, 'We are going to take your apples,' there was an enormous concern that went through the New Zealand industry—and justifiably. We were in the middle of a process. We were still negotiating the design of the revised import risk assessment. Then when we got to the end of the process, in August this year, for the industry to find out after the permits were issued and after premises in New Zealand had been certified I think shows no respect to our industry at all. I am not sure what the government was concerned about but, quite frankly, it should have been much more open. For the industry to find out on the day that the process was determined to be completed—and that date was determined as part of the negotiation of the WTO settlement—that in previous weeks certification of orchards had been approved and export permits had been approved, shows no respect to our industry.

It also demonstrates a general disposition that this government has towards the agriculture sector in this country. It does not show the sector due respect. The industry found out late in the process, but they could have been told what was happening, when it was happening and how it was happening, which would have removed that concern and angst that was generated throughout the industry. It is going to take a long time for the industry to regain some trust in the mechanisms of this government and in the way that the government interacts with them.

The bill review process occurred during the last parliament. The government has been very slow to enact the provisions of that. We know that economic conditions are tight but, as I said, the biosecurity status of this country is one of our greatest assets. Having a strong biosecurity system and having good systems that allow us to import and export our goods efficiently is very important. Any loss of that biosecurity status provides a significant risk and threat to our export capacities and export revenue.

If you go back to the time of the global financial crisis and look at the statistics you will see that it was agriculture that was one of the sectors that held our economy out of recession. The strength of our agricultural exports was one of the key factors in holding our economy out of recession. So when the government is so lax in the way that it deals with our farming sector—our rural exporters—I think it really needs to sit back and take a close look at the way it is managing this. It needs to be prepared to invest in the recommendations that came out of the bill process to ensure that this country has a strong and efficient biosecurity system. There is not question that that is the case.

Unfortunately, this legislation that has been put in front of the parliament by Senator Xenophon, although very well intentioned, does not meet the mark. I think Senator Sterle's contribution quite clearly laid out some of the issues that this legislation would create, but by the same token, given the way that the government has approached this matter and given the way that the government has managed this issue, particularly over the recent past, I understand his sincerity in wanting to ensure that the biosecurity system is strong. Unfortunately, the legislation does not provide, in my view, the efficiency of process that might be required to maintain an efficient biosecurity system. In that context, I support the committee's recommendation that the bill not be supported. It is important to note that the submissions to the inquiry predominantly followed that line as well. They were not supportive of this piece of legislation because of the inefficiencies that it might bring to the system. As I have said on a number of occasions during this contribution, Senator Xenophon's concerns
are very genuinely held. I know that in South Australia there is an important apple industry and that the growers in his state, as they are in mine and in other states, are very concerned to ensure that they are not subjected to diseases, such as fire blight, that would have a major negative impact on the industry. In saying that, I again acknowledge Senator Xenophon's genuine concern for the industry but indicate that I cannot see myself supporting this piece of legislation.

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (10:01): The Quarantine Amendment (Disallowing Permits) Bill 2011 is an important piece of legislation because it brings to the Senate a matter of grave concern for Australia's primary producers and for biosecurity nationally. We should bear in mind that the seven billionth person has now joined us on this planet at a time when we have accelerating climate change. A recent report on food security, which is becoming absolutely front and centre in global negotiations, from the Food and Agriculture Organisation of the United Nations through to the United Nations Framework Convention on Climate Change, recognised that with extreme weather events, a changing ice melt and so on areas that have been food bowls up until now will become less productive as we proceed into the future. One example I will give of this is South America, where there is a huge dependence on glacial melt to maintain irrigation over the dry season. We are now finding that those glaciers are melting at a great rate, and there is real concern that Peru, for example, will have a major problem feeding itself, let alone anyone else.

In California, the Colorado River feeds one of the world's largest fruit and vegetable growing bowls. It is a competitor in the global context. In California they are not getting the snow they used to get and therefore not getting the snow melt that is necessary to maintain their rivers and their irrigation levels. So we are going to see both threats and opportunities emerge globally, but the reality is that we need to produce as much food as we possibly can, not only for ourselves in Australia but to feed into a global marketplace. I have little confidence in the predictions of some of the professionals in the Department of Agriculture, Fisheries and Forestry in analysing already evident trends in global warming, glacial melt and snow melt and in looking both at opportunities to maximise penetration in world markets and at where there will be shortages and therefore higher prices in certain commodities at certain times of the year.

Things are changing and, as I said, there are threats and opportunities. We are now in a position where we have to maximise agricultural production in Australia at a time when we are seeing extreme weather events and shifting rainfall patterns. We saw this last year in Queensland with the flood events, we have seen it with the extreme drought in the Murray-Darling and we have seen it with fire. We need to think about how we maintain agricultural land and ecosystems for maximum food production, and we have all the challenges from urbanisation, coal seam gas and the like. But if you make a priority of maintaining the health of ecosystems and agricultural land to maximise productivity then biosecurity is front and centre. We have to make sure that we stop any further incursions into Australia of diseases we do not have already and that when those incursions occur we get onto them immediately and do everything we can to eradicate them before they become a major problem.

Senator Xenophon's bill today is as a result of the controversy over the decision to allow apple imports from New Zealand into
Australia, therefore threatening Australian apple and pear producers with fire blight. He has brought in a piece of legislation which would impact not just the issue of fire blight but in fact all agricultural imports. The issue that has brought us to this point is that Australia does not have fire blight. A commonsense test of the person in the street would ask: if we are a country without fire blight, why would we allow the import of apples from a country that does have fire blight? Biosecurity Australia gave evidence to a Senate inquiry a couple of years ago saying that, yes, fire blight would come to Australia as a result of allowing apples from New Zealand. Their main argument then was: however, it will not spread; it will come here but it will not spread. How can we possibly take the view that it will not spread? Conditions are changing, and I am concerned that not only will it come here but it will spread.

The question is: why would you have to do that? Why would a country have to take apples from a country with a disease we do not have and risk biosecurity in this field? The answer is: the World Trade Organisation rules. That is where it all comes back to. That is the reality. That is why we are doing this; otherwise, common sense would say, 'We're just not going to do that. We're not going to allow in an import of a product that could threaten our biosecurity in any shape or form. We don't need to do it. We don't need New Zealand apples in the Australian market. We've got quite enough apples of our own.' But it is because of the World Trade Organisation rules. Of course it is well known to all of us that New Zealand took Australia to the WTO over this particular issue and Australia lost in that international forum, and that is why we are in the space we are in. Then it was up to Biosecurity Australia to look at the risk assessment and the rules that would cover the import to make sure they are stringent enough so that they minimise the risk to Australia of the entry of the disease. That is the point where Senator Colbeck is right.

The decision by the Prime Minister when she went to New Zealand to address the New Zealand parliament to use that opportunity to say that Australia would take New Zealand apples when the revised import risk assessment was still underway meant that every single producer in Australia saw the Prime Minister take a political opportunity in the country in question to get a big cheer from that parliament. But what it said to producers here was: the revised risk assessment really was not worth anything. The deal had already been done. Everything had already been stitched up. To add insult to injury, when the New Zealand Prime Minister came to Australia and spoke in our parliament, the Prime Minister then made a joke of it with him saying that if Australia won the world cup she would eat a New Zealand apple, and if New Zealand won—you know what I am saying. Conversely, they would each eat the other country's apple in the event that that was the outcome of the world cup.

Again, you can imagine what that did to apple growers around Australia who are very, very concerned about what the risk to their whole business, their community, their district was to see this being turned into a political joke. It is actually the reverse here: the argument against Senator Xenophon's bill—and I think it has been put quite succinctly by the Animal Health Alliance when they said in their contribution to the Senate committee that, historically, Australia has had a reputation internationally of being a difficult country to import into due to its strict quarantine requirements. They argued that 'including a political step in the quarantine assessment process would further erode our international credibility.' The
The political step they were referring to was Senator Xenophon’s requirement that this could be a disallowable instrument; that any permit of this kind, whether it is apples or something else from another country, could be a disallowable instrument. That is the political step because it plays in a Senate committee or a parliamentary committee which must report within 15 days based on that.

The political step that was taken—in my view, a very poor judgment—was to make this announcement in the New Zealand parliament and then make a joke of it in the Australian parliament. That was a political intervention in the process and it has undermined confidence in apple growers that when the revised risk assessment went around it was anything other than just a cosmetic procedure.

What we do know is that Australia as a member of the World Trade Organisation is obliged under the SPS agreement to consider all import requests from other countries concerning agricultural products. That World Trade Organisation agreement states specifically that:

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent … [it] is based on scientific principles.

The issue here is to whether we are taking the scientific principles seriously enough, whether we are doing adequate research, whether we are actually out there arguing the science. I am concerned and I have lost a lot of confidence in Biosecurity Australia in terms of application of the science and indeed how the whole thing is managed.

When I was first elected to the Senate in 2004 we had the citrus canker outbreak in Queensland around Emerald. To this day we still do not know who tipped off the owners of the property that Biosecurity Australia were coming on a raid, and overnight, the night before the raid, the evidence was dug up and taken away. To this day no-one has ever been charged in relation to that and they got away with it.

The next issue I have been dealing with lately is the Asian honey bee. Biosecurity Australia has said, ‘There is no evidence to say that it can be eradicated therefore we have downgraded it. It is no longer an eradication effort; it is now a management effort. We are going to manage the incursion of the Asian honey bee.’ I can tell you, Madam Acting Deputy President, that the Asian honey bee will progress beyond the tropics into New South Wales and it will probably come even further south. When it does, the community is going to ask: how on earth did this happen? What is more, on the science base—apart from my concern about the beekeepers and the cross-pollination services and so on that are currently offered by the beekeepers of Australia and of course their honey production—I have got major concerns about wiping out native bee populations and our whole biodiversity.

I am disgusted with the department of the environment in that whole process about determining the risk of the Asian honey bee. The department of the environment sent an observer only and then the observer said nothing during all of this. There is an expert at the CSIRO who has spent 25 years studying the Asian honey bee and he was not given the run of the floor in terms of explaining the biodiversity impacts. Regardless of that, why weren’t our Biodiversity people talking about what was going to happen?

We have seen it again with myrtle rust, another disaster for the natural environment. The Lamington National Park in Queensland has been devastated now by myrtle rust. In it came and it just got away from a flower farm in New South Wales before it was taken
A small hive beetle had come into New South Wales. The beekeeper concerned alerted the authorities, saying: 'I'm worried about this. I haven't seen it before.' It was near the Richmond Air Force base. Might that not give you a few clues? The Air Force there had been flying backwards and forwards from South Africa at the time. You should think: 'That hive is near the Air Force base. They've been going backwards and forwards from South Africa. We might have a good look at that.' But, no, quarantine New South Wales just said, 'No, it's fine to move that hive into Queensland.' That was done and now this small honey beetle has had a huge impact right through New South Wales, leading to massive reductions in honey production as a result of a complete failure.

I heard just recently that we have now discovered a bacteria in the Riverina that has come from semen straws imported into Australia, and it is leading to a significant reduction in fertility in the beef herds in the Riverina. A PhD student is doing her work on that. That bacteria will become an increasing concern. Is it any wonder the apple growers in Australia are worried sick about fire blight? Is it any wonder that the beef growers of Australia are going to be panicking shortly with regard to the imported product that is bringing in a bacteria previously unknown here? These are the sorts of realities we are facing.

Every year there are more and more incursions into Australia's ecosystems that will reduce our agricultural productivity at a time we need to be maximising our productivity. That is the biggest challenge for agriculture, as I said at the start. We need to lift our agricultural productivity. We cannot do it in the same way we have done it in the past. We cannot clear more land. There is no more water for irrigation. We are faced with an oil crisis and we have to get off petrochemical fertilisers. How are we going to lift our productivity? We are going to need massive research and development. What we do not need are additional costs on growers and producers around the country because they have to manage incursions of disease that they ought not to have been confronted with in the first place.

So I have a good deal of sympathy for what Senator Xenophon has put on the table. I note with interest that Senator Colbeck did not mention that the shadow minister for agriculture, Mr Cobb, had a private member's bill in the lower house which was practically the same as Senator Xenophon's—the ability to disallow. He went to several districts around Australia, waving the private member's bill and saying that the coalition would do this and that to stop the import of apples from New Zealand. When it came to it in the House of Representatives, Mr Cobb was given the opportunity to speak to the bill and move it. He did not do so, saying instead that he would go to New Zealand to have a look, when in fact many coalition members of parliament and senators had already been to New Zealand.

The issue here and what is really weighing on people's minds is: how do you weigh up Australia's national interest and how do you weigh up our obligations under the World Trade Organisation rules? The accusation of course always is that Australia is using its concerns about quarantine—our sanitary and phytosanitary measures—as non-trade tariff barriers. That is the accusation and that is one of the criticisms here—that what Senator Xenophon is trying to do is to add a political step which will give other countries a greater reason to say that we are putting politics ahead of the science and therefore undermining our credibility in markets. Of course this goes both ways. Other countries can then say that they will not take Australian product if we start this. So you
can see that there is potential for a trade war, with other countries joining in and so on, if this were to proceed. The Australian Greens cannot support this legislation either, for the reason that I am just outlining.

We think Australia rushes into way too many free trade agreements and we think it is time that we absolutely lifted the scientific and R&D effort that goes into biosecurity and quarantine in Australia. We cannot tolerate these continuing failures in our own bureaucracy. On the Asian honey bees, Biosecurity Australia have provided no scientific evidence whatsoever that the Asian honey bee cannot be eradicated in Australia. They have said it cannot be but they have not gone up to Cairns and collected the data, and they have not supported the on-ground effort around Cairns. They say that it cannot be done. The scientists say that they do not know whether it can be done or not but we should try because of the consequences. That is what the Greens have been saying—go up there and get the evidence. It is not just the Greens saying this; it was a tripartite agreement from this parliament. The government, the coalition and the Greens in the Senate committee all said, 'Go and get the evidence.' And they did not. I think Biosecurity Australia are absolutely remiss in utterly refusing to give effect to what the Senate committee unanimously asked them to do—that is, to go and get the evidence. So I have grave concerns.

Senator URQUHART (Tasmania) (10:21): I rise also to speak against this Quarantine Amendment (Disallowing Permits) Bill 2011, a bill that has the potential to damage Australian industry and productivity. This bill aims to establish greater parliamentary scrutiny over import conditions for biological products, parliamentary scrutiny that will go over and above the current strict, scientific import conditions placed on Australia's businesses and that will impose a significant bureaucratic bottleneck that could take years to clear. It is important to recognise that Australia is first and foremost a trading nation, and that the Gillard government maintains its commitment to a science based, quarantine decision-making system. As an island nation with abundant farming land, we are reliant on our ability to export. Australian grain exports equal approximately $6 billion per year. We export approximately $5 billion worth of meat, and sugar and horticultural exports total approximately $1 billion. This bill puts over $440 million worth of Tasmanian agricultural exports and over $32 billion worth of Australian agricultural exports at risk and would result in Australia failing to meet its international obligations. This is revenue that sustains rural and regional communities all across this country—revenue that, if this bill is passed, may be lost to those communities.

It is fascinating to think how this bill originated. The importation of New Zealand apples has been a deeply divisive issue for the coalition. While we on this side have accepted the scientific assessment of Biosecurity Australia, there was the contribution from the opposition spokesperson on agriculture, the member for Calare, who was trying to propose any means possible to stop apple importation from New Zealand. Such legislation would have given the New Zealanders a prime case to take to the World Trade Organisation and claim for damages, a claim that would have allowed New Zealand to impose retaliatory action on Australian exporters up to the estimated value of the lost apple exports. Luckily, once again the Nationals were slapped down by their senior coalition partners. The member for Curtin did think of the Australian farmers and their communities ahead of the short-term political window-dressing of the Nationals.
Australian scientists have confirmed that any fire blight on commercial quality and mature fruit is in poor health and dies quickly. Further, science has found that it has never been shown that fire blight can be moved from apple fruit to a tree. Quite simply, the scientific facts do not support claims that countries that import apples eventually get fire blight. It is the import of nursery stock that is the potential pathway for fire blight. As members opposite should be aware, Australia has a stringent two-year quarantine requirement for imported apple nursery stock, and these requirements include specific testing for fire blight.

Unfortunately, Senator Xenophon has continued the Nationals' campaign to destroy Australia's agricultural exports, in the form of this bill—a bill that seeks to add a demonstrably heavy-handed layer of parliamentary scrutiny to what is already a transparent and science based process to manage the pest and disease risks associated with imported food products. It is a quick, populist reaction to the New Zealand apple issue, not a considered, scientific approach to dealing with the real threats of disease importation into Australia. Senator Xenophon admitted to this in his dissenting report to the Rural Affairs and Transport Legislation Committee's inquiry into this bill, where he only referenced New Zealand apples—one thing that is imported, yes, but there are many, many others. In his dissenting report, Senator Xenophon stated:

The controversial introduction of New Zealand apples into Australia is a prime example of where this Bill would have provided an additional layer of scrutiny ...

However, the proper place for scientific scrutiny and comment on the import conditions for apples from New Zealand was during the 60-day comment period after the draft report was released. All stakeholders were provided with sufficient opportunity to highlight their concerns and provide any scientific evidence supporting different quarantine measures.

As a member of the Rural Affairs and Transport Legislation Committee, I participated in the inquiry into this bill. As Senator Sterle outlined earlier, the committee's report recommended quite clearly that this bill not be passed. Submissions were received from 16 organisations, and the clear majority argued that this bill is not necessary and would in fact weaken Australia's quarantine and biosecurity framework. The committee found that, in practical terms, the bill was unworkable, specifically because it would cause significant and unnecessary delay, both to the issuing of permits and to trade.

The bill seeks to amend the Quarantine Act 1908 to provide that the biosecurity policy determinations made by the Director of Quarantine are disallowable legislative instruments. The bill seeks also to provide that a permit to import, introduce or bring in an animal, plant, substance or thing is a disallowable legislative instrument and that, when these instruments are presented to parliament, the minister is required to table a risk analysis in both houses and refer the instruments to parliamentary committees responsible for agricultural matters.

Practically this means that the bill would prohibit the importation of any product of quarantine concern, and all conditions of import would then have to be remade as a legislative instrument, by the minister. The legislative instrument would be automatically referred to a parliamentary committee, and, if it or any member of parliament did not move to disallow the instrument, the import permit and conditions of import would be considered valid.

For example, if the committee or any member of parliament moved to disallow the import permit and associated import
conditions, that could result in a delay of a further 15 sitting days. As an example, if the bill passed this year, an importer could apply to import a product on 1 December 2011 and it would take until well after Anzac Day 2012, some five months at least, before an importer had certainty that no disallowance motion had been moved. If only one member of parliament moved a disallowance motion, the importer could be waiting until mid-August 2012 for certainty. Australian retailers are already doing it tough enough with the high Australian dollar. They do not need this heavy layer of uncertainty placed onto their business.

The Pet Food Industry Association of Australia and Animal Health Alliance noted in their submissions that the approval system for the import permit applications is already both arduous and time consuming. The Animal Health Alliance stated that the new arrangements proposed by the bill would 'only serve to lengthen the already unacceptable time line for the issuance of import permits'.

Under this bill, any decision to allow the importation, introduction, bringing in or removal of a thing—defined under the Quarantine Act 1908 as an animal, plant, substance or thing—will be thoroughly scrutinised by parliament. Currently this decision-making power is left solely in the hands of Biosecurity Australia, where science based risk assessments are undertaken to protect Australia's animal and plant status and natural environment.

In its submission to the inquiry, Shipping Australia stated that, if passed:

... this Bill clearly indicates that Parliament does not have any confidence that the Australian Quarantine and Inspection Service can carry out its role in terms of granting import permits and would deliver a clear signal to industry that they should also question their confidence in the ability of AQIS to carry out the tasks set under legislation approved by this Parliament.

Further, the Food and Beverage Importers Association commented in its submission that:

Any review by Parliament would not be seen as 'scientifically based' but as 'politically based' because the Parliament and its Committee system would not hold any specific scientific expertise over and above that contained in the Framework.

The committee was particularly mindful of Australia's WTO obligations and is committed to Australia's responsibilities which require that all import requests from other countries, particularly in relation to agricultural products, are considered using scientific based principles. It is vital that Australia not only meets its obligations under the WTO, but continues to make trade decisions based on scientific evidence provided by the appropriate government agencies, not on political grounds. Senator Xenophon goes on to state in his dissenting report, and I quote:

In the case of New Zealand apples, while analysis may have determined the risk of fire blight to be low, it can be argued that the damage caused by fire blight makes any risk too great.

While I understand the senator's concern, it is simply not legitimate. If this approach were taken by countries that take Australia's agricultural exports, our industries would be decimated. The simple fact is that one can never be certain of zero risk and, if other countries were to demand a zero risk of disease importation, our industries would be decimated. In its submission, Quarantine and Inspection Resources Pty Ltd, expressed concern that:

This Bill will undermine the credibility of Australia's market access efforts.

They also state:

The ability of Australia to gain access, and perhaps even more importantly maintain access, in the face of a problem depends to a high degree

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on the credibility of the ... scientific staff involved in market access arrangements.

It is quite obvious from the overwhelming evidence provided to the committee's inquiry that this bill should not pass. It is quite obvious that this bill would do serious harm to Australian agricultural industries and to the reputation of the scientists at AQIS and Biosecurity Australia and would create an extra unnecessary workload for the parliament.

Senator IAN MACDONALD (Queensland) (10:32): I also have some concerns with this bill. I have been listening to the debate very carefully and I thank particularly Senator Colbeck for his leadership on this issue. I hasten to say twice in two days that there is one aspect of the debate on which I agree with the Greens—that is, what a fool our Prime Minister made of herself when she went to New Zealand and there made a major announcement on biosecurity of our country. To do that in New Zealand just shows how poorly served we are by our current Prime Minister. I continue to be amazed as to why the Greens, with all their criticisms of Ms Gillard as occurred in today's debate, continue to support her in the Lodge. I suppose the answer is the evidence this week when, by a guillotine arrangement supported by the Greens, this parliament adopted the carbon tax legislation, even though just 12 months ago, as Australians listening to the debate will recall, Ms Gillard promised the Australian public, very solemnly, very sincerely, that there would be no carbon tax under a government she led—yet this week that carbon tax was introduced into Australia.

How can anyone ever have any confidence in anything Ms Gillard says in the future? That dishonest approach to political campaigning—promising there would be no carbon tax because she knew at the time, had she been honest, that Australians would not have voted for her—will never be forgotten by Australians. Similarly, apple growers in Australia will never forget the Australian Prime Minister going to the New Zealand parliament and making an announcement about importation of New Zealand apples to Australia with what many people believe are not the right biosecurity arrangements. I am going to have to curtail my speech because again the Greens and Labor Party have put a time management arrangement on all the bills before us.

Senator Polley: How many times did the Howard government do that?

Senator IAN MACDONALD: Senator Polley, as I recall, was always first to her feet saying how awful that was. These things happen, but it is the hypocrisy which really disturbs me. What happened to the time when you could come into this chamber and debate fully bills of importance? The speakers list shows how very importantly senators treat this bill. We are all being time constrained. A number of senators who want to speak simply cannot get onto the speakers list. I have agreed to restrict myself to just 10 minutes so that other senators have an opportunity to put their views forward.

I am concerned about making biosecurity more a political issue than a scientific issue. That is why I have genuine concerns with this bill. As I said, Ms Gillard's actions in the New Zealand parliament showed that the last thing Australia needs is politicians grandstanding and playing politics in matters as important as biosecurity.

The majority of submissions made to the committee which investigated this bill argued that it would weaken Australia's quarantine and biosecurity framework. The committee was also told that, in the view of many of the submitters, the bill was
unworkable specifically because it would cause significant and unnecessary delays both in the issuing of permits and in trade. As well, many of the submitters indicated that it could result in the disclosure of commercially confidential information. What concerned me was the argument made by a number of people who made submissions that the legislation was potentially contrary to Australia's World Trade Organisation—WTO—obligations. A lot of Australians do not fully understand the import of WTO rules and regulations. A lot of them say we should be building tariff barriers and we should not be letting in other goods and commodities that compete with ours. But, of course, Australians benefit more from WTO regulations than do many other advanced countries around the world.

For example, we grow more sugar than we could ever consume ourselves and it is terribly important to Australia that the trade be as free as possible without tariff and non-tariff barriers. The Australian sugar industry is only as good as it is because it exports a considerable proportion of the cane that is grown in this part of the world. I come from a cane-growing area so I know just how important the cane-growing industry is to Australia and how many jobs it supports and how many people's lives depend on that industry. So it is absolutely essential that WTO rules are followed and observed, because it is in Australia's interests.

Similarly, I have, on behalf of the opposition, shadow ministerial responsibility for Northern and remote Australia and I note the beef cattle industry is so terribly important to Australia but, again, we consume only a small proportion of the beef that Australia produces. Our industry is really so good because we can export practically free of constraints to many parts of the world. There are many parts of the world, like the United States and Japan, to which we do export quite a bit, but there are some constraints. This is why our trade in live cattle exports to Indonesia is so very important to Australia and why the quite stupid decision of the minister to totally ban exports for a period of time was such a bad policy decision and made things so difficult for so many smaller operators, particularly those in the beef cattle areas.

I also want to briefly touch on the issue of importation of bananas. We have to allow free trade, but our biosecurity rules should be such that they allow us to reject imports that do not meet the very stringent arrangements we have for disease-free fruit. Banana growing is a very important industry and is to be found in the area that I come from, around Tully and Innisfail and now up on the Atherton Tableland. It is essential that our quarantine and biosecurity arrangements are first class. To have politicians interfering in scientific arrangements for the importation of anything is the wrong way to go, and that is why I have some serious concerns about this. I congratulate the Australian banana industry, as it is a fabulous industry that employs so many people in the north. We do believe, if I may say so with perhaps a little bias, that Australian bananas are the best that you would find anywhere in the world. But we must continue to protect this industry with proper biosecurity arrangements.

The Asian honey bee, which I first raised many months ago after some people from Cairns raised it with me, is an issue that is not very well handled by the current government. We have the government supporting scientists who did not really seem to have any interest in eradicating the honey bee, whereas other scientists do—and certainly the industry, and I think most parliamentarians, are very keen that the government should be doing everything to eradicate the honey bee. I think the idea that you cannot eradicate it so you control it is...
the wrong one. Had action been taken right at the beginning, when this was first raised, I think eradication would have been easy.

It is similar to the situation with the tilapia fish that are now infesting waters in North Queensland and will soon do it elsewhere. The state government, who control our waters there, particularly the rivers, did nothing for years and allowed the tilapia to get a real foothold which will now be very difficult to eradicate. I will finish my remarks there, although there are a lot of other things I would like to say, as I am conscious of the time. I will leave my remarks there and reserve my position on this particular bill.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (10:43): I would like to speak to the Quarantine Amendment (Disallowing Permits) Bill 2011. At the outset I would like to make a comment in response to some remarks made by Senator Colbeck earlier in this debate. Unfortunately, the opposition do not seem to be able to attack the Prime Minister, Ms Gillard, on the facts, so they make things up, and what Senator Colbeck said about the Prime Minister is a perfect example of that. He decided to use privilege to claim that the Prime Minister, when she was addressing the New Zealand parliament, had claimed, while the dispute over this issue was still before the World Trade Organisation, that Australia would accept apples from New Zealand. The facts are, as I am sure you would know, Madam Acting Deputy President Moore, that, in her speech to the New Zealand parliament, she said Australia had accepted the decision of the World Trade Organisation after the World Trade Organisation had made its finding and what the Prime Minister said to the New Zealand parliament, quite correctly, was that the dispute had now been determined and Australia would accept the result, as it was obliged to do. So Senator Colbeck was quite inaccurate, quite misleading and quite wrong. I think the concerns of apple growers in Australia are exacerbated by these sorts of outrageous and false claims made by Senator Colbeck.

Returning to the bill itself, I think it is worth while acknowledging the report of the Senate Rural Affairs and Transport Legislation Committee. Senator Urquhart spoke very eloquently as a member of the committee, which was led by Senator Sterle, a very hardworking senator from Western Australia. The government notes that the committee recommended that the Quarantine Amendment (Disallowing Permits) Bill not be passed, and of course that is the position of the government.

Each and every year the Department of Agriculture, Fisheries and Forestry issues tens of thousands of import permits with some 14,000 different sets of import conditions. Permits cover an immense range of products. Madam Acting Deputy President, I am sure you are very familiar with these. There are fruit and vegetables; domestic pets such as cats and dogs; working dogs for the Australian Federal Police and the Defence Force; agricultural plant and animal breeding stock; genetic materials for horse, cattle and sheep breeding programs; medicinal and veterinary vaccines; used mining and agricultural machinery and military equipment; research supplies for universities and medical companies; and oak casks to support Australian premium wine production.

Permits are issued to the entire Australian community. Mums and dads can get them, wholesalers can get them and retailers,
universities, mining companies, winemakers and farmers can get them. Unfortunately and without question, this bill will hurt Australian farmers, who rely on imports to improve their growing productivity. I will give some examples. Turkey farmers who rely on imported fertilised eggs to supply Australian turkeys will not be able to meet the demand next Christmas. Beef farmers will be denied access to the best genetic resources in the world. High-quality grape growers, particularly in my home state of South Australia, will not be able to have their grapes processed into high-quality wine for export because the importation of oak for this purpose will be suspended.

This bill if passed would mean that the Senate Standing Committee on Regulations and Ordinances would have to consider up to 250 import conditions every single sitting day in order to confirm all 14,000 sets of import conditions over a 12 month period—and that is only if there is sufficient expertise and human resources to provide that many draft instruments for the minister to sign, if the minister is on hand to sign all of these instruments each and every day and if the Attorney-General’s Department can register all of these instruments on the Federal Register of Legislative Instruments.

The government does not doubt Senator Xenophon’s good intentions in respect of this bill. He has raised concerns in this place and in the rural affairs and transport committee about the revised policy determination on the importation of apples from New Zealand made by the director of quarantine. I will say a little bit more about this later on. This bill does not recognise the complex task performed by the department’s biosecurity staff each and every day. It has been government policy over successive governments to implement a science based quarantine and biosecurity framework. Senator Macdonald talked about that in his contribution earlier. That means quarantine decisions are based on a scientific assessment of the risks posed by the importation of a commodity, and these risks are then managed by the imposition of specific and targeted measures. Biosecurity staff within the department and its predecessors have been performing this task for decades. That is why there are 14,000 conditions of import on the AQIS import conditions database. I commend the database to senators as a valuable resource, should they be responding to inquiries from constituents about import conditions.

This bill takes a sledgehammer to decades of accumulated knowledge developed by the department and its predecessors and says that they are all wrong. Senator Xenophon often says that, of course, about issues he disagrees with. This bill seems to think that once import conditions are established they remain static. In fact they are reviewed regularly and the department makes amendments to them in response to any changes to the pest and disease status of the exporting country. Earlier this year the department put in place emergency measures in response to a devastating outbreak of kiwifruit canker in New Zealand. The importation of nursery stock from New Zealand was prohibited immediately, and a very short time later the importation of kiwifruit pollen from New Zealand was also suspended.

DAFF officials are constantly monitoring the pest and disease status of countries that Australia imports from and amends quarantine conditions as necessary. Under this bill, however, when the department decides to change conditions of import, even if those changes are to strengthen conditions, the changes will be subject to parliamentary disallowance. This bureaucratic madness would have the perverse impact of encouraging the unregulated trade of
products of biosecurity concern. It is unregulated or illegal activity that poses the biggest risk to Australia's environment and biosecurity, not formal, regulated trade. This bill is bad for Australia's unique biosecurity status. Let us look at apples from New Zealand. What Senator Xenophon is trying to do is to find a way of revisiting the Australian government director of quarantine's policy determination on the importation of apples from New Zealand. Senator Xenophon and those opposite know that the Department of Agriculture, Fisheries and Forestry prepared a draft review of the conditions for the importation of apples from New Zealand. The draft review was published on 4 May 2011. The apple industry, members and senators, the scientific community and the community at large had two months to provide comment on the draft review, and the comment closed on 4 July. Biosecurity officials within the department considered all of the submissions before finalising the review and providing it to the director of quarantine for a final policy determination. A final policy determination was made by the director of quarantine on 17 August.

We all know that the policy review was commenced because New Zealand successfully challenged Australia's 2007 policy in the World Trade Organisation. But the policy review was conducted by Australian officials of the department with no interference from the World Trade Organisation, the New Zealand government or the ministerial wing of this building. No matter how many Senate orders to produce documents Senator Colbeck sponsors, those documents will only ever confirm this fact. The review followed the same import risk assessment process that was in place when the National Party was on this side of the chamber. The revised policy decision is a biosecurity policy underpinned by the science—and those opposite know that they would not change it even if they were in government.

Those opposite also know that the Gillard government's response to the WTO decision followed the same process that the Howard government followed when it lost a similar action under similar terms relating to the quarantine conditions for raw salmon from Canada. In fact, after the decision, John Howard said that Australia would get 'murdered' in an ensuing trade war by challenging its loss in the WTO. On that occasion John Howard said:

... it’s very difficult to ignore the findings of a body such as this—the WTO—because if we can put aside the finding of a so-called independent body ... other countries can do the same thing.

It is not often that I quote John Howard in support—

The ACTING DEPUTY PRESIDENT (Senator Moore): The Prime Minister.

Senator FARRELL: Former Prime Minister, yes—correct. He lost his seat in the 2007 election, as I recall.

The ACTING DEPUTY PRESIDENT: Correct; just in terms of reference, Senator.

Senator FARRELL: Yes, I understand, Madam Acting Deputy President, and I shall call him Prime Minister. Prime Minister John Howard said that Australia exports four times more primary produce than it imports and would 'suffer four times as much' in retaliation. That is why it has been so disappointing to observe the coalition as it has responded to the issues of apples from New Zealand. We have seen the member for Calare with his reckless New Zealand apples bill. Like all of the National Party policies, it has been a colossal flip-flop. It was introduced and then withdrawn after he was...
rolled by Julie Bishop. Then we saw the members for Calare and Murray in New Zealand on their political tourism trip embarrassing Australia and embarrassing their colleagues while they were guests of the New Zealand government.

But National Party members have not asked the minister a single question on this issue during question time. In fact, they have barely turned up to the Senate estimates hearing on this matter. They have left the heavy lifting to their Liberal colleagues because they do not have the gumption to do it themselves. That, of course, is why they keep getting rolled within their own coalition. I say this to the carping, negative Nationals: if they want to revisit the conditions for the importation of apples from New Zealand, all they need to do is stump up with the science that contradicts the findings of the department's review on import conditions. Any credible evidence that says Australia's conditions of import put Australia's biosecurity status at risk will of course be taken very seriously by this government.

In conclusion, the Gillard government is getting on with the business of building a better biosecurity system. We are investing in the information technology that the system requires; correcting Warren Truss's short-term budget decision to flog off the Australia Post quarantine stations, by investing in the PEQ facility to meet our future needs; and, finally, analysing the data and intelligence on biosecurity matters and making science based decisions that protect Australia's pest and disease status and the $30 billion in farming exports annually. As a result, the government does not support this legislation.

Senator Xenophon's deep concern and interest for industries in South Australia, and I think that is shared by all members of parliament in South Australia. Having attended rallies up in the Adelaide Hills with apple and pear growers and seeing people from the Liberal side of politics there and also Family First, Senator Xenophon and others, there is obviously a deal of concern to make sure that we sustain what is a very good industry for South Australia.

There are a couple of issues, though, with this bill. It seeks to address the option for parliament to intervene in imports. This is largely in response to the issue of New Zealand apples and the expected impact that may have due to the presence of fire blight in their orchards, which not only has made apple growing problematic for them—although they have a large industry and they manage it—but also has pretty much obliterated their pear industry. So there is a great concern here that, if fire blight took hold, it would likewise obliterate the pear industry here. So there is a very legitimate concern that has led to this bill. The problem with the bill, though, is that it will apply far more broadly in Australia and will have impacts in many other sectors. What I would like to do is acknowledge the South Australian situation and what has led to the bill. And then I will talk a little more broadly about how the government has responded to the New Zealand issue and to biosecurity more broadly—the need to put in place a suitable framework for biosecurity and, most vitally, what it has done to date in terms of funding for biosecurity. Biosecurity is not just our horticultural sector. It is also about our livestock sector and even things like native forest growth and the opportunity there for carbon sinks. If we are to truly protect industries such as the apple and pear industry in my home state of South Australia, as well as many other industries,
there is a whole range of areas where biosecurity is quite important.

In South Australia apples are important. Something like 29,000 tonnes of apples are grown there. The farm-gate value of production there is nearly $60 million and that represents about nine per cent of Australia's apple production. It has exports of around 1,000 tonnes a year which are valued at some $2.8 million. It has about 220 apple growers and about 100 primary produce growers, and the vast majority of those are family owned businesses in the Adelaide Hills. There is a rich history going right back to the 1860s in South Australia. They have obviously been very concerned about the decision to allow New Zealand apples in because of fire blight. In response, the South Australian government has also looked at this and has had a couple of knee-jerk responses—for example, putting in its own quarantine zones. It has been interesting to see that even Apple and Pear Australia Ltd and the growers have said that is not a great idea and have encouraged them to wind back those options. It has been heartening to see some of the supermarkets in South Australia say they will only stock South Australian grown produce. Along with appropriate labelling to give the public the option to choose where they buy things from, I think that is a good way to move ahead.

This bill, in seeking to address the problem Senator Xenophon has identified and brought to our attention, would have a far more broad reaching impact. As we have just heard from the previous speaker, Australia exports significantly more than it imports. It is important for Australia to maintain its integrity within the World Trade Organisation construct and rules so that we can have the fairest and easiest access for our produce into overseas markets—and that is across a whole range of areas.

The New Zealand Apple occurrence is a really good example of why this bill is not a good idea. The bill essentially provides a mechanism whereby the parliament can inject itself into a process that should be something importers and exporters see as a consistent, reliable and transparent process that will allow them to make investment decisions with some certainty around what crops they will grow and what money they will spend in terms of marketing their produce. Our Prime Minister addressed the New Zealand parliament and decided to announce that New Zealand would be able to send their apples to Australia. Biosecurity Australia then had to play catch-up to produce the appropriate IRA to allow that to occur. So the very thing that has led Senator Xenophon to this bill is a classic example of why this bill is not actually a good idea. It is not in the long-term interests of Australia's growers in the apple and pear industry or any other industry that seeks to export its produce from Australia.

The Senate Standing Committee on Rural and Regional Affairs and Transport held an inquiry into this bill. A number of stakeholders came together and provided input to the inquiry, and the vast majority of them did not support the bill. The committee argued that the bill was not only unnecessary but also had the potential to weaken Australia's quarantine and biosecurity framework—and that framework is the thing that provides security and certainty for importers and exporters. The committee also indicated that the bill would cause significant and unnecessary delays both in the issuing of permits and to trade itself. The committee acknowledged that the evidence provided by a number of organisations argued strongly against the bill on the basis that it would be contrary to Australia's WTO obligations—and, as I have highlighted, those obligations are important for the viability of our industry
to actually maintain exports into a number of countries.

The governance issue and the framework are really where I would like to spend the remainder of the time I have available. The Labor government, to their credit, commissioned Mr Beale to have a quarantine and biosecurity review into the framework of biosecurity in Australia. Mr Beale found that it is impossible to escape the conclusion that the agencies are significantly under-resourced, putting Australia’s economy, people and environment at significant risk. Despite that, in 2009 the Labor government slashed $58 million from the Customs budget, leading to some four million fewer air cargo consignments being inspected each year and 2,150 fewer vessels being boarded on arrival. There have been further cuts to things like CRCs, which are an investment in our ability to develop the science to actually conduct appropriate biosecurity measures. Given that agricultural production in this country drives around $150 billion a year in economic production—it is about 12 per cent of GDP, about 1.6 million Australian jobs and around $32 billion in exports—cuts to the resources going to biosecurity are obviously not viable.

The reason we need to make sure that biosecurity work, both in framework and in resources allocated to it, has again been borne out by the whole New Zealand apple import issue. Whatever the political background, whatever the flaws in the way it has been arrived at, the people involved have intercepted nearly a quarter of the New Zealand shipments and found that they have not met the requirements—so they have been rejected. Whilst that is pleasing from the point of view that they have been intercepted, what it highlights is that an adequate level of resourcing in a suitable framework is required if we are to maintain the integrity of biosecurity in Australia because the cost of the resources to intercept and stop infected shipments arriving pales into insignificance compared to the cost of constraining an outbreak. We have seen in Australia that just in the horse industry, for example, over $1 billion has been spent trying to constrain outbreaks. If we look at foot and mouth disease, which could have a devastating impact in Australia, or diseases in the apple and pear industry or any number of areas, once an outbreak has occurred the cost to constrain it and recover would be enormous. So it is worrying when we see throughout the Beale review a number of comments that the Commonwealth government needs to increase resources. Recommendation 3, for example, says:

The Commonwealth should increase its resources to support the monitoring, surveillance, investigation and, where appropriate, prosecutions associated with post-border biosecurity detections.

There are a whole range of areas where the review talks about the need for increasing resources as well as increasing cooperation.

When we look at the government’s response and the 2011 budget papers what we see is that they have successfully negotiated a draft intergovernmental agreement on biosecurity, but the actual actions that have been taken have been largely around interim inspector-generals—so more bureaucracy—and an expansion of an eminent scientists group to include an economist, and an advisory council. They have put in place a whole range of these measures but not more funding to people on the front line to do the roles that have been identified as necessary.

The South Australian government in their submission last year to the Senate inquiry into biosecurity and quarantine arrangements noted that the formation of Biosecurity SA had integrated a bunch of things because of the value of the agricultural sector and
primary production in South Australia. But it goes on to say that, due to budget pressures facing governments, it is going to be difficult to maintain the current capacity to manage biosecurity threats. It talks about a number of things being developed, but goes on to highlight that budget pressures are the significant issue.

This bill goes far broader than the apple issue that caused Senator Xenophon to bring it forward. It would, however, undermine our obligations to the WTO, which is the framework under which most of our primary producers are able to export and which is of great value to Australia. But the critical point is that the growers' concerns have been validated by the import consignments that have already been rejected. It highlights that not only do we need a good framework for biosecurity but it needs to be adequately resourced. The record of this government to date has not shown that it is serious about adequately resourcing the biosecurity framework. So, whilst not supporting Senator Xenophon's bill, I do support his concern and I certainly call on the Labor government to provide adequate resources to make sure we have a biosecurity system that will prevent, as opposed to just respond to, biosecurity issues in Australia.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (11:10): It is a pleasure to rise here in support of the sentiment of Senator Xenophon's bill—who by reason of health is not able to be here today—though acknowledging that we will not be supporting it. But it is clear to state that we have heard a tirade—well, not a tirade, sort of a wet sponge from the Labor Party, about how the National Party has not been doing anything, but they spend their whole time complaining about the National Party and what it has done, which is fair enough.

What I can look at is the Labor Party's record. You do not have to go too far from this town to see the effects of the Labor Party's record on anything to do with biosecurity or anything to do with real and effective dealing with environmental issues—such things as African lovegrass, which is not that far from here, and serrated tussock. You have just given up on all these things. You do not care about them anymore. You apparently can cool the planet, but you cannot deal with African lovegrass. You can rejig the whole of the Australian economy on a colourless odourless gas, but you cannot deal with Asian honeybees. Apparently you are going to lead the world on changing an economy based on carbon dioxide, but you cannot deal with myrtle rust in your own country. It just goes to show how absurd the Labor Party have become.

I remember as a kid going in to see my dad when he was involved in the BTEC scheme—he was a vet—and spending days going out with him bleeding cattle. At a later stage he was in charge of that brucellosis and tuberculosis eradication scheme in northern New South Wales, out of the Tamworth office. That was a great success. Australia got rid of brucellosis and tuberculosis. New Zealand still has it. It goes to show what a country can do when it is motivated.

But we are going to get nowhere with the Labor Party and the Greens. They are not really worried about the environment in the proper sense. What they are really worried about is the philosophy and the theatrics. They are really worried about social re-engineering; that is what they really want to do. I was listening Senator Milne's discussion here today about quarantine and we started hearing about floods and fires and famines and all the incredible things that are apparently going to happen. But even their grand architect, Professor Flannery, says there can be seen to be 'no discernible
correlation' between changes in the extent of fires, floods and famines and global warming. It is one of these total absurdities that is trotted out here. What I did not hear Senator Milne or the Labor Party talk about is how they are dealing with biosecurity as it is at the moment. And of course we have no confidence in them.

You can bet your life that under this government, the Green-Labor-Independent government, fire blight will come in. It is just a matter of when. It is going to come. We have already heard today about the evidence that a quarter of the shipments have had issues pertaining to them. They are failing before they have even started. If someone said that in a quarter of your cars the brakes are going to fail then you would probably recall the cars. But they are going forward with the process under the current arrangements because they do not really care about the environment. They do not really care whether we wipe out the pear industry in Australia. They do not really care whether fire blight comes into this nation. It is absurd. With all the trash of leaves and litter that is going to be coming in from farms, which will have fire blight, sure enough we are going to get fire blight.

What will the Labor Party do then? They will deal with it the same way they are dealing with African lovegrass, with Chilean needle grass, with St John's wort, with the Asian honey bee and with myrtle rust. They will not deal with it because they do not really care. What they do care about are the theatrics. They care about people dressing up as koalas and parading out the front of this building. That is the Greens and the environmental movement—dress up as a koala and wave a placard. But when it comes down to dealing with the issue, when you really need the competency to grasp the issue and deal with it, they do not have it and they do not care about it. True environmentalism is actually looking after the environment in a hands-on and real way. Whatever happened to the production of an effective rust to deal with blackberries? That has gone nowhere.

I had the privilege the other day to visit the farm where Farrer developed a variety of wheat that took Australia into the 20th century. He developed it from a small plot down on the river. I saw at that point in time the sorts of competencies our nation had, the sorts of desires and the thrill that the government had to get behind people who were giants in this nation. But this government is not investing in them. This government is taking the resources out. This government is incompetent even when it comes to the health of our own people. What about the Indigenous people of Northern Australia? What happened to the tuberculosis clinics in the Torres Strait Islands? You care about the environment but you do not care about that part of the environment. That is another little thing you have moved out of the way. Let us not worry about tuberculosis coming. Let us not worry about the infection of the Australian people. If we get drug resistance in tuberculosis, we have no hope of treating it.

All you care about is the hugging and kissathons at the end of the vote. You do care about completely redesigning our nation's economy, even though we see on television Europe falling over. The global financial markets are falling over and there is complete and utter culpability of what we did the other day. You just do not care and you step back from it. As I said the other day, it is part of the Vandals who have overtaken Rome. The philosophy is over; the Labor Party has finally been subdued. What we have in the Prime Minister is basically a manifestation of Romulus Augustus. It is all over and it is merely a figurehead. The philosophy is now occupied by somebody else. It is a sad day. The party that was once
the party of Curtin and Chifley is now, what? What have you become? You are a vacuous type of shell.

Senator Milne: Madam Acting Deputy President, I raise a point of order on relevance. Until Senator Joyce arrived we were having a sensible debate in the chamber about the merits of a bill on biosecurity. I would ask that Senator Joyce direct his remarks to the bill on biosecurity.

The ACTING DEPUTY PRESIDENT (Senator Boyce): Order! Thank you, Senator Milne, there is no point of order. Senator Joyce.

Senator JOYCE: Thank you, Acting Deputy President Boyce. I was in my room happily listening to Senator Milne talking about fire, flood, famine, fear and loathing. This is what it always comes to, to make you feel guilty. It is what they always do. After they have made you feel guilty they say you should become righteous. The prospect of righteousness is always an amazing path to get there. The path to righteousness via the Greens and the Labor Party is a new tax. If you pay the new tax you are righteous and you are a wonderful person. Coal becomes righteous once it crosses the sea, apparently. If you burn it in China it is righteous. For uranium it is the same deal. It is righteous once it passes over water. It is an incredible position. I was wondering about this, so I found what Tim Flannery said: Australia naturally has a high degree of variability in rainfall—
I agree with him—
with long periods of intense droughts—
I agree with him—
punctuated by heavy rainfall and flooding,—
I agree with him on that too—
so it is difficult from observations alone to unequivocally identify anything that is distinctly unusual about the post-1950 pattern … But that is apparently not what Senator Milne believes in. She believes in devastation. You have to make people feel scared before they bung a new tax on you. You have to make people scared before, via every power point in the house, you turn into a collection mechanism for the Australian taxation department.

Now we have Senator Larissa Waters saying that we are going to remove fossil fuels in the next decade. It is like a couple of days ago was year zero. We will all be heading out to the countryside to a new cultural revolution. We are going to sit down there and live on beetles and nuts and we will be righteous. We will be hungry, cold and miserable but we will be righteous. But that is what you do, and it makes abundant sense. Of course we can get rid of all fossil fuels in the next 10 years. We do not need a car park anymore; we need a stable to put the horses in when we ride up here! This is the absolutely absurd position. The absurd position is evident in this. They do not care about the real environmental debate—the one that takes acumen, planning and, as it says in the report, resources to deal with the issues. They do not care about that. They do not care about having a proper analysis of the statistical probability that fire blight will come in. They do not care about that.

The Greens do not care about putting their hands on the hotplate and saying, 'I'll bring down the government if you do not properly deal with fire blight.' They do not care that they are not able to show anything that this Labor-Green-Independent alliance has done for the environment, bar one thing. I will give them one; they will probably get rid of rabbits on Macquarie Island. That is about it. That will be the piece de resistance. The removal of rabbits from Macquarie Island is about as good as it is going to get.
Unfortunately, I do not think that is going to stop us from getting fire blight. It is certainly not going to deal with African lovegrass. It is certainly not going to deal with Chilean needle grass. It is not going to deal with blackberry, St John's wort, myrtle rust and the Asian honey bee. And it is not going to stop fire blight coming into our nation. When it comes to the real, on-the-ground, definitive environmental statement, they do not have one. They cannot formulate that outside this building. How can you possibly think about the proper environment when what you are really concerned about is the next manifestation of the conversation at the manic monkey cafe of inner suburban Nirvanaville? That is really what they are concerned about.

Ms Plibersek—this is the misleading way they carry on—said on 1 August 2011, 'The thing that we need to remember about the reasons for doing this is that there is a serious threat to our economy.' She was talking about global warming. She said that there was a serious threat to our environment of not acting. She said, 'In environmental terms we are looking at losing the Great Barrier Reef.' I do not know where it is going. I do not know where the Great Barrier Reef is off to. I reckon I could find it; it is just off the coast of Bundaberg. But Ms Plibersek says we are losing the Great Barrier Reef. And she says that we are losing Kakadu. Where is it off to? She says we are losing the ability to feed ourselves. What a load of rubbish!

I will tell you when we are going to lose the ability to feed ourselves. That will happen when those opposite shut down the Murray-Darling Basin. That is when we will lose the ability to feed ourselves. Listen to what they want. They want to take 7,600 gigalitres of water out of the Murray-Darling Basin. We will not have an irrigation industry. They want to shut down the thing that feeds 40 per cent of Australia.

How are they going to feed the horses that we have to ride to work because they also want to get rid of fossil fuels? This is a mad world; it is the year zero of the Greens. It is a new world and they are proclaiming it each day. Each day you read about it. We will not eat; we will not drive cars! We are going to go to 80 per cent reduction in carbon emissions to take us back to 1910 levels.

So when we go through the doors in the morning—I suppose that now that we do not have a steel industry they will have to be made out of wood—how will it all work? Where is the economy that works like this? Where is this magical place? Where is this Xanadu that we are basing this on? I think it might be somewhere in the highlands of Tasmania—in a little, little house with a little, little fire that you see every now and then on the television!

Why are we doing this to the Australian people? Let us think of the other things. The Greens want to shut down rodeos. We cannot possibly have them! They are totally evil! We cannot have people out west enjoying themselves; it is immoral! As we return to being content hunters and gathers on the forest floor, we will not be allowed to have fossil fuel. We will have horses but if you leave the Greens long enough we will not be allowed to ride them—you can bet your life!

An honourable senator interjecting—

Senator JOYCE: The blacksmiths won't. This is all part of the progression.

Senator Milne: Madam Acting Deputy President, I rise on a point of order. We are discussing a bill on a quarantine provision relating to fire blight and world trade. I ask that you ask the senator to be relevant to what is before the chamber.
The ACTING DEPUTY PRESIDENT (Senator Boyce): Senator Joyce, I have been assuming that your comments were going to bring you back to the topic in hand. Could you please ensure that they do.

Senator JOYCE: Thank you very much, I will. Fire blight will come into the country under this government, this regime. What do we call the regime? Big Brother No. 1! Under this regime fire blight will come in. Without being jocular, if fire blight comes in we will lose the apple industry. We will totally lose the pear industry; it will definitely be wiped out.

We got to this position because the Prime Minister of Australia went over to New Zealand and it just seemed like a cool thing to say. She was moved by the moment. She was moved by the podium. She thought, 'I've got to say something.' She said, 'Your apples can come in,' and then she walked away, to the smell of burning flesh. This is part of the crazy government we have.

I don't know; maybe if they have a change of leader they will change their position. I was watching the next contender for leadership—the former leader—sing the other day over in Perth. He was doing a marvellous job! He was being moved by the mosh pit! Apparently, he said that he sings like a cow. He was very tired. He asked the people whether they wanted him to sing. And I thought, 'There's my next Prime Minister. I'm feeling so comfortable about where we are! Things are looking A-okay!'

If we do not have a competent government occupying the treasury benches soon, on so many fronts—fire blight will just be one classic example—this nation is just going to start falling down around our ears. They have shown no competency. Whenever it comes to a test on biosecurity—we are not in the government; they are—they have shown no competency whatsoever in any way, shape or form on any of the major environmental issues and in the real environmental battles. There is not one thing that they can direct our attention to where they have shown a real interest in protecting the environment of Australia. They are very interested in the social re-engineering of Australia. They have been usurped by the Greens and have now gone down the path of almost profane economics that will put the whole of Australia at threat. But they are doing nothing at all to deal with the real environmental problems.

We have had so many issues and so many battles. I can remember postweaning multisystemic wasting syndrome. Now it is the fire blight issue. We have had, in the past, governments that were actually competent. The brucellosis and tuberculosis eradication campaign was the classic example of what happens when you have real, fair dinkum people who get out and do a job and bring about a result. We do not have that with this government. What we will end up with is the destruction of a large section of the agriculture of the southern basin, because this government, backed by the Greens and the Independents, will be responsible for fire blight coming into this nation.

Senator HEFFERNAN (New South Wales) (11:30): Could I begin by thanking the people who have found the time for me to speak today on the Quarantine Amendment (Disallowing Permits) Bill 2011. It is said this place is about politics, but I would like to have a little go without too much politics. In an era of modern communication and transport, quarantine becomes seriously complex because of the dangers of the movement of passengers and freight. As Senator Milne pointed out, diseases can come in, such as the virus that is now threatening fertility in cattle in the Riverina, just by simple oversight. All
science has vagaries, all human endeavour has some failure, and we must never lose sight of that, but for many years I have been on a committee that have worried about biosecurity and keeping Australia's trade advantage against its freight disadvantage and currency disadvantage. Australia's great advantage is its clean, green and free status and, with that in the back of our minds, for many years we have endeavoured to use science to keep us in that space—clean, green and free.

This bill presents the chamber and the parliament with a dilemma, because there are instances in trade where politics has got in the road of good judgment and maybe we need to think about a last-resort tool to prevent something stupid happening because of political intervention. The danger with this bill is that if we present ourselves to the rest of the world as being prepared to use politics instead of science then we open up the era of game playing—and I think we would easily lose that game. The future looks pretty grim for many democracies now—the United States is technically insolvent, southern Europe is technically insolvent, Japan is insolvent—and China has a non-market currency. This says to me that in Australia we are going to have a currency disadvantage. Even though we have got free trade agreements all round the place and more to come, in those free-trade agreements we got rid of tariffs but we have now imposed upon ourselves currency tariffs.

I do not think anyone knows what to think about this bill other than that it does have dangers, if we endorse it, for our scientific future. It is a fact that for many years—and I have chaired the committee for many years—we kept out New Zealand apples with science. We were always determined to find a way to do that because it is a fact that New Zealand do not have a substantial pear industry because they have fire blight. We have a huge pear industry, and that is the reason they do not have one. You cannot buy a New Zealand pear, because fire blight is now endemic.

There is no protection scheme in Australia. When we started off with the science on this we had a final import risk analysis of the importation of New Zealand apples which said: 'We accept that under this import risk analysis fire blight will enter Australia if we let the apples in.' That is what the analysis said, using the best of science. It went on to say, 'But we don't think it will get out into the orchards.' There was a precautionary principle behind that—and there is no politics in this; it has been difficult for everyone, and I gave my own mob when we were in government as hard a time as anyone—but now we have switched to risk management. With New Zealand apples we have done away with the biosecurity provisions in our trade arrangements and moved to farm management practices.

When the committee that I chair were going to New Zealand—and when I eventually told them what to do—they were told we could not go and have a look at New Zealand farm management practices because there is too much human failure in farm management practices. Every farm has a different practice and there are rorts built into the system now. I am pleased to see that we have knocked off a good few of the apples coming in now under the inspection regime we have implemented—which they are complaining about—but can you imagine the pressure the people who are doing the examining in New Zealand will come under over time if they find one leaf or half a leaf, as they have found, with midge on it or potential contamination in the containers? It will be: 'Mate, that's only half a leaf; let that go through.' That will be the pressure they will come under over time.
We have heard all the talk about the political intervention in New Zealand's parliament and here, which is the political intervention we resisted in our time—and very robustly, behind private doors, I have to say. We then come to needing a trigger to stop something stupid happening in quarantine and to maintain our clean, green and free status. I give the instance in recent times of the political intervention of the United States and Canada in pressuring the present government and Simon Crean to bring in beef from herds that have BSE. We resisted it. I had been to the Canadian parliament and told them that when they were prepared to do an NLIS and a whole range of other things we would think about it. But because of pressures—and I do not think Simon Crean understood this—he was agreeing to it. And the dopey Cattle Council signed up to it, as well as some unmentionable colleagues in this parliament who thought it was a good idea because the Cattle Council thought it was a good idea. Well, it was not a good idea. It was political intervention in a science base, and the danger of this bill is to set that precedent. We resisted that eventually. To Tony Burke's credit, the light went on and he was able to convince the government that we should not do this. I remind the parliament and people listening to this that you cannot sterilise against the prion for the human variant of CJD. If you go to the dentist and you are a risk of CJD because of blood, the dentist has to destroy the instruments; they cannot sterilise them. That is how serious it was.

But what it was really all about—and I had a very frank, short-syllable discussion in the Canadian parliament about this—was that we get the advantage because we are clean, green and free. Every time they got a reactor in the United States and Canada, we got their market share in Korea and Japan. That was an advantage that was more valuable to us than the disadvantage we have in currency. These are the things that we have to consider in this parliament for the future.

Going back to a little bit before that, you cannot take it for granted that an organisation such as the OIE has any credibility on a lot of this stuff. I remind people today that we were nearly ambushed by beef from Brazil because Brazil was scheduled by the OIE to have foot-and-mouth-disease-free zones. If SBS ever did Australia a favour, it was when we talked them into taking a camera over there to show the absurdity of the desktop study done by the OIE under trade pressures and a glass of wine or two in Europe somewhere to allow them to bring beef into Australia—which actually happened. It came into Wagga. It ended up on the Wagga tip. We were able to demonstrate that in Brazil there is no such thing as a foot-and-mouth-disease-free zone because of what the cameras caught on the border, which was a road. You have to have a border on a foot-and-mouth-disease-free zone because of what the cameras caught on the border, which was a road. On one side of the road, on the right, it was foot-and-mouth disease free, and it was foot-and-mouth disease positive on the other side—and there was a mob of cattle walking up the road on both sides of the road. That was the end of it. I am pleased to say that someone in the decision-making processes of that got the bullet—not physically but figuratively. It was a dreadful thing.

With the cattle and the BSE episode, which is pretty recent, our guys—and I will not name them to embarrass them, but it falls onto both sides of politics—did not realise that, over there, the US Cattlemen's Association did not want to have traceability because they wanted to be able to do all the things that likeable rogues do with cattle
herds. It was the same as we have had now: it took a serious crisis in Australia to convince the Northern Territory cattlemen that they ought to participate in the NLI System in Australia, which will probably cut down on some of the poddy dodging up there. What our guys did not know and certainly Simon Crean did not know—and you cannot expect people to know everything—is that there is an open border between Canada and America and an open border between the United States and Mexico. Eventually, sense won the argument, and we said as a government, 'Well, we'll do an import risk analysis with Canada and the United States,' and Japan was the other appellant. Canada wrote back and said, 'We don't have the resources—to carry out this import risk analysis; therefore we'll withdraw.' The United States said, 'We're not interested.' And that was due to political pressure from the US Cattlemen's Association.

We really do have to make sure that we have good science and that we are well equipped and financed to carry out that science. I remind you of the citrus canker outbreak in Emerald. That was a failure of border protection. Several other things have been nominated here this morning, such as myrtle rust and Asian honey bees. These are all things that we endeavour to keep out, but there is human failure.

On the Quarantine Amendment (Disallowing Permits) Bill 2011, while everyone is saying, 'We understand what's behind it,' the risk is triggering an event which will set a global precedent for political intervention in these processes. I have heard a lot of discussion that seemed to be well off the quarantine bill this morning. The real referee of what is happening to the globe is not a parliament anywhere; it is Mother Earth. She is the referee, so politicians can play around as much as they like.

I am disappointed that we have ignored the import risk analysis advice on apples and gone to farm management practices so that we can avoid, politically, the import risk analysis advice. The advice was that, if we bring in New Zealand apples, because of the calyx of the apple we will actually import fire blight, but allegedly it will not get out into the orchards. But—and there was no explanation of what that botanic gardens episode was in Melbourne—if that does happen, you can bet that no-one in the decision-making line in the bureaucracy or in the government will get the sack, but the apple and pear growers will wear the consequences. So this is serious stuff, and we should not be playing politics with it.

In an era of modern transport and communication, we do have some advantages. The best advantage Australia has is that, by 2050, two-thirds of the world's population is going to live in Asia, our nearest neighbours. It is estimated by the science that they are going to lose 30 per cent of their productive land in that time and the food task is going to double. Sadly, according to the science, unless there is some sort of human catastrophe, there will be nine billion people on the planet and 1.6 billion of those people could be displaced, looking for somewhere else to live. But this is the scary part. This is why we have to use science and—just getting off the page a fraction—protect our means of production and sell our surplus production rather than our means of production, especially to other sovereign entities. By 2070 China is going to have 1.8 billion people and the planet, barring a catastrophe, is going to have 12 billion people. Just to take China as an example, it is going to have to feed 900 million of those people from someone else's agricultural resource. What we really need to do in Australia is focus on the task ahead: the global food task. Part of us getting an
advantage because of our fortunate geography—we are an island continent—is to protect our borders. Obviously quarantine provisions have a big part to play in that. I can remember some years ago when we allowed in Romney sheep from New Zealand. They went to Bathurst. The department of agriculture blokes who let those sheep in knew that Johne's disease was endemic in New Zealand. For whatever reason, those sheep were let in. Guess what? We now have endemic Johne's disease. I declare an interest here: we inoculate our sheep for Johne's disease. Senator Milne referred to the fertility issue with beef which is the result of semen straws that were brought into Australia. These are serious situations. Most people do not even think about them. We have heard all this political garbage, but most people take their food for granted. More people live in the western suburbs of Sydney than all of rural Australia. They just down to Coles or Woolies to get their tucker. It is not as simple as that.

We really need to carefully consider, without staking out a political position to advantage one side against the other, what we do to protect our greatest feature in global trading in food which is: 'You can eat our tucker knowing it is safe.' It is clean and green. In maintaining our trade advantage, we have to put up with the likes of the US who provide a $200 per head subsidy on cattle going through their feedlot system. We have to put up with Europe giving huge subsidies to their farmers.

The greatest risk to Australian farmers at the moment, as long as we can maintain our biosecurity status, is the distortion in the land market by foreign entities, especially sovereign entities. I can give you the names of people, but I will not—and some are in Western Australia, Senator Adams—who have sold their properties at a huge price and agreed to lease them back from the super fund et cetera who bought them. But they cannot pay the rent because the capital appreciation to get a return on the money for the super fund investor has set the rent too high against the risks from the vagaries of weather and from one or two crop failures et cetera.

We really need to take the political gusto out of this debate and give serious consideration to where Australia is going to be in 50 years time against the complications of modern transport and communications. Why? This one is unbelievable: how could Australia's quarantine and biosecurity people allow 34 containers through Botany wharf, allegedly holding fertiliser from China, that turned out to contain dirt? It turned out to be Chinese dirt not Chinese fertiliser. How could we have allowed that to happen? Those are the sort of risks we have. This poor guy in Condobolin thought he had saved $150 a tonne on his MOP fertiliser, but when it got there and he opened the container and one of the bags, he said, 'Gee that doesn't look like fertiliser.' It certainly did not. It was dirt, full of seeds and all sorts of quarantine risk materials, which is still in storage in Botany. I thank AQIS for the way they have gone about negotiating with the Chinese government—because it was bought through an accredited Chinese website—to try to get them to take the dirt back to China. We do not want it here. I think it has accumulated something like $300,000 in storage fees so far.

These are the sorts of risks that we take that ordinary Australians are not aware of. They are not aware of the good work that we do and the good work that the quarantine people do against the potential interference from politicians looking for a political advantage. We must not take things for granted and think, 'She'll be right,' because she will not be right. We have had umpteen instances. We have had Brazilian beef
dumped at the Wagga tip on Christmas Eve. Brazil has endemic foot-and-mouth disease. Yet the OIE, the global organisation that is supposed to be the referee, said that it was okay to do it. This area is full of risk and it should be full of serious consideration. We must find a way scientifically to protect ourselves. That is what we have been able to do and I plead with the present government. They have made a serious error here. Political weight is put on here and the world trade people do put pressure on. When this came up when we were in government, I said, 'Let them go to the WTO.' But after enough glasses of wine in Geneva and after familiarisation with the officials, you come to an arrangement which says, 'We're going to set aside the import risk and the biosecurity provisions, and rely on farm management provisions.' I have to say that is fraught with danger.

The DEPUTY PRESIDENT: Order! Senator Heffernan, you have had nearly 20 minutes of your speech; could you seek leave to continue your remarks.

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

Leave granted; debate adjourned.

NOTICES

Presentation

Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (11:51): I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to various bills, as set out in the list circulated in the chamber, allowing them to be considered during this period of sittings.

Business Names Registration (Application of Consequential Amendments) Bill 2011

Corporations (Fees) Amendment Bill 2011

Deterring People Smuggling Bill 2011

Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011

Higher Education Support Amendment Bill (No. 2) 2011

National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011

Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2011

Personal Property Securities Amendment (Registration Commencement) Bill 2011

Social Security Amendment (Student Income Support Reforms) Bill 2011

Social Security Legislation Amendment (Family Participation Measures) Bill 2011

Tax Laws Amendment (2011 Measures) Bill 2011

Pay As You Go Withholding Non-compliance Tax Bill 2011

I table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—

BUSINESS NAMES REGISTRATION (APPLICATION OF CONSEQUENTIAL AMENDMENTS) BILL 2011

Purpose of the Bill

To clarify the application of the consequential amendments to other Commonwealth Acts that were included in the Business Names Registration (Transitional and Consequential Provisions) Act 2011.

Reasons for Urgency

The National Business Names Registration System forms part of the Council of Australian Governments' Seamless National Economy reform agenda. The National Business Name Registration Legislative Package, which establishes a National Business Names Registration System, received Royal Assent on 3 November 2011.

That package of legislation included:
- Business Names Registration Act 2011 (Registration Act)
- Business Names Registration (Fees) Act 2011 (Fees Act)

The Business Names Registration (Application of Consequential Amendments) Bill 2011 (Application Bill) will clarify that many of the consequential amendments in the Transitional Act will apply on the date that the National Business Names System commences.

The Application Bill needs to be enacted before the first proclamation of the Business Names Registration Act, which is due to take place in late March 2012, to allow the transitional provisions to take effect before the commencement of the National Business Names Registration System.

CORPORATIONS (FEES) AMENDMENT BILL

Purpose of the Bill

The purpose of the Bill is to provide for a more equitable and robust cost recovery regime for the supervision of securities exchange markets, by enabling the charging of market participants in addition to market operators in relation to the performance by ASIC of its market supervision function.

Reasons for Urgency

The current fees regulations, Corporations (Fees) Regulations 2001 (which are made under the Corporations (Fees) Act 2001), reflect an interim cost recovery arrangement only. This arrangement was intended to be reviewed in light of a new market operator commencing operations. It is anticipated that the first new market operator will commence operations in the second half of 2011.

This amendment needs to come into effect as soon as possible to allow sufficient time to develop the new fees regulations. It would be preferable for the new fees regulations to be in place before competition between securities exchange markets commences.

DETTERING PEOPLE SMUGGLING BILL

Purpose of the Bill

The Deterring People Smuggling Bill will ensure that Australia's people smuggling offences remain effective.

The bill will insert a clarifying section into Subdivision A of Division 12 in Part 2 of the Migration Act 1958 to clarify the phrase no lawful right to come to Australia means that a non-citizen who does not have visa that is in effect, and who does not fall within one of the exceptions to section 42 of the Migration Act, does not have a lawful right to come to Australia for the purposes of the people smuggling offences in the Migration Act.

Accordingly, people smuggling offences will continue to be interpreted in accordance with the intention of the Parliament in 1999 as applying where a person organises or facilitates the entry, or proposed entry, of another person into Australia, where that person had, or has, no lawful right to come to Australia under domestic law.

The Bill will not affect the rights of individuals seeking protection or asylum. The clarification will operate retrospectively from December 1999, and apply to offences committed or suspected to have been committed from that time.

Reasons for Urgency

These amendments are necessary to ensure that the provisions operate in accordance with the intention of the Parliament when it enacted and amended people smuggling offences in the Migration Act.

EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS LEGISLATION AMENDMENT BILL 2011

Purpose of the Bill

The Bill will make legislative amendments to streamline and modernise extradition and mutual assistance processes. Amendments will be made to the Mutual Assistance in Criminal Matters Act 1987 to:
increase the range of law enforcement tools available to assist foreign countries with their investigations and prosecutions,

strengthen protections against providing assistance where there are death penalty or torture concerns in the requesting country, and

streamline existing processes for providing certain forms of assistance.

Amendments will also be made to the Extradition Act 1988 to:

streamline the early stages of the extradition process to reduce delays,

extend the availability of bail to later stages in the extradition process, and

allow a person to waive the extradition process, subject to certain safeguards.

Amendments will be made to both Acts to enable Federal Magistrates to perform functions under the Acts, to clarify privacy and disclosure provisions and to introduce grounds of refusal if a person may be prejudiced by reason of his or her sex or sexual orientation.

Reasons for Urgency

This Bill represents the first major reforms to Australian extradition and mutual assistance legislation since they were first introduced over 20 years ago. Amendments in the Bill will make important updates to equip Australian authorities with the law enforcement tools they need to cooperate effectively with their international counterparts to investigate and prosecute crime in the modern technological age. Following two stages of extensive consultation, passage of the Bill in the Spring 2011 sittings will implement important updates and improvements to the extradition and mutual assistance regimes. It will also allow law enforcement authorities earlier access to these important tools.

The Bill also introduces efficiencies to the extradition process. The timely passage of the Bill will allow these amendments to be implemented sooner; potentially reducing the number of delays, including the amount of time a person spends in custody, in new and ongoing extradition cases.

HIGHER EDUCATION SUPPORT AMENDMENT BILL (NO. 2)

Purpose of the Bill

The bill amends the Higher Education Support Act 2003 (HESA) to implement 2011-12 Budget measures and update indexed grant amounts. The bill also amends HESA by clarifying that Australian citizens enrolled in Australian providers are only entitled to Commonwealth supported places (CSPs) and will only have access to HECS-HELP, FEE-HELP and VET FEE-HELP schemes when they are enrolled primarily at an Australian campus.

Reasons for Urgency

The indexed grant amount update is required for 2011. All other measures have effect from 1 January 2012.

Students need to be advised in advance of changes to arrangements affecting their student contributions for 2012 and HELP debts. The reduction in the HECS HELP up-front discount will require some students to pay more of their student contribution amount.

The maximum grant amount under Section 30-5 for 2011 must be increased to cover the total required funding for 2011 payments. Maximum payment amounts under Sections 41-45 and 46-40 and all other amounts under Part 5-6 of HESA are amended on an annual basis to reflect indexation and other variations.

There is ambiguity in HESA about its application to Australian citizens studying at the overseas campuses of Australian universities. Given the move to a demand driven system as of 1 January 2012, the Department needs to ensure that CSPs and access to HELP schemes are offered in line with the Government's policy intentions.

NATIONAL HEALTH REFORM AMENDMENT (INDEPENDENT HOSPITAL PRICING AUTHORITY) BILL

Purpose of the Bill

The bill amends the National Health Reform Act 2011 (once enacted) to establish the Independent Hospital Pricing Authority (IHPA).
Reasons for Urgency
Through the 13 February 2011 Heads of Agreement – National Health Reform, COAG agreed to the introduction from 1 July 2012 of a national approach to activity based funding (ABF), and that public hospital services will be funded, wherever possible, on a national efficient price for each public hospital service provided to public patients. The national efficient price is to be set by the IHPA.

The National Health Reform Agreement provides further details of new funding arrangements. Under that Agreement the IHPA is to be established permanently by 31 December 2011.

The IHPA also needs to be established as soon as possible to undertake work required to meet the 1 July 2012 deadline for the new funding arrangements for Australian hospitals. Passage of the legislation in the Spring sittings will accommodate the administrative arrangements necessary to establish the agency. This will include appointing the board, recruiting the CEO, organising accommodation, recruiting specialist staff, developing business practices and support services.

Passage in Spring will also provide time to put in place strong governance and mature technical capabilities to support arrangements for activity based funding. This is critical to ensure funds are spent transparently and accountably on efficiently delivering services to public patients through public hospitals.

PARLIAMENTARY SERVICE AMENDMENT (PARLIAMENTARY BUDGET OFFICER) BILL

Purpose of the Bill
The bill would establish the office of the Parliamentary Budget Officer and the Parliamentary Budget Office (PBO) and amend the Charter of Budget Honesty Act 1998 to clarify the role of the Department of the Treasury and the Department of Finance and Deregulation with respect to the costing of election commitments during the caretaker period.

PERSONAL PROPERTY SECURITIES AMENDMENT (REGISTRATION COMMENCEMENT) BILL

Purpose of the Bill
The bill amends the definitions of migration time and registration commencement time in the Personal Property Securities Act 2009 (the Act) to remove the legislative imperative for these events to occur by a certain time.

Currently the migration time must be no later than the first day of the month which is 25 months after the month in which the Act received the Royal Assent, and the registration commencement time must be no later than the first day of the month which is 26 months after the month in which the Act received the Royal Assent. The Act received the Royal Assent on 14 December 2009, which means the migration time and the registration commencement time must be no later than 1 January 2012 and 1 February 2012, respectively. The Attorney-General (as the relevant Minister under the Act) may determine an earlier time for both the migration time and the registration commencement time.

The bill amends the Act so that the Attorney-General may determine the migration time and the registration commencement time to occur at any time.

Reasons for Urgency
The PPS Register is a significant component of the new PPS reforms, and it is not possible for the Act to commence operating without the online system. All components of the online Personal Property Securities Register are either completed or well advanced. The first round of user acceptance testing, which commenced on 9
August 2011, identified significant issues with the system. Those issues have been addressed, but a second phase of user acceptance testing is required and is currently being planned with industry. Until that phase is concluded, it cannot be certain that other critical activities such as migration of data from the existing registers (including the ASIC Register of Company Charges, and the various State registers of encumbered vehicles and vehicle securities registers) could occur within the current timeframes in the Act.

After the conclusion of this second phase of user acceptance testing, there will be few or no Parliamentary sitting days left before the end of 2011, and before the Act requires the new PPS regime to commence operating in early 2012.

SOCIAL SECURITY AMENDMENT (STUDENT INCOME SUPPORT REFORMS) BILL

Purpose of the Bill
The bill responds to recommendations of the Review of Student Income Support Reforms.

Reasons for Urgency
The Government announced on 21 February 2011 that a comprehensive review of its package of student income support reforms would be brought forward by 12 months. The Review of Student Income Support Reforms reported to the Minister for Tertiary Education on 8 July 2011. Any new eligibility arrangements eliminating regional eligibility distinctions for student income support will be implemented from 1 January 2012.

In order that the measures in this bill can be implemented from 1 January 2012, the bill needs to be passed within the 2011 Spring sittings. Timely passage of the bill will provide certainty for students about the income support available in 2012 and will allow sufficient time for Centrelink to implement the measures.

SOCIAL SECURITY LEGISLATION AMENDMENT (FAMILY PARTICIPATION MEASURES) BILL

Purpose of the Bill
The bill amends the Social Security Act 1991 and the Social Security (Administration) Act 1999 to implement the teen parent measures. This measure was announced in the 2011 12 Budget and aims to reduce the risk of lifelong disadvantage suffered by teen parents due to poorer education outcomes.

The amendments are needed to ensure that teen parents can be required to enter and comply with employment pathway plans, and attend interviews to discuss those plans, and be subject to suspension of payments for non-compliance with these requirements.

Reasons for Urgency
Passage of the bill in the 2011 Spring sittings will ensure the teen parent measure can be implemented from 1 January 2012 as announced by the Prime Minister.

TAX LAWS AMENDMENT (2011 MEASURES NO. 8) BILL 2011 AND PAY AS YOU GO WITHHOLDING NON-COMPLIANCE TAX BILL 2011

Purpose of the Bill
This bills will:

- restore the Commissioner of Taxation’s discretion to allow a trustee’s election made in respect of the death or forced disposal of livestock to continue where the election could otherwise lapse because of a disentitling event;
- clarify the taxing point of the Petroleum Resources Rent Tax;
- amend the tax law to reduce the scope for companies to undertake fraudulent phoenix activities; and
- make consequential amendments to the taxation of gaseous fuels.

Reasons for Urgency
The reasons for urgency:

- The Commissioner of Taxation's discretion measure commences from 1 July 2006.
The Petroleum Resources Rent Tax measure is required to provide clarity to the existing law following recent consideration by the Federal Court.

The phoenix activities measure, a savings measure, was announced as an election commitment with a start date of 1 July 2011. As it will expand the application of penalty provisions and restrict individuals’ access to Pay As You Go withholding credits, company directors need certainty about the application of these changes.

The amendments to the taxation of gaseous fuels measure are required to be enacted by 1 December 2011 when the principal legislation commences to apply.

Senator CAROL BROWN: To move:
That the Joint Standing Committee on the National Broadband Network be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 22 November 2011, from 6 pm.

Senator SINGH: To move:
That the Senate—
(a) formally marks National Asbestos Awareness Week, which this year is being held between 21 November to 25 November 2011, by affirming its support for the historic decision by Australia in 1993 to ban the production, importation and use of asbestos;
(b) notes the terrible legacy that asbestos has left on the Australian community, leaving us with one of the highest rates of asbestos related diseases in the world;
(c) extends its sympathies to all individuals living with asbestos related diseases and the friends and families of those who have sadly passed away as a result of asbestos related disease; and
(d) commends the Government on its efforts to eradicate asbestos from workplaces, homes and the community, including through:
(i) the recent ratification of the International Labour Organization (ILO) Asbestos Convention, as one of the first ILO conventions to be ratified by the Commonwealth Government since 2006,
(ii) its work at the 2011 Conference of the Parties to the Rotterdam Convention on Prior Informed Consent to have chrysotile asbestos listed in the convention,
(iii) the $5 million grant made to support the Asbestos Diseases Research Institute’s Bernie Banton Centre,
(iv) funding for the new Australian Mesothelioma Registry, which was launched in 2010 to gather more detailed and accurate information on mesothelioma and asbestos related diseases,
(v) support for the harmonisation of health and safety legislation which will provide, for the first time, a uniform framework for the minimisation of exposure, the removal of asbestos and the management of asbestos materials in the workplace,
(vi) the establishment of the Asbestos Management Review in late 2010 to recommend strategies for the development a national strategic plan to improve asbestos awareness, management and removal,
(vii) the loan agreement with the New South Wales Government to ensure asbestos victims and their families continue to receive payments through the Asbestos Injuries Compensation Fund, and
(viii) the $1.5 million Comcare Asbestos Innovation Fund which sponsors programs and research to prevent and better manage asbestos exposure, as well as improving the treatment for asbestos disease sufferers.

Senator ARBIB: To move:
That—
(1) In the week beginning Monday, 21 November 2011, the following government business orders of the day shall be considered:
Social Security Legislation Amendment (Family Participation Measures) Bill 2011
Coal Mining Industry (Long Service Leave) Legislation Amendment Bill 2011
Business Names Registration (Application of Consequential Amendments) Bill 2011
Social Security and Other Legislation Amendment Bill 2011
Social Security Amendment (Student Income Support Reforms) Bill 2011
National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011
Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011
Crimes Legislation Amendment Bill (No. 2) 2011
Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2011
Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011
Higher Education Support Amendment Bill (No. 2) 2011
Corporations (Fees) Amendment Bill 2011
Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and Pay As You Go Withholding Non-compliance Tax Bill 2011
Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011
Auditor-General Amendment Bill 2011
Tax Laws Amendment (2011 Measures No. 7) Bill 2011
Navigation Amendment Bill 2011
Maritime Legislation Amendment Bill 2011
Aviation Transport Security Amendment (Air Cargo) Bill 2011
Veterans' Affairs Legislation Amendment (Participants in British Nuclear Tests) Bill 2011
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oils in the Antarctic Area) Bill 2011
National Residue Survey (Excise Levy Amendment (Deer) Bill 2011
Indigenous Affairs Legislation Amendment Bill (No. 2) 2011
Defence Legislation Amendment Bill 2011
Personal Property Securities Amendment (Registration Commencement) Bill 2011
Competition and Consumer Amendment Bill (No. 1) 2011
Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill 2011
Competition and Consumer Legislation Amendment Bill 2011
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011.

(2) On Wednesday, 23 November 2011 and Thursday, 24 November 2011, any proposal pursuant to standing order 75 shall not be proceeded with.

(3) On Tuesday, 22 November 2011:
(a) the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to 10.40 pm;
(b) the routine of business from 7.30 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at 10 pm.

(4) On Wednesday, 23 November 2011:
(a) consideration of the business before the Senate be interrupted at approximately 5 pm, but not so as to interrupt a senator speaking, to enable Senator Sinodinos to make his first speech without any question before the chair; and
(b) consideration of government documents shall not be proceeded with.

(5) On Thursday, 24 November 2011:
(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
(b) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) shall not be proceeded with;
(c) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 3.45 pm, shall be government business only;

(d) divisions may take place after 4.30 pm;

(e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed in paragraph (1); and

(f) if the Senate is sitting at 10 pm, the sitting of the Senate be suspended till 9.30 am on Friday, 25 November 2011.

Senator ARBIB: To move:
That any order of the day relating to the Auditor-General Amendment Bill 2011 be listed on the Notice Paper as a government business order of the day.

Senator WILLIAMS: To move:
That the Senate—
(a) notes the continued financial problems and huge debt levels afflicting many European countries;

(b) asks the Government to call on the European countries that offer farm subsidy programs, to cease these programs immediately to allow more balanced terms of trade; and

(c) agrees that the cessation of farm subsidy programs would assist Australian farmers and the global financial system more broadly.

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

Business Names Registration (Application of Consequential Amendments) Bill 2011
Corporations (Fees) Amendment Bill 2011
Deterring People Smuggling Bill 2011
Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011
Higher Education Support Amendment Bill (No. 2) 2011
National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011
Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2011
Personal Property Securities Amendment (Registration Commencement) Bill 2011
Social Security Amendment (Student Income Support Reforms) Bill 2011
Social Security Legislation Amendment (Family Participation Measures) Bill 2011

Senator BOB BROWN: To move:
That the Senate—
(a) notes the report of the Book Industry Strategy Group recommending that the goods and services tax be scrapped from domestic book sales or applied to online purchase of books from overseas; and

(b) calls on the Government to determine in 2011, which is the better option for the $2.3 billion Australian book industry.

COMMITTEES
Selection of Bills Committee
Report
Senator McEWEN (South Australia—Government Whip in the Senate) (11:52): I present the 16th report of 2011 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 16 OF 2011

1. The committee met in private session on Wednesday, 9 November 2011 at 7.16 pm.

2. The committee resolved to recommend—
That—
(a) the provisions of Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011 be referred immediately to the Education, Employment and Work-
place Relations Legislation Committee for inquiry and report by 29 February 2012 (see appendix 1 for a statement of reasons for referral);

(b) the provisions of the Defence Trade Controls Bill 2011 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 12 April 2012 (see appendix 2 for a statement of reasons for referral);

(c) the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011 be referred immediately to the Environment and Communications Legislation Committee for inquiry and report by 7 February 2012 (see appendix 3 for a statement of reasons for referral);

(d) the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011 be referred immediately to the Rural Affairs and Transport Legislation Committee for inquiry and report by 27 February 2012 (see appendix 4 for a statement of reasons for referral);

(e) the provisions of the following bills be referred immediately to the Economics Legislation Committee for inquiry and report by 14 March 2012:

- Minerals Resource Rent Tax Bill 2011
- Petroleum Resource Rent Tax Assessment Amendment Bill 2011
- Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011

(see appendix 5 for a statement of reasons for referral)

3. The committee resolved to recommend—
That the following bills not be referred to committees:

- Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill 2011
- Business Names Registration (Application of Consequential Amendments) Bill 2011
- Customs Amendment (Military End-Use) Bill 2011
- Paid Parental Leave and Other Legislation Amendment (Consolidation) Bill 2010

The committee recommends accordingly.

4. The committee deferred consideration of the following bills to its next meeting:

- Public Accounts and Audit Committee Amendment (Ombudsman) Bill 2011
- Telecommunications Amendment (Mobile Phone Towers) Bill 2011.

(Anne McEwen)

Chair
10 November 2011

Appendix 1

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee

Name of bill:
Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011

Reasons for referral/principal issues for consideration:

This Bill has differences to Bills of a similar nature that were presented in the last Parliament and the industrial relations environment has also changed.

It is vital that this Bill be subjected to the appropriate scrutiny to ensure the best result for employees and employers in the building and construction sector.
Possible submissions or evidence from:
- Master Builders Association
- Australian Chamber of Commerce and Industry
- Institute of Public Affairs
- Housing Industry Association
- National Electrical Contractors Association
- Civil Contractors Association
- Australian Industry Group
- Independent Contractors Association of Australia

Committee to which bill is to be referred:
Education, Employment and Workplace Relations Legislation Committee

Possible hearing date(s): 
Possible reporting date:
(signed) Senator Kroger
Whip / Selection of Bills Committee member

Appendix 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011

Reasons for referral/principal issues for consideration:
This Bill provides a much needed process of emergency listings under the EBPC Act for threatened species and ecological communities where they are at risk from a significant and imminent threat.

Possible submissions or evidence from:
Peak and local environmental non-government organisations, the scientific community (particularly Australian biodiversity experts), industry and regulators.

Committee to which bill is to be referred:
Environment and Communications Legislation Committee

Possible hearing date(s):
Possible reporting date:
7 February 2011
(signed)
Senator Siewert
Whip / Selection of Bills Committee member

Appendix 4
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011

Reasons for referral/principal issues for consideration:
This bill proposes to address a number of issues raised by the community in the current Senate Standing Committees on Rural Affairs and Transport (RAT) (References committee) inquiry into the impact of mining coal seam gas on the
management of the Murray-Darling Basin (which is due to report by end 30 November 2011). As such it would seem appropriate that this bill be considered by the RAT Legislative committee (given significant overlap in membership of the two committees).

Possible submissions or evidence from:
Organisations, groups and individuals who are likely to have an interest in this bill include members of farming communities, the agricultural sector, mining and coal seam gas sector, state and federal regulators - all of which have participated in the recent Senate Standing Committees on Rural Affairs and Transport (RAT) (References committee) inquiry into the management of the Murray-Darling Basin.

Committee to which bill is to be referred:
Senate Standing Committees on Rural Affairs and Transport - Legislation Committee.

Possible hearing date(s):
Hearings may not be needed given the extensive hearings undertaken by the Senate Standing Committees on Rural Affairs and Transport (References committee), however written submissions on this Bill which proposes to address a lot of the issues raised in the inquiry would be of assistance.

Possible reporting date:
27 February 2012
(signed)
Senator Siewert
Whip / Selection of Bills Committee member

Appendix 5
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Minerals Resource Rent Tax Bill 2011 & related bills
Reasons for referral/ principal issues for consideration: lack of certainty on revenue, production volume and commodity price assumptions, complex legislation, unfair impact on small miners, preferential treatment of big three mining companies, process by which tax designed in secret with big three miners.

Possible submissions or evidence from:
- Minerals Council of Australia
- Australian Mining and Exploration Companies
- Chamber of Minerals and Energy
- CCI WA
- ACCI
- Business Council of Australia
- Australian Industry Group
- APPEA
- APIA
- Institute of Chartered Accountants of Australia
- Tax Institute
- Magnet (Magnetite network)
- Australian Coal Assoc
- DomGas Alliance.
- Woodside
- FMG
- Xstrata
- Rio Tinto
- BHP Biliton
- ExxonMobil
- Atlas Iron
- BC Iron
- Chevron
- WA State Treasury
- NSW State Treasury
- QLD State Treasury
- The Treasury

Committee to which bill is to be referred:
Senate Economics

Possible hearing date(s):
Possible reporting date:
March 2012
(signed)
Senator Kroger
Whip / Selection of Bills Committee member
BUSINESS
Leave of Absence

Senator McEWEN: by leave—At the request of Senator Xenophon, I move:
That leave of absence be granted to Senator Xenophon for 9 November and 10 November 2011, for personal reasons.

Question agreed to.

COMMITTEES
Economics Legislation Committee
Meeting

Senator McEWEN: by leave—At the request of the chair of the Economics Legislation Committee, Senator Bishop, I move:
That the Economics Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 1.50 pm.

Question agreed to.

MOTIONS
Remembrance Day and Mental Health Services for Veterans

Senator WRIGHT (South Australia) (11:54): I seek leave to amend general business notice of motion No. 551 standing in my name and to add the names of Senator Feeney and Senator Ronaldson to the motion.

Leave granted.

Senator WRIGHT: I, and also on behalf of Senator Feeney and Senator Ronaldson, move the motion as amended:
That the Senate—
(a) notes that:
(i) 11 November is Remembrance Day, which commemorates the official end of World War I on that date in 1918, and
(ii) on Remembrance Day we remember those members of Commonwealth armed forces who died in the line of duty in World War I,
(b) recognises:
(i) the sacrifice of Australians who have died serving our country,
(ii) that death is not the only human toll of war,
(iii) that veterans suffer from mental health effects directly related to their experiences serving in conflict zones, including suicide, and
(iv) the mental health effects of conflict reach beyond veterans to their families, who are also affected; and
(c) calls on the Government to continue to:
(i) ensure funding for mental health services for veterans and their families,
(ii) encourage the armed services to promote and support good mental health practices,
(iii) encourage speaking out about suicide and to make suicide prevention a priority, including within the armed forces, and
(iv) encourage a culture of openness and understanding about mental health in the Australian military.

Question agreed to.

COMMITTEES
Gambling Reform Committee
Meeting

Senator McEWEN: At the request of Senator Crossin, I move:
That the order of the Senate of 2 November 2011 authorising the Joint Select Committee on Gambling Reform to hold a private meeting otherwise than in accordance with standing order 33(1), be varied by omitting "29 November 2011" and substituting "22 November 2011".

Question agreed to.
Education, Employment and Workplace Relations References Committee

Reporting Date

Senator McEWEN: At the request of Senator Marshall, I move:

That the time for the presentation of the report of the Education, Employment and Workplace Relations References Committee on disability employment services be extended to 25 November 2011.

Question agreed to.

Senators' Interests Committee

Reporting Date

Senator BERNARDI: I move:

That the time for the presentation of the report of the Standing Committee of Senators' Interests on a draft code of conduct for senators be extended to 10 May 2012.

Question agreed to.

MOTIONS

Asbestos

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11:55): I seek leave to add the name of Senator Singh to motion No. 555 standing in my name.

Leave granted.

Senator BOB BROWN: I, and also on behalf of Senator Singh, move:

That the Senate—

(a) notes the current and potential damage that imported asbestos is creating to the health of people in the Asia Pacific region;

(b) recognises the Australian Government’s efforts at the 2011 Conference of the Parties to the Rotterdam Convention on Prior Informed Consent to have chrysotile asbestos (white asbestos) listed in the convention;

(c) expresses its disappointment that Canada is stalling the listing of chrysotile asbestos in the convention;

(d) calls on the Canadian Government to recognise the profound global implications of Canada’s continuing production and export of asbestos and asbestos-containing products; and

(e) supports the Australian Government to use strong diplomatic efforts to convince the Canadian Government to cease both production of and trade in asbestos.

Question agreed to.

BILLS

Australian Broadcasting Corporation Amendment (International Broadcasting Services) Bill 2011

First Reading

Senator LUDLAM: I move:

That the following bill be introduced: A Bill for an Act to amend the Australian Broadcasting Corporation Act 1983, and for related purposes.

Question agreed to.

Senator LUDLAM: I present the bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator LUDLAM (Western Australia) (11:57): I move:

That this bill be now read a second time.

I seek leave to table an explanatory memorandum relating to the bill.

Leave granted.

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

Leave granted.

The speech read as follows—

The purpose of the Australian Broadcasting Corporation Amendment (International Broadcasting Services) Bill is to keep the Australia Network in public hands by requiring
the ABC to be the sole provider of Commonwealth funded international broadcasting services.

Keeping the Australia Network in public hands is consistent with Australia’s national interests, because the Australia Network shapes perceptions of Australia and its relationship with nations in the region and globally. Keeping the Australia Network in public hands is also consistent with the practice of every other country that provides international broadcasting services, including Britain’s BBC World Service, the Voice of America and Germany’s Deutsche Welle.

The ABC is independent of government but accountable to parliament and the public through statutory transparency obligations. The ABC regards its audience as citizens, not consumers and through the Australia Network extends that respect to neighbours in the region. The ABC has a statutory responsibility to provide independent news and has a proven record in this regard.

The national broadcaster is bound by its Charter to provide innovative, high standard programming that contribute to a sense of national identity, inform, educate, entertain and reflect Australian cultural diversity and promote the arts. The wealth of material generated from this foundation, informed by public editorial policies and subject to independent review mechanisms for complaints of serious cases of bias, lack of balance or unfair treatment, ensures a high standard that is projected to the region.

Commercial broadcasters do not share these qualities, responsibilities or statutory obligations. Commercial broadcasters are driven by different imperatives are primarily accountable to shareholders to maximise profit. Commercial broadcasters are therefore more likely to put commercial interests before impartiality requirements, and this could have major significance in countries where commercial interests exist, such as China.

The ABC has proven itself to be a first class international broadcaster that is seen as independent from political and commercial influence. This Bill seeks to maintain that high standard, credibility and quality of service.

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

Leave granted; debate adjourned.

MOTIONS

Latrobe Valley: Clean Energy

Senator MADIGAN (Victoria) (11:57): I move:

That, in light of the possible passage of the Clean Energy bills through the Senate and the acknowledgement of the fact that the Latrobe Valley region will be the hardest hit by the introduction of a carbon tax, the Senate:

(a) recognises that privatisation of the State Electricity Commission of Victoria (SECV) by the Kennett Government has been a failure with little or no investment in new technologies by the private sector which is now threatening Victoria’s power supply; and

(b) calls on the Federal Government:

(i) to lead the way to a new clean energy industry in the Latrobe Valley by working with the Victorian Government in the recommissioning of the SECV, and

(ii) to work with the State Government of Victoria to help build a new Coal-Gasified power station at Driffield as the first step in the creation of a clean power industry in Victoria and help build a future for the district and secure under public ownership a reliable clean power industry in that state.

Question negatived.

Cultural Heritage

Senator MADIGAN (Victoria) (11:58): I move:

That, in light of the fact that the Australian Parliament, on behalf of the Australian people, has rightly recognised the cultural heritage of the Indigenous members of our community and identified the importance of their historic connection to the land on which we all live, the Senate recognises that there are other Australian communities which also have a cultural heritage which comes from their connection, over generations, to the district and environment which they have inhabited and from which they have
created an identity which is passed on to future
generations of those communities.

Question put.
The Senate divided. [12:03]
(The President—Senator Hogg)

Ayes....................... 30
Noes....................... 35
Majority ............... 5

AYES
Abetz, E
Bernardi, C
Boswell, RLD
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Ferravanti-Wells, C
Heffernan, W
Joyce, B
Macdonald, ID
Mason, B
Parry, S
Ronaldon, M
Sinodinos, A

NOES
Arbib, MV
Bishop, TM
Brown, RJ
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Marshall, GM
McLucas, J
Moore, CM
Pratt, LC
Siewert, R
Stephens, U
Thistlethwaite, M
Waters, LJ
Wright, PL

PAIRS
Back, CJ
Fifield, MP
Humphries, G
Nash, F
Ryan, SM

PAIRS
Sherry, NJ
Collins, JMA
Evans, C

Great Barrier Reef

Senator WATERS (Queensland) (12:06): I move:
That the Senate—

(a) notes:

(i) that the Government and the Opposition
did not support the Australian Greens' motion on
9 November 2011 that all applications and
approvals made under the Environment
Protection and Biodiversity Conservation Act
1999 [the Act] which would have a significant
impact on the Great Barrier Reef World Heritage
Area to be suspended until the conclusion of the
United Nations Education, Scientific and Cultural
Organization [UNESCO] requested strategic
assessment, to allow consideration of all
cumulative impacts of coal and coal seam gas
ports and other developments on this
internationally-significant biodiversity icon',

(ii) the comments by the Minister for
Sustainability, Environment, Water, Population
and Communities (Mr Burke) on Four Corners on
Monday, 7 November 2011, that he would 'prefer
a situation where as much as possible is able to be
dealt with once we've concluded the strategic
assessment, but people have legal rights under
law to commence the process and those processes
continue in the interim', and

(iii) the Act already provides a suspension
process for applications and approvals in
particular circumstances and a revocation process
for approvals in particular circumstances, both
without compensation rights flowing to the
proponent; and

(b) calls on the Government to:

(i) confirm that sections 130(5), 132, 144
and 145 of the Act allow the Minister to suspend
all applications and approvals made under the Act
that would have a significant impact on the Great
Barrier Reef World Heritage Area until the
conclusion of the UNESCO requested strategic
assessment, and
(ii) if necessary, urgently amend the Act to confer on the Minister the power to suspend all applications and approvals made under the Act that would have a significant impact on the Great Barrier Reef World Heritage Area until the conclusion of the UNESCO requested strategic assessment, to allow that strategic assessment to properly consider all cumulative impacts of coal and coal seam gas ports and other developments on this internationally-significant biodiversity icon.

Question put.

The Senate divided. [12:07]

(The President—Senator Hogg)

Ayes.......................9
Noes.......................42
Majority..................33

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

NOES
Adams, J  Arbib, MV
Bernardi, C  Bilyk, CL
Birmingham, SJ  Bishop, TM
Cameron, DN  Colbeck, R
Cormann, M  Crossin, P
Edwards, S  Eggleston, A
Farrell, D  Faulkner, J
Fawcett, DJ  Feeley, D
Fierravanti-Wells, C  Fisher, M
Furner, ML  Gallacher, AM
Heffernan, W  Hogg, JJ
Johnston, D  Kroger, H (teller)
Lundy, KA  Madigan, JJ
Marshall, GM  McCutcheon, A
McKenzie, B  McLucas, J
Moore, CM  Parry, S
Payne, MA  Polley, H
Pratt, LC  Ronaldson, M
Scullion, NG  Singh, LM
Stephens, U  Sterle, G
Thistlethwaite, M  Urquhart, AE

BUDGET

Consideration by Estimates Committees

Senator McEWEN (South Australia—Government Whip in the Senate) (12:11): On behalf of the respective chairs, I present additional information received by committees relating to the following estimates:

- Community Affairs Legislation Committee—2 volumes
- Economics Legislation Committee—3 volumes
- Education, Employment and Workplace Relations Legislation Committee—1 volume
- Environment and Communications Legislation Committee—3 volumes
- Foreign Affairs, Defence and Trade Legislation Committee—2 volumes
- Finance and Public Administration Legislation Committee—5 volumes
- Legal and Constitutional Affairs Legislation Committee—3 volumes
- Rural Affairs and Transport Legislation Committee—1 volume

BILLS

Tobacco Plain Packaging Bill 2011
Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011

Second Reading

Debate resumed on the motion: That these bills be now read a second time.

Senator CROSSIN (Northern Territory) (12:11): Last night, as we proceeded to the adjournment, I was talking about the impact of smoking in the Northern Territory and I now remind people that the rate of smoking in the Northern Territory is, in fact, the highest in the country. When I concluded last night, I was in the middle of a sentence that went something like this: in 2004-05 more than 56 per cent of Indigenous adults in the Northern Territory aged 18 and over were
smokers. The rates of smoking in some Aboriginal communities are as high as 73 per cent of adults. Based on this data, the rate of smoking amongst Indigenous adults in the Northern Territory is approximately 2.2 times the non-Indigenous rate and 3.3 times the national rate. Based on this data too, the rate of smoking in the Northern Territory produces a great burden. The burden of tobacco related disease is particularly high amongst Indigenous people, and we see this on a daily basis. It could not be more clear that drastic steps are needed to address the enormity of this problem.

Under the Council of Australian Governments National Healthcare Agreement, the government has committed to reducing the smoking rate among adults, aged 18 and over, from 19 per cent in 2008 to 10 per cent by 2018 and halving the smoking rate among Indigenous adults from 48 per cent in 2008 to 24 per cent by 2018. As part of the strategy to achieve this, we recognise the need to assist and encourage smokers to quit and we also recognise the need to discourage people from taking up the habit. So a major element of the strategy is to reduce the attractiveness of tobacco and to focus attention on health issues. That is why we have appointed Dr Tom Calma as the National Coordinator for Tackling Indigenous Smoking and much of the work that we are doing to decrease the smoking rate amongst Indigenous Australians will be his responsibility. In 2008 we committed $14.5 million to the Indigenous Tobacco Control Initiative, which supports 18 pilot projects to tackle smoking in Indigenous communities around Australia. The lessons learned from those projects are being applied to the measures worth $100 million for tackling smoking under the Council of Australian Governments Closing the Gap in Indigenous Health Outcomes National Partnership Agreement. The Tobacco Action Workforce is being rolled out nationally in 57 regions over three years through regional teams with healthy-lifestyle workers who are working to promote good nutrition and physical activity. On 29 April we announced that we would legislate to mandate plain packaging of tobacco products by 1 July 2012. The evidence shows that branding and packaging design can mislead consumers about the safety of tobacco, reduce the effectiveness of graphic health warnings and increase the appeal of tobacco to young people. This evidence is set out extensively in the reports of the Preventative Health Taskforce, which find that plain packaging would increase the noticeability, recall and impact of the health warnings, that it would reduce the ability of packaging to mislead consumers to believe that some products may be less harmful than others and that it would reduce the attractiveness of tobacco products to both adults and children. Generally, the aim is to reduce the appeal of smoking.

The Tobacco Plain Packaging Bill 2011 regulates the retail packaging and appearance of tobacco products to improve public health and to give effect to certain of our obligations under the World Health Organisation Framework Convention on Tobacco Control. The plain-packaging legislation will prohibit tobacco industry logos, brand imagery, colours and promotional text other than brand and product names in a standard colour, position, font and style on the drab dark brown colour shown through research to have the least appeal to smokers. The bill will make it an offence to sell, supply, purchase, package or manufacture tobacco products for retail sale other than products in packaging which complies with plain-packaging requirements. These
offences will apply to manufacturers, packagers, wholesalers, distributors and retailers of tobacco products in Australia who fail to comply with the plain-packaging requirements. We know that these strong measures are not going to be popular with everyone. After all, these will be some of the toughest measures against tobacco smoking in the world, if not the toughest. We do have a responsibility to reduce the incidence of tobacco related diseases and encourage people to quit. In fact what we want to do is prevent our young people from taking up smoking.

Finally, I want to turn to one of the main elements of debate in relation to these bills. There is not so much debate about the Tobacco Plain Packaging Bill 2011—we hear that the opposition is going to support that legislation—but they make spurious arguments for not supporting the Trade Marks Amendment (Tobacco Plain Packaging) Bill. This bill was sent to the Senate Legal and Constitutional Affairs Legislation Committee, which I chair, for particular inquiry into and reporting on the elements of this legislation. The trademarks bill is consequential to the plain-packaging bill. It is intended to amend the Trade Marks Act to enable regulations to be made in relation to the use of trademarks. As the minister noted in her second reading speech:

The objective of any such regulations would be to ensure that the practical operation of the Tobacco Plain Packaging Bill 2011 does not prevent businesses from registering new trademarks, or from protecting registered trademarks against infringement.

The opposition say they are not going to support this piece of legislation. It would not be any surprise, of course, that the people who are objectiong to the trademarks amendment bill are the four main tobacco companies operating in Australia. It seems to me that the opposition want to have their cake and eat it too, basically. Their public position is that they are going to support the plain-packaging bill but that they are going to hedge their bets and support the big tobacco producers by not supporting the consequential legislation, which is the trademarks amendment bill. They do that by hiding behind the fact that the trademarks amendment bill is predominantly what is known as a Henry VIII clause. That is, it is an express provision which authorises the amendment of either the empowering legislation or any other primary legislation by means of delegated legislation.

The Scrutiny of Bills Committee, which I once chaired in this parliament, is tasked with looking at each and every piece of legislation that comes into the Senate—and a fine upstanding committee it is. It examined this bill and noted that, while clause 231A enables regulations to be made which are inconsistent with the Trade Marks Act, the explanatory memorandum to the trademarks bill contains a detailed explanation of the possible need for this clause, including the need for the government to comply with its obligations under the Madrid protocol. The Scrutiny of Bills Committee then concluded that it would make no further comment, so it did not see this as a significant issue or problem. The Madrid protocol is an international agreement which facilitates a system of international registration of marks administered by the World Intellectual Property Organisation.

It is interesting to note the evidence that the committee took while investigating this legislation. The submission from the Department of Health and Ageing outlines that a draft of the trademark bill, along with any amendments we were proposing to the plain-packaging bill, had been issued for public response so that anyone could raise items of concern. There was consultation on the exposure drafts of both of these pieces of
legislation. And do you know what? None of the evidence we received during the committee inquiry came from the tobacco associations. None of them provided input—none at all. There was no input from British American Tobacco Australia, who so adamantly said to us during our committee inquiry that they were fervently opposed to the trademarks bill. Issues about the trademarks bill were raised only by the International Trademark Association, the Institute of Patent and Trade Mark Attorneys, the International Association for the Protection of Intellectual Property and Professor Mark Davison, who was a member of the expert advisory group.

It is interesting that when the department had an exposure bill out there for consultation, none of the main tobacco companies sought to have any input then but were more than happy to come to a Senate committee and raise their concerns at that time—and, of course, have managed to arm-twist the opposition into believing them that the Tobacco Plain Packaging Bill 2011 and the consequential bill, the Trade Marks Amendment (Tobacco Plain Packaging) Bill should now, for some reason, be supported.

But let us have a close look at why we believe we need to support this legislation. Contrary to what some people on the opposition would have you believe, it will be able to be disallowed in parliament. Under the subordinate legislation—which is what this trade marks amendment bill provides—if a regulation is made that can then change the substantive plain packaging bill, that process that the minister may undertake is disallowable in both houses of parliament. So I am entirely baffled as to why the opposition would not support the trade marks amendment bill, and I would welcome an explanation from them as to why they do not believe that the ability to have any regulation examined by the Senate Standing Committee on Regulations and Ordinances and the ability to disallow any regulations by both houses of parliament is not a sufficient enough safeguard for them to support the trade marks amendment bill.

Henry VIII clauses are not unprecedented in Australian legislation or even in the Trade Marks Act itself. My committee concluded:

In this context, the committee notes the evidence of Professor Simon Evans who stated that, on current authorities, a Henry VIII clause, regardless of its breadth, would be constitutionally valid.

We also noted that the Henry VIII clause in the trade marks bill that we are dealing with today is limited in its scope. That is in the explanatory memorandum and the outline of the bill. It provides that regulations can only be made in relation to the effect of the operation of the plain packaging bill. So we have a very narrow application that would be used only if needed, drafted in response, as the department said, to issues raised by the submissions during their public consultation.

So let us be clear about the process. The department went out with a draft exposure of the trade marks amendment bill and three organisations and a professor provided input and none of the tobacco companies had any input. The drafting of this has been done in response to that public consultation. The trade marks amendment bill would allow subordinate legislation or a regulation to be drafted that amends the substantive plain packaging bill. If that occurs, the regulations and ordinance committee of the Senate can have a look at it and that instrument can be disallowed by both houses of this parliament.

So I am at a loss to work out why the opposition would want to support this. I will go to their dissenting report and quote what they suggest. They use a very unusual word, but I suspect it is one that probably Senator Brandis has dug up somewhere. They say:
It is difficult to see how a lacuna—
'a lacuna' sounds like something out of The Lion King, really—
in the Government's plain packaging regime of a few months—should that be necessary to allow Parliament to remedy any flaw in this regime …
A lacuna is actually a gap. If you go to a thesaurus or a dictionary it talks about a gap or a flaw. But that is not what the trade marks amendment bill is about.

If Liberal senators are actually opposing the trade marks amendment bill because they somehow think that there has been a gap or a flaw in the original legislation, they have totally got it wrong. The trade marks amendment legislation is there in case at some stage there is a need to protect the manufacturers of the cigarette companies. The plain packaging legislation 'is intended to provide an additional level of assurance for trade mark owners' and to ensure that the government will be able to 'act quickly to address any unintended consequences' arising out of the regulation of trademarks intended for use on tobacco products and their retail packaging.

So I would be really interested to hear from the opposition exactly in the context of the work that we did in the Senate Legal and Constitutional Affairs Legislation Committee and on the fact that the large tobacco companies in this country did not provide to the department any input during the consultation phase of the trade marks amendment bill, on the fact that that bill is here to provide some level of reassurance for trademark owners of tobacco products on their retail packaging and on the fact that any regulation that is struck under this trade marks amendment bill could be subject to scrutiny by the regulations and ordinance committee and disallowed in both houses of parliament.

I can only come to the conclusion that while, on the face of it, you might be seen to be supporting the tobacco plain packaging bill, what you are really doing is hiding behind the facade of the trade marks amendment bill to actually protect the big tobacco companies and owners in this country. That is what you are really doing. You are using this bill to actually say, 'We agree with the intent of the health outcomes you are trying to achieve'—yeah, right—but really we're backing up big business.' I call on you to reconsider that and to put your support behind both of these pieces of legislation. (Time expired)


Leave granted.

Senator XENOPHON (South Australia) (12:28): The incorporated speech read as follows—
Tobacco Plain Packaging Bill
Mr Acting Deputy President, tobacco kills over 15,000 Australians every year, from cancer, heart disease and chronic obstructive pulmonary disease.

That's around 50 people a day.

It is the largest single preventable cause of death and disease in Australia.

In fact, smoking kills more people every year than road accidents, alcohol and other drugs combined.

Yet despite these statistics, despite most people knowing the dangers, 3 million Australians continue to smoke daily.

This Bill is one way to try to reduce the number of Australians who smoke and who take up smoking.

The Preventative Health Taskforce has told us that plain packaging will increase the impact of health warning messages, it will reduce the ability
of tobacco companies to mislead consumers into believing that some cigarettes are less harmful than others, it will make cigarettes look less attractive and it will reduce the appeal and desirability of smoking generally.

This Bill is also in line with the World Health Organisation Framework Convention on Tobacco Control, which recommends that plain packaging be considered as part of comprehensive bans on tobacco advertising.

Australia is the first signatory to the Framework and will be the first in the world to implement this recommendation.

The question is, will plain packaging work? Well, if it isn't likely to reduce the number of smokers, I highly doubt the big tobacco companies would be as scared as they are.

Mr Acting Deputy President, tobacco is big business.

The equivalent of 1100 packs of 25 cigarettes are sold in Australia every minute.

In the last financial year, Australians spent $13.4 billion dollars on cigarettes and tobacco.

So it's not surprising that British American Tobacco, Imperial Tobacco and Philip Morris, for example, are very worried about the impact this legislation will have on their bottom line.

Because plain packaging will go some way to reducing smoking.

Plain packaging will prohibit the use of all tobacco industry logos, brand imagery, colours and promotional text on the retail packaging of tobacco products.

And it will make every packet a drab green-brown colour.

Smoking may have a bit more of a taboo culture about it these days, but for many young Australians, the attractiveness of the habit is still there.

Of course, plain packaging on its own won't reduce smoking rates to 10 percent by 2018.

But, in conjunction with increasing the tobacco excise, alongside restrictions on internet advertising through a Bill that's about to be brought before the Senate, and with additional funding for anti-smoking social marketing, smoking in Australia may fall.

Mr Acting Deputy President, I note the concerns that have been raised by the tobacco companies about the impact this policy will have on Australia's international obligations with respect to trade marks.

But ultimately, I believe we need to do whatever we can to reduce smoking rates in Australia.

The Tobacco Plain Packaging Bill will remove the advertising for smoking which a cigarette packet does on its very own.

As one Philip Morris executive is reported to have said — "In the absence of any other marketing messages, our packaging ... is the sole communicator of our brand essence. Put another way, when you don't have anything else — our packaging is our marketing," he said.

Let's face it — a group of people are out at a café. Let's assume they're in a State where they can smoke in the outdoor area.

One pulls out a pack of cigarettes. They light up, and leave the pack on the table. That's advertising. Right there.

A smoker I know, for example, has admitted to me that they smoke the brand of cigarettes they saw all their friends smoking and, on occasion, this person will see someone smoking a different brand and they'll try one of their cigarettes "just to see".

And the only way this person knows to try a different brand is by the different coloured box, the different font, the different logos.

Mr Acting Deputy President, plain packaging will change this mindset.

It may not see a dramatic drop in smoking straight away, but I do believe plain packaging will, year by year, reduce the prevalence of smoking and most certainly it will reduce the uptake of smoking.

Tobacco companies spend big bucks in research and development of packaging.

They look at every minute detail — not just what colour the packet should be, but exactly what shade; they look at the fonts and the size of the letters and the spacing between words; they...
think about the size of the box, whether it's slim, wide or narrow ...

The packaging of each brand is different, tailored for men, for women, for the more expensive brands and for the cheaper brands.

Mr Acting Deputy President, plain packaging will remove the opportunities for tobacco companies to draw in its consumers.

Mr Acting Deputy President, I welcome the transition measures in the Bill for retailers, which will allow them to stock and sell both compliant and non-compliant cigarettes for a period of time.

This will enable them to sell continue to sell current stock while at the same time stocking their shelves with compliant products so there will not be a gap in supply and there will be minimal excess stock of non-compliant products.

Mr Acting Deputy President, whether you smoke or not, I think most people agree that we have to do something to reduce smoking in Australia.

This Bill is one key measure to achieve this and that is why I support this legislation.

Senator BIRMINGHAM (South Australia) (12:28): I rise to speak on Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011, and I do so having had, I think, a track record in my few years in this place of expressing reservations where appropriate about proposals that governments introduce that increase the nanny-state approach to regulation and legislation in this country. Today my remarks will be no different and I will outline some concerns I have with this legislation, notwithstanding, ultimately, recognition that it will pass.

I do hold strong concerns with the mission-creep of government into the lives of individuals and into the operations of private enterprise. Individuals find government spending more and more of its time interfering in things and therefore more and more of their money telling them what is good for them and telling them how to live their lives or run their businesses. In some ways this is a good thing. I fully accept that information is power, and knowledge used wisely can lead to better decision making by individuals. But law makers in this country, at all levels, must ensure they know when and where to draw the line, when enough knowledge is available to empower sensible decisions and when government action starts to impede on voluntary, informed decision making by people, decisions that are made by individuals with full cognisance of the consequences of those decisions.

In approaching this debate, I am reminded of the words of PJ O'Rourke in his Liberty Manifesto of 1993. He said:

There is only one basic human right, the right to do as you damn well please. And with it comes the only basic human duty, the duty to take the consequences.

That libertarian sentiment does, I believe, need some tempering, so I will leap from the modern day liberal thinking of PJ O'Rourke to the early liberal thinker John Stuart Mill. In his classic text On Liberty, Mill said:

That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him …

... ...

In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

In On Liberty, Mill set a standard for liberal thinking which, I believe, is as broadly
relevant today as it was when he penned those words in 1859, and it is with that philosophy in mind that I turn to this legislation. Within this legislation are elements of both persuasion and compulsion. The impact of this legislation for individuals is largely one of persuasion. However, the impact for business is largely one of compulsion. For individuals, the legislation attempts to make smoking less appealing by, firstly, removing any allegedly attractive or appealing elements of tobacco packaging and, secondly, by effectively warning people about the harms of smoking. For business, the legislation strips from them their established brands and trademarks, with no recompense.

Let us assess these motivations and the consequences of this legislation in sequence—firstly, the removal of the allegedly attractive or appealing elements of the packaging and its impact on the motivations of individuals. The impact of this so-called plain packaging approach on consumer behaviour is, frankly, unknown; it has not been tried anywhere else. That is not to say that it should not be tried here; somebody has to be the first in all reforms, of course. But what I do note is that already cigarette packaging is hardly attractive to the eye in any event. The unattractiveness of existing cigarette packaging is due to steps already taken by governments to achieve the second motivation behind this legislation, which is to effectively warn people about the effects of smoking. Health warnings, however, have actually been displayed on tobacco products since 1973. Most significantly, they were dramatically overhauled by the Howard government with reforms which took effect in March 2006. It was the former member for Adelaide and Parliamentary Secretary for Health Trish Worth who championed and delivered these reforms, and they were quite striking in their effect.

Tobacco products today have health warnings that cover 30 per cent of the front of the packet—that being the most prominent, most visible top fold of the packet—and 90 per cent of the back of the packet. Each warning contains graphic and disturbing imagery. Alongside those disturbing images are warnings that are rotated on different packets. Those warnings—such as 'Smoking causes emphysema,' 'Smoking causes mouth and throat cancer,' 'Quitting will improve your health,' 'Smoking: a leading cause of death,' 'Smoking harms unborn babies,' 'Smoking causes blindness,' 'Smoking is addictive,' 'Smoking doubles your risk of stroke,' 'Smoking causes lung cancer' and 'Smoking causes heart disease'—stand out very, very strongly indeed.

Since these reforms took effect in 2006, it has been nigh on impossible for anyone to pick up a packet of cigarettes without being warned about the health consequences every time they look at the packet. To return to my opening comments, there is no excuse for people not already being fully informed about the consequences of their smoking. In fact, it is almost guaranteed that smokers these days choose to smoke while being fully informed of the potential negative consequences.

Senator Di Natale interjecting—

Senator BIRMINGHAM: That, in fact, would be illegal, Senator Di Natale, and that law should be enforced fully. They may choose to reject those consequences. They may even dispute the validity of those consequences or the smoking warnings. But they are certainly informed of the facts and the figures, which, of course, have very emotive pictures alongside them to emphasise the message. So, in terms of the
motivations behind this legislation, we do not know whether this will work in reducing the appeal or attractiveness of smoking, but we do know that these packets have been pretty unattractive since the reforms of 2006. We also know that it is impossible, barring sight or literacy problems, that people are not already being warned about the negative consequences of smoking. It is hard to see how or if this legislation will make any meaningful difference to the likelihood of people taking up smoking or choosing to smoke.

The consequences of this legislation on business are clear and are meaningful and do apply an element of compulsion—in this case, a ban on companies using trademarks, branding, logos et cetera on their products. This is an extraordinary step for government to take. It is not that in passing this legislation the government is making these products, cigarettes, illegal. It is not that in passing this legislation the government is acquiring the trademarks or brands from the companies in question. It is that this legislation effectively extinguishes these trademarks and logos by banning their use.

This raises some serious questions around intellectual property rights and the rights of companies in terms of established logos. Companies, in whatever sector, argue that such branding is important for product differentiation. Because no steps have been taken by government to regulate this product or make it illegal for manufacture and sale, it remains a competitive market with different companies seeking to maximise their individual market share. That is right and they will continue to seek to maximise their market share. But stripping all of them of their branding and logos and trademarks means their capacity to do so is minimised.

Taking away this intellectual property has been cited by many as raising the potential risk of compensation claims from these companies. Intellectual property law has built up over a long and sustained period of time in Australia. It has an important role to play in all our dealings, particularly as in emerging economies and some of our major trading partners like China we go to great lengths to urge them to impose stricter, tougher and tighter intellectual property laws. By undermining that argument in those places. And we potentially expose Australian taxpayers to the ridiculous situation where, if tobacco companies challenged this legislation in the courts and are successful, they could end up having to pay significant sums of money to those tobacco companies. I would think everyone in this chamber would not wish to see occur.

I am not usually inclined to quote journalists but Barrie Cassidy made a very valid point with regard to the legal advice that the government relies on. Speaking on the 7PM Project in September he said:

I mean that is the really scary thing, that they felt they had a really strong case—speaking of the government's migration amendments—and clearly they didn't. The same office, by the way, is advising the government on the plain packaging of cigarettes and this is a big deal because the big cigarette companies around the world have got deep pockets and they are taking on the government and they want this to be an international test case. If the government loses that one we'll all suffer. You won't get your pension until you are 80.

Whether Cassidy is right or wrong will of course be determined in the courts. But there is a real threat, and it is an unnecessary threat. If the government wished to make tobacco products less attractive they could have increased the size of the warnings. They could have largely overtaken the packets with warnings. They could have
stripped trademarks and logo use on the packaging right back to the absolute bare minimum: simply the top of the packet, the bottom of the packet—a very small, 10 per cent, portion of the packet. Instead, they have taken the extra step that imperils the taxpayer because of the potential for challenge and, in doing so, creates the situation where the arguments Australia has historically made in favour of a strong and robust recognition of intellectual property are undermined. That is what concerns me about this legislation.

I am no fan of smoking and no particular fan of tobacco companies. My father died of smoking related cancers when I was just 12. I would have liked to have known him a little better than I did. However, I think in this place we need to always consider legislation with a rational mind and take a rational approach, not an emotional approach. I think the motivations behind this legislation are clearly sound. Reducing smoking is important. Reducing smoking rates is something we should strive to do. If there is a belief that we can manage to do that by taking up more of the packaging with health warnings then that is worthy of support. That is why the opposition is not opposing the primary legislation before us. But it seems to me to expose taxpayers to unnecessary risks, and that it will be on the government's head. They have decided to go down this path.

The opposition have taken the approach that we stand just as much against smoking as anybody else. We stand ready, just as much as anybody else, to campaign against smoking and to do our bit to try to discourage all Australians from taking up this habit. That is why we introduced graphic health warnings when in government in 2006. But, having taken that step and demonstrated our credibility in this space, we are not going to allow the government to wedge the opposition or to paint us as being against measures to try to reduce smoking rates. That is why we will let this legislation go through. But it is a pity that the government was not willing to have a sensible and rational discussion about the implications of this legislation.

Senator Brandis interjecting—

Senator BIRMINGHAM: Senator Brandis slightly scoffs, knowing that sensible and rational discussions are not what this government is known for.

Senator Brandis: You're just such an optimist, Senator Birmingham!

Senator BIRMINGHAM: I try to be, Senator Brandis. It is a pity that the government was not willing to engage in sensible discussions that could have seen an extension of the graphic warnings applied under the Howard government so that they overwhelmed the packaging, but would not have exposed Australia to the hypocrisy of undermining our longstanding position on strong intellectual property rights and would not have potentially exposed the Australian taxpayer to claims over the loss of brand as a result of this legislation.

Debate interrupted.
President Ludlam, before speaking to this bill let me just make the point that, I am informed, contrary to the customary practice there was not a discussion this week between the government and the opposition to identify those bills listed in the non-controversial bracket of debate that were to be treated as non-controversial. The listing on the red of the nine bills before us is something, I am informed, which was done unilaterally on the basis of the government's understanding of the opposition's position rather than pursuant to agreement. In particular the No. 10 bills on the red, the Work Health and Safety Bill 2011 and the Work Health and Safety (Transitional and Consequential Provisions) Bill 2011, I am told, are in fact the subject of amendments to be moved by Senator Abetz. I do not know how that was allowed to happen. This particular time of the week is reserved for non-controversial legislation, as we know, and the government should not presume to list legislation as non-controversial without the explicit agreement of the opposition. Perhaps the process went awry for unexplained reasons this week.

In any event, having made that initial observation, let me say a few words about the Excise Tariff Amendment (Condensate) Bill 2011 and the Excise Legislation Amendment (Condensate) Bill 2011. I begin by pointing out that it is not impossible that these two bills might be entirely academic because they have to do with petroleum. As we know the Australian Greens, yesterday, announced that their next plan to secure the greater prosperity of the Australian people was to ban fossil fuels. The government has resolutely assured the Australian people that they will not go along the path of the Australian Greens in seeking to ban fossil fuels.

It rather reminds me of the famous remark of the Prime Minister in 2010 when she said, six days before the election, 'There will be no carbon tax under the government I lead.' Now, as of the day before yesterday, we have a carbon tax. Yesterday the Prime Minister said, 'There will be no ban on fossil fuels under any government I lead.' So, I do not know how long it will be before the Australian Labor Party is ensnared by its lethal, treacherous, serpentine alliance partners into paying the 30 pieces of silver required to move on the Australian fossil fuel industry, drive up the cost of living of ordinary Australians even more than the carbon tax will drive it up and break another solemn commitment to the Australian people. Nevertheless on the hypothesis that that will not happen anytime soon, that the Australian Labor Party will not be ensnared by the Australian Greens with their fossil fuel prohibition proposal as they were ensnared by their carbon tax proposal, it may well be that this legislation will have an operative effect. So on that optimistic note, Senator Feeney, let me proceed to address it.

The Excise Tariff Amendment (Condensate) Bill 2011 amends the Excise Tariff Act to clarify and confirm the area encompassed by the 'rank and trend', as it is known, condensate production area located within the North West Shelf project area, one of the many great Australian industries and enterprises which, of course, would be rendered desuetude were the Greens ever to have their way. The Excise Legislation Amendment (Condensate) Bill 2011 amends the Petroleum Excise (Prices) Act 1987 to clarify that failure to provide petroleum producers with written notification setting out the terms of a volume weighted average of realised prices determination does not affect the making of that determination, the measure of firms or the current application of the crude oil excise regime as it applies to condensate production. I make it clear that the coalition will be supporting these bills.
However, in doing so the coalition does point out that this Labor government has engaged in an assault on the Australian energy and resources sector. It has comprehensively mismanaged the investment framework for oil and gas exploration and the resources sector in general. When it comes to identifying which areas of policy this government has so fundamentally mismanaged there is some very serious competition. Along with the well-publicised failures in border protection, the carbon tax backflip which has made its own assault on the resources industry, the bungling of the schools halls program, the pink batts program and the live cattle exports program, the Gillard government has inflicted some extraordinarily destructive policies on Australia. Those destructive policies extend to the resources sector, a sector which has contributed so significantly to our economy and should be given the opportunity to continue to do so.

The oil and gas industry over time has made a vast contribution to Australia’s economy. But, just as importantly, it has provided the energy security that other countries would kill for. We are one of the few countries in the OECD that is an energy exporter in its own right. Part of that export is condensate from the North West Shelf, originally exempted as part of the incentives that were provided to this very important industry to get the project off the ground. And while we see those incentives ripped away by this government we also see a very significant change in attitude within the oil and gas sector, and potentially the investors in that industry in particular.

As a result of the deliberate actions of this government, Australia has suffered an erosion of our previously gilded sovereign risk profile when it comes to investment in the energy and resources sector. Who would have thought that Australia, one of the world’s mining and energy superpowers, is, as a result of the incompetence of this government, now regarded in some of the great commercial centres of the world as a sovereign risk. What an extraordinary turn of events. There can be no excuses for this government-led assault based on changing international circumstances or economic difficulties given that one of the very first acts of the Labor government after it was elected in November 2007 was to slug a massive tax increase on the oil and gas sector, in particular the North West Shelf, by removing the exemption that had applied to condensate. It is fair to say that without that exemption and without some very significant courage by the players at the time the exemption was introduced—in including of course the late, great, sainted Sir Charles Court—this condensate would be still lying thousands of metres beneath the seabed.

Coalition governments go out of their way to provide incentives to get these resources developed. The moment we have a Labor government in power it does everything it can to rip away the money that these companies have put at risk and have earned as a just reward. We on this side of the chamber, and of course the wider community, have also been aware of the Labor Party’s complete inability to manage money. We have seen the evidence from successive Labor governments that apply the big-spending, big-taxing philosophy—and this legislation is just more proof of that.

But even though we are conditioned to this big-taxing, big-spending government, we were shocked when the former Rudd government so brazenly slapped a $2.5 billion excise on condensate. This signalled a very clear intention that this was to be a government that would view the resource sector not as a great Australian industry underwriting our nation’s prosperity and
providing jobs for tens of thousands of Australians but as nothing more than a cash cow. I am sorry to say that the government has realised the worst of our fears. While the oil and gas industry, in particular the offshore sector, has spent much of history well out of the public spotlight, it is nonetheless one of the most substantial sectors of our economy.

The former coalition government took great care to encourage investment and to facilitate an environment that would be conducive to exploration and production. And what happens? We find ourselves with a government now—having wasted tens of billions of dollars—desperate for money. The government's $2.5 billion tax slug has sent a shiver down the spines of major investors in the oil and gas sector because it has shown that this is a government that is prepared to be cavalier with investment, with issues of sovereign risk and with Australia's very dearly held reputation as a safe investment destination.

The bills before the chamber today are a consequence of that multibillion-dollar cash grab and are an attempt to clean up some of the confusion created from that tax grab in the zone covered by that taxation. The coalition wants to end that confusion and that is why we are supporting these amendments, while condemning the initial cash grab.

As I mentioned, we do not oppose these bills because we take the attitude that investors in the oil and gas sector deserve certainty in this very uncertain climate, even in a situation where the government seems to go out of its way to create uncertainty. As I said, it is our responsibility to bring what stability we can, as an opposition, to an uncertain playing field. No matter how the government might try to spin it, the subsequent projects in this field are in spite of what the government is doing, in spite of the hurdles it is putting in place, and certainly not because the government has put in place anything like the appropriate policy settings.

This huge tax burden was slapped on the industry with no warning and no consultation. Even the Minister for Resources and Energy found out after the event. What sort of government would do that to such an important sector—or, indeed, at all? It is a government that shows no restraint when it comes to imposing taxes and shattering the investment security that companies and investors from overseas look for.

It is little comfort that we recognise that this action is the standard operating procedure for this Labor government, particularly when it comes to decisions that affect the energy and resources sector. As we know from the resources superprofits tax debacle, which not only affected onshore exploration and mining but also offshore exploration and development, and from the ongoing mess that surrounds the new version of the minerals resource rent tax and the carbon tax, the Rudd government and now the Gillard government simply have not understood the dynamics in the resources sector.

Modelling done on the impact of the carbon price on industry estimates that a carbon price of just $25 per tonne would close 16 coal mines and cost 23,000 jobs in that industry alone. Access Economics estimated that a carbon price of $26 per tonne will, by 2020, have cost 126,000 Australian jobs. In imposing tax after tax after tax—like this condensate tax, the carbon tax, the minerals resource rent tax, any new tax they can think up at any time—all this government is doing is chasing investment away. I cannot believe that we have a government that, despite all of this and the economic insecurity in international
markets, is still charging blindly ahead, putting in place more taxes—most infamously, earlier this week, in defiance of the Australian people, the carbon tax.

If the government proceeds with the flawed MRRT, not only is it going to put the budget's stability at risk but also it is rolling the dice on questions of energy security and future mining investment. Sudden changes such as the condensate tax, which we are debating now, continue to reinforce that sense of instability and that negative impact on investment security. With the government constantly changing the rules of the game for investments, it jeopardises Australia's sovereign risk profile and makes Australia a less attractive place to invest, particularly in the energy generation sector. The coalition believes that decisions about taxation paid by the mining industry should be done under the existing regime of state based royalties because the resources belong to the people of the state. They do not belong to the Commonwealth, and the decision to tax them should be a decision made by the state governments. It has worked well in the past and will continue to work well once a coalition government is elected and the minerals resource rent tax is rescinded.

The series of taxes including this condensate tax undermines Australia's energy security and puts international investment in the sector at risk. Coming at a time when the economy is also being slugged with a carbon tax, these policies show how poorly this government understands the contribution of the energy and resources sector and how ill equipped the government is to handle the economy. The only messages that come out are: 'Here's a new condensate tax; here's a new carbon tax; here's a new LPG tax; here's a new tax on mining.' The energy and resources sector is constantly being used as a cash cow for a big-taxing, big-spending government that cannot control its own finances. The energy and resources sector, including the oil and gas and the mining industries, is the great driving force of the Australian economy. At the moment, it is sustaining the economy at a time of global difficulty and when the manufacturing sector faces difficulties in competing with the very high dollar and the imports that are coming in. Yet we have a government that has no qualms about taxing this industry whenever it can.

As I said before, the coalition will not object to these bills, given that they are clarifying bills, but the Gillard government should stand condemned for its continued and comprehensive mismanagement of policies that apply to this sector, just as it is impacting on all sections of the economy.

Senator Macdonald, I know that you came into the chamber after I had commenced speaking, but I was making the point earlier on in my contribution—and I wonder if the chamber would be interested in hearing your observations about this when I resume my seat—that these bills, which deal with the taxation regime for condensate, may well be hypothetical, because if the government capitulate to the Australian Greens, just as they capitulated to them on the carbon tax, then we will not have any need for condensate legislation because we will not be allowed to use fossil fuels in this country at all. You will remember, Senator Macdonald—through you, Mr Acting Deputy President—that no sooner had the infamy of the carbon tax passed the chamber than Senator Bob Brown announced that the Greens' new plan was to prohibit the use of fossil fuels entirely. I know, Senator Macdonald, you have taken a close interest in this matter but I want to wind up my contribution to this second reading debate by making the observation that if the Greens continue to dictate the policies of this Labor government, to hold it hostage to their
harebrained plans to deindustrialise Australia, then not only will we have no need for legislation dealing with condensate but we will not have an oil and gas sector at all. With those observations and, in closing, expressing the hope that the government could not be quite so silly, I indicate the coalition's support for these bills.

Senator IAN MACDONALD (Queensland) (13:04): Senator Brandis is correct: I have come into the chamber during the debate on the Excise Tariff Amendment (Condensate) Bill 2011 and a related bill to hear what the Greens political party will say about them. I assume Senator Wright is here to speak on these bills, because they are important bills and, as Senator Brandis rightly points out, if the Greens have their way there will be no fossil fuels used whatsoever and these bills will be completely irrelevant.

This condensate bill is simply one part of the whole mix of fuel and energy and how we tax it and how we encourage it in Australia. I am very conscious that the Labor Party and the Prime Minister, Ms Gillard, went to the last election promising there would be no carbon tax in this term of parliament—a very, very solemn promise. She came to government after the election after doing an unholy deal with the Greens political party that caused her and every member of her party to break their solemn promise to the Australian people that there would be no carbon tax under a government Ms Gillard led. If it was that easy for the Greens political party to get the Labor Party and Ms Gillard to break a solemn promise to the Australian people that there would be no carbon tax under a government Ms Gillard led. If it was that easy for the Greens political party to get the Labor Party and Ms Gillard to change their minds on something as fundamental as a promise not to introduce a carbon tax—a tax which will have very widespread ramifications for the Australian people, our economy and our way of doing business—one wonders how easy it will be for the Greens to get Ms Gillard to go along with their harebrained, crazy scheme to ban all fossil fuels from Australia. You could not imagine that even the Labor Party would be involved with that, but, then, who could have imagined that a once great political party would give a serious commitment before the last election to introduce no carbon tax and then break it with impunity? I am very worried about that.

The Greens political party could get up tomorrow and say: 'Look, Ms Gillard, we know you like the Lodge. We know you like the planes. We know you like flitting around the world stage and telling everyone who is prepared to listen—I understand there are not too many who do—how Australia is leading the world with greenhouse gas reductions. We know you like that, Ms Gillard, but we, the Greens, are thinking of withdrawing our support for you unless you start the process of reducing Australia's reliance on fossil fuels.' Ms Gillard has shown that she will do anything to stay in the Lodge, so it may well be that the scenario that Senator Brandis suggested is not just fantasy but is in fact what will happen.

As I say, I do not want to delay this debate too much, but I am very keen to hear what the Greens political party have to say on this issue. Are they in favour of the bill? I would be interested in hearing that, of course, but I would be more interested in having the Greens political party assure us that it is worth our while debating this bill at length or that it will be irrelevant into the future. I am very worried that this call by the Greens political party to reduce or even ban fossil fuels from Australia will be heeded by the Labor government under Ms Gillard. As I say, 13 months ago you would not have believed that the Australian Labor Party could even contemplate that; but, then, 13 months ago you would not have believed that the Australian Labor Party would make a commitment not to introduce a carbon tax and then just break that solemn promise to
the Australian people without any consideration.

I know the Lodge is nice. I know it is lovely flying around the world in your own plane—or I imagine it would be; it has never quite happened to me and is never likely to happen to me. I know Ms Gillard likes being Prime Minister. I know she likes telling all Australians, particularly Indigenous Australians: 'You don't know what's good for you. You don't understand what needs to happen for your wellbeing, so we'll do it for you. Big Brother will look after you.' It is that typical socialist outlook on life. Individual Australians are not competent to look after themselves. They are not competent to use their money to make donations—

The ACTING DEPUTY PRESIDENT (Senator Ludlam): Senator Macdonald, I wonder if I might draw your remarks to the bill before the chair.

Senator IAN MACDONALD: Yes, thank you, Mr Acting Deputy President. You will notice, if you happen to read the Hansard, that I have been referring to the bill. The bill is about a tax on condensate and is very relevant to the issue of fuel and energy across the board. I am just saying, if you hear me, Mr Acting Deputy President, that this bill is very relevant to whether Australia is going to be a user of fossil fuels in the future. I am just saying it would be unthinkable that anyone would think that Australia might ever get to that position. But, when you see the influence the Greens political party has on the Australian Labor Party, led by Ms Gillard, anything could happen. That is what I am very concerned about.

I do not want to delay the Greens political party. I am sure they will be making a contribution to this bill next so that we can get an assurance from them that there is some worth in proceeding with this debate.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:12): I thank senators for their contributions to the debate on these bills and I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Ludlam): No amendments to the bills have been circulated. Before I call the minister to move the third reading, does any senator wish to have a committee stage on the bill to ask further questions or clarify further issues? If not, I call the minister.

Senator FEENEY: I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

Maritime Legislation Amendment Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (13:13): I rise to speak on the Maritime Legislation Amendment Bill 2011. These bills have been around for a while. We have only got to them by reason of other legislation being dealt with—the carbon tax bills and our single-handed desire to cool the planet from a room in Canberra, send us back to 1910 to ride horses around and change our car parks back into stables. Maybe we could rename this place 'the Manger' as opposed to Parliament House.

This bill seeks to amend the Navigation Act 1912 and the Protection of the Sea
The (Prevention of Pollution from Ships) Act 1983. It will introduce an offence for negligent navigation in a manner that causes pollution or damage to the marine environment. It will create an offence for failure to report in a mandatory reporting area. It will increase the penalties for reckless or negligent discharge of oil or oil residue by ships. This is a clear example of how, at times, though the public never see it, there are bills that we agree on. They are called noncontroversial because we agree on them and therefore they do not make the paper. The lasting impact of damage to our unique marine environment should not be underestimated. While significant environmental incidents are relatively uncommon, the number of reported oil spills in Australian waters has averaged over 250 per year for the last 10 years. Oil spills at sea have the potential to cause lasting damage to our marine ecosystem as well as having an ongoing impact on the maritime, fishing and tourism industries. We have seen this globally with examples such as the Exxon Valdez. I heard the other night that more oil is spilt in a year than was spilt by the Exxon Valdez; it is just that that oil spill was over such a wide area of United States coastline.

Oil spills at sea have the potential to cause lasting damage. In Australia's recent history, we have had two very pertinent maritime incidents that stand out. One was the grounding of the Shen Neng 1, which ploughed into a reef off Gladstone, and the other was the Pacific Adventurer oil spill.

Senator Feeney interjecting—

Senator JOYCE: You are right. I will take the interjection. The Labor Party said it was an attack on fossil fuels. This is yet another unity ticket where we all hope that the Labor Party will be able to hold out against the Greens, who want to get rid of fossil fuels because they are basically anti civilisation and want to take us back to being content hunters and gatherers on the forest floor, eating beetles and nuts. In dealing with the interjection, if we were to claim that the Labor Party would roll over to the Greens, we would probably have someone like Mr Swan come out and say that that was hysterical. Mind you, that is exactly what he said to us when we said that they would roll over on the carbon tax.

The changes proposed in this bill implement some of the recommendations from a report conducted by the Australian Maritime Safety Authority in the wake of the Shen Neng 1 incident. The Shen Neng 1 ran aground 38 nautical miles east of Great Keppel Island, causing damage to a three-kilometre stretch of the Great Barrier Reef. Mind you, it will grow back. This caused the fuel tanks to rupture and four tonnes of fuel oil to leak into the surrounding waters. Thankfully, the vessel was successfully salvaged by Svitzer, preventing the spillage of coal, heavy fuel and oil which was on board.

I remember at the time the interest in the spill and the circus of aircraft flying over it. It was visited more than the Holy Spirit that day. There was Peter Garrett, Anna Bligh and the Prime Minister all earnestly looking out the window at it. What surprised me about that is that not far from there is a real ecological disaster that no-one wants to talk about—that is, the Mount Morgan mine. It is completely full of water and has heavy metals throughout. It has killed the river downstream. No-one wants to talk about it. It is in the too-hard basket. There are 11,000 megalitres of water and they have the capacity to treat six megalitres a year. It is leaking from the tailings at the moment. You only have to go to the Dee River just below it to see. It is killing crops. Cattle are not allowed to use it. People are not allowed to
swim in it. No-one wants to talk about it. It is owned by the state government, of course, and that is why the state government does not want to talk about it.

The Pacific Adventurer oil spill in March 2009 saw 270 tonnes of heavy oil leak as far as seven nautical miles off the coast of Cape Moreton. The ship lost 31 containers of ammonium nitrate overboard which caused the leak. The clean-up operation lasted two months and involved 2½ thousand people. Three-thousand tonnes of contaminated sand was removed from Moreton Island.

This bill implements a number of measures. Firstly, clause 267ZZI will require the master of any ship in Australian waters not to operate the ship in a manner that causes pollution or damage to the marine environment. Additionally, the bill will require that the master of any ship in Australian waters must ensure the ship is operated in a manner that does not cause pollution or damage to the marine environment—clause 267ZZJ. Similarly, in relation to Australian flag vessels operating on the high seas, it is the responsibility of the master not to operate the ship in a manner that causes pollution or damage to the marine environment—clause 267ZZL—and to ensure that the ship is operated in a manner that does not cause pollution or damage to the marine environment, which is under clause 267ZZM.

This bill also creates criminal and civil penalties for contraventions of these provisions and the procedural requirement through which compliance with the bill may be enforced. Criminal and civil penalties are provided for and a higher civil penalty may apply in the case of serious damage. The high penalties are intended to deter noncompliance and to take into account the level of cost saving that shipping operators may achieve through noncompliance and the perceived likelihood that a breach will be identified and a shipping operator prosecuted.

The bill also creates an offence where the master of a ship fails to report in a mandatory reporting area—clause 269E—such as the Great Barrier Reef. A strict liability offence is created, so no intention is necessary for an offence to be committed. This makes it clear that the prosecution does not have to establish that the master knew or was reckless as to the fact that the ship was in a mandatory reporting area. This is appropriate as the defendant, the ship's master, is best placed to provide evidence as to whether the provision was contravened. Finally, the bill increases penalties under the legislation for reckless or negligent discharge of oil or oil residues by ships. Australia, as a signatory to the International Convention for the Prevention of Pollution from Ships, MARPOL, is required to ensure that the penalties specified in law are adequate to discourage violations. Presently the act imposes a maximum penalty of $220,000 for an individual and $1.1 million for a corporation for reckless or negligent discharge of oil or residue into the sea. However, this is significantly less than that imposed by state governments, with spills in New South Wales and Queensland having a maximum penalty of up to $10 million for a corporation.

The bill will increase the fine for a corporation from $1.1 million to $11 million. The amendment will mean that the severity of a penalty will be based on the seriousness of the offence and not the location of the offence. In increasing the penalty, the bill puts the burden on the polluter to pay the clean-up bill. In the wake of the Pacific Adventurer spill—and I think everyone remembers that, when everybody was out cleaning the beaches, scraping up the oil—the Protection of the Sea Levy was increased
by 3c per registered tonne in order to recover
the clean-up costs of the spill. This meant
that the industry paid for the mistake of a
particular shipping line, as their legal
liability was inadequate to cover the cost of
the clean-up. It should be noted that the
owner of the *Pacific Adventurer*, Swire
Shipping, agreed to pay $25 million in
compensation in excess of their legal
obligations arising from the oil spill. This
was still below the total clean-up cost, which
was estimated at $31 million.

In conclusion, the coalition is pleased to
support the bill and will continue to support
sensible measures designed to protect our
unique marine environment. The ongoing
situation in New Zealand shows us that,
while major incidents in Australia are rare,
they can happen. We need to take steps to
deter dangerous and reckless actions at sea
and to deal appropriately with incidents
should they arise.

Once more, this is an example of an
environmental piece of legislation which is
bipartisan. This is an example of a position
where both parties have decided to agree to
get passage of the legislation to bring about a
better environmental outcome. This legis-
lation actually has the capacity to provide a
better environmental outcome, as opposed to
the carbon tax, which is not going to do
anything for the environment but will just
make people poorer. This piece of legislation
quite evidently will try to alleviate and
mitigate the effects of oil spillages. A tax
delivered to every power point in the house
is going to do absolutely nothing at all to
cool the planet. Now we hear that the Greens
want to go to totally renewables in the next
10 years. That will send us back to the Dark
Ages, literally.

It is incredible that, within maybe 48
hours of the passage of the carbon tax
legislation, the people that the Labor Party
negotiated with, who are now at the tiller of
this nation, have made a statement which
quite obviously will accelerate driving the
ship of state into the rocks. One has to ask
the question: what on earth happened in the
discussions? Mr Combet assured us that this
was not going to cost one manufacturing job.
What happened in those discussions? Did
they discuss that? Did they say: 'The people
we're in business with want to completely
and utterly shut down any form of major
industry in Australia'? How did we get to a
position where, when we were told that it
was all under control, that it was competent,
that—

**Senator Feeney:** Mr Acting Deputy
President, I rise on a point of order. I ask that
you draw the speaker's attention to the bill. I
appreciate the fact that he is using as much
maritime and navigational terminology as he
can but, notwithstanding that, he is not
referring to the bill. This is a time for non-
controversial legislation. If he is going to
filibuster, I ask that he at least be artful about
it and refer to the bill.

**Senator Ian Macdonald:** On the point of
order, Mr Acting Deputy President: Senator
Feeney raises a point of order that is rarely
raised in relation to speeches in second
reading debates. Senator Joyce is clearly
very much on the topic and, as well as that,
is making some very good points, which
perhaps the minister at the table does not like
to hear.

**Senator Feeney:** It sounds just like
you're filibustering!

**Senator Ian Macdonald:** Well, you
raised the point of order, Minister. If you are
accusing—

**The ACTING DEPUTY PRESIDENT**
(Senator Ludlam): Senator Macdonald, do
not debate the issue. I think you have made
yourself quite clear on the point of order.
Senator Ian Macdonald: I was just responding to an unruly interjection from the minister. I hope I have made my point.

The ACTING DEPUTY PRESIDENT: You have.

Senator Ian Macdonald: I think the speaker is being very relevant to the bill.

The ACTING DEPUTY PRESIDENT: There is no point of order, but I will direct Senator Joyce's comments to the question that is before the chair.

Senator Joyce: Thank you very much, Mr Acting Deputy President—a Daniel come to judgment.

The Maritime Legislation Amendment Bill 2011 is a good piece of legislation. As it is a good piece of legislation, we should juxtapose it quite clearly with an appalling piece of legislation, which was the carbon tax. This legislation will actually deal with the problem. That is why it is a superior piece of legislation to pieces of legislation such as the Clean Energy Bill, which started off as something about global warming then became about carbon pollution and then became about clean energy. The government did not have to use weasel words in this bill like they had to in that bill, where it had to keep changing and changing.

The reason that this piece of legislation has an inherent strength to it—and it is essential that we talk to this—is that there has been a competent hand on the tiller, with the political association between the National Party, the Liberal Party and the Labor Party, to bring about a piece of legislation that is not extreme and that everybody knows the effect of. That juxtaposes quite evidently with the Clean Energy Bill, where we have no idea what the effect of it will be. There was absolutely no competency whatsoever shown by the minister to answer serious questions about it. The minister could give flowing recitations on glamorous points but on the technicalities and getting down to the detail was completely and utterly at sea.

After this bill is passed, we will have a period of certainty. The Labor Party, in debate on the other bill, talked about certainty, yet within 48 hours the Australian Greens were back on the front page of the paper saying that they had to take the next step and the next step is the complete removal of fossil fuels from Australia. Where will this end? With the removal of fossil fuels. Every motor car runs on fossil fuels, so we take them off the road. So you say, 'We'll have electric cars.' Electricity is generated predominantly from fossil fuels, so we will take electric cars off the road, too. We'll go back to ships: every one of them will be off the sea except those coming from overseas. Those from overseas will still be allowed but the Australian ships will be gone. The trains run on diesel so we will take them off the railway lines. There will be nothing left.

It would not matter if this had come from the ramblings of a dissident group, but this came from the Greens partner in the Greens-Labor Party-Independent alliance. I deliberately put them in that order because that is how the show is being run. The leading light of the Greens-Labor Party-Independent alliance—the glee club—who negotiated and brought into our nation this Clean Energy Bill, is now wanting to completely remove from Australia motor cars, trains, ships, recreational pursuits, anything to do with fossil fuels, anything with a synthetic base or an oil base, or plastics, carpets or nylon. We will obviously have to get rid of coal and steel. How would we build this place? What would we build it out of? We cannot use steel. We will build it out of sticks. There will be no more glass because you need energy to make glass.
This is the new world. This is where they live. Quite evidently, the absurdity is that this is where our nation is going. At times, if you did not laugh you would cry. While all this is going on, what is happening overseas? The world is basically falling out of its financial bed. So what are we doing to our nation? We are putting it in the most precarious position, completely redesigning it on a colourless, odourless gas. How absurd is that?

Senator Di Natale: It's weightless, isn't it?

Senator Joyce: What a peculiar thing for someone to say. You have just brought in a bill. Do you not know about it? Of course carbon dioxide has weight. What an incredibly foolish interjection from somebody whose party has been prominent in bringing into our nation the most dangerous act in my time here. He asked: 'Isn't it weightless?' What a peculiar question. This is why what they are doing to our nation is so dangerous. As I said before, Julia Gillard is the Romulus Augustus of the Australian Labor Party. It is all over. It just goes to show that, when they want to, we can do things which are effective.

The other day they passed the most dangerous piece of legislation economically for our nation at this juncture of our history. What we see now coming from their alliance partner the Greens is a question as to whether carbon dioxide is weightless—a foolish thing to ask. And today they are thrilled to be on the front page of the paper saying they are ready for the next step. They have hardly taken a breath and they are ready for the next step. The next step, Australia, is to remove fossil fuels from our nation. When that happens, you will not have to worry about the Maritime Legislation Amendment Bill as far as Australian ships go. We will not have any Australian ships because we will not be allowed to have steel, we will not be allowed to have fuel and we will not have an economy.

Senator IAN MACDONALD (Queensland) (13:34): In commencing my contribution to the Maritime Legislation Amendment Bill, I indicate that I reject and am offended by the suggestion by the senator at the table, the Parliamentary Secretary for Defence, that this is a filibuster. I remind the minister that I have been here a long time through previous Labor and Liberal governments. This last four years has been the most restrictive period of speeches and contributions to debate that I have seen in the long time I have been in this parliament. All this week we have had bills guillotined, with the Greens joining the Labor Party to cut off speeches. Mr Acting Deputy President, you are aware that government documents, all those literally thousands of documents which are promulgated by government and government agencies each day and by necessity brought into this chamber so that they can be scrutinised, have been removed from—

Senator Feeney: Mr Acting Deputy President, I rise on a point of order. I ask that you draw the speaker to the subject matter before the Senate.

The ACTING DEPUTY PRESIDENT (Senator Fawcett): There is no point of order.

Senator IAN MACDONALD: I am simply making the point that, when you try to debate a bill, all you get from the government is accusations and attempts to interrupt. We have not had a chance to even look at Government documents—of which there are thousands—during the last two or three weeks, showing that this government has no interest in parliamentary democracy. That is why I intend to take my full time in addressing aspects of this bill. Out of
courtesy to the minister and his advisers, I indicate that I do want to go into committee and, for the advisers’ benefit, I indicate that I do want to explore the provisions of subsection 267ZZI (1) to (5) and perhaps other aspects of the bill. As Senator Joyce has said, the coalition will be supporting this because it does have some attraction as to the benefit to the Great Barrier Reef and it follows on from a lot of other federal government legislation to protect the Great Barrier Reef. When I start looking at the legislation in a bit more detail, I find there are some aspects of it which cause me great concern. So I want to find out whether the stakeholders were consulted and I want to make sure that my understanding of what is a quite complicated piece of legislation is correct, as I might have amendments to move in relation to those aspects once I get the answers from the minister.

This bill, as was said in the second reading speech and by Senator Joyce, came to light as a result of two incidents involving vessels in the Great Barrier Reef area. One was the Sheng Neng 1 incident, where almost a thousand tonnes of heavy fuel oil and around 65,000 tonnes of coal caused significant environmental damage and required a very extensive shoreline clean-up. The other one involved the Pacific Adventurer, which lost 31 containers of ammonium nitrate overboard in Moreton Bay, not quite the Great Barrier Reef area but, of course, this legislation is Australia wide and not confined to the Great Barrier Reef and of real concern is the protection of all of our fairly pristine waters around Australia. The waters around Australia are not terribly productive waters, from a marine mammal and fish point of view, but they are, by world standards, very pristine and we want to keep them that way.

So this legislation arose out of those two particular incidents and out of a report by the Australian Maritime Safety Authority which made four recommendations. One was to extend the coverage of the reef vessel traffic service to the southern boundary of the Great Barrier Reef. Another recommendation was to strengthen regulatory arrangements, including modernising the penalties and offence provisions. A further recommendation was to enhance navigational aids in the Great Barrier Reef area. The fourth was to develop a whole-of-government management plan. Senators will probably tire from hearing me say this but I will continue to say it because I am very proud of this fact: I live in that part of Australia which is adjacent to the Great Barrier Reef and over my lifetime I have been out there fishing and I have helped small businesses who have made a real contribution to tourist numbers in Australia by their work on the Great Barrier Reef, so I know it is a fabulous living thing that must be nurtured.

Senator Feeney interjecting—

Senator IAN MACDONALD: I know the minister is not interested in the environmental protection of the Great Barrier Reef, but I am sure the Greens political party will be speaking on this bill, which is very important. As I was about to say, the Great Barrier Reef is worth saving, this bill is an element of doing that and it follows a lot of very significant environmental legislation introduced by Liberal governments in the past. Who can forget that it was the Fraser Liberal government that first introduced management plans for Fraser Island, at the southern end of the Great Barrier Reef? Who can forget that it was a Liberal-National party government that introduced the green zones of the Great Barrier Reef, perhaps the most
significant step forward in looking at protection of the Great Barrier Reef.

If you read former Senator Richardson's book, *Whatever It Takes*, you will understand what this is about. Senator Richardson said, quite rightly, over the Labor years it was about whatever it took to stay in power and, at the time former Senator Richardson was around, the thing that was required to stay in power was environmental concern. The Labor Party have never had any interest in the environment but 'Richo', former Senator Richardson, told them that if they wanted to win elections they had to look like they were doing something for the environment. So they talked a lot about it and they brought in some silly things. But the significant environmental protections that have ever happened in Australia have occurred at the times of Liberal-National party governments and that is particularly the case with the Great Barrier Reef. So this legislation is simply another step forward in protecting the Great Barrier Reef.

Before I get on to the detailed provisions of the bill, I want to mention that it is not just as to the sea that we protect the Great Barrier Reef; we do protect the Great Barrier Reef by many other ways. One of the ways that the Great Barrier Reef is being protected is by an activity called Reef Rescue. It was a program that the Howard government had been working on and we had been providing money to farmers and coastal landholders to encourage them to act so that nothing they did impacted on the Great Barrier Reef. This legislation is about spills of oil and things being carried on ships but many would say there is a greater danger to the reef from what happens on the land. Prior to the 2007 election, the Liberal and National parties made a commitment to the Australian people that they would introduce a program called Reef Rescue. From memory, I think we promised $250 million to go to natural resource management groups along the Great Barrier Reef coast who would then go out and work with farmers and landowners to minimise damaging run-off to the reef. I have to say, to the Labor Party's credit, they also adopted our policy and actually put in a bit more money. From memory, I think they offered about $400 million. But it was a policy initiated by the Howard government and taken up by the Labor Party, and I am pleased about that. I give credit where credit is due.

Reef Rescue has given land managers the incentive and skills needed to act now and more than 1,700 landowners have been engaged in 2,755 different on-the-ground projects to help with Reef Rescue, which is being organised by a group of coastal natural resource management groups called Reef Alliance. As the alliance says in its report on this program:

In some cases change was achieved with cash—through co-investment with land managers—giving people the incentive to update their machinery, infrastructure or management techniques. In many cases projects were already on the drawing board, but the availability of a grant—some of this $250 million or $400 million—made them a reality much sooner.

Risk assessments, farm plans and training enabled people to expand their skills and knowledge. Developing technical skills, gaining expert advice, understanding scientific knowledge and chatting with peers at field days have all been vital to achieving on ground change. Many landholders now have a clearer picture of how to run their business in a sustainable and—I would emphasise—profitable way.

Whether they were achieved through grants or training, the resulting changes in land management are having a tangible and immediate impact—
The ACTING DEPUTY PRESIDENT: Order! Senator Macdonald, I draw your attention to the fact that, whilst this may have an association with the legislation before us, it is not directly related. I draw you back to the subject of the bill.

Senator IAN MACDONALD: Thank you, Mr Acting Deputy President. As I was saying, the work being done has a tangible and immediate impact in reducing run-off at the farm level into the Barrier Reef. Many would indicate that that is perhaps a greater problem for the Great Barrier Reef than accidents at sea. I support anything that assists the Barrier Reef, whether it be Reef Rescue or this legislation. But, as is typical with the Labor Party, you have to be very careful about legislation that they bring forward.

I note that a strict liability offence is created in clause 269E so that no intention is necessary for the offence to be committed. This makes it clear that in prosecuting an offence under the proposed act the prosecution does not have to establish that the master knew of or was reckless about the fact that the ship was in a mandatory reporting area. Perhaps this is appropriate, as a ship's master is very often best placed to provide evidence as to whether this section was contravened. Nevertheless, many of us on this side of the chamber as a matter of principle have concerns about the creation of these strict liability offences. In some cases it is difficult for a master or somebody in a position of responsibility to account for all of the issues that he is responsible for at any given time.

Mr Acting Deputy President, you might recall, as I am sure other senators will recall, debates in this parliament about proposals to introduce strict liability offences for aircraft captains in circumstances where they could not possibly be expected to be able to take responsibility for what happens. There was a big issue at the time about strict liability offences for airline pilots. Again, legislation introduced by this government, no matter what its intentions, is always pretty light on detail and management. But there was quite a substantial debate on that. I think the legislation was blocked in the Senate, if my memory serves me correctly. Eventually those proposals were defeated.

I just mention that to say that there is always a bit of a concern about strict liability offences. But this is a different circumstance. The strict liability in this bill is only in relation to an offence where a vessel is in a mandatory reporting area, and perhaps a vessel that is in a mandatory reporting area like the Great Barrier Reef is usually there for quite some time. It would seem incomprehensible that a master could have any excuse for not knowing that he was there or not undertaking the mandatory reporting processes. As a general principle, there are concerns about strict liability offences, but in this instance perhaps it is relevant.

I also want to draw the Senate's attention to the provisions of the bill that place quite substantial requirements in many instances. I am just pausing to get my notes in relation to the particular offences that I wanted to mention to the Senate and which I want to raise in the Committee of the Whole. I note that there is a provision about Australian ships causing pollution or damage in the marine environment outside Australia. That is in proposed subdivision C of the bill. Section 267ZZK provides that the proposed subdivision C applies to all ships, including those generally excluded by section 2, from the operation of the Navigation Act. The following subclause provides that a master of an Australian ship must not operate the ship in a negligent and reckless manner that causes pollution or damage to the marine environment in seas beyond Australia's
When I was the minister for fisheries in the Howard government, our government put a lot of work into trying to regulate provisions that would protect the rare Patagonian toothfish. With a lot of effort and the engagement of new vessels to enforce Australia’s law, we were able to clear out pirates who were pillaging the rare Patagonian toothfish stocks within Australia’s waters and our EEZ. But on the high seas it was not that easy. I know of a number of instances where Australia, France, the United Kingdom, the United States and Canada looked very seriously at what the world could do to regulate shipping on the high seas. It is easy to regulate it within the exclusive economic zone of any country, but it is much more difficult of course on the high seas. There is a United Nations convention on the law of the sea that in some way mentions that, but the difficulty in enforcing anything on the high seas is fairly obvious. So I am interested in how Australia can legislate for Australian ships on the high seas causing pollution. I am intrigued to find out in the committee stage how that will apply.

There is also another matter that I want to explore further in the committee stage, and that is the involvement for the very first time first time of fishing vessels in these sorts of laws. These laws have in the past applied to the big tankers carrying lots of oil and various items that could in fact have caused major damage to the Great Barrier Reef and other parts of Australian waters. But, for the very first time, this legislation seems to involve fishing vessels, and that is what I want to explore in committee. (Time expired)

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (13:55): I thank senators for their contributions and I congratulate you, Mr Acting Deputy President Fawcett, for your attempts to get coalition senators to at least acknowledge the standing orders and to try to actually be relevant to the bill. But of course what we have heard today—and Senator Brandis summed this up very clearly—is that the opposition have no intention whatsoever of allowing any further legislation to pass. Despite the fact that they intend to vote for this legislation—

Senator Ian Macdonald: Mr Acting Deputy President, I rise on a point of order on relevance. Senator Brandis has not even taken part in this debate, and the minister, having just come into the chamber, clearly has no idea, as usual, what he is talking about.

The ACTING DEPUTY PRESIDENT (Senator Fawcett): There is no point of order.

Senator CARR: The coalition have made it perfectly clear that they have absolutely no intention of taking these matters seriously. Of course, what this is is the dummy spit that you have from time to time from people who have no real interest in actually undertaking their proper legislative functions in this chamber. After 29 hours of debate around the climate change legislation and the steel bills—where we saw 19 speakers put on the list, just to make sure that we burnt up as much time as possible—we have speaker after speaker engaging in tedious repetition.

Senator Joyce: Mr Acting Deputy President, I rise on a point of order on relevance. Time is pressing, and we want to progress this and actually get somewhere. I do not even know whether the minister knows which bill he is talking about. If you can expedite this and get us to a position where we actually conclude, that would be really appreciated.
MINISTERIAL ARRANGEMENTS

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:00): I inform the Senate that Senator Ludwig, the Manager of Government Business in the Senate and Minister for Agriculture, Fisheries and Forestry, will be absent from question time today. I think we have notified the leaders, but the representative duties will be spread: Senator Arbib will answer questions on behalf of the Minister for Health and Ageing, the Minister for Indigenous Health and the Minister for Mental Health and Ageing; Senator Sherry will answer questions relating to the Minister for Agriculture, Fisheries and Forestry; and Senator Wong will answer questions relating to the Attorney-General, the Minister for Home Affairs, the Minister for Justice and the Minister Assisting the Attorney-General on Queensland Floods Recovery.

QUESTIONS WITHOUT NOTICE

Gillard Government

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:00): I refer to this week’s lame efforts by the government to distance itself from its—

The PRESIDENT: Senator Abetz, you did not indicate whom the question is to. That was the confusion. We will start the clock again. Senator Abetz.

Senator ABETZ: Mr President, on a point of order: when do you actually have to notify to whom the question is to—

The PRESIDENT: Senator Abetz, you did not indicate whom the question is to. That was the confusion. We will start the clock again. Senator Abetz.

Senator ABETZ: Mr President, on a point of order: when do you actually have to notify to whom the question is to—

The PRESIDENT: Senator Abetz, it is normal to notify at the beginning. I thank you for that on a Thursday afternoon.

Senator ABETZ: I thank you for drawing it to my attention. My question is to Senator Evans as Leader of the Government
in the Senate. I refer to this week's lame efforts by the government to distance itself from its alliance partner, the Australian Greens. To quote one Labor senator, 'You could say we learnt our lesson. We didn't want to look like we were married to the Greens.' I also refer to statements this week by Senator Milne that the carbon tax vote 'is only the first step', that it puts in place a 'platform to campaign for even more' and that now there is no limit to 'upward ambition'. Given the government's capitulation to the ideological push by its alliance partner, the Greens, in legislating a carbon tax in breach of its promise not to introduce a carbon tax, how can Australians be assured that Labor will not give in yet again to the extreme attacks by their alliance partner, the Greens, on Australian industry, jobs and living standards?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:02): I am glad the senator used the word 'lame' in introducing his question, because it certainly was. I am not sure there was much of a question in that diatribe, but to the extent there was I will try and give some sort of response. It just seems to me that it was a political diatribe, much like the many we heard during what was supposed to be a debate on important legislation this week. The government has a very positive and strong legislative agenda that it is pursuing through this parliament. We have been very successful at getting that legislation supported in this parliament. The carriage of the climate change legislation is a very important, historic achievement in this country. I would like to thank all members of parliament who supported that legislation. The government is very proud of that achievement because we regard it as important economic and social reform, but also it is a very clear sign that this government, despite not having a majority in either house of parliament, is able to work with other members of parliament of goodwill to bring forward important legislation and have it carried by the parliament.

The behaviour of the opposition is in stark contrast to that of the other legislators in this place. All they are interested in doing is saying no, being oppositionists and contributing nothing to the public policy debate. This government will carry on trying to get important legislation debated and carried through this place. We hope this evening that the opposition does not continue to delay too much in getting the plain packaging tobacco legislation through the parliament. That, again, will be a very important piece of legislation in combating the terrible effects of smoking in the Australian community. We are getting on with the job.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:04): Mr President, I ask a supplementary question. Given the government has capitulated to Green demands to break its promise on a carbon tax, have a media inquiry, dissolve Work for the Dole, means test private health and guillotine 40 pieces of legislation, how can the public be confident that Labor will not give in to further extreme demands from their alliance partner, the Greens, in relation to the coal and gas industries, which will place our economy at even greater risk?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:05): Senator Abetz's obsession with the Greens continues to worry me. I think he ought to get over it and try and join the public policy debate in this country, because
that obsession is leading him down a very nasty and dead-end path. This government is getting on with its legislative agenda, governing for Australia and driving important reforms. We will continue to do that through this parliament and we will look for support from all other members of parliament prepared to enter into discussions with us about good public policy. It would be very helpful if the opposition decided to take a more positive attitude, try to contribute to the public policy debate and perhaps come on board for those important economic reforms, but at the moment there is no sign of them playing any role in public policy debate in this country, and that is a shame.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:06): Mr President, I ask a further supplementary question. Is the minister aware of reports that his deputy, Senator Conroy, recently acknowledged that the Greens inspired carbon tax was destroying the government and admitted to grave reports about climate change science? Is this the real reason your deputy, Senator Conroy, was absent for Tuesday's vote on the carbon tax?

Senator Conroy interjecting—

The PRESIDENT: Senator Conroy, you need to withdraw.

Senator Conroy: I withdraw, Mr President.

The PRESIDENT: Thank you.

Opposition senators interjecting—

The PRESIDENT: When there is silence we will proceed. Senator Evans.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:07): Is it not uncommon for people, when they get dissociated from the rest of the community—when they become isolated—to get paranoid and dominated by conspiracy theories. I think Senator Abetz and the opposition reflect that process. They see conspiracy theories in the Greens all the time. Now, apparently, Senator Conroy being paired while attending to cabinet duties is somehow a conspiracy. Senator Conroy was paired for the debate and has been an active participant in the parliament this week, as always. But, like many members of parliament, he occasionally is paired. He was paired with a Liberal senator. I do not know whether that is a conspiracy! Was a Liberal senator part of the conspiracy? It really is an indictment of the Liberal Party. They are so irrelevant, so paranoid and so consumed by conspiracy theories that they have nothing to offer to public policy or the parliament.

Broadband

Senator BILYK (Tasmania) (14:08): Mr President, my question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Can the minister please inform the Senate of any recently announced retail-pricing plans for National Broadband Network services and how they compare with existing ADSL pricing?

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) (14:08): I thank the senator for her ongoing interest in the National Broadband Network. I am pleased to inform the Senate that, just yesterday, a new era of competition was again highlighted as Optus revealed its NBN pricing. Optus's prices, like those of Exetel, Primus and iiNet, and Internode before them, prove again that superfast broadband services offered over the NBN will at the very least be comparable with today's broadband prices, with the
added benefit of significant increases in speed and quality of services—

Senator Ian Macdonald interjecting—

Senator CONROY: I am sure that the member for Bradfield, in the other place, who is a former Optus executive, has also noticed. I wonder whether he will attempt to smear his former employer, as he pathetically attacked Exetel and Dodo when they released their plans—$34.50, Senator Macdonald. Thirty-four dollars fifty—

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

Senator CONROY: My apologies, Mr President—

The PRESIDENT: and not to individuals themselves—

Senator CONROY: I am pleased—

Opposition senators interjecting—

The PRESIDENT: Senator Conroy, you might just resume your seat, because when there is silence we will proceed. Senator Conroy.

Senator CONROY: I am pleased to inform the Senate that the price of Optus's 25-megabit stand-alone broadband plan is exactly what it is charging today for its broadband over the copper network. In fact, if customers choose to bundle services, the 12-megabit entry-level NBN product from Optus can be had for under $40 a month. I wait with bated breath to see exactly whether Mr Fletcher will attack Optus for being too expensive or too cheap, because he cannot make up his mind. He cannot make up his mind; it is just embarrassing, but it typifies the approach taken by those opposite. We now have multiple retail service providers competing, for the first time, on a level playing field. (Time expired)

Senator BILYK (Tasmania) (14:11): Mr President, I ask a supplementary question. Can the minister inform the Senate of any further independent analysis of broadband plans and pricing, comparing existing NBN retail products with existing copper based ADSL2+ services?

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) (14:11): Just last month, WhistleOut, an independent comparison website, released its own analysis of NBN prices versus existing ADSL2+ prices, and its analysis found that users could pay up to 18 per cent less for an entry-level 12-megabit-down, one-megabit-up service with a 50-gigabit download capacity than they currently pay for the same ADSL2+ service—18 per cent less. WhistleOut also expressed the view:

... the NBN will democratise high-speed internet access so that users will finally be getting what they pay for.

A rational person would expect the opposition to support this and even apologise for the baseless fear and smear campaigns they have been running. But I call on the National Party—(Time expired)

Senator BILYK (Tasmania) (14:12): I thank the senator for that answer. Mr President, I ask a further supplementary question. Is the minister aware of any statements in support of the Labor government's National Broadband Network?

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) (14:12): I am aware of such supporting statements, and they came from none other than the National Party. They came from the Nationals in a press release on the NBN announcement on 7 April 2009.
And do you know what the Leader and Deputy Leader of the Nationals in the Senate entitled their press release, Mr President? Let me tell you: they called it 'The Nationals' broadband network'? Why would they call it that? Because they knew it was a great deal for regional Australia. We are delivering a uniform wholesale price, we are delivering fibre to over 70 per cent of homes and businesses in regional Australia and we are delivering a universal minimum standard of 12-meg down, which is significantly better than many people receive in metropolitan areas today. What was that quote from Senator Joyce? It was: "How could we disagree with something that is quite evidently our idea," he said.

(Read by Clerk)

Australia Network

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:14): My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Has the government sought legal advice on the question of whether its abandonment of the Australia Network tender has exposed the Commonwealth to potential liability for the payment of damages to the tenderers?

Senator Birmingham interjecting—

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) (14:14): They have brought in the big guns—sorry, Senator Birmingham. The Australia Network is a core element of Australia's overseas broadcasting network and a major public diplomacy platform. It makes a significant contribution to the promotion and protection of Australia's national interests. The Gillard government is determined to ensure the Australia Network has a strong and effective operator that will advance our national interests. The tender process was terminated on legal advice that it was compromised by the leaking of information confidential to the process. I would like to emphasise that at all times the government has acted within the terms and conditions of the tender process.

For the benefit of the Senate it is worth again explaining both how the Australia Network has come to this point and the absolute priority of the government's actions at every stage of the process. The government announced that it would conduct—

Senator Brandis: Mr President, I rise on a point of order. The point is that the minister is not being directly relevant to the question. He was asked whether the government had sought legal advice about one matter—that is, the potential exposure of the Commonwealth to a liability and damages at the suit of the tenderers. He has referred to other legal advice on a different matter. He is now proposing to rehearse the history of the tender. He has not approached or gone near the question he was asked.

Senator Chris Evans: There is no point of order. Senator Conroy has been giving a direct and full answer to the question asked of him. The question went to the tender process and the legal issues associated with it, and Senator Conroy has been directly relevant to those questions and is putting in context the issues of the legal advice to the government in dealing with the tender process. He is directly on the point and has about 50 seconds to go to complete his answer, which will be a full answer to the question asked of him.

The PRESIDENT: I have listened to the minister's answer very carefully. I believe the minister needs to address the question that has been raised.
Senator CONROY: The government announced that it will conduct an open tender process for the Australia Network in November last year, and, as is normal practice for these matters, placed an official public notification of the tender on AusTender on 4 February of this year. Tenderers were given until 25 March to respond. The tenders were considered by an independent panel of government officials in a process which, again—as is normal practice for such a large tender—took several months.

Senator Abetz: Mr President, I draw your attention to the sessional orders that were changed some three years ago now and which required ministers to be directly relevant in answering questions. I would invite you to invoke that sessional order in relation to this answer.

The PRESIDENT: I have already, in response to a previous point of order, drawn the minister's attention to the question, and I draw the minister's attention to the question again. The minister has 16 seconds remaining.

Senator CONROY: Despite Senator Birmingham's assertion, I had no involvement in the development of the ABC's bid during this time. I had no involvement; neither was I briefed on it. I was confident on principle that the ABC's bid was strong—(Time expired)

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:18): Mr President, before asking my first supplementary, I invite you to review the Hansard and report back to the Senate after your consideration of whether the minister defied two directions from you to address the question. My supplementary question is this: what is the government's estimate of the costs suffered by the Commonwealth as a result of the abandonment of the tender process and the additional costs which the Commonwealth will incur as a result of the tender process having to be repeated? Does the minister accept that responsibility for this debacle must lie somewhere within the government and that the liability for the damages caused by the leak must also fall upon the person or persons within the government who corrupted the process?

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) (14:19): I repeat: the government at all stages followed legal advice in considering all of the issues that were relevant. During the period between the government's initial decision to put the Australia Network to an open tender and the finalisation of the independent panel's deliberations, we saw a significant number of international changes take place, including significant political transformation across the Middle East and North Africa. A number of consular crises also underlined the importance of ensuring that strengthened information services would be available from a range of sources. Consistent with its view that the Australia Network was a matter of national importance, the government—

The PRESIDENT: Senator Conroy, I do draw your attention to the question.

Senator CONROY: I draw your attention to the answer I have given already. I have already referred to the legal advice. Consistent with its view that the Australia Network was a matter of national importance, the government wanted to ensure that the tender took account of these rapidly changing international events.

Senator Ronaldson: Mr President, I rise on a point of order: this is the third clear
defiance of your ruling in relation to relevance. I ask you to demand of the minister that he answer the question.

Senator Chris Evans: Senator Conroy is dealing with a complex issue. He is dealing with an issue that involves an inquiry into the leaking of information during the tender process. Senator Conroy has made it clear that his primary response to the questions asked of him is that the government is acting on that legal advice. That is perfectly directed to the questions asked of him. He is then trying to provide some information regarding those processes. He has made it clear there is an ongoing investigation and an ongoing process inside government, and I think he is directly relevant to the question being asked of him.

Senator Joyce: Mr President, on the point of order, I would also like to draw your attention to the comment made by Senator Conroy towards you. I think it was a reflection on the chair and that you should ask him to withdraw that comment.

The PRESIDENT: Senator Conroy has three seconds remaining in which to answer the question.

Senator Abetz: Are you going to ask him to withdraw?

The PRESIDENT: I have already asked Senator Conroy to come to the question that was raised. The minister now has three seconds remaining.

Senator CONROY: As I said at the beginning of my answer, and I reiterate for those opposite, we considered all of the legal issues. (Time expired)

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:22): Mr President, when you review the transcript, as I have requested you to do, you will note that, for four times now, the minister has defied your ruling.

My second supplementary question is this: given that the government regards the matter as being of sufficient gravity to call in the Australian Federal Police, will the government also request the Auditor-General to determine the loss to the Commonwealth of the debacle of this corrupted tender process? If not, why not?

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) (14:23): The leaking of the information, as mentioned just then by Senator Brandis and as I have previously advised, compromised the process. The government viewed the leak as serious, so serious, as Senator Brandis has indicated in his question, as to justify calling in the AFP. This action was in line with the advice of all departments involved. Taking this into account, as well as the fact that the leaking of confidential information was a matter which required investigation by the Australian Federal Police, the government was forced to abandon the Australia Network tender process. There was no way to assure ourselves that the final result in a negotiation as yet to take place was not open to challenge.

Senator Brandis: On a point of order, Mr President, as you are aware, all I asked was whether the government would call in the Auditor-General—and to explain if not why not. The question was only related to whether the Auditor-General would be engaged. The minister has only addressed the issue of the request to the Australian Federal Police to investigate the matter. Although the minister is treating your rulings with contempt, it must be said, Mr President, I do ask you to draw him to the question.
The PRESIDENT: The question was broader than that which you have indicated. The minister is answering the question. The minister has 10 seconds remaining.

Senator CONROY: Much of the commentary on the leaked report has failed to appreciate that the next step in the tender process was to firm up bidder claims in contractual form. (Time expired)

Afghanistan

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (14:25): My question is directed to the minister representing the Prime Minister. I ask: is the governor of Oruzgan province in Afghanistan, Mohammed Sherzad, a good and important ally for the Australian contingent in that province? Is it true that this governor has asked to be transferred from his post because it is too dangerous for him to stay in office? Can the minister tell the chamber whether the Prime Minister met the governor on her recent visit and whether or not he discussed the fact that it was too dangerous for him to remain in that office in Oruzgan province?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:26): As minister representing, I do not have a full brief in terms of all the questions contained in Senator Brown's primary question, but I can advise him in response to some of the issues he has raised.

As everyone in this chamber knows, it is a difficult time in Oruzgan province. We have seen this in the most recent incidents resulting in the wounding of three Australians and two Afghan soldiers, and we all send our sympathies to them and their families. As I say, it is a very difficult time. We are aware of recent press reports indicating that the governor, Governor Sherzad, is seeking another position in the Afghan government. I cannot speculate on those reports. I have no further information other than an awareness of those reports.

What we do know is that Australia has appreciated the valuable work that Governor Sherzad has undertaken in Oruzgan across a full spectrum of issues and he remains a valued partner of Australia's forces there. During his time as governor we have made substantial headway in training the Afghan National Army 4th Brigade. Security in the province has improved in large measure due to his willingness to work closely with us throughout the province. He does remain a consistent voice for the people of Oruzgan and is focused intently on making improvements in the fields of good governance and the rule of law. I am advised that, as a valued partner, the government would not like to see him leave his position; however, this is ultimately obviously a matter for the Afghan government.

As I have indicated, we do not have any information other than the reports that you referred to. But the Australian contingent in Oruzgan continue to have strong and positive relations with the Afghan government and Afghan regional officials, and obviously they are currently experiencing quite a difficult time, particularly as a result of that recent attack. (Time expired)

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (14:28): My supplementary question is this: is the danger to the governor which has got him to ask for a transfer related to what Amin Saikal of the Australian National University warns as Afghan security forces being widely infiltrated by the Taliban, and can the government give a report to the Senate about that infiltration and the increasing danger it poses to our own forces in Oruzgan?
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:28): Senator Brown would be aware of the reports or the commentary by the CDF of the Australian Defence Force regarding these matters, and I think they are currently pursuing inquiries to make sure they understand exactly what happened in this incident involving the shooting of three Australian soldiers and two Afghans. So I think people do not want to leap to conclusions or generalise, but there is no doubt this incident has caused concern.

It is the case that ANA soldiers are recruited from across all provinces of Afghanistan and it is the case that they are deliberately not employed in areas of the country from which they are recruited. It is designed to dislocate them from existing family, tribal and social associations and aid in the operational effectiveness of the ANA. So there are strong procedures in place to try to guard against this sort of thing. But clearly ADF are going to pursue their inquiries into this matter, and I think it is best that we—

(Time expired)

Australia Network

Senator SINODINOS (New South Wales) (14:31): My question is to the Minister for Broadband, Communications and the Digital Economy and well-known climate sceptic, Senator Conroy. I refer the minister to his statement to the Senate on Tuesday regarding, as he described it, the compromised Australia Network tender process. He said:

On 27 October the Secretary of the Department of the Prime Minister and Cabinet wrote to the Australian Federal Police requesting an investigation into the leaks.

At whose request did the secretary make this referral? Did he act on his own initiative? Was the request made in writing?

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) (14:32): Thank you for that question. I am looking forward to you
solving financial illiteracy on that other side, Senator Sinodinos. I did see, following my statement, a report in a newspaper which believed that there was some sort of scandal and that the Department of the Prime Minister and Cabinet had intervened in the process. It did cause me some concern. Let me be very clear about this: I requested the police investigation direct to the departmental secretary of the Foreign Affairs and Trade. He then had a discussion, I believe, with Dr Watt, and, ultimately, following that discussion, Dr Watt referred the matter to the police. Let me be very clear: after considering the legal advice I requested it.

**Senator SINODINOS** (New South Wales) (14:33): Mr President, I ask a supplementary question.

*Opposition senators interjecting—*

**The PRESIDENT:** Order! It is no-one else's question.

**Senator SINODINOS:** Why was this referral made by the secretary of the Prime Minister's department? Why wasn't it made by the secretary of your department or the secretary of the funding department—that is, the Department of Foreign Affairs and Trade?

*Honourable senators interjecting—*

**The PRESIDENT:** Order! Minister, I will give you the call when it is appropriate. You are entitled to be heard in silence.

**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) (14:34): I sought the Federal Police investigation. I advised the Prime Minister's office, and I think the Deputy Prime Minister's office, of the serious legal issue that had come up following the advice.

**Workplace Relations**

**Senator MOORE** (Queensland) (14:35): My question is to the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Evans. Can the minister outline to the Senate today's announcement by the Prime Minister to address the pay equity gap in the community sector?

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:35): I thank Senator Moore. I know she has had a keen interest in this issue for many years. The government are serious about achieving equal pay for women, and today we made a major step in our bid to close the longstanding pay gap between men and women. In their work as counsellors, as
social workers and as legal aid officers, social and community service workers make a difference every day and they deserve proper reward for their efforts.

The Prime Minister today announced that the Gillard government will help make equal pay a reality for community sector workers by making a joint submission to Fair Work Australia with the Australian Services Union in the current social and community sector equal-pay case. This means that together we will argue for rates of pay which fairly and properly value social and community sector work. Other unions who are applicants in the case will join with us—and we expect major providers will do the same—to support this argument before Fair Work Australia’s full bench. If through its own independent processes the full bench agrees to the solution we propose, then community sector workers covered by this case will be paid new, fair pay rates based on the evidence of gender pay imbalance given in the case. When fully implemented this should deliver pay rates comparable to those awarded by the Queensland Industrial Relations Commission in its landmark 2009 case. The government will propose that pay increases start on 1 December next year and be gradually phased in over six years. This commitment comes at a cost to the federal budget of over $2 billion over the full phase-in period, but this will help deliver a historic pay rise to 150,000 of Australia's lowest paid workers, including 120,000 women working in difficult jobs often described as 'caring jobs'. This is a historic measure that seeks to address the serious imbalance for those women in caring professions.

Senator MOORE (Queensland) (14:38): Mr President, I ask a supplementary question. Can you explain why support from state and territory governments is important to progress equal pay in this sector?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:38): It would be remiss of me if I did not recognise the huge amount of work that Senator Collins has put into the government's work in this regard, and I congratulate her and thank her for that. It is true that the funding arrangements in this sector are incredibly complex. The Commonwealth does not actually employ anyone directly covered by the claim, and the funding is provided by the private and not-for-profit providers as well as Commonwealth, state and territory governments. That means that all of us are going to have to contribute to pay our share to fund these pay increases if successfully awarded. We have come up with our $2 billion to make it happen, and obviously state and territory governments are going to have to come on board as well. But I know many of them have already made commitments. I have spoken to many of the premiers and territory leaders in the last day, and I think most of them will come to the party and recognise that they have got to make a contribution to ensuring that we do deliver wage justice for these female workers. (Time expired)

Senator MOORE (Queensland) (14:39): Mr President, I ask a further supplementary question. Can you outline how the case will now proceed?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:39): The government will now work with the applicant unions to finalise the joint submissions for Fair Work Australia. The government will be meeting with SACS providers and state and territory governments over the next few days to discuss the Fair Work Australia submission and to invite
them to work with us and to support the submission before Fair Work Australia. That means that together we will argue for rates of pay that fairly and properly value social and community sector work and which do not discriminate and which will finally end decades of unequal pay.

The ASU case is the first case before Fair Work Australia to test the new equal pay provisions in the Fair Work Act. The case is only possible because of the government's fair work system that provided the means for which these cases can be pursued. They would not have been possible under the previous Work Choices legislation. Nothing was done then to address pay inequity for women. The Fair Work Act allows this sort of advance to be made and we hope to see more—(Time expired)

Australia Network

Senator BIRMINGHAM (South Australia) (14:40): My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. I refer the minister to his statement to the Senate on Tuesday of this week regarding the corrupted Australia Network tender process. He said that the Australian Government Solicitor indicated:

… there is a possibility that the current process may in some way be tainted or corrupted such that it is not possible that a fair and equitable outcome can be achieved.

I ask the minister: was this a conclusive finding of the Australian Government Solicitor or was this one of two or more possible findings identified by the Australian Government Solicitor?

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) (14:41): Obviously you are now trying to run around to get me to effectively table the legal advice, Senator Birmingham, but that is not going to happen. As we discussed yesterday, those opposite never went down that path previously. Let me be clear, because Senator Birmingham's questions rely on picking up one little bit of his press release and reading it out as fact. Much of the commentary on the leaked report has failed to appreciate that the next step in the tender process was to firm up bidder claims in contractual form. Consistent with the request for tender documentation originally issued by the government on 4 February 2011, a negotiation phase was always contemplated as part of this process, with negotiations possible with any number of tenderers. The leak of confidential information made this phase of the tender process—a phase which was absolutely crucial in my consideration of an outcome—completely untenable. As the nature and extent of the leaks were unknown, it was impossible to determine to what extent the commercial-in-confidence material on which those negotiations would rely had been compromised. Tenderers were advised of the government's decision and a public statement was made by me on 7 November.

Senator BIRMINGHAM (South Australia) (14:43): Mr President, I ask a supplementary question to the minister. I note his description that further progress of the tender was 'completely untenable'. Was that his opinion or the Australian Government Solicitor's opinion? Did the Australian Government Solicitor actually recommend ending the tender process or was that option identified as one of two or more possible pathways forward?

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) (14:41): Obviously you are
Productivity) (14:43): Yet again, Senator Birmingham is seeking to get the government to table and reveal all of the legal advice. As I have said repeatedly, and as we debated yesterday, the attempts by those opposite to cry crocodile tears, when they refused, week in and week out in the past—

Senator Brandis: You're running away at a million miles an hour, Stephen!

Senator CONROY: George, why don't you get the big guns back on your feet—

The PRESIDENT: Order! Just address myself or—

Senator CONROY: Thank you. I will ignore those interjections from those opposite.

The PRESIDENT: It is disorderly to interject, but you should refer to senators by their correct title.

Senator CONROY: I apologise for not referring to Senator Brandis as Senator Brandis. Senator Birmingham is simply trying to find another way to try and do something the government has said it will not do.

Senator BIRMINGHAM (South Australia) (14:44): Mr President, I ask a further supplementary question. I refer the minister to further comments he made about this matter on Tuesday of this week in which he said the Australian Government Solicitor's advice was that it 'was open to the government to decide'. Did the advice of the Australian Government Solicitor provide a pathway or option where the government could in fact have proceeded with this tender and its finalisation?

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) (14:45): Thank you for correctly reading out the legal advice that I have advised the chamber of. Yet again the senator opposite is seeking to obtain information that those opposite would not reveal when they were in government. I intend to continue that convention.

Senator Birmingham: Mr President, a point of order: the minister has been asked a series of three specific questions about specific statements he made to the Senate on Tuesday of this week, statements he made claiming to have relied upon the advice of the Australian Government Solicitor. On each of these occasions we have simply sought that the minister provide further information about those statements and on each of these occasions he has refused to do so and simply referred back to his original comments. Clearly he is refusing to actually address the detail of the questions and be relevant to them.

The PRESIDENT: You are debating the issue now. There is no point of order. The minister has 42 seconds remaining.

Senator CONROY: I have finished.

Renewable Energy

Senator MADIGAN (Victoria) (14:46): Mr President, my question is to the Minister representing the Minister for Health and Ageing, Senator Arbib. Can the minister advise when the government will act upon recommendation 4 of The social and economic impact of rural wind farms report, which recommends:

… the … Government initiate as a matter of priority thorough, adequately resourced epidemiological and laboratory studies of the possible effects of wind farms on human health.

Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (14:46): I thank Senator
Madigan for his question and his real concern and interest on this issue. I understand that most of Australia's wind farms are in Victoria, so it is obviously an issue that is important to his constituents. It is also an issue that many senators in this place have spent a great deal of time looking into, including the government's Senator Moore and Senator Carol Brown. I am aware that there are some concerns about the health effects of wind turbines. As senators will know, the Senate Community Affairs References Committee conducted an inquiry in March into the social and economic impacts of rural wind farms at the request of former Victorian senator Steve Fielding. The report of the inquiry was released at the end of June. As senators may be aware, the community affairs committee found that there was not enough evidence to establish a direct link between wind farms and poor health. The government is in the process of considering the recommendations from the Senate inquiry and will respond shortly.

It is important to remember that the government already receives scientific advice on health issues in Australia from the National Health and Medical Research Council. The council has looked into the health impacts of wind turbines. The National Health and Medical Research Council was involved with the scientific forum involving the wind farm industry, Australian researchers, international experts and consumer representatives in June. The council issued a public statement in July 2010 which concluded that there was no published scientific evidence to positively link wind turbines with adverse health effects. I am advised that the council is currently updating its review of the literature and will advise on updating the public statement. I can advise the Senate that there is much work being undertaken on this at present.

Senator MADIGAN (Victoria) (14:48): Mr President, I ask a supplementary question. Can the minister confirm that these studies will comply with recommendation 4 by ensuring that the research will engage across industry and community and include an advisory process representing the range of interests and concerns?

Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (14:49): There has been a great deal of engagement already with community and industry this year. I note that the Senate Community Affairs References Committee inquiry earlier this year received more than 1,000 submissions from a range of interested communities, individuals and doctors and also industry. The National Health and Medical Research Council scientific forum in June was attended by: environmental health experts; acoustic engineers and scientists; environmental health researchers; representatives from state and territory health, planning and also environmental departments; members of the public living close to wind farms; major public interest groups; Department of Health and Ageing representatives; and also international experts from countries with substantial experience in wind turbines. As an outcome of the scientific forum, the council will systematically review the literature, focusing on the possible health impacts of audible noise and infrasound. The National Health and Medical Research Council is establishing an expert reference group to advise—(Time expired)

Senator MADIGAN (Victoria) (14:50): Mr President, I ask a further supplementary question. Can the minister assure the Australian community that all recommended research into the effects of wind farms on human health will be completed and released
before the government invests any further taxpayer dollars in the further extension of wind farm development in and near residential areas?

Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (14:50): The National Health and Medical Research Council is establishing an expert panel, as I said, to advise on the literature review and to inform any update of the public statement. Using the results of this review, the council will advise on updating the statement early in 2012 and on the need for further targeted research. I should also add that, as senators may be aware, decisions about the placement of wind farms near houses are the responsibility of the local planning authorities. As I have said, the council has conducted a review of the scientific literature to determine if there is a link. The literature review considered the potential health impacts of infrasound noise, electromagnetic interference, shadow flicker and blade glint produced by wind turbines.

Australia Network

Senator HUMPHRIES (Australian Capital Territory) (14:51): Mr President, my question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. I refer the minister to his statement in the Senate on Tuesday regarding the corrupted Australia Network tender process emphasising that, 'at all times the government has acted within the terms and conditions of the tender process'. Has the government had independent advice to confirm that it has, as claimed, acted at all times within the terms and conditions of the tender process? Has the government had independent advice to confirm that it has, as claimed, acted at all times within the terms and conditions of the tender process? From whom has the government received the advice? When was it provided? If there is no such advice, on what basis or on whose assessment has the minister concluded that the government has acted at all times within the terms and conditions of the tender process?

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) (14:52): The overall probity of the tender process was the Australian Government Solicitor. I myself had a legal adviser from the AGS who gave us the advice. As to the date, I would probably have to take it on notice as to exactly what that date was. But we used the Australian Government Solicitor.

Senator HUMPHRIES (Australian Capital Territory) (14:52): Mr President, I ask a supplementary question. I thank the minister for confirming that the Australian Government Solicitor has advised that at all times the government has acted within the terms and conditions of the tender process. I ask—

Government senators interjecting—

Senator HUMPHRIES: That is what I think he said.

Government senators interjecting—

The PRESIDENT: Order! You need to ask a question. You need to get to the question. You should not give a preamble to your question.

Senator HUMPHRIES: If I have misunderstood the answer, I would be grateful if the minister would clarify what it was he did say. Does the minister accept that responsibility for this debacle must lie somewhere within the government?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:53): The overall probity of the tender process was the Australian Government Solicitor. I myself had a legal adviser from the AGS who gave us the advice. As to the date, I would probably have to take it on notice as to exactly what that date was. But we used the Australian Government Solicitor.
Productivity) (14:53): The Australian Federal Police are conducting the investigation into the leak. As for your political slandering of anyone you can try to drag in, the Australian Federal Police are investigating this and we await their report. But the premise of your question we reject utterly.

Senator HUMPHRIES (Australian Capital Territory) (14:54): Mr President, I ask a further supplementary question. Has the government received any indication from either bidding party that they may seek to recoup from the government the costs of their participation in these two failed tenders? If so, will he table that correspondence?

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) (14:54): I think you can read about it in one of the organs of News Limited; it is fairly widely available. Yes, I have received a letter which indicated—

Opposition senators interjecting—

Senator CONROY: It is a confidential letter. It is a private letter that has gone to the department. I am not sure I am in a position to release a private letter. As to the question of cost, I repeat the statement I made on Tuesday: we are considering all of the issues as part of the ongoing consideration by cabinet of the Australia Network contract.

Superannuation

Senator CROSSIN (Northern Territory) (14:55): My question is to Senator Sherry, the Minister representing the Assistant Treasurer and Minister for Financial Services and Superannuation. Can the minister outline to the Senate how many Australians in each state and territory will benefit from the government's reforms to superannuation—in particular from the tax concessions for low-income workers—to be funded by revenue from the minerals resource rent tax? How will the government's use of the proceeds of the minerals resource rent tax deliver the benefits of the mining boom to Australian superannuation fund members and improve the superannuation outcomes of, in particular, female workers?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (14:56): Thank you for your question. As I have mentioned, this government is very proud to present to the Australian parliament a minerals resource rent tax, which will raise approximately $11 billion. All of this money will be used in a number of ways, but particularly in superannuation tax cuts, to help pay for the increase in the superannuation guarantee and to provide tax cuts for small business. It will be used for a range of other measures as well. In the context of superannuation, as I have mentioned, and as we now know, the Liberal opposition for the first time ever has done a backflip and will support the increase in the superannuation guarantee.

There are three other measures in this package which is funded by the mining tax. The measure that I particularly want to draw to the Senate's attention is the current taxation arrangements for superannuation. There is a 15 per cent contributions tax that applies to all Australians contributions, regardless of their income level. This is particularly unfair for low-income and low-middle-income earners, who either pay 15c in the dollar on their income tax or, in some cases, pay no effective tax on income tax but pay a 15 per cent contributions tax. The government has announced as part of this
package that is funded by the mining tax that it will rebate the contributions tax on superannuation for low-income and low-middle-income earners with salaries up to $37,000.

This is a very important equity measure. It will benefit some 3.6 million Australian workers who contribute to superannuation, of whom 2.1 million are females. It is paid for by the mining tax. In fact, this measure effectively removing the contributions tax from low-income earners' superannuation will effectively cost more than increasing—

(Time expired)

Senator CROSSIN (Northern Territory) (14:58): Mr President, I ask a supplementary question. Would the minister please outline what calculation the government has used to define what a comfortable retirement is for Australia's superannuation fund members?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (14:58): There are a range of measures and advice from actuaries—for example, the recently published Melbourne Mercer Global Pension Index. This measure of effectively removing the contributions tax from some 3.6 million low-income earners will benefit, for example, over a million low-income Australians in New South Wales and some 93,000 Australians in my home state of Tasmania. There are a range of other figures. The opposition, at a somewhat shambolic and well-leaked leadership group last Friday, have agreed to support the superannuation guarantee. But will they support and maintain the tax cut on 3.6 million low-income earners' superannuation? Will they support that important part of—

(Time expired)

Senator CROSSIN (Northern Territory) (15:00): Mr President, I ask a further supplementary question. Is the minister aware of any alternative policies and do these alternative policies pose obstacles or risks to the Gillard government's historic reforms of the superannuation system?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (15:00): The particular measure that I have been outlining, which is effectively a tax cut—a very substantial tax cut—for 3.6 million low-income Australians, will cost $830 million, so it is a substantial cost to the budget and is funded by the mining tax. Where do the Liberal opposition stand on this measure? They have agreed to support the increase in the super guarantee but they have not agreed to support the tax cut for 3.6 million low-income-earning Australians. If by chance they decide to support this tax cut, they have one problem: they have no money to pay for it, because they have committed to reverse the mining tax. How will they pay for this particular measure? Or are they going to go to the next election arguing for a tax increase on 3.6 million Australians' superannuation? (Time expired)

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Australia Network

Gillard Government

Senator BIRMINGHAM (South Australia) (15:01): I move:

That the Senate take note of the answers given by the Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) and the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to questions without notice asked by Opposition
senators today relating to the Australian Labor Party and to the Australia Network tender process.

In regard to the Australia Network contract, what we are witnessing at present is a textbook cover-up of a corrupted process by a government mired in a dodgy and dirty deal. What we have seen is a three-step move to conceal the facts behind the scandal that is plaguing this $223 million corrupted tender for the Australia Network. Chapter 1 of the textbook cover-up that the government is engaged in is to claim that everything associated with the tender—the now extinguished tender—remains confidential, not simply the purely commercially confidential material of the tenderers. Chapter 2 of the cover-up is to seek legal advice, to selectively quote from that legal advice and to justify their changed position as a result of that legal advice but to refuse to release the full legal advice for proper public and parliamentary scrutiny. Chapter 3 of this cover-up has been to refer certain allegations to the Australian Federal Police but to refuse to detail what those allegations are and to refuse to answer any further questions on the matter because of the police investigation and referral. This is a trifecta of cover-up tactics by this government over this dodgy contract deal. Firstly, they are hiding behind the tender; secondly, they are hiding behind the legal advice; and, thirdly, they are hiding behind the police investigation. Clearly, they have a lot to hide.

Despite the textbook cover-up, the more Senator Conroy talks about this Australia Network contract, the bigger the hole he digs for himself. On Tuesday, he told the Senate that the advice from the Australian Government Solicitor was that 'it was open to the government to decide' the way forward on the basis of the advice and how the tender may or may not proceed from there. Yet today in response to questions he said that as a result of the Australian Government Solicitor's advice it was 'completely untenable' to proceed with the tender. Which is it? Was it completely untenable or was it open to the government to decide a way forward? If what he said on Tuesday is correct and truthful then in fact the government had the opportunity to find a pathway to finalise this tender process rather than, as he is claiming now, it being completely untenable to do so.

Despite this textbook cover-up, the more Senator Conroy talks the more he exposes how it is the dysfunctionality of this government that has corrupted this tender process to the core. Today what he has revealed is that, in referring these allegations—whatever they may be; he has failed to detail them—to the Australian Federal Police, he informed two offices. He informed the office of the Prime Minister, Ms Gillard; and the office of the Deputy Prime Minister, Mr Swan. What is notable is who he did not inform or advise. He did not inform the minister responsible for the first half of the period of this tender process. He did not inform the minister responsible for the department that has managed this tender process throughout its entire existence and has always managed the funding. Who would it be that he did not inform or advise? Of course it would be the former Prime Minister, the Minister for Foreign Affairs, Mr Rudd—the foreign minister, who was stripped of responsibility for this tender by Prime Minister Gillard because she did not trust him or did not like the result that he was trying to engineer. The foreign minister, who should rightly have oversight of a tender for a diplomatic service such as this, has instead been kept in the dark and fed you-know-what by the government, by Senator Conroy and by the Prime Minister because they do not trust him.
The result has been that a $230 million tender has gone off the rails. The result is wasted expenses for the taxpayer money and wasted time for the tendering parties—the ABC and Sky News—and, of course, the many staff at the ABC who have now been hanging in limbo for 12 months trying to get finalisation of this. There is only one way for the government to remove the stench hovering over it in regard to this Australia Network contract. Today, Senator Conroy should write to the Auditor-General and invite him to thoroughly scrutinise every aspect of this corrupted process.

Senator CROSSIN (Northern Territory) (15:07): Let’s take this opportunity to reiterate some of the facts about this. I know Senator Conroy has answered some extensive questions during the most recent estimates process regarding this. The Australia Network is a core element, as we all know, of our overseas broadcasting network, and it is a major public diplomacy platform. It makes a significant contribution, as we know, to the promotion and protection of Australia's national interests.

Let’s go to the tender process. It was terminated, as Senator Conroy has said a number of times, including again today, on legal advice that it was compromised by the leaking of information confidential to the process. We know that at all times, though, this government has acted within the terms and conditions of the tender process—no more or no less than the opposition have done in government and would do again, no doubt, if they ever got a chance to be in government again.

For the benefit of the Senate I think it is worth explaining that the Australia Network has come to this point under the absolute propriety of the government's actions at every stage of the process. The government announced that it would conduct an open tender process, as we all know, for the Australia Network in November last year and, as is the normal practice in these matters, placed an official publication notice of the tender on AusTender on 4 February this year. Tenderers were given until 25 March to respond. They were considered by an independent panel of government officials, a process which, again, is normal practice for such a large tender, and it took several months.

Despite the assertions of the opposition Senator Conroy, as I understand it, has said repeatedly that he had no involvement in the development of the ABC's bid during this time and nor was he briefed on it—

Senator Birmingham: He said it was a ‘fine bid’!

Senator CROSSIN: In fact, it was a fine bid. The ABC's bid was strong—

Senator Birmingham: How do you know? You weren't there.

Senator CROSSIN: As I already know—and you know as well, Senator Birmingham—at the estimates committee he was quite forthright in providing that advice to the estimates committee when questioned about it.

During the period between the government's initial decision to put the Australia Network to an open tender and the finalisation of the independent panel’s deliberations, we saw a significant number of international changes take place. There was significant political transformation across the Middle East and North Africa. A number of consular crises also underlined the importance of ensuring strengthened information services would be available from a range of sources. Consistent with this view, the Australia Network was a matter of national importance—as it has been and continues to be—and the government wanted to ensure that the tenderer took account of
these rapidly changing international events. And the government then announced that it would amend the Australia Network tender to add a selection criterion to cover these issues—not an unusual process at all, I would have said.

So, in taking this position, I am advised that the complete propriety of adding to the tender criteria was normal practice. As the opposition may or may not know, a media release to this effect was issued on 24 June this year and the amendment was placed publicly on the AusTender site on 8 July, with the two tenderers given until 27 July to provide additional information. The government also publicly announced at this time that, consistent with our view of the importance of the Australia Network and the expanded criteria for the tender, cabinet would in fact take the final decision on the tender. I understand that cabinet made a decision at that time and I am advised that Senator Conroy would be the approver for this purpose. The independent panel reconvened in August to consider the amended tender bids and provided an update report at the end of that month. So a two-month time frame in DFAT handling was entirely justifiable, as tenderers were given the opportunity to address the new criterion. And the tender evaluation board considered those responses.

So, as we move on with this time frame, as the opposition try to unpick what they think might be a story here, we lay more facts on the table for their consideration. Apparently, some elements of the independent panel's report, as we know, have now been leaked. The leaking of this information has, of course, compromised the process—as it would if any information were leaked under a tender process that might have been held during the Howard government years, or under any government's jurisdiction. Every government—previous governments and this government—would consider such a leak to be—(Time expired)

Senator JOHNSTON (Western Australia) (15:12): This matter is extremely serious. There is only one way that a duly elected government in this country can do business and acquire non-government services, products, assets and work—and that is through a tender process. Without a tender process that is full and laden with integrity, government cannot function. The basic responsibility of every minister in our country, in our system, is to oversight and conduct a proper, fair, equitable, transparent, honest and decent tender process. This minister has failed not once, not twice but three times—he has completely botched tender processes. There are very few people in public life who can stand up and say that they have been directly responsible, through their fumbling of the ball, for costing the Australian taxpayer $30 million. Not many people can say that, but Minister Conroy has the ignominy of being able to proudly proclaim that he, through his own fumbling and incompetence, has lost $30 million in the failure of NBN mark I—as identified not by us in politics: the Australian National Audit Office have pinged him! He then dropped the ball on the $36 billion construction tender; it collapsed in April.

This tender is another classic example of his raging, glaring, naked incompetence. This man not only has mucked up a $223 million tender; he has done so whilst under the massive cloud of a conflict of interest. In discussing this contract in estimates he said, 'I have seen the ABC tender proposal; it is a fine tender.' If he knows it is 'a fine tender', when the Prime Minister gave him the guernsey to oversight this thing he should have said, 'Whoa, hold on; I am the responsible minister for the ABC.' But, no, his understanding of public policy
responsibility is zero. He is the prince of dunderheads. He is functioning under the most glaring identifiable—

The DEPUTY PRESIDENT: Senator Johnston, you probably need to withdraw that last remark. Thank you.

Senator JOHNSTON: I withdraw. He is functioning under the most fundamental and basic conflict of interest.

What do we see here? The government embarks upon advice contrary to the Department of Foreign Affairs and Trade on this important tender. The government has refused to disclose the names of the members of the evaluation board who are adjudicating the tender. So they are not acting in accord with the government department's advice and they are not telling anybody who is making the decision. But the leaks tell us that on two occasions that independent board said, 'Give the contract to Sky.'

Why aren't they doing that? The answer is: because Sky is owned by the 'evil empire'—News Corporation. So, the Prime Minister has rolled her sleeves up and dived in and said, 'We are not going to give this tender contract to the evil empire. They are the bad guys. They are saying that we're doing terrible things like the carbon tax and the mining tax.' This is what this government has brought to the table—no integrity. Indeed, the Solicitor-General's advice that we have heard from the minister says it all: this contract has the potential to be tainted and corrupted.

But it does not stop there. Look along the front bench in both chambers. 'Tainted' and 'corrupted' are the two glaring words that come to mind when you look at these people. Not many ministers can stand in this place and say, 'I personally, of my own ability, have burnt $30 million of taxpayers' money,' but he can. He will go down in history as one of the great spendthrift incompetents. (Time expired)

Senator BILYK (Tasmania) (15:17): The first question I ask myself about the opposition and their issue in regard to the tender process being stopped while the Australian Federal Police look into the leaks is: why would those opposite want to continue when they know that the process has been compromised? I cannot find an answer to that within my own mind. We know the process has been compromised. Senator Conroy has been very up front about it and very clear about it. So the process has been stopped and the AFP has been called in to investigate.

To me that is pretty easy to understand. But in question time we heard the opposition saying, 'Why isn't it continuing?' One would think, bearing in mind that every question they asked today was about the Australia Network tender process, that they had some vested interest in making sure the ABC did not win the tender. We know that many on the other side—I do not know if I could honestly say everyone, but certainly many on the other side—absolutely loathe the ABC. They come in and speak for 10 or 15 minutes at a time in a complete diatribe about how bad the ABC is. So I think there is a bit more to what the opposition are up to than they are letting on.

We all know that there is an increasing need for an effective Australian presence, particularly in Asia and also in the Middle East and North Africa. We all know that the Australia Network is a core element of our overseas broadcasting network. The other thing we all know is that satellite television is now the way hundreds of millions of people get their viewing and it is in these areas that they access the television. It is commercially sensible for Australia to be in there.
Senator Bernardi: If you know all of this, why do you have to read it?

Senator Bilyk: I am not reading it. I am referring to a couple of dot points, because your side was so atrocious through question time. When I was sitting in my office earlier I watched a number of people on your side who allegedly were passionate about something and knew something about it but were reading their speeches. So don't come in here and try to score stupid points.

The DEPUTY PRESIDENT: Order! Senator Bernardi, please cease interjecting. Senator Bilyk, please direct your remarks through the chair.

Senator Bilyk: My apologies to you, Mr Deputy President. I know that you are a very civil man, unlike quite a few others on the other side.

We know that satellite television is the way that many millions of people get to view their television these days, so it is very important that we get this process right. My colleague Senator Crossin was talking about the process before, and I will just reiterate it because those on the other side do not seem to be able to get it to sink in. In November 2010 the government announced the open tender process for the rights to conduct Australia's international TV operation for the next decade for a maximum of $223 million over the 10 years. I think I heard Senator Humphries say yesterday—if it is incorrect to attribute this to Senator Humphries, I apologise in advance—that he did not think that was that much money, or words to that effect. But $223 million of taxpayers' money is money that we are accountable for. So, in that accountability and responsibility process and in making sure that the taxpayers' money is spent appropriately, we have called in the AFP to investigate the leaks.

I do not know how much simpler it could be. I am happy to stand here for the next 50 seconds and keep saying it, but that is the simple issue around it. Tenders were submitted, as people know, and the process proceeded until quite recently, but there were significant leaks of confidential information to the media. So the tender process has been compromised, and compromised to such a degree that we obviously could not go forward. If we had gone forward once the process had been compromised, we would have had those on the other side all through question time today getting up asking questions about why we proceeded. We all know that all they want to do on that side of the chamber— (Time expired)

Senator McKenzie (Victoria) (15:22): Today we hear a sorry tale of conflicting advice, conflicting interests and conflicting ambitions. The decision to overturn years of practice when the previous government had just renewed the ABC's contract for the Australia Network saw the current government move to a process of open tender and to reject previous government practice. This government actively sought to go to an open tender process, so you would think they would know what it was about and have it all set out. They actively sought to change practice despite recommendations from DFAT, one of the key stakeholders in a well-functioning Australia Network, and which was so well prosecuted today by Senator Crossin. So against this background, against the advice of DFAT, the ALP government chose a process of open tender, a process which has seen deadline after deadline pass, to get to the point where the whole process has been ditched. It is so typical. If you do not like an answer, scrap it and start again. What a surprise from this government!

It goes to two core aspects of this government and how they conduct themselves in terms of their legislative agenda and practice. The first is incompetence. We see it time and time again...
in how they manage transparent processes, in how they manage public money and in how they choose to manage the Greens' heart's desire. The Greens' heart's desire in this particular sorry tale may have something to do with the fact that Senator Johnston mentioned which two companies were involved in the tender process rather than the actual details of the tender applications themselves. Secondly, I think the tender process failed probably because of the indecision that is endemic in this government. They are indecisive about their policy and they are indecisive about how and when they should act. There are plenty of examples.

They put the decision off because of international events is one of the arguments that the government have prosecuted. The first time they put it off because the international climate had changed. To my way of thinking, that would mean that the advice of DFAT was more important, not less, to feeding into the decision—but not on this matter. I hate to be a conspiracy theorist, especially after some of the comments made by Senator Evans today, but maybe being a sceptic comes a little with the territory. Maybe it is less about the relevancy of DFAT as a key stakeholder in the Australia Network having input into the decision and more to do with who the minister in charge of that department is. I will leave that for other people to prosecute.

The second reason we rearranged the deckchairs on the Titanic and put off the decision again was leaks. So this government gets compromised by its own cabinet. The indecision and uncertainty continue with a Minister for Broadband, Communications and the Digital Economy who shifts deadlines like deckchairs on the Titanic. It feeds into a general climate of uncertainty around this government—uncertainty around how its climate change policy will actually affect climate change; uncertainty around jobs, particularly in regional areas; uncertainty of deadlines, of process and of advice. What this country needs is a cabinet that governs, a minister that has oversight and a government that makes decisions and takes action—a government that leads.

As my colleagues have prosecuted today, the answers given today during question time go to trust. It is crystal clear that trust is lacking in the political process in our nation. This entire debacle illustrates that cabinet does not trust itself, that those within the tender process have no reason to trust government deadlines and that the Australian people have every reason not to trust this government as they do not even trust themselves.

Question agreed to.

DODOCUMENTS

Australia Network

Order for the Production of Documents

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) (15:27): Mr Deputy President, I make a statement in regard to the order dated 9 November in which the Senate sought all recommendations of the Australia Network tender assessment panel, the legal advice that the government considered when making the decision to terminate the tender process due to the significant leaks of confidential information to the media—

The DEPUTY PRESIDENT: Senator Conroy, you need leave to do this.

Senator CONROY: I seek leave.

Senator Bernardi: We accept your resignation!
Senator CONROY: As gracious as always, Senator Bernardi!

Leave granted.

Senator CONROY: The Senate also sought the legal advice from the Department of Foreign Affairs and Trade to the Minister for Foreign Affairs regarding how the Australia Network contract should be awarded.

The government considers that it is not in the public interest to publish these documents. Disclosing the deliberations and recommendations of the assessment panel would disclose a significant amount of commercially sensitive material that was provided in confidence by the tenderers. It is contrary to accepted Commonwealth practice to disclose the information in tenders submitted by unsuccessful tenderers. The publication of the Department of Finance and Deregulation Guidance on Confidentiality in Procurement dated July 2007, available on the department of finance website, states as follows:

For probity, agencies must ensure all submissions are treated as confidential for the duration of the procurement process. Similarly, all unsuccessful submissions should be kept confidential after the award of the contract.

Public disclosure of commercially sensitive information of unsuccessful tenderers would be a major departure from longstanding Commonwealth procurement process. It would undermine the confidence that potential participants in future procurement processes may have in the security of their commercial information. Furthermore, any future tender for services related to the Australia Network would run a very significant risk of being comprised because potential tenderers whose commercially sensitive proposals had been made public would be subject to an unfair advantage.

In taking the decision to terminate the tender process, the government took into account advice provided by the Australian Government Solicitor. I have referred to that advice to confirm that the government took appropriate advice and to assist in explaining the government's reasons for taking this decision. It is the practice both of this government and former governments not to release the Commonwealth's confidential legal advice in response to orders for the production of documents, and it would not be in the public interest to do so here. In relation to the advice provided to the Minister for Foreign Affairs, I am advised that it contains commercially sensitive material and forms the basis for deliberations in cabinet. For these reasons, the government considers it would be contrary to the public interest to release those documents.

I would just add one further piece of information. I have consulted my records and, in relation to a question from Senator Sinodinos, I also consulted the Cabinet Secretary, Mr Dreyfus. As to the timing, I will shortly confirm when the advice was received.

Senator BIRMINGHAM (South Australia) (15:31): I seek leave to take note of the minister's statement. As I was out of the chamber at the time and do not have a copy of it, I only have certain details of what he said. Is it possible to do that in a brief moment?

The DEPUTY PRESIDENT: Yes, it is.

Senator CONROY: I say no.

The DEPUTY PRESIDENT: Senator Birmingham, leave is being denied for taking note. I see that you now have copy of the document.

Senator BIRMINGHAM: In that case, I seek leave to make a short statement in relation to the ministerial statement.
The DEPUTY PRESIDENT: Leave is granted for five minutes.

Senator BIRMINGHAM: We have here an example of Senator Conroy refusing to live by the types of standards that he used to call upon from others. The Senate passed a resolution yesterday asking for certain documentation to be tabled and made available to it. The Senate, with the support of the coalition, the Australian Greens and the crossbenchers, passed a resolution seeking some fairly simple and straightforward information. We wanted to see information regarding the advice the Department of Foreign Affairs and Trade gave to Mr Rudd prior to the initiation of the Australia Network tender. We wanted to see the reports of the independent evaluation board, the tender evaluation board, provided to Mr Rudd or Senator Conroy in relation to either the first incarnation of this tender or the second incarnation of this tender. It is pretty straightforward information that the Senate sought.

So, firstly, I note that time would not have been a factor in this. We were specific rather than broad-ranging in our requests, and I note that the motion was passed in the Senate not just with the support of the coalition, not just with the support of the crossbenchers, but, to get passage through the Senate, with the support of the Australian Greens as well, which demonstrates the broad concerns that are held in relation to the handling of this corrupted tender process. We sought those documents for fairly clear and specific reasons. We sought the documentation in terms of the advice provided to Mr Rudd prior to initiating the contract because of serious reports indicating that the Department of Foreign Affairs and Trade actually advised Mr Rudd not to go down the tender path but to instead renew the ABC’s contract. In fact, the government, who it seems are now bending over backwards and corrupting all sorts of processes to keep the ABC in this contract, could have spared themselves all this grief, all this pain, had they simply accepted the advice of DFAT in the first place. But Mr Rudd refused to accept that advice because he obviously wanted to change things.

So then we sought the documentation, the reports of the independent tender evaluation board, as provided to either Mr Rudd for the first incarnation of the tender or Senator Conroy for the second incarnation of this tender. We sought that information because it has widely been reported—and Senator Conroy has effectively confirmed in this place that the reports are correct—that on both occasions the four departments involved in the independent tender evaluation board all recommended that the Sky bid be adopted.

Yet on both occasions the government has found a way and an excuse to get out of accepting that recommendation. Firstly, they suddenly said that issues in the Middle East were so significant that they needed to change the tender—and miraculously at that time they needed to strip the tender away from Mr Rudd and give it to Senator Conroy. And the second time around they said the leaks themselves were a reason to end the tender process. But it would appear that it has been a month or more between Senator Conroy getting advice from the tender evaluation board and axing the tender. So he had plenty of time to start the negotiations he referred to in the chamber today and to conclude those negotiations and do a deal with the successful tenderer—if that is what he wanted.

But quite clearly that is not what he wanted. Senator Conroy, the Prime Minister and the majority of the cabinet clearly had a predetermined outcome from this tender in mind and they have been unwilling to accept
the fact that the independent evaluation board came up with the other option, that the independent board recommended Sky instead of the ABC. The government should come clean. If they wanted the ABC all along, they should simply say so and acknowledge the fact that they stuffed Sky around, at great time and expense. They should come clean that they have cost the Australian taxpayer, at great time and expense. And Senator Conroy should come clean that it has been all about not letting Mr Rudd have his way and that, once again, the government is keeping secret the sort of documentation it used to call to have released. (Time expired)

Senator LUDLAM (Western Australia) (15:37): I seek leave to make a brief statement on this matter.

The DEPUTY PRESIDENT: Leave is granted for two minutes.

Senator LUDLAM: I want to add my remarks to those of Senator Birmingham, who has expressed adequately our concerns not only in this particular instance of the Minister for Broadband, Communications and the Digital Economy refusing a very direct and very reasonable order of this chamber but also on the broader principle of ministers reading brief statements to effectively tell the Australian Senate, which passed by majority an order for these documents to be produced, that we cannot have them and that it is just too bad. This is a matter that this parliament is yet to resolve. When there is a clash between the executive and the parliament over the production of documents, we are left with no recourse. This is something that I have had a strong personal interest in over the last couple of years: the unresolved matter—which has been resolved in other parliaments, including other Australian parliaments—when there are orders for documents, which do not come lighty, and they are not produced. The Australian Greens certainly do not support orders unless they have merit, because we realise it is a very significant thing to do. For the minister to simply stand up and say, 'You can't have it, here are my reasons, and if you don't like them that's too bad,' is not good enough. This needs to be resolved.

Two parties went into the tender process in good faith. I can understand why Sky would be particularly aggrieved by this decision, which appears to have been a shambles from the beginning. Senator Birmingham addressed in some detail the various theories that are running around the building as to why this matter was terminated, where the leaks came from and so on. To be honest, I could not care less. My concern is that this matter should never have been put to tender in the first place; this is a function that properly should remain with the ABC, our national broadcaster. I have introduced a bill to make sure that that happens, and in the early part of next year I look forward to that gaining the assent of this chamber.

I would like to put Senator Conroy on notice that this matter will not rest here. I think this parliament and the Australian community and the parties to that tender are owed more than explanation that we just got.

DOCUMENTS

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 appear at the end of today’s Hansard.
Responses to Senate Resolutions
Tabling

The DEPUTY PRESIDENT: I present the following responses from the Minister for Foreign Affairs, Mr Rudd, to:
(a) a resolution of the Senate of 7 July 2011 concerning Sri Lanka; and
(b) a resolution of the Senate of 22 September 2011 concerning Libya.

DELEGATION REPORTS
Official Visits by the President of the Senate

The DEPUTY PRESIDENT: I present the following four reports of official visits by the President of the Senate:
United Kingdom – July 2010
United Kingdom, the Hague, Brussels and Turkey – April 2011
Singapore, New Zealand and Tonga – May and June 2011
Kingdom of Morocco – July 2011

AUDITOR-GENERAL'S REPORTS

Report No. 12 of 2011-12

The DEPUTY PRESIDENT: In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 12 of 2011-12: Performance audit: implementation of the national partnership agreement on remote Indigenous Housing in the Northern Territory.

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:40): by leave—I move:
That the Senate take note of the report.
I will keep my remarks brief because I know we are running out of time. This is a very important report because there has been a lot of controversy around this particular agreement and the delivery of remote Indigenous housing in the Northern Territory. Some of the key elements of this report quite clearly highlight that the federal government has not yet got its act together on delivering housing to remote communities. If you read through some of the rather complicated language in the report, it is quite clear that the Australian government needs to do more here. Take this statement:

... less attention has been given to the articulation of the operational role of the Australian Government, and to the development of robust program management systems and processes in the areas of master planning, risk management, budget control, financial reporting. Accordingly, further work is required to clarify the responsibilities and accountabilities ...

It is quite clear that after all these decades of trying to provide housing to remote communities we still have not got the right.

Then we go to the issue of the delivery of infrastructure. Everybody knows that just putting houses in place in communities does not work. We have to have the infrastructure there as well. The report points out that the money for the infrastructure provision has been underestimated, which of course is then going to come off the program and mean we can build fewer houses. This is not satisfactory.

We should also note from the report that we are building the houses knowing full well there will still be 9.3 people in those houses. So not only are we not delivering this program properly, not delivering the number of houses, but we are still delivering circumstances that do not address the underlying cause of disadvantage in Aboriginal communities, and that is overcrowding. We are building houses knowing full well that we will still have overcrowding in these communities. Today the government released its report on the Northern Territory Emergency Response, trying to gloss over the problems with that.
This is another problem in the failure to adequately address Aboriginal disadvantage in this country. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Environment and Communications Legislation Committee

Documents

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (15:42): I present a letter to the Chair of the Environment and Communications Legislation Committee, Senator Cameron, relating to a report from the previous parliament on the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010.

DOCUMENTS

Tasmanian Forests Intergovernmental Agreement

Live Animal Exports

Order for the Production of Documents

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (15:43): I table a statement relating to the order for the production of documents concerning the Tasmanian Forests Intergovernmental Agreement.

I also table documents relating to the order for the production of documents concerning the export of live cattle to Indonesia.

Senator COLBECK (Tasmania) (15:43): by leave—I move:

That the Senate take note of the documents.

I have not had the opportunity to see the documents and I would appreciate being able to do that so I know what I am talking about. As there is only a minute left now to speak on this matter, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BILLS

Tobacco Plain Packaging Bill 2011

Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator THISTLETHWAITE (New South Wales) (15:44): I am proud to be a member of a government that is taking genuine, world-leading action on preventative health. I have spoken many times in this chamber about the burden that preventable disease is having on our nation’s health system and, indeed, on our budget. Smoking, of course, is a big contributor to that burden. This legislation over time will provide an effective deterrent to the uptake and to the continuation of smoking in our society and should therefore reduce the burden of preventable disease on our nation and on our budget.

Every year around 15,000 Australians die of tobacco related causes. It represents one of the world's leading preventable causes of death and disease in Australia. Smoking causes 84 per cent of new lung cancers in men and 77 per cent in women. When tobacco related sickness and disability are taken into account it causes more disease and injury in Australia than any other single risk factor. If that is not enough to convince people, and sadly it is not enough for some, the social and economic costs of tobacco are around $31.5 billion a year.
In the last 10 years Australia has done much to reduce the use of tobacco in our society. We have seen social marketing campaigns, the restriction of tobacco advertising and promotion, mandated health warnings, product information on tobacco packaging and stronger enforcement of legislation prohibiting the sale of tobacco products to children. But there is more to be done. The rates of smoking in our society warrant that. Simply put, this bill will reduce the number of Aussies suffering from tobacco related illnesses.

We have heard some shallow arguments from an industry fighting to maximise its profits and, unfortunately, we have heard some hollow arguments from those opposite particularly in relation to the consequential trademarks amendment bill which is an effective part of this suite of reforms. Labor remains the only major party in our nation to refuse donations from tobacco companies. In the true spirit of the way in which we view tobacco production, this legislation will ensure that we reduce the incidence within our society.

About 15 per cent of Aussies in 2010 over the age of 14 continue to maintain the habit of smoking. Today almost three million Australians smoke including almost half of our Aboriginal and Torres Strait Islander population over the age of 15 years. In 2008, as a part of the National Healthcare Agreement, the Council of Australian Governments agreed to a target of reducing the national adult smoking rate to 10 per cent and halving the Aboriginal and Torres Strait Islander smoking rate by 2018. To achieve those targets, of course, we need to do more for the health of the Australian people.

As a result of a raft of marketing control initiatives introduced in previous years, the packaging of tobacco has become big tobacco's primary marketing tool. As one Philip Morris executive said:

Our final communication vehicle with our smoker is the pack itself. In the absence of any other marketing messages, our packaging ... is the sole communicator of our brand essence. Put another way—when you don't have anything else—our packaging is our marketing.

Colours, images, logos and fonts on cigarette packets are utilised to their full potential by the tobacco industry to entice more adults and more young people to purchase their products. There is also evidence that the tobacco industry uses packaging to influence sensory and health perceptions of tobacco products. For instance, the use of words such as 'light', 'mild' and 'low-tar' give a false impression that the product is less damaging to the smoker's health and less addictive than the full flavour brands. Under the World Health Organisation Framework Convention on Tobacco Control, which is legally binding in 172 ratifying or accessioned countries, parties are obliged to ensure that:

... tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.

Further, parties are required to ban or restrict, as far as their constitutions allow, all forms of tobacco advertising, promotion and sponsorship. Australia is not alone in our interest in plain-packaging legislation. Several countries, including trading partners such as New Zealand, Canada and the United Kingdom, have also considered or are currently considering the introduction of plain packaging for tobacco products. Our leadership on this very important issue has received widespread support including from representatives in the United States, the
European Union, India, Norway, Uruguay and, of course, the World Health Organisation. But, despite the compelling case and overwhelming support for plain packaging, the government's efforts have not been completely without opposition. Big tobacco has challenged the plain-packaging legislation, and they have been flexing their muscle through a vast advertising campaign aimed at bullying the government and the public into submission.

I am proud to say that the government's commitment to this important legislation remains firm. Plain packaging, in my view, is an absolute no-brainer. We are talking about 15,000 Australians every year that die through the use of this product. That is 15,000 Australians who do not get to see their son or daughter have their next birthday or do not get to see their next grandchild born. All MPs have received letters from 260 professors of health and medicine urging them to support this legislation. Studies have revealed that plain and generic packaging of cigarettes makes the product less attractive and appealing. The removal of imagery associated with cigarettes is particularly effective on young people, and the plain packaging also serves to highlight health warnings, which become more noticeable and more memorable.

A significant number of public health experts have expressed unequivocal support for the proposal. For example, the Australian Medical Association, the Royal Australasian College of Surgeons, the Public Health Association of Australia, the Cancer Council, the National Heart Foundation of Australia and the National Stroke Foundation have each welcomed the measure on the grounds that it will help to reduce smoking in Australia, it will help save lives and it will improve the health of many thousands of Australians.

In its submission to the government's public consultation on plain packaging of tobacco products, the World Health Organisation Secretariat welcomed the proposal, stating:

WHO is of the view that ... implementing the proposed legislation aiming to prevent tobacco advertising and/or promotion on tobacco product packaging will achieve its stated goals of: reducing the attractiveness and appeal of tobacco products to consumers, particularly young people; increasing the noticeability and effectiveness of mandated health warnings; and reducing the ability of the tobacco product packaging to mislead consumers about the harms of smoking.

WHO strongly supports the Australian Government's proposal on plain packaging and agrees with the conclusion that through the achievement of the aforementioned aims in the long term, as part of a comprehensive suite of tobacco control measures, this legislation will contribute to curbing the initiation of tobacco use, reducing tobacco consumption, and decreasing incidences of relapse in those who cease to consume tobacco ... In view of the scientific and legal bases for the interventions articulated in the exposure draft of Australia's Tobacco Plain Packaging Bill 2011, the WHO Secretariat strongly supports the proposed legislation.

The House of Representatives Standing Committee on Health and Ageing recently completed an inquiry into the bill. In particular the committee looked at evidence relating to the bill's health implications and served to drive home the point that tobacco packaging plays a large role in marketing the product. The committee concluded:

It is abundantly clear that different packages are designed to appeal to different socioeconomic groups ... it is also clear that packaging has been used to detract from the impact of graphic health warnings, and that plain packaging will increase the impact of these warnings.

The committee also found that existing plain packaging evidence was adequate to support the measure and its likely effectiveness. The committee considered that criticisms of the
evidence were insubstantial and, on the whole, superficial. Notably, the fact that plain packaging has not been introduced in other countries should not function as a deterrent to the passage of the legislation in Australia. Rather, the committee found that it demonstrates Australia's willingness to take the lead in tobacco control, a role that Australia has taken in the past in terms of preventative health.

Research has shown that, over time, many of the tobacco control measures introduced in Australia have been effective in reducing the smoking rate, and there is no reason to believe that it will not be the same in this case. The committee was strongly supportive of the proposed tobacco plain-packaging legislation and recommended that the bill be passed.

As I have said, 15,000 Australians die each year from tobacco related illnesses. It represents one of the leading preventable causes of death and disease in Australia. Smoking causes 84 per cent of new lung cancers in men, and 77 per cent in women. The social and economic costs of tobacco use are around $31.5 billion a year. And the experts say plain packaging will make a real difference, particularly to the next generation of Australians who we need to protect from this addictive and damaging product.

We do not support the death of Australians, and we will not waiver in our determination to ensure that our next generation lives in a safer, more healthy environment. It is as simple as that. This is a wonderful, preventative health initiative. It is a genuine world-leading reform and I am proud to commend this bill to the Senate.

**Senator WILLIAMS** (New South Wales—Nationals Whip in the Senate) (15:57): I would like to add some words to this debate on the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011.

I am very concerned about the removal of the property rights for one reason only—and that is because the Australian government may get sued. It is no secret that members of the National Party and members of the coalition believe in property rights. I refer to the time of—I was quoting this the other day—the infamous Kimberley Maxwell Yeadon, the minister in the New South Wales Carr government. I believe Senator Wong was one of his staffers.

**Senator Wong:** Yes.

**Senator WILLIAMS:** Yes, it was interesting reading the other day. When I was in the sheep yards or the shearing shed I would often laugh at John Laws, who would make it a common habit to get stuck into the 'jumped-up shop steward' as he used to refer to him. Mr Yeadon brought in a policy called SEPP 46 followed by the Native Vegetation Conservation Act. That removed farmers' rights to carry out activities on their land. We now have a case, for example, in New England, where a farmer pushed over a tree.

**Senator Wong:** We are talking about tobacco.

**Senator WILLIAMS:** I am talking about property rights, Senator Wrong, if I am going to take the interjection, but I need to talk to the Deputy President and focus on him, as the rules allow. I will give you an example, Mr Deputy President. A farmer pushed over a tree to rip out blackberries—a noxious weed—and get rid of rabbits. He is now facing a $50,000 fine because he pushed over that tree to do away with vermin that cause soil erosion and to remove the blackberries. That is an example of how property rights were removed.

Now, let's get onto property rights and this bill. Like it or not, it is legal to sell cigarettes in Australia and these companies have a
property right, a trademark. I find it most alarming that Philip Morris Asia has lodged a claim for compensation of some $67.5 billion. I do not know where the government will get that money if it is not successful. Tobacco companies are wealthy, which means they can employ good solicitors, the best barristers and the best senior counsel. Minister Roxon claims the government has strong legal advice and is on strong legal ground on this issue, but let's look at the government's record on the Malaysia solution. The High Court ruled against the government's legal advice. My concern is that if the government makes a mess of these property rights, these trademarks, it will cost Australian taxpayers billions and billions. So let's hope the government does have it right, because if it has it wrong and the court rules in favour of the tobacco companies for having their trademarks, their property rights, removed—and I know that some in this chamber do not care about property rights, as I just showed with the history lesson of Kim Yeadon in New South Wales—it is going to be at huge cost. If we get sued and the government loses the case—and of course there will be challenges and it will probably end up in the High Court—how many billions is it going to cost the Australian taxpayer? So I do hope this time the government's legal advice is strong and does hold water, because it certainly did not for the Malaysia solution for asylum seekers, as the High Court proved. We all know, in this chamber and around Australia, about the government's legal advice on that.

Just today a tobacco industry spokesman, Scott McIntyre, predicted that the government is going to have to spend millions of dollars of taxpayers' money fighting challenges in court followed by a potentially billions of dollars in compensation to the tobacco industry. That is my concern. He said:

We've invested billions of dollars into these brands. Unfortunately it looks like the government is pushing us down that path. So already the tobacco industry are taking up the legal challenge; there is no question about that. As I said, they are wealthy—that is, I assume they are wealthy. I do not know if they are public companies; I do not have shares in them. I know that when I took on a challenge in court it was very difficult because I did not have much money. In the end, I had to come to a settlement because I had run out of money to pay the legal team. The point is that the tobacco companies will not have that problem. They will be able to finance, as I said, the best solicitors, the best barristers and the best senior counsel to take on this case.

Senator Bilyk may shake her head. Is she going to shake her head when she comes in here in two years time to say, 'We've just had to fork out for a $67 billion bill because of a court hearing'? She will not be grinning about it then, Mr Acting Deputy President. Those opposite will be saying: 'Where are we going to get the money from? Of course! The Australian taxpayers will pay it. We will sell off some assets. We will add it onto the debt of $215 billion.' As I said, I hope the government have it right because, if you have it wrong, removing those property rights—

Senator Bilyk: So the rich can do whatever they want, the big companies can do whatever they want, and don't worry about the public health issue?

The ACTING DEPUTY PRESIDENT (Senator Cameron): Senator Bilyk, order!

Senator WILLIAMS: Thank you, Mr Acting Deputy President. You know interjections are unruly. I know you yourself would never consider doing that and I thank you for bringing Senator Bilyk to order on that issue.
The ACTING DEPUTY PRESIDENT: Senator Williams, order!

Senator WILLIAMS: It does get hard at times, doesn't it? I can recall Senator Forshaw in the chair. He was very strict but he was a very different Senator Forshaw when he was sitting over on the other side of the chamber.

You know what I believe about property rights. You may dislike the product—ban it if you wish; make it illegal—but the tobacco companies have a legal product as it stands and they have a property right, just like the farmers in the example I gave earlier. It might even have been Senator Wong who gave that advice to then Minister Kim Yeadon in the New South Wales parliament.

Who knows? It is something we will never find out. But this is the issue: the cost and what will come out of it.

The government brought in the alcopops tax in an effort to raise the price of mixed drinks in cans—and I must admit I have shared the odd can of Bundy and cola in my life, in moderation of course. What do the young ones do then? They turn to buying a bottle of rum and a bottle of Coke and mixing it themselves, which is a very dangerous situation. I do hope that this does reduce smoking but I also hope that it does not cost the nation billions and billions of dollars. And I do hope the government have their legal advice correct.

Senator BILYK (Tasmania) (16:05): How would Australians react—and I specifically ask Senator Williams this question, through you, Mr Acting Deputy President—if each year 24 fully occupied Boeing 747s crashed, killing every passenger on board? That is the scale of the tragedy attributed to tobacco smoking in Australia: 15,000 deaths per year. And that description does not account for the months and years of suffering experienced by the many people affected by smoking related diseases.

Let us not forget that the health and social costs to Australian taxpayers have been estimated to be $31.5 billion, which is barely covered by the $5.8 billion raised in revenue from tobacco excise. That is money that we could be putting into our health system to save lives from diseases that are unpreventable, rather than the preventable diseases caused by cigarette smoking.

If we had a problem suddenly arise that started to cost our nation tens of billions of dollars annually and resulted in the death of thousands of Australians, I do not think we would regard it as a mere concern. Just imagine if terrorism or natural disasters were responsible for the same number of deaths. I am not sure even the word 'tragedy' would be adequate to describe it. I think we would call it a national emergency. A strong government response would be expected and would occur. But cigarette smoking has become so pervasive and so socially acceptable that many still seem to just regard it as a normal part of life, despite the destruction it causes.

Tobacco reforms over a number of years, coupled with other anti-smoking programs, including advertising and support for quitting, have, thankfully, been effective. The Australian Institute of Health and Welfare publishes a survey on a regular basis to gain information about use of tobacco, alcohol and other drugs. That survey, over a number of years, has shown a steady and consistent decrease in tobacco use from 29.1 per cent of people aged 14 years and older in 1993 to 15.1 per cent in 2010. The 2010 survey shows that, at 15.9 per cent, Tasmania, my home state, still has a higher rate of smoking than any other state except Queensland. However, the positive news for Tasmania is that between 2007 and 2010 there has been a statistically significant
decrease in the proportion of daily smokers, down from 22.6 to 15.9 per cent.

This is very positive news and I would like to congratulate the Tasmanian government for its tobacco reforms, including the introduction of smoke-free areas. Smoke-free areas were established in Tasmania under changes to the Public Health Act 1997 and include all indoor areas at public places and workplaces, including offices, shopping centres, factories, hospitals, bars and nightclubs, gaming areas, indoor areas at restaurants, corridors, toilets, function rooms and movie theatres; areas within three metres of a doorway to a public building; areas within 10 metres of air intake for ventilation equipment servicing a public building; work vehicles when another person is present; inside a vehicle if a child is inside the vehicle; any other area not being on private premises designated by the occupier to be smoke free; 50 per cent of outdoor dining areas; and reserved seating areas of outdoor sporting or cultural venues.

I am particularly grateful for the inclusion of vehicles if a child is inside the vehicle. As a former childcare worker, a mother, a politician and co-convenor of Parliamentarians Against Child Abuse and Neglect, it concerns me greatly that any parent or adult would expose their child to cigarette smoke. While adults can to some degree actively avoid cigarette smoke and the harm caused by it, children have little or no choice. That harm is greatly increased by smoking inside a car, which is an enclosed space, often with no ventilation.

In terms of child protection, there is a statistic in Tasmania that concerns me very greatly, and that is our rates of smoking among pregnant women. In 2009, 23.9 per cent of Tasmanian women smoked tobacco during their pregnancy. Smoking prevalence among young mothers was highest, with 49 per cent of pregnant women under the age of 20 and 43.5 per cent of 20- to 24-year-olds continuing to smoke through pregnancy. Tasmania continues to have the highest proportion of women of any state or territory who smoked during their pregnancy. Unfortunately, many expectant mothers honestly believe that smoking during pregnancy will not harm their baby. However, smoking during pregnancy is regarded as one of the key preventable causes of low birth weight babies. Low birth weight babies, of course, are more likely to die in their first year of life and are more susceptible to chronic illnesses later in life, such as heart and kidney diseases, and diabetes. As with children in cars, they have no way to defend themselves against their mothers’ behaviour, and I see this also as an important child protection issue.

Of course, the declining rate of smoking nationally proves that measures to limit the attractiveness of tobacco smoking can be effective. The Council of Australian Governments set a goal under the National Healthcare Agreement of reducing the national smoking rate to 10 per cent of the population by 2018 and halving the Aboriginal and Torres Strait Islander smoking rate. I am pleased and proud to be part of a government that is working cooperatively with the states and territories to deliver positive outcomes in reducing the rates of tobacco use throughout Australia.

This brings me to the bills currently before the Senate. The Tobacco Plain Packaging Bill 2011 will make it an offence to sell, supply, purchase, package or manufacture tobacco products for retail sale unless those products comply with plain-packaging requirements. The bill will enable the development of regulations to specify plain-packaging requirements and conditions for the appearance of tobacco products. Under plain-packaging requirements, brands
and products will only be distinguished by the brand and product name, printed in a standard colour, in a standard position on the package and in a standard font, size and style. Individuals can be fined up to $220,000 for a fault based criminal offence or $6,600 for a strict liability criminal offence. A corporation may be fined up to $1.1 million for a fault based criminal offence or $33,000 for a strict liability criminal offence. The maximum civil penalty that may be awarded is the same as for a fault based offence, but no conviction would be recorded for a breach of civil penalty provisions. The bill does not limit the operation of state or territory laws relating to packaging and appearance of tobacco products. However, where there is any conflict of state or territory laws with the plain-packaging requirements, the bill will prevail.

Plain packaging on tobacco products achieves outcomes that we believe will be effective in combating tobacco use. Attractive packaging is one of the devices used by tobacco companies to attract people to smoking, so, primarily, plain packaging reduces the attractiveness and appeal of tobacco products to consumers, especially young people. The colour of the packaging has been chosen based on research to have the lowest appeal to smokers. Plain packaging also increases the impact of the graphic health warnings now mandated on tobacco products. It is very difficult to ignore a picture such as a graphic health warning if it is the most prominent feature on the package.

Coupled with this bill is the Trade Marks Amendment (Tobacco Plain Packaging) Bill, which is being introduced so that the government can, if necessary, quickly remedy any interaction between the Tobacco Plain Packaging Bill and the Trade Marks Act 1995 that cannot be dealt with under the Tobacco Plain Packaging Bill. It amends the Trade Marks Act to allow regulations to be made in relation to the operation of the Tobacco Plain Packaging Bill and to make regulations that are inconsistent with the Trade Marks Act.

There is plenty of evidence to support the effectiveness of plain packaging. In 1995, an expert panel provided the Canadian department of health a comprehensive review on the likely effects of plain packaging. At that time, four studies had been conducted into the effectiveness of plain packaging of tobacco products. They were a 1987 study by Trachtenberg published in *Forbes* magazine, various studies conducted in New Zealand by Beede and Lawson into brand image attraction for tobacco products and the impact of plain packaging on the perception of health warnings, a 1992 Melbourne study by the Centre for Behavioural Research in Cancer Control on the reaction of adolescents to cigarette packs modified to increase the extent and impact of health warnings, and a 1993 University of Toronto study by the Centre for Health Promotion examining the effects of plain packaging on the image of tobacco products among youth.

The expert panel found that all four studies produced evidence to support the hypothesis that plain packaging made cigarettes less attractive and appealing. No study providing contrary evidence is known to exist. The expert panel found that there are three primary benefits of plain packaging, which I will outline. Research shows that brand imagery can create false perceptions that certain brands are less harmful than others. Based on their colour and branding, adult smokers have rated particular brands as less harmful and easier to quit. For example, Marlboro's packs with a gold logo are regarded by smokers as less harmful than packs with a red logo. Researchers have
concluded that removing colours from packs and terms such as 'gold', 'silver' or 'smooth' significantly reduces these false beliefs.

An Australian study published in 2008 involving more than 800 adult smokers found that the appeal of tobacco products was reduced by progressively reducing the amount of pack-branding design information. The plainest packs were not only seen as less attractive but were also considered lower quality, less satisfying and significantly less stylish or sociable. A similarly designed study in Canada reached the same conclusions. Research on plain packaging shows that reduced branding not only undermines the positive images in brands but also increases the negative aspects. This is why plain packaging can help to enhance health warnings. Brand imagery distracts from health warnings and therefore reduces their effectiveness.

People have an enhanced ability to recall health warnings on plain packs. They are seen as more serious than the warnings on branded packs, and smokers exposed to large, picture based warnings are significantly more likely to report thinking about the risks of smoking or to stop having a cigarette or think about quitting. Larger health warnings are more memorable, noticeable and more likely to elicit cessation related attitudes and behaviours.

However, an Australian study funded by the National Health and Medical Research Council and presented to the 2011 Society for Research on Tobacco and Nicotine found that plain packaging was actually more effective than increasing the size of health warnings. There is plenty of research evidence to support this measure, but anyone who doubts the effectiveness of plain packaging need only look at the response of the tobacco companies. If big tobacco did not believe that this measure would impact on their bottom line, why are they intent on campaigning so fervently against it? It is obvious that the likes of British American Tobacco and Philip Morris are concerned about their profits when it comes to their response to plain packaging.

The Gillard government's plain-packaging reforms are not a measure in their own right. Rather, they are part of a package of reforms that this government announced in April 2010 to reduce the rates of tobacco smoking in Australia. We increased the excise on tobacco products by 25 per cent, a measure designed to provide a financial disincentive for smokers to continue smoking. A 2009 submission by Cancer Council Australia to Australia’s Future Tax System Review stated that a 21 per cent increase in excise would prompt 130,000 adults to quit smoking and prevent 35,500 children from taking up smoking. We have also introduced and brought into law legislation to prohibit the advertising of tobacco products on the internet and have made record investments in antismoking social marketing campaigns.

One of the tough questions that often arise in public policy is when to regulate and by what degree. Regulating people's behaviour is a difficult balancing act between the freedom of the individual to make their own choices and the freedom of others not to be adversely affected by those choices. Some tobacco smokers would argue that their smoking is a personal choice, but I disagree. Smoking affects everyone. It affects the health and environment of nonsmokers, who through no choice of their own are forced to live in an environment polluted with cigarette smoke. It affects friends and family who have to go through the grief of watching a loved one suffer and possibly die because they have contracted a smoking related illness. And it affects every taxpayer in Australia who ends up footing the bill for the billions of dollars in health costs and lost
productivity that are caused by smoking. So, the more people we can get to give up smoking, the more every Australian benefits, including nonsmokers.

The Tobacco Plain Packaging Bill and the Trade Marks Amendment (Tobacco Plain Packaging) Bill are an important part of the reforms that this government is putting forward to reduce smoking rates in Australia. I welcome the federal opposition's support for this bill. Although it took them some time to get to it, it is the right decision and it is in the interests of Australia's public health. I am looking forward to the day when the opposition follow Labor's lead in other matters regarding public health and refuse to accept political donations from tobacco companies.

While the Liberal and National parties are still accepting donations from tobacco companies, they must be compromised. I accept that any individual or company has a right to participate in the political process. However, the coalition parties should exercise their good judgment and not accept donations from companies that produce a product which causes such harm when used as intended. If they want to take money from an industry which is killing 15,000 Australians a year through its products then I think they need to take a good hard look at themselves. It gives me great pride to be a member of a party that does not accept donations from tobacco companies.

Finally, I will conclude by saying that it gives me great pride to be part of a Gillard Labor government that are serious about tackling this huge public health issue that is being faced both here in Australia and across the world. With our plain-packaging legislation, Australia is leading the world, and I congratulate the Minister for Health and Ageing, Nicola Roxon, for the hard work that she has put into making sure that cigarette smoking is moving ever closer to becoming a thing of the past. I commend the bills to the Senate.

Senator CASH (Western Australia) (16:21): The Senate is considering in this second reading debate two bills which the government has introduced in what we are told is an effort to reduce the incidence of smoking in Australia. The first bill is the Tobacco Plain Packaging Bill 2011 and the second is the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011. So that there can be no question about my position on the issue of smoking, I state for the record that, based on considerable empirical research, I believe that smoking is a health hazard and that smokers who indulge the habit for a period of time are likely to suffer significant health problems, which may result in their early death. Equally, I believe that there is considerable empirical research to show that the passive intake of tobacco smoke by those who come into contact with it is likely to have adverse health implications.

It is clear that the ill effects from smoking and passive smoking harm many of our citizens and impose a massive financial burden on the Australian health system. It is unacceptable to stand by and do nothing when up to 15,000 Australians die of tobacco related causes each year. I therefore support action which will effectively reduce the incidence of smoking in Australia in an effort to improve the health of our citizens and reduce the burden on our health system, which is estimated to be up to $31½ billion each year.

Given the government's stated purpose in relation to these two bills, the question that needs to be asked by the Senate is: does the proposed legislation in its present form achieve the government's stated purpose? Clearly, based on the evidence of numerous
published reports and having regard to the submissions that have been made to the various parliamentary committees, the answer to this question is: most unlikely.

Given that the opposition and the government share a common belief that smoking does indeed harm one's health and can indeed cause death and given that the government and the opposition share a common desire to reduce the incidence of smoking in Australia, you would have expected the government to have adopted a bipartisan approach to achieving what is a common policy objective. However, clearly the Minister for Health and Ageing decided that she was the sole expert in the field of smoking and wanted to use the introduction of these bills to try to make out that the only political party in Australia that was interested in reducing the incidence of smoking in Australia was the Australian Labor Party.

What did the minister for health do? Australians were subjected to the minister embarking on a massive campaign to try to denigrate the opposition, notwithstanding the fact that the opposition had a remarkably positive and constructive record of reducing the numbers of smokers in Australia when we were in government. The minister got so carried away with her vilification of the opposition that she suggested that the opposition's position on the bills was influenced by political donations that it may have received at some stage from tobacco companies. The minister, in attacking the opposition, was so adamant in this position—that accepting donations or other support from tobacco companies was so wrong in principle and in practice—that she trumpeted from the rooftops that the Australian Labor Party's policy was not to accept donations from tobacco companies and that Labor maintained the holier-than-thou position that it would return any such donations to tobacco companies, no doubt with a curt note saying, 'The Labor Party is not for sale.'

The minister made it very clear, in her protestations, that Labor was clean and would never knowingly take money from tobacco companies. We have heard speeches from those on that side of the chamber saying that the coalition parties are the only parties in Australia that accept donations from tobacco companies. That is just plain wrong. Not only is it just plain wrong; it is offensive to this side of the chamber. Just as the Prime Minister said, the day before the election, 'There will be no carbon tax under a government I lead,' the minister pretended to the Australian public that the notion that the tobacco companies could give money to the Labor Party was an offensive one. That was just plain wrong. You can only imagine what the Australian people thought about the credibility of the minister in question when they woke up one morning to find that, notwithstanding her protestations that Labor would never contemplate accepting money from tobacco companies, the minister herself had actually written to tobacco companies soliciting financial support from the tobacco companies to assist her re-election campaign. Let us just say that again for the record. The minister herself had written to tobacco companies and asked them for money, solicited a donation from them, to fund her own election campaign—complete, total and utter Labor Party hypocrisy.

Worse than that, when the minister's hypocrisy was exposed by the media, the Australian published a story that showed that, despite the so-called ban on Labor accepting tobacco money, lo and behold, there were letters circulating that showed that the Australian Labor Party were still asking tobacco companies for political donations. Let us have a look at what the Australian newspaper ran on 18 June 2011:

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CHAMBER
THE Labor Party has continued to seek political donations of up to $102,000 from a major tobacco company, as recently as this week, despite a ban.

The embarrassing revelation comes in the same week federal Health Minister Nicola Roxon was forced to apologise for sending a fundraising request to the same company in 2005, a year after Labor banned tobacco company donations.

Most of the six newly revealed letters were sent by Sports Minister Mark Arbib when he was secretary of the NSW ALP. They invited a senior tobacco executive to spend up to $15,000 on tickets to fundraising functions.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Cameron): Senator Cash, I draw your attention to the matter at hand.

Senator CASH: Thank you, Mr Acting Deputy President, but I was not engaging in taking up the interjections or should I say the bleating from the sheep on the other side—or, as they have been called, the 'zombies' on the other side. We all know who called his own colleagues zombies, don't we.

Senator Fierravanti-Wells: The quota girls.

Senator CASH: I love that: 'the quota girls' as well; that is exactly right. The senators on the other side call out and interject saying that the Labor Party does not accept political donations and never did, but that is just plain wrong. It was Minister Roxon herself who had to apologise for misleading the Australian public on the basis that she wrote to big tobacco companies and asked them for money to assist in her re-election campaign.

Getting back to the Australian newspaper, what else did the article say, bearing in mind that it was as recent as 18 June 2011? It said:

Current NSW secretary Sam Dastyari wrote to the executive at Philip Morris this month offering a $5000 place at a Business Dialogue and Country Business Forum.

It would seem that the Labor Party's holier-than-thou attitude was nothing more and nothing less than typical Labor Party spin. What was the other spin the Labor Party tried to give to the Australian public? Minister Roxon also embarked upon a false campaign trying to denigrate the Liberal Party as not wanting to reduce the incidence of smoking. Like the minister's false statements about Labor not seeking money from tobacco companies, she was caught out this time for not properly checking the Liberal Party record.

As far back as 1966, under the government led by Sir Robert Menzies, the Liberal Party took positive action to reduce smoking by introducing a voluntary tobacco advertising code for television. Then in 1976 we continued our efforts to reduce the incidence of smoking in Australia when, under former Liberal Prime Minister Malcolm Fraser, we instituted a ban on the advertising of tobacco products on television and radio—again, a policy of a former Liberal government. In 1997, Dr Michael Wooldridge, the Liberal Minister for Health and Family Services, was responsible for cabinet agreeing to a massive national advertising campaign against smoking, which lasted two years and cost around $7 million.

In December 2003, the Howard government signed the WTO Framework Convention on Tobacco Control, which was ratified in October 2004. In 2006, then Minister for Health and Ageing Tony Abbott introduced legislation to require graphic warning measures covering about 30 per cent of the front of cigarette packets. Because of the positive action taken over successive decades by former Liberal governments, in particular the action taken under the former Howard government, Australia saw a
significant decline in 2007 when smoking rates dropped from 21.8 per cent to 16.6 per cent. The reduction of smoking rates in Australia between 1989 and 2007 was 40 per cent for men and 44 per cent for women and represented one of the biggest falls in OECD countries. So it is purely false piety and hypocrisy for Labor to denigrate Liberal Party achievements in reducing the incidence of smoking in Australia, given that in 2007, when we lost office, Australia had the third lowest prevalence of smoking in the world, behind Sweden and Canada.

The legislation in its present form raises a number of significant issues on the question of trademark law and intellectual property rights. The government and the minister have on many occasions assured the opposition that its legal advice surrounding their plain-packaging proposal is robust, saying that they are 'on strong legal ground'. In agreeing that we will not be opposing this legislation in this place, the coalition—the opposition—has accepted the government's assurances regarding its legal advice at face value. However, despite accepting those assurances, we note that when you go to the text of the bill there are a number of alarm bells. For example, despite the government's assurances, proposed section 15 of the Tobacco Plain Packaging Bill provides that the bill would not apply to the extent that it would cause acquisition of property on other than just terms under section 51 of the Australian Constitution. The only conclusion that one can draw from the inclusion of this clause in the legislation is that the government itself does have some doubts about the strength and veracity of its legal advice. But, as I said, the government has given assurances to the coalition that its legal advice is robust and that it is 'on strong legal ground' and the coalition has accepted those assurances coming from the Labor Party. However, given the tenor of a number of the submissions on the potential infringement of intellectual property rights and given that the second bill is supposedly designed to overcome any infringement of trademark laws, the coalition is not necessarily convinced that the government has overcome all of the potential issues relating to intellectual property.

The other area of concern to me is the issue of unintended consequences that may actually flow from this bill. I have read the submissions made to the relevant parliamentary committees and I am somewhat alarmed at some of the dire predictions of what some believe will occur once tobacco products have to be marketed in plain and generic packaging. Based on the substance of a number of the submissions, it does seem very possible that there will be a substantial increase in the illicit trade of counterfeited tobacco products. To date the government has not advised the Senate on the specific action it proposes to take to overcome the increase in the illicit trade of counterfeited tobacco products and on what the cost impacts are in terms of detection activities. And, of course, there is the value of the revenue forgone, meaning the taxes forgone, due to the illicit tobacco trade. A number of submissions to the relevant parliamentary committees have raised issues relating to the impact of the legislation on retailers and, although I am supportive of appropriate measures being taken to reduce smoking, which clearly flow through to a reduction in the amount of tobacco products sold, it would be remiss of me as a Liberal not to acknowledge the adverse impact that will be borne by some retailers of tobacco products.

There are clearly without a doubt many unanswered questions in the minds of people when it comes to addressing the issue of tobacco products in our society. I have made my position very clear in relation to support
for measures to reduce the incidence of smoking in Australia. The issue that I have with the legislation that is before the Senate is the unproven mythology being implemented by the government and the yet-to-be-answered questions on how successful the government's experiment will actually be. The coalition agrees that the use of tobacco each year kills and harms thousands of Australians and that it is sensible public policy to take action to reduce rates of smoking. The coalition has expressed its support for the policy objective of plain packaging of tobacco products. However, support for the government's objectives should not be an excuse for it to override principles of good legislative practice. That is why, whilst supporting the principal bill, the coalition will not be supporting the trademarks amendment bill, as we do not believe that this bill is necessary for the government to continue to implement its plain-packaging agenda.

If the minister had taken the time to draft the Tobacco Plain Packaging Bill properly, the trademarks amendment bill would not be needed. The coalition will be opposing this bill as we do not believe it is necessary and because the coalition do not agree with giving the minister the power to override the Trade Marks Act through regulations, which is precisely what this amendment bill does in clause 231A. This is a clause that allows for regulations made by the minister under an act of parliament to override the act itself. This is exceptionally uncommon. It goes against the basic legal principle that an act trumps regulations, it is not good legislative practice and it would not have been necessary had the government taken the time to properly draft the principal bill.

Senator SINGH (Tasmania) (16:42): I rise to speak, proudly so, in support of the Tobacco Plain Packaging Bill 2011. Almost everyone either knows someone that has contracted a tobacco related disease or has lost someone from this deadly, addictive product. For me, it was my grandfather, Les Southern. Like many of his generation, he took up smoking during the war not knowing its lethal consequences, simply seeing it as a moment of relief in the hard days as a 17-year-old serviceman. He continued smoking when he returned home, until it became such a reflex and a routine that it was ingrained into his personality. There were no barriers to smoking in those days, neither in his office nor visiting businesses and homes on his beat as a police officer, and it was a time when one would not be bombarded with advertising for tobacco smoking at every turn. I remember many a day visiting Les in his home, sitting in the kitchen under a cloud of smoke, as he told me stories about his times as a young soldier or in the police force. I did not see smoking then as wrong or right. I just saw it as my Poppy who, like many of his time, smoked.

But in the late 1990s he started to become sick: coughing, wheezing and having trouble breathing. As he became more ill, it seemed to become harder for him to give up the habit he had carried with him nearly his whole life. Yet he was an active man who loved to dance, go to social events and have a good long chat. Eventually, he was put on an oxygen machine for severe emphysema that restricted his activities—and, yes, his smoking. Doctors told him he needed to stop. It was the hardest thing to do.

I was 28 when he passed away. I was fortunate to have had 28 fantastic years with Les. But I wish he could have seen me enter parliament, and I know that he would have loved to have been here. After his passing, my mum and I cleaned his house. As we took the pictures and photos down around his house, the outlines of the frames left a
distinct colour and shape against the nicotine stained walls. As it had done in life, the smoke had surrounded and crowded out signs of life. Losing my grandfather is just one example of the 15,000 Australian lives that are lost from tobacco related disease each year. According to the 2004 National Drug Strategy, tobacco is also the cause of over 750 hospital bed days, with eight per cent of these occupied by children under the age of 15. An Australian Institute of Health and Welfare report shows that a total of 4,715 men and 2,911 women died from lung cancer in 2007, making the disease the leading cause of cancer deaths for both sexes. The burden of this addictive substance is obvious and it is also heartbreaking. Too many people are losing loved ones, and these people are dying from what is too often a preventable disease.

What did big tobacco have to say about this? Big tobacco say plain packaging will not work. But if big tobacco believe it will not work why are they fighting so hard? Not only are they fighting; they are screaming, taking desperate measures and turning to threats of legal action in a desperate attempt to deter the Gillard Labor government from acting.

Research into the effectiveness of plain packaging has found a number of benefits, and I would like to take a moment to share some of those findings. Tobacco brand imagery distracts from the health warnings. Studies have shown participants have a greater ability to recall health warnings on plain packs, as opposed to those displaying brand imagery and flashy logos. Studies have also shown that unregulated package colouring and imagery contribute to a misperception that some brands are safer than others. The colour of the pack has been associated with lower risk. Perhaps surprisingly, cigarettes in red packets are considered less dangerous than those in black packets, for example. Cigarettes described with terms such as 'smooth', 'gold' or 'silver' have also been believed by smokers to have a lower health impact when compared to other tobacco products.

Perhaps most telling is a study of 800 Australian adult smokers, with results showing that the plainest cigarette packs were seen as less attractive and smokers of these packs were seen as significantly less stylish and less sociable. The cigarettes in these packs were also thought to be less satisfying and of a lower quality. Plain packs resulted in these negative perceptions—they were less attractive, less stylish and of a lower quality and smokers of them less sociable. It is exactly these negative perceptions that we want people to associate with smoking, especially our youngest generation, those who may be considering taking up smoking and who I certainly hope never will. Increasing evidence from Australia and right around the world shows that plain packaging reduces the attractiveness of cigarettes among young people, and this will mean that fewer young people take up the habit. This is exactly what we want this legislation to achieve. We must remember that tobacco companies constantly need to recruit new customers because they keep killing their current ones.

The evidence says plain packaging will work, and this is exactly why the Gillard Labor government is acting. It is why organisations such as Cancer Council Australia, the Heart Foundation, Action on Smoking and Health, the Public Health Association of Australia and many others have all worked so hard for so long and are throwing their support behind the Gillard Labor government and the federal Minister for Health and Ageing, Nicola Roxon, with regard to this legislation. In August this year 260 professors of health and medicine, including four Australians of the Year,
band together to write a letter of support to MPs. I can think of few issues that have commanded such attention and such support.

Big tobacco themselves know it will work. Professor Mike Daube, President of the Public Health Association of Australia, said on the release of the exposure bill earlier this year:

The tobacco industry has responded to this move more ferociously to anything in tobacco control in 20 years and I think that sends out a signal, if the tobacco industry is so worried about it, then we've got to be on the right track.

They are running scared at the thought of losing their astronomical profits. Big tobacco—and by this I mean companies such as British American Tobacco Australia, Philip Morris and Imperial Tobacco Australia—collaborated to fund a mass media countercampaign. Their sole aim, of course, is to stop this legislation. So underhand were their actions that the major corporations associated with this alliance were not initially aware of the involvement of these tobacco companies. These corporations promptly withdrew their membership of the alliance as soon as they did become aware.

Arguments against plain-packaging legislation are light. They include a simple 'it won't work', but we know that tobacco companies would not be screaming so loudly unless they knew, as we do, that it will. Since the idea of plain packaging was floated as an option by the Labor government, tobacco companies have been turning to desperate measures to stop this legislation. Why? Because they know this legislation will reduce their profits, as fewer people will take up smoking. This legislation will have the biggest impact on those who do not yet smoke. Thanks to these bills, current nonsmokers will not be wooed by fancy logos, by split packs, by retro tins. This product will never say anything other than the reality. And what is that reality? It is that cigarettes kill you.

The world is watching as we take this brave step against big multinationals. We have not been intimidated. We have not been frightened off. Australia's leadership with these bills will undoubtedly result in similar legislation being adopted in other countries. History will show it was the Gillard Labor government that led the way. History will show that Australia was not afraid to take on big tobacco and win.

A cigarette pack is one of the final avenues for advertising that tobacco companies have. It is somewhat of a compact billboard, one would say. We know that cigarette packs are used as 'badge' products. They allow a smoker to promote certain characteristics, just as a certain brand of fashion accessory always does. A cigarette pack becomes a status symbol, as it promotes the characteristics associated with a particular brand.

Tobacco companies know the power of this marketing on their customer base and they have been getting increasingly sneaky when it comes to attracting people to their brand. In February 2006, just a month prior to picture based warnings being introduced on all tobacco products, one company began selling their products in retro style tins. These tins had health warning stickers that were able to be easily peeled off. And, just as the tobacco company knew they would be, they were very popular with young people, with new young smokers. This is both underhand and sneaky. Plain packaging will eliminate this ability and there will no longer be an avenue to implement underhand marketing strategies via packs. All packs, regardless of their brand, will look the same. There will be no trademarks, no logos and no pretty colours. Only prescribed information, such as a brand name, will be allowed, in a
set font, style and colour. Most importantly, graphic health warnings will dominate. There will be no ignoring the fact that tobacco is a product that kills.

Unfortunately, while those on the other side of this chamber say they support—or supposedly support or halfway-pregnant support—this legislation, they have continued to employ stalling tactics and block it, and the Labor government has been forced to reconsider implementation time frames for this legislation. This is quite unbelievable when those opposite have full knowledge of the fact that such companies are killing their voters each year with their products. But perhaps they are playing these games because they enjoy the odd political donation from big tobacco companies.

**Senator Fierravanti-Wells:** You obviously weren't listening to Senator Cash.

**Senator SINGH:** I was listening to Senator Cash very closely. Big tobacco are very desperate to stop plain packaging and are resorting to every trick in the book, and the Liberal Party seem to be on their side—given Senator Cash's nonsensical diatribe just earlier. Unlike the Liberal Party, which continue to receive such donations from cigarette companies, the government will not be influenced by big tobacco. Unlike the coalition, the Gillard Labor government is serious about tobacco reform and about reducing the burden of smoking-related disease in our country. Plain packaging is one of many reforms that will ultimately drive down smoking rates.

While these rates are dropping, they still remain unacceptably high in Australia. The government raised the tax on cigarettes by 25 per cent last year because we know there is a clear correlation between a price increase and the cessation of smoking—particularly among low-socioeconomic groups, which we know carry the highest burden when it comes to smoking-related illness. A price increase not only helps drive people towards a quit attempt but also stops people from taking up the habit in the first place.

The Gillard Labor government has also spent $27.8 million on advertising on antismoking campaigns. Why? Because we know that sustained mass media campaigns, specifically TV advertising, are an effective way to decrease smoking rates. In December last year, the Labor government made the decision to place nicotine replacement therapy on the Pharmaceutical Benefits Scheme, and it has been available since February this year. Where NRT once cost up to $140, those with a concession card can now access a four-week course for approximately $5.40—and $33 for those without a concession card. This was a move welcomed by many, as it broke down the barrier for those who could not previously afford NRT. For many, it was cheaper to continue smoking when compared to purchasing NRT.

In September this year, federal health minister Nicola Roxon announced that the Australian government would commit an additional $700,000 to the World Health Organisation to increase the global fight against tobacco smoking. More than 170 countries have ratified the World Health Organisation Framework Convention on Tobacco Control, which includes a comprehensive road map for the implementation of effective tobacco control policies—one of which is plain packaging. As Ms Roxon said, tobacco companies are fighting for their profits, but we, the Labor government, are fighting for people's lives.

Unfortunately, in my home state of Tasmania, we continue to buck the national trend with higher than average smoking rates. In 1995, Tasmania's smoking rate was 1.5 per cent higher than the national average.
and today it is more than four per cent higher. Just last week, Tasmania was named as the state with the worst lung cancer rates for women in the nation and the state with the second-highest rate of mortality in both men and women who develop the disease.

This is unacceptable, and that is why the Tasmanian Labor government was the first state to ban smoking in bars and clubs, in January 2006, and smoking in cars carrying children, in 2008. The Tasmanian Labor government is introducing reforms that will see a dramatic increase in the number of places smoking is banned, including in all outdoor dining areas and pedestrian malls. These laws are planned to commence in March, 2012. These regulations will help reduce the proportion of daily smokers in Tasmania and have done so already—from 22.6 per cent in 2007 to 15.9 per cent in 2010. But, of course, we still have a long way to go, with four in every 25 Tasmanians still choosing to smoke.

In closing, I would like to acknowledge the tireless efforts of some of those who have been involved with this legislation—those who have thrown their support behind the Gillard Labor government. While I cannot name them all—there has been such support and momentum behind this legislation—there are some key players. Cancer Council Australia, the National Heart Foundation of Australia, Action on Smoking and Health Australia, the Public Health Association of Australia and many more have long advocated for plain packaging and have had the courage of their convictions, fronting more than one government inquiry to represent the arguments for plain packaging. All the efforts on this issue are to be applauded.

There is no quick fix when it comes to smoking addiction. There is no overnight solution—just as there is no quick fix for those addicted to the substance. We know that it can take many attempts to successfully quit, but each attempt is a step closer, just like each measure introduced by this government: a 25 per cent increase in tobacco tax, placing nicotine replacement therapy on the PBS, increasing the spend on antismoking marketing and now plain packaging. It is all a step in the right direction and eventually we will win this fight. I commend these bills to the Senate.
targeted and sophisticated as it is—to get out and let the people of Victoria know that smoking apparently, according to the companies that make the cigarettes, is an attractive proposition. So, in Victoria, we will be unable to see the plain brown packaging. But never mind—the headlines were great: 'Government won't be bullied by tobacco'; 'Labor beats big, bad tobacco'. Maybe the headlines should have said: 'Labor once again implements policy that burdens small business'.

I am a former health educator, and the number of adults and young people who smoke is certainly disappointing to me. Of course, it is a reality: everybody knows that smoking kills you. The Centre for Behavioural Research in Cancer released a study in 2008 that showed that 16.5 per cent of Victorian adults aged 18 and over smoked regularly—not happy; not good enough from my perspective. The smoking rate for men was 18½ per cent, which was higher than for women at 14 per cent—again, too many people are smoking, and this is a big drain on our health and the economic fabric of our society. In 2010, the Cancer Council of Victoria spent $27 million on research, education, prevention and support initiatives around tobacco control. Figures from Victoria indicate that almost $8 million has been spent on tobacco control activities in that state. Of the $8 million, over $4 million was spent by VicHealth, an internationally recognised preventative health body and a statutory body of the Victorian parliament, around tobacco control activities. Currently VicHealth has placed tobacco control as one of its highest priorities. We have initiated several successful strategies within my home state as a result of VicHealth’s advocacy which have been really successful in lowering the smoking rate.

School based smoking intervention programs have had only limited, if any, effect on smoking reduction. I have been part of delivering those programs in classrooms right across the state. These programs are generally viewed as dated and too narrow a form of health education without the backing of strong community-based programs. There has been a significant effort to reduce smoking rates in this country, and it has worked. We lead the world in smoking reduction strategy. The Victorian government introduced the Tobacco Act in 1987 and, since then, has constantly rolled out reforms and supporting regulations to reduce smoking rates. I understand that there needs to be an essential and comprehensive tobacco control strategy in place, but introducing legislation that simply adds costs and complexity to small business rather than complementing what Victoria has contributed towards tobacco control is not the solution to combat such a complex issue. While the intention of the Tobacco Plain Packaging Bill, to reduce smoking rates, is sound—put up your hand if you do not support a reduction in smoking rates—the broader implications of passing the bill mean that restrictions to small businesses and retailers, in terms of stock management and pricing methods, are significant.

I wish to bring to light the issues borne by retail and small business. They have advocated the issues to the Gillard government to no effect. My electorate office in Bendigo, Victoria, has received hundreds of phone calls and letters from small business owners opposing the plain packaging bill—not big tobacco industries but little corner stores and milk bars, where cigarettes are already under the table in Victoria. Owners of small stores in Dunkley, Ferny Creek and Ringwood have all indicated that there would be many unintended consequences of the legislation. As an additional burden, any business would need to spend more time and money in
relation to the plain packaging bill to ensure they were complying with the law. Frustrated small business under a Gillard government—what a surprise!

On this note, I turn to concepts around individual responsibility. The nanny state is alive and well. As a current smoker let me know recently, it would not matter if you wrapped the cigarettes in barbed wire—the addiction to nicotine is so complete that they would gladly reach in to get it. Let's remember that this is a legal substance. The best way to ensure that we reduce smoking rates would be to ban the substance that kills people. Smoking, since cigarettes are a legal product in a liberal democracy, is an individual choice and the decision to smoke is an individual decision. It is ignorant of the government's to justify that one rationale for plain packaging is to reduce the ability of the tobacco product and its package to mislead consumers about the harms of smoking. If I went out on the main street here or in any town across Australia, I would struggle to find anybody who does not know that smoking is bad for you. The government is misguided if it thinks that people smoke because they are not aware of the harmful effects. Social learning theory suggests that people smoke as a result of social and psychological influences, which usually start in an experimentation phase when people are in their teens. Smoking then becomes a physiological condition with nicotine as the addictive product.

Children and teenagers generally learn by example from others, and, when they see their peers or parents smoke, they emulate this behaviour. It is scientifically recognised that influences for people taking up smoking are peers, parents and economic status, not the colour of the packaging. There are several methodological issues around the research, particularly David Hammond's work, that I have concerns with. Smoking becomes associated with other social activities such as having a coffee or going to the pub.

Let's talk about the research. The virtues of science have been lauded in this chamber all week. The study that this bill is based on has serious flaws. The research used by the government to formulate the rationale that trademark imagery and brand appeal are directly related to people's decision to take up smoking—not whether they decide to take up smoking but whether they prefer colour packaging over khaki—just does not hold water. The article by Hammond et al 2009, 'Cigarette pack design and perceptions of risk among UK adults and youth', outlines the findings, and the research and was published in the European Journal of Public Health. The results of the study showed that plain packs significantly reduced false beliefs about the health risk and ease of quitting and were rated as significantly less attractive and appealing to young people for picking up smoking. What a surprise—olive green is less attractive than blue, red or silver! No news there. 'Do teens prefer khaki or shiny, bright, primary colours?' What a great piece of research on which to base the legislation!

Effective public policy should be based on evidence-based best practice, not one-off studies. In fact, large independent studies have failed to identify a significant link between tobacco advertising and teenage smoking rates. We want to see surveys and statistical analysis from Australia which take into account our framework for housing cigarettes—you cannot see the packages in my home state—as well as our already stringent laws at a state level, our comprehensive tobacco education programs and the other cultural factors. In Australia right now, smoking is not cool. Plucking results and figures from other countries and pinning them onto Australians means the
Gillard government is again dodging its responsibility to see the real problems and concerns of Australia at large.

I understand the goodwill of the bill, but I would hate it to be an opportunity for the government to distract itself—or, rather, the public—from other more pressing political issues. I would hate to think that this bill is a populist attempt to create a veneer of action by the Gillard government. The coalition has always been a strong advocate of public health advancement. We laud the good intentions of the bill. But, having said that, let me ask fellow senators: is this another example of the Labor government producing a quick headline—an irrational fix—to a very complex and deep-rooted societal problem? I will not be opposing the bill.

Senator FAWCETT (South Australia) (17:09): I rise to address the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011. As I said in my maiden speech in this place, I am a conservative, and that means that I believe in individual responsibility as opposed to the deadening hand of government control over individuals. However, there are times when the national interest or the greater public good means that there is a role for government to intervene.

As we look back in recent history and see how well Australia has survived the global financial crisis, we do not have to look back too long to see that the structures that the previous Treasurer, Mr Peter Costello, put in place—with his financial sector reforms to the RBA and the Securities and Investments Commission, the Prudential Regulation Authority and the ACCC—were some of the things that helped us to survive that crisis. So there are times when the government should intervene for the greater public good, and I believe that this is one of them.

Some 15,500 deaths each year in Australia, and some 55,500 admissions—and that is in New South Wales alone—are caused by tobacco-related illnesses. In 2004-05, the cost to the Australian society was $31½ billion, which is a huge cost to the society. There are many areas where that money could be put to better use—not to mention the cost to families, individuals and relationships which is due to the suffering caused by of tobacco related cancers, illness and death. On a more global scale, the World Health Organisation has put out a number of fact sheets, the most recent of which, updated in July this year, estimates that currently tobacco kills about half of its users on a worldwide basis—that is some six million people each year, including some 600,000 people dying of tobacco related disease who are not even smokers but people who have contracted cancer or associated illness just from being in the presence of smokers.

Australia, thankfully, has a good record on the world scene of leading incentives to decrease the rate of smoking. If we go back to 1945, some 72 per cent of men in Australia smoked; by 2007, only 18 per cent smoked. In 1945, some 26 per cent of women smoked; interestingly, the number of female smokers peaked in 1976, when some 33 per cent of women smoked, but by 2007 that had decreased to 15 per cent. Disturbingly, youth figures are still high: some 19 per cent on average still smoke. Even worse, of our Indigenous population, some 50 per cent, on average, still smoke—51 per cent men and 49 per cent women. So, whilst we have come a long way, in reducing smoking rates among both a demographic within our population who are easily influenced—that is, our young people—and a large proportion of our Indigenous population, we still have a long way to travel.
I can certainly look back and see the change, and I am very thankful for it. As I was looking at some of the notes and background information for this speech I recalled my time as a trainee pilot with the Defence Force, stuck in the CT-4A aircraft, which was a very small plastic bubble—we used to call it the plastic parrot—flying in the days when people could still smoke while flying an aircraft. I recall once not actually being able to see out the front of the cockpit due to the amount of smoke from my instructor who was smoking there. Thankfully, by the time I left active flying—in fact, even just earlier this year as an active reserve pilot—I found that smoking had well and truly been banned in ADF aircraft. In fact, they do not even make the aircraft which the Australian Defence Force purchases with ashtrays anymore. So, personally, I welcome the advances and the changes in attitude.

The other thing I welcome about this whole debate is that, by and large through the history of Australia, smoking reduction has been a very bipartisan effort. Both sides of politics have made a real attempt to influence the behaviours of Australians to decrease the rates of smoking because of that greater public good. I have been disturbed by some of the comments that almost accuse the coalition of having no interest in this, so I just want to put on the record some of the contributions that the coalition has made over many years, often with ALP support. There have also been many times when the ALP has initiated things, and the coalition has supported them. Right back in 1966, it was Sir Robert Menzies who brought in the first voluntary tobacco advertising code for television. Former Prime Minister Malcolm Fraser banned the advertising of tobacco products on TV and radio in 1976. Michael Wooldridge, the Minister for Health and Family Services in 1997, launched what at the time was the largest ever national advertising campaign against smoking, with a spend of some $7 million over two years. The current Leader of the Opposition, Tony Abbott, when he was Minister for Health and Ageing was in 2006 the first person to introduce the graphic health warnings on tobacco products. In opposition, it was the coalition who first proposed an increase in the tobacco excise in May 2009—a measure that was later adopted by the government. So I think the coalition can hold its head up as having a good track record of working constructively with the ALP on anti-smoking measures in the past, and I certainly encourage members opposite to continue that approach and make sure that we work for the best interest of the Australian people rather than try to make smoking reduction into a party political action. It is far too important for that.

The question, then, is: will it work? The fact is that we already have those graphic warnings, and some of the feedback and studies on them appear to indicate that they work. The World Health Organisation has done a number of studies not only in Western countries but also in places such as Brazil and Thailand and in other countries as well, such as Canada and Singapore. They have found that putting the graphic warnings on cigarette packets has a statistically significant impact. It is not a silver bullet, though. There are many other factors: socioeconomic factors, peer influence and age—young people are very susceptible to risk taking and doing things that are slightly rebellious, and smoking is one of these things, and there are also people who have just become addicted to the habit and find it really hard to give up. I graduated from military college with a peer who did a double major. He was looking at cancers caused by smoking, yet he was a chain-smoker. So understanding the damage caused by
smoking is not necessarily incentive enough for some people to give up the habit. For some people, it has to be recognised that it is a difficult habit to give up, and I applaud the governments of both persuasions for their efforts over the years to provide support to people through education and other measures to help them break that addictive habit.

Plain packaging is probably going to be most effective on young people, who are perhaps more influenced by the attractive nature of some packaging. If you look through some of the papers that have been produced by people such as the Cancer Council of Australia, the World Health Organisation and others, there is ample evidence that tobacco companies have spent considerable time, money and effort designing packaging to attract people in certain demographics to use particular products. Some of the ways they have used internal packaging and the ability to have sub-packages, expanding the amount of advertising space, indicates that they are aware that money spent on that additional advertising—that visual appeal—is going to increase the uptake of their product, if not smoking in general.

So, even if it is not the silver bullet, this plain-packaging legislation is one more measure—and again, in the overwhelming interest of the public good, I support anything that will provide some assistance in reducing smoking rates. One area I am concerned about, though, is process. I am not raising this as a criticism of the government's bill but as a general comment about consultation with stakeholders. I have had many emails from small business owners who are concerned about the impact on their operations in the shop and their ability to control stock. I note the fact that it was only after the coalition really pushed the fact that small business had not been consulted that allowances were made for the concerns of small business owners. I note that the coalition in the other place did put forward an amendment to allow the use of a tobacco company trademark on the two smallest outer surfaces of a cigarette carton to try to alleviate some of the concerns of small business. I regret the fact that that amendment was not passed, not because it is a sop to the companies but because it supported small business, who at the end of the day are the people who generate a significant number of the employment opportunities in Australia.

One of the other areas I wish to touch on is that of unintended consequences. The Australian Customs and Border Protection Service annual report shows that Australia over the last number of years has seized a significant amount of illegal tobacco: some 743 tonnes and 217 million cigarettes. In 2010 the National drug strategy household survey report claimed that illicit tobacco in Australia is used by some 4.6 per cent of smokers. There are other figures around which show that there has been an alarming increase in the amount of illegal tobacco smoked. There has been some contention that that is a position put forward by the tobacco companies to try to get government intervention in order to make sure that they are not losing margin. Some of those figures show that the amount of illegal tobacco smoked was around 6.4 per cent in 2007, 12.3 per cent in 2009 and 15.9 per cent in 2010, equating in this report to some $1.1 billion in lost revenue. To this debate—and, as far as I am concerned, my support for the intent of reducing smoking—the revenue is a secondary issue. The primary issue here is the health outcomes for our community. If we do see an increase in the illegal trade, it may well undermine this and many others anti-smoking initiatives that both sides of politics have been supporting.
One of the reasons that the health outcomes may be worse is shown in a number of reports about the ways that illegal tobacco is marketed. The tobacco is often slightly damp to increase the weight and increase the returns to the people selling it. That dampness turns the tobacco mouldy. It is then bleached with chlorine to treat the mould, and the chlorine then turns to chlorine gas when it is inhaled. So, if people do start turning to illicit tobacco because it is cheaper, easier to procure or for some reason becomes more attractive—again, the young people have that risk-taking approach—then the health outcomes could be worsened. In parallel to these plain packaging initiatives, I would certainly encourage the government to continue adequately funding and encouraging the activities of the Customs and Border Protection Service. I know the ATO are very concerned about making sure the government does not lose revenue, but there should be a whole-government approach taken to make sure that the illegal tobacco industry is really clamped down on so that it does not become an unintended consequence of the plain packaging measures.

One of the concerns the coalition has raised around this legislation is that we have not had access to the government's legal advice. The government assure us that they are on very strong ground in relation to trademarks. The concern that has been raised by the coalition and other players is whether this legislation's treatment of intellectual property and trademarks will set a precedent that will affect other areas. We can only take the government on their word that they are on strong ground. We certainly trust so, because the tobacco companies have indicated that they will be prosecuting these anti-smoking measures in the courts, and there is potential for the taxpayer to be exposed to a large cost to defend that action. We would certainly hope that that would not be money spent in vain, that the government's position would indeed be validated. As I say, we have not seen the advice, so we cannot comment on that. But we will give the government the benefit of the doubt and trust that that is the case.

In summary my position is—as evidenced by many people we know in our community—that tobacco does kill, and the greater public good is served by government intervention to make sure that users are informed, that those who are easily influenced are dissuaded and that the taxpayer's exposure to the consequences of the use of tobacco is minimised. I will not be opposing this bill.

**Senator Bernardi** (South Australia) (17:24): I start my contribution to this debate by making a confession. I know we are not in the hallowed halls of St Francis Xavier Cathedral or somewhere like that, but I want to put on the record that I, for a substantial part of my adult life, was hopelessly addicted to cigarettes.

**Senator Wong:** And a rower!

**Senator Bernardi:** And being a rower, Senator Wong—that is exactly right. The lure of tobacco was such that every morning I would wake up and crave a Marlboro Red and that I would continue to smoke Marlboro Reds throughout the whole day until I went to bed—and on occasions I would wake up in the middle of the night and do it. I am not particularly proud of it, because it is a terrible habit. I make no bones about the fact that smoking is addictive and it is dangerous; yet it can seduce even people who have a commitment to health and fitness.

One of the great challenges is how to break this nexus of people picking up the habit—the addiction—of smoking. I fully support measures which do that by targeting children. We should protect our children.
Senator Singh mentioned before that we have banned smoking in cars where children are present. I think that is an excellent initiative. I do not support smoking in public buildings. As a former publican, I believe that individual businesses should have the right to make a choice as to whether they want to allow smoking on their premises or not, but I accept that that is not the way the world is moving.

I declare this because I suffered a number of ill-effects from smoking. They are not directly related to smoking, but once I picked up a respiratory infection and spent some time in hospital. After three months there I was allowed out for a brief sojourn to visit a doctor. Such was the lure of my addiction to Marlboros, I stopped and bought a packet and had a couple of cigarettes along the way. I got to the doctor, who said, 'You've been smoking, haven't you?' and I said, 'Yes, I have' quite sheepishly. She said: 'Look, you've got some scars on your lungs. If you continue to smoke you will die of cancer very quickly.' It was a rather a telling moment. That was probably the last cigarette I had. So I know full well the dangers of smoking. I know full well how bad it is. I know that it kills people. The less smoking we have, the better.

The reason I tell this story is that I want to put it very clearly on the record that I am not a defender of what Senator Singh called 'big tobacco'. I am apparently associated with big everything—big tobacco, big oil. Maybe I am accused of this because I am big Cory! But I am just big Cory and I am marching to my own beat. Senator Wong, I see you laughing. Maybe you have accused me of being too big—whatever it is. I am not a defender of big tobacco, but I am a defender of freedom. I am a defender of freedom of choice, I am a defender of intellectual property rights, I am a defender of small business and I am a defender of a business's right to sell a legal product.

I am also a very strong supporter of effective and prudent policy. Many people in this chamber and out there in the community would know that I am deadset against the creep of the nanny state, which seems to have an insatiable appetite. The problem with the nanny state is that it is not so much concerned about whether the practices or the laws it wants implemented or introduced are going to be effective or not—it is not concerned about whether it is actually going to achieve its stated aims. The objective of the nanny state, for those who advocate along this line, is generally to gain more control. It is about more control over individuals, more control over choices, more control over people, more control over businesses and ultimately more control over our society. That is what concerns me, quite frankly, about this legislation.

The advocates of this legislation are proudly trumpeting that this is the most draconian—that is my choice of words; they say it is the strongest—antismoking legislation anywhere in the world, as if it is some sort of patriotic duty that they have done and some sort of great achievement. Those words fill me with dread. Every time we fail to learn from the experience of other nations we risk imperilling our own nation and the things that make it so good. Other countries have quite thoroughly examined this issue of plain paper packaging, and they have invariably rejected it. They have rejected it on the grounds that there is no compelling evidence—no sensible belief—that it will actually decrease smoking rates. Coupled with this are a number of notable risks, and I will come to those risks a little bit later.

The suggestion that this bill is really just another piece of nanny-state legislation is
evidenced by the response when the coalition said we would not be opposing it—albeit that we have a number of serious concerns not only about its being ineffective in reducing smoking rates but also about the dangers of legal challenges, the dangers to intellectual property and a range of other concerns which I will come to. When we announced that, the nanny-state supporters came out and started loudly trumpeting what a great victory it was. They then started their campaign suggesting plain paper packaging for alcoholic beverages and for energy-dense and nutrient-poor food. That is the sort of food that most of us have eaten on more than one occasion.

We have a Preventative Health Taskforce who have said they are going to have a crackdown on drinking, on smoking and on this energy-dense, nutrient-poor food. They want to talk about banning drinks advertising. They want graphic warnings on beer bottles. They want ‘appropriate portion sizes for meals’. Now, who is going to determine what an appropriate portion size for a meal is? It is a mighty difficult question, because I would suggest to you that someone of my stature might consume a little bit more food than someone of, say, Senator Cash’s stature—and that is no reflection on you, Senator Cash; it is probably a reflection on me. They want to tax unhealthy food because it might contain a little bit too much salt or too much fat. We already have a tax on ready-to-drink beverages, based on the premise that it would help reduce under-age drinking; but that reduction has not come to fruition. We have seen a transition from ready-to-drink beverages to naked spirits and people mixing their own. We have also seen suggestions that they want to ban alcoholic energy drinks.

Every time we talk about banning something because people, particularly adults, cannot make the appropriate choices, we go down a path from which I think there is very little chance of return. Once again I come to the fact that we do want to protect children and that there are measures which are effective in reducing the appeal of smoking and other harmful practices to children. We have seen the effectiveness of some of those measures in the form of advertising restrictions and things of that nature. But, with companies investing hundreds of millions, sometimes billions, of dollars in branding their products, for a government then to say unilaterally, ‘Sorry, we're not going to allow you to do that,’ sends a very, very bad message about the state of governance in this country.

I do not know anyone who defends smoking from the point of view that it is healthy for you. That may have been the case many years ago. In fact, my wife once told me she was diagnosed with asthma when she was seven or eight, and she was told that when she felt an asthma attack coming on she should have a menthol cigarette—an Alpine Light or something similar. It did not really work for her, and she would be shocked that I have revealed the state of the Irish health system back in the early seventies! But, anyway, things have moved on.

We have here an unproven policy, which may be well intentioned, to reduce smoking rates. But I do not think it is going to be effective. That is part of the reason I reject the idea that this bill is good policy. Also, we have heard that people are concerned about the intellectual property rights which may be lost by companies and about the fact that the bill could subject our people or our government to significant compensation claims. The legal issues associated with this bill are actually reflected in the Australian Constitution, a document which I believe more Australians should be knowledgeable
about and more governments should be mindful of, because there are often encroachments on the separation of powers and some of the freedoms in our Constitution. There is a suggestion that plain paper packaging would constitute acquisition of property on other than just terms according to section 51 of the Australian Constitution. It may also violate article 20 of the TRIPS agreement, the World Trade Organisation's multilateral agreement on international property, which says:

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements …

However, there is a health exemption in the TRIPS agreement, and this is where the legal contention lies.

The government and the minister responsible have on many occasions assured the opposition that their legal advice surrounding plain paper packaging is 'robust' and that they are on strong legal ground. Despite past experience, we accept the government's assurance at face value. But we are concerned because we have no proof of this. The government have refused to provide a copy of their legal advice to the opposition. Proposed section 15 of the Tobacco Plain Packaging Bill provides that this bill would not apply to the extent that it would result in acquisition of property on other than just terms, as under section 51 of the Australian Constitution. To me, that also suggests that there must be some doubts about the strength of the legal argument advanced by the government's advisers.

I am also concerned, having been a small business man myself, about the impact of this measure on retailers. There seems to have been a lack of consultation with retailers and small businesses over this issue. A number of them have contacted me, as I presume they have many other senators. They are worried about how this is going to impact their stock management at the point of sale—the difficulties in differentiating between packets that look almost identical.

We know that the House of Representatives Selection Committee referred this bill for inquiry to the House of Representatives Standing Committee on Health and Ageing with a wide-ranging brief. It focused solely on the health impacts of this bill. It did not deal with the impact on small retailers or the impacts of illicit tobacco—statistics for which were mentioned by the previous speaker, Senator Fawcett. The chair of this committee made a specific point of suggesting that there were concerns over these issues and that the bills should be referred to other committees to have those issues dealt with. I would also like to make the point that the first we saw of this bill was when the minister introduced it in the House on 6 July. It was not flagged or issued as part of the Commonwealth's exposure draft or consultation paper, which was released in April this year. The Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011, which we are discussing as well, has been referred to the Senate Legal and Constitutional Affairs Legislation Committee so that the committee can consider the specific provisions within this bill, any issues they create and ultimately their constitutionality. This bill contains what is known as the Henry VIII clause. This clause allows regulations made by the minister under an act of parliament to override the act itself. It is the clause that ministers can use to do virtually anything they like. In this situation, regulations made by the minister under the Trade Marks Act could override the Trade Marks Act itself. This is uncommon, to be very generous. It goes against the basic legal principle that an act trumps regulations. These clauses are exceptionally rare, and I stress that they are used only when there is no other alternative.
Of course, the minister in this case did have an alternative: she could have drafted the original legislation—the Tobacco Plain Packaging Bill—properly. The coalition believe this would have been a better way. We do not believe that the trade marks bill is necessary for the government to continue to implement their plain packaging agenda. I would suggest that if the minister had not been in such a hurry, has been across the detail, and had taken the time to draft the Tobacco Plain Packaging Bill properly, the Trade Marks Amendment (Tobacco Plain Packaging) Bill would not be needed. That is why the coalition will not be supporting the Trade Marks Amendment (Tobacco Plain Packaging) Bill.

In the time I have left, I turn my attention briefly to the issue of counterfeit and illicit tobacco. I have spoken with the tobacco companies about this and about whether they are overstating the case. I have spoken to some retailers as well. Based on the information that I gained, and based on the information provided to me by some consumers, illicit tobacco is widely available. The annual report of the Australian Customs and Border Protection Service shows that over the last three years it has seized 743 tonnes of tobacco and 217 million cigarettes. Clearly not all of that is illegal tobacco—it might include tobacco brought in by people who have bought too much duty free. However, I think the government have completely ignored the counterfeit tobacco issue and made no real attempt to address it through this legislation. This is despite the fact that articles 15 and 20 of the World Health Organisation framework also recommend implementing a track-and-trace regime for tobacco products and strengthening legislation against illicit trade in tobacco products. The government have instead let the tobacco companies manage their own tracking of tobacco products on a voluntary basis. This is despite articles within the draft protocol to eliminate illicit trade in tobacco products, as published by the WHO, which also state that the obligations of each party of the FCTC shall not be performed by or delegated to the tobacco industry. So there are a number of ways in which this government have failed to take fully into account the issues surrounding the counterfeit and illicit tobacco.

Finally, I would like to address the minister's conduct. I know that partisan politics play a significant role in how we go about our business, and it would be remiss of me not to insert a bit into my contribution to this debate. The minister has sought to politicise this issue surrounding plain packaging and tobacco control, simply for political gain. Any genuine attempt to engage in discussion or to raise issues which may have a serious impact on how our country will function in the future has been dismissed as the action of a person in the pay of big tobacco, and the rhetoric has been ramped up. The joke of this is that apparently the Liberal Party is in the pay of big tobacco because the Labor Party banned donations from the tobacco industry. It is somewhat galling that it was then discovered that the minister herself wrote to the tobacco industry asking them for a contribution to her own campaign fund. It is somewhat galling that recently there have been six newly-revealed letters—some sort of new revelation—sent by people such as the Minister for Sport, Senator Arbib, when he was secretary of the New South Wales ALP. These letters invited a senior tobacco executive to spend up to $15,000 on tickets to fundraising functions. Personally I do not see anything wrong with that. That is their business. They can invite anyone they like to their functions. But it is rank hypocrisy for those selfsame people and their conduits within the Labor Party to walk into the chamber and say, 'You people are...
talking to tobacco executives' and 'You people are talking to the tobacco companies about support and sponsorship' when they are doing the selfsame thing. This is what is diminishing politics in this country. The hyperbole is being ramped up, the hypocrisy is reaching a much higher level than it otherwise would, and we are diminishing politics and political debate in this country as a result. If you want to deal with tobacco companies, deal with them. I do not have any shame in saying that I am happy to talk to the tobacco companies, but not because I like their product or because I want to use their product—and I do not particularly want other people to use their product either. I would be devastated if my children started smoking. But they point is that they run legal businesses in this country and, whilst they are doing business legally in this country, we should have no shame in talking to them and openly engaging with them. I say to the government: whilst you are living off the pig's back and taking their taxes and using them to support your employment, you cannot demonise them and say that anyone who talks to them is somehow in their charge.

The problem we have here is that the level of hypocrisy is so large and so grotesque in this government that people have lost confidence in them. They have lost confidence in any genuine attempt there may be to redress some serious social ills, and they have lost confidence in the government's ability to manage things. That is proven by this issue, because the legislation is so poorly drafted that it will not achieve what it is intended to do, and it will have myriad unintended consequences. That is why the coalition stands for common-sense policies. We will give the government the benefit of the doubt on this legislation, but we have serious concerns about its legal implications for the Australian government, to the tune of billions of dollars, and about its effectiveness in reducing smoking rates.

Senator EDWARDS (South Australia) (17:44): I rise today to support my colleagues in talking about the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011. I was compelled to come down here after listening to quite a bit of the other side's contribution to this debate. They seem to have tried to corner the market on suggesting that we are involved in some kind of conspiracy with big business. It gets a bit tiresome to hear, I must say. What is wrong with big business? We try to attract big business to this country all the time. I think that everybody outside this place would want to know that every big, medium-sized and small business is receiving the support of all sides in this place.

We all know that smoking is the largest single cause of preventable death and certainly contributes to disease on a large scale in Australia. Globally over the next 50 years tobacco smoking is projected to result in 450 million deaths worldwide. That is a staggering nine million people a year. Today I want to draw the Senate's attention to the issue at a local level. According to the most recent ABS survey, 20.2 per cent of Australian males and 16.4 per cent of women are daily smokers. The annual social costs of tobacco use in Australia—the lost productivity and the medical intervention and research—are estimated at $31.5 billion. I have been digging into this further as I have been getting into these bills and I see that South Australia's share of this social cost is $2.39 billion, a staggering figure that recurs every year. Smoking and smoking related diseases are estimated to cost South Australia 57,275 hospital-bed days annually, while the direct impact on South Australia's health budget is estimated at $24 million annually.
No-one can credibly argue that this habit is not an incredible drain on this country's budget. Further research shows that there are not only social monetary imposts. The Cancer Council indicates that smoking rates are higher in rural Australia than they are in major cities and urban areas. This is putting stress on health services that are already diminished compared with those available to their city cousins. More alarmingly, in South Australia there are approximately 1,140 tobacco-attributable deaths annually. Tobacco is the greatest single risk factor for the disease burden in Australia. It accounts for 7.8 per cent of the total disease burden, including sickness, disability and death. Twenty per cent of all cancers and 70 per cent of lung cancers are attributed to smoking. One in two long-term smokers will die prematurely from tobacco-attributable deaths annually. The Australian Bureau of Statistics figures show that people aged 15 years and over who lived outside major cities in 2007-08 were 30 per cent more likely to be daily smokers than those in the major cities. The difference in daily smoking rates for women was greater than for men. Women outside major cities were 50 per cent more likely to smoke on a daily basis, while men were 15 per cent more likely. Men and women living outside major cities had higher rates of smoking in most age groups and it is only from the age of 55 that the rates of smoking converge for those living inside and outside major cities.

In highlighting these facts I want to make it clear that I support Australians giving up smoking and I actively encourage all those I can to do so. It is this emphasis on reducing smoking rates that leads me to my first concern: the potential rise of the illicit tobacco trade. Senator Bernardi has just spoken about it and Senator Birmingham spoke earlier about it. Most of the senators on my side are very concerned about the illicit trade in tobacco. The impact plain packaging may have on the growth of the illicit trade is not clear and it is likely to become evident only after this measure is implemented. Some retail businesses are already claiming that the illicit tobacco trade, or chop-chop as it is sometimes called, is already on the rise, evidenced through the increase in the sale of papers and filters but not in the sale of pouch tobacco. They are going in and buying their papers and filters, but they are not buying tobacco. This anecdotal evidence has been put forward by representatives of the supermarket industry, who obviously feel somewhat slighted by this legislation because they have not been consulted in any kind of detailed way. The minister has delivered this legislation and they now have to scurry around and reorganise their businesses. It is another lot of government interference in their businesses that they did not expect. The intent of this bill is to further reduce the rates of smoking. If we see a rise in the use of chop-chop then the purpose of the bill has been defeated. The government, if it is serious about reducing the rates of smoking in Australia, must also have a clear strategy on how to deal with the illicit tobacco trade.

Further to the potential rise in the illicit tobacco trade is the uncertainty surrounding the legal foundation upon which this bill sits. I am not a lawyer, unlike a lot of people in this place—it is probably fortunate that Senator Cameron is not here; he would say 'Hear, hear!'—but I do bring some real working experience on trademark legislation. Before coming to this place I spent decades promoting and investing hundreds of thousands, if not millions, of dollars into businesses which had to grow and prosper their products through the use of brands and trademarks. Across the world, it is fundamental that trademarks should be protected. Laws are enshrined, as they are...
here in this country, to protect people's proprietary rights in trademarks. My concern with these bills rests upon the possible interpretation that they acquire trademarks, which are unquestionably property rights.

There is much contestation about the impact of these bills. We must proceed with caution when legislating for this type of action. Currently, trademarks and intellectual property rights are provided for under the Trade Marks Act 1995 and a number of international agreements, such as the Paris convention and the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, refer to them. Trademarks are an important way for businesses to differentiate their product from others in the marketplace, effectively making it easier for consumers to make decisions about which products to purchase. Plain packaging takes away the ability for companies to differentiate and market a legal product through the use of their trademarks and, as a consequence, takes away their right to their personal property. I will come back to this point shortly.

The tobacco industry states that the introduction of plain packaging regulations would contravene minimum obligations for the protection of intellectual property rights under trade agreements in general, and under article 20 of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 in particular. While there is debate about how broadly the industry has chosen to interpret article 20, the point is that there is significant uncertainty over the impact of this legislation. However, in considering this proposed legislation I cannot support the erosion of property rights in any form, whether it be for chewing gum, cheese, soap powder or motor cars. My fear is that parts of this legislation will be the thin end of the wedge. This, colleagues, is one of my primary concerns: that measures like plain packaging could creep into other legitimate, legal goods and services sold and consumed in our society.

Do we prevent the use of trademarks for all products that pose a risk or are perceived to have a negative impact on society? Is plain packaging for tobacco simply the start? What is further down the road of political correctness? It was floated around this place last month, and Senator Bernardi referred to it earlier, that we should have an extra tax on fast food and health warnings on potato chips. Should all food come in drab brown packaging with a warning saying that this product may cause obesity? I suspect not. This bill reflects the totalitarian roots of those opposite: the Left/socialist origins of the Labor Party and the Greens. Telling people what is good for them and passing legislation is another step in their plan to control behaviour.

There are very few things we humans use or consume that, when used in excess, are not damaging. One of my Senate colleagues eats a lot of carrots. I noticed that her palms were orange, and she told me that it is from eating a lot of carrots. We must never resile from protecting an individual's right to choose whether they eat a lot of carrots, whether they smoke or whether they drive a certain brand of car that they like. We must always empower people to take responsibility for their own behaviour. Governments should not be in the business of telling people when, where and how much of something they can eat, drink or do. This is particularly true for all products which are legal—and tobacco, of course, is legal.

This kind of social debate should always come back to freedom of speech, to freedom of choice and to personal responsibility. Through information and education, which are freely available in our community via a number of sources, people can decide what is
best for themselves. Branding and marketing are key tools used to differentiate very similar products in a highly competitive marketplace. We cannot take away a company's right to market and brand its product under the spurious guise of health benefits.

Having said all this, I want to reiterate my support for reducing smoking rates in Australia. It is a sentiment with which everybody in this house, including the smokers I have heard, is in furious agreement. But I want there to be a particular focus on rural Australia and I want to let the minister know that it has an unacceptably high number—a disproportionately high number—of people who smoke, compared with the number of smokers in urban and city areas. That is something we should address as a matter of great priority.

To this end I offer my support for the Tobacco Plain Packaging Bill. I hope that it achieves its intended outcome. But I cannot, for the reasons I have outlined, support the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011.

Senator EGGLESTON (Western Australia) (17:59): I have to concede from the beginning that I am an ex-smoker. When I was a medical student, all medical students and all nurses smoked. If you went to a hospital dining room, there would be a smell of tobacco there. But I do not think many health professionals smoke these days. The world has changed so much: from a culture where smoking was acceptable to a world where people see smoking as taking an unnecessary risk with your health. In a world where fitness is regarded as such a high value objective, smoking—which reduces people's lung capacity and can cause peripheral vascular disease, meaning that people cannot run as far or as fast as they otherwise could—is no longer acceptable.

The facts and figures on smoking are as indisputable as they are staggering. When the sickness and disability costs caused by tobacco are taken into account, along with the deaths related to usage, it can be said that tobacco causes more disease and injury in Australia than other risk factor. In fact, research suggests that the cost of tobacco usage to our economy and in the health budget in particular amounts to an astounding $31.5 billion a year. That is a lot of money. To put this in perspective, this is more than three times the GDP of Papua New Guinea—an enormous amount of money.

It is interesting and educational to consider what could be done if we saved that $31.5 billion a year that tobacco is costing us. We could build more schools. We could build more hospitals. We could build more roads. We could build a lot more important infrastructure around this country. We have to consider tobacco perhaps not so much in terms of health impact, even though that is important, but in terms of what we could do if the money that tobacco and the tobacco industry is costing our country and budget every year were available to put into other programs and activities.

Because I was a medical practitioner, I am sure that it will not surprise my colleagues to learn that I support the Tobacco Plain Packaging Bill 2011 as another step in the battle to reduce the level of smoking in this country. But, like other speakers who have spoken this afternoon, I do not support a ban on tobacco. Banning tobacco is not the way to go. Whenever you ban things people then set up a trade in getting around the bans and the prohibitions. We ban drugs and yet there is a great illicit trade in this country in both soft and hard drugs. In the United States in the 1930s, when there was Prohibition and the United States government sought to ban alcohol, bootlegging then occurred. I believe...
that the Kennedy family in fact became rich by bringing whiskey made in Canada across the border with the United States and selling it around the United States—so the story goes. So banning tobacco is not what we want to do. Banning is the wrong way to go. What we need to do is educate people about the risks of tobacco and the benefits of giving up smoking. That is the pathway that by and large has been taken by various governments around Australia.

As a medical practitioner, like Dr Di Natale—and I am sure that he will make some remarks about this—over the years I have seen firsthand the damage that smoking does not just to an individual's health but in the arbitrary way that it breaks apart families and indiscriminately disables people with diseases like emphysema. It is very hard to forget the sight of an old friend who was once a robust and energetic person and who now has severe emphysema and has to get around dragging an oxygen bottle on a cart behind them and breathing with a mask over their nose just to get enough oxygen to walk a short distance. I once had the experience of catching up with somebody who I had not seen for many years who was in exactly that situation. He invited me to come and have coffee with him at Mindarie Keys in the northern suburbs of Perth. I felt how sad it was to see this once robust person living in that way, pulling his oxygen bottle around with him and able to do very little.

To put it bluntly, smoking kills. It kills in many ways. It kills through heart disease; it kills through the cancers it causes, such as lung cancer and bladder cancer; it kills through peripheral vascular disease; and it kills through respiratory disease, a disease with a very high morbidity rate. I must say that I am very proud to be a citizen of a country that has pioneered anti-smoking health education campaigns and began doing so some three decades ago. Australia, quite rightly in my view, introduced legislation banning tobacco advertising in the media and in the promotion of sport. This meant that people—young people in particular—were not presented with images that encouraged smoking. Instead, they were confronted only by the effects of smoking in the people around them. We strengthened laws prohibiting the sale of tobacco to innocent children. More recently, we imposed tight tobacco controls on smoking in public areas. Once upon a time, whenever you went into a cafe or restaurant you had to peer through the mist of smoke to find whoever it was you were going to have your meal with. People used to smoke in theatres, which is hard to believe now, and even harder to believe is the fact that people used to smoke on aeroplanes, which would be totally unacceptable in this day and age.

Australia in fact has been at the forefront of change when it comes to this toxic drug, and our achievements are truly outstanding when it comes to the curbing of the scourge of tobacco on the community and preventing meaningless incapacity and premature deaths. In my home state of Western Australia, under the leadership of Professor Mike Daube, the Quit campaign, which the Western Australian Department of Health introduced and funded, has produced outstanding results in reducing smoking and is regarded as a world benchmark. I congratulate Mike Daube on his enormous success in reducing the incidence of smoking in Western Australia.

The coalition's record in this area, at the federal level, is also one which we can be proud of. It was Robert Menzies who first introduced a voluntary tobacco advertising code for television, almost half a century ago. It was under the Fraser Liberal government that bans on advertising tobacco products on television and radio came about. More recently, Dr Michael Wooldridge, who
was the health minister in the early years of the Howard government, in June 1997 announced what was at the time the biggest ever national advertising campaign against smoking, with a federal government budget of some $7 million over two years. That was a very effective campaign and it began a program of public health activity and action which the federal government has shown considerable leadership in in other areas, such as the HIV campaign, for example. I think our federal government indeed has every reason to be proud of its great record in terms of public health campaigns. The Howard government imposed tougher tobacco taxes and the graphic health warnings on tobacco products, which were introduced under Tony Abbott's leadership as Minister for Health and Ageing in 2006 and which also led to quite significant reductions in the level of consumption of tobacco, particularly, I believe, among younger people. So, not surprisingly, in total the coalition presided over the biggest decline in smoking rates recorded in the history of any Australian government.

The coalition generally supports the Tobacco Plain Packaging Bill, but with some reservations, as some of my colleagues have mentioned today. There are issues, of course, about trademarks—and they are quite legitimate issues of a legal nature. These things have to be given due consideration. I have read that the tobacco industry plans to challenge this legislation through the courts in Hong Kong on issues to do with trademarking, and it will be very interesting to see what the decisions of the courts are when this matter is tested.

But, as I said, I do not think banning is the way to go in terms of reduction in tobacco usage. I think the road we have followed, in terms of health education in discouraging people to smoke, has been very successful—and it is a road that does not involve particularly big legal issues. Even if, in fact, the tobacco industry is successful in the Hong Kong courts in objecting to this legislation, I think the health education campaigns which are being followed in Australia, and this legislation to require plain packaging, will do a great deal to continue the reduction in the consumption of tobacco in this country.

The bill, as we all know, seeks to prohibit the use of all tobacco industry logos, brand imagery, colours and promotional text on the retail packaging of tobacco products. It allows for the use of a brand and variant name in a standard colour, position, font and style on the tobacco package. The bill does mandate that retail packaging of tobacco products should be in a standard, drab brown colour, with the exception of health warnings, the brand and variant name and any other relevant legislative requirements. Personally, I think that people who are nicotine addicts will find a way of finding the particular brand of cigarette that they want, whatever packaging it is in, but hopefully there will be fewer people who are addicted to nicotine and fewer people going into shops to buy packets of cigarettes. The bill does make it an offence to sell, supply, purchase, package or manufacture tobacco products in retail packaging that does not comply with the requirements of the bill—and that, I am sure, will prevent tobacconists and other stores from in some way indicating on the packs, either through their placement on the shelves or with other signage, the brand of the tobacco that is available.

While tobacco control reforms in Australia undertaken by both government and public health organisations have reduced the prevalence of smoking in our community, it is clear that more needs to be done, if for no other reason than the very important one that tobacco is costing our economy $31.5 billion a year—an enormous
amount of money. And, as I said, that money could be used in so many other ways: building community infrastructure and other programs which the government might provide for the benefit of the Australian community.

Something like three million Australians, more than one in eight, still smoke. I am told the prevalence is highest amongst Aboriginal and Torres Strait Islander people, with almost 50 per cent of the population over 15 years smoking. That is very sad, because our Indigenous population, especially in some of the more remote areas of Australia, is unfortunately subject to a number of disadvantages, principally alcohol abuse, which leads to breakdown of family values and various other kinds of abuse in these communities. It is very unfortunate that, on top of this, smoking is such a common thing among Aboriginal people.

It is hard to escape the fact that we need to have community health programs and public health nursing services that go out into these Aboriginal communities running, specifically, antismoking campaigns and encouraging Aboriginal people, especially young people, to recognise the detrimental effect tobacco smoking will have on them by reducing their health and life expectancy. Smoking leads to secondary diseases such as chronic bronchitis; emphysema; various kinds of cancer such as lung cancer, cancer of the bladder and cancer of the throat; and vascular disease. So its mortality and morbidity rates are very high.

I believe in health education. I do not believe that banning a product is going to be very helpful, because once you ban it a criminal trade is immediately created to get around the ban. I believe very strongly that the health education campaigns run by governments, both at the Commonwealth and state level, and particularly in Western Australia, have been very successful. We should not only congratulate ourselves on the success of those campaigns but put much more money into reducing the incidence of tobacco usage in this country, bearing in mind that the cost to the community is $31.5 billion a year as a consequence of tobacco usage. That cost is not just in hospitalisation costs; it is in the cost of social services, disability pensions and loss of income for people who are unable to work. I do not think we as a community can ignore a problem that is costing this country $31.5 billion a year. We should all be working and dedicating ourselves to supporting programs that will help to reduce that cost to the community.

I quite sincerely believe that this plain packaging initiative is a step in the right direction, and for that reason I am quite happy to support it.

**Senator RONALDSON** (Victoria) (18:17): I am pleased to be able to participate in the debate on this legislation. Before I do so I acknowledge that I have been a reformed smoker for some 27 months, 10 days, four hours and about 34 seconds, I suspect—and counting. Those who have been around here for some time will know that in between my time in the other place and my time here I was a participant on behalf of the industry, which is no secret to anyone.

I just want to say a few words. The first is that this is still a legal activity. The companies producing the cigarettes are doing so legally. Those who are selling the cigarettes are doing so legally. Therefore, it was with some concern that during this debate I heard from some on the other side an almost arrogant dismissal of the concerns of small business. Small businesses are concerned about loss of business and the flow-on effects of a reduction in smoking.
To arrogantly dismiss those concerns is, I think, very unfortunate. I think they should be listened to, respected and acknowledged. Their issue is also our issue, because it is indeed we who have put them into this position.

I would like to think that this bill will work. I remain unconvinced and I remember vividly when I was in the other place meeting with Customs, the Australian Federal Police and others to address what was a very serious chop-chop issue in Ballarat. What a lot of small business people are concerned about is that they will lose business as a result of this but there will be other so-called small business people operating out of homes and the backs of cars and at markets who have not been paying rates and taxes as part of their businesses, and we will see a shift from legitimate taxpayers across to illegitimate non-taxpayers. That is why I think arrogantly dismissing the concerns of small businesses in relation to this matter is wrong—wrong, wrong, wrong.

Chop-chop undoubtedly is going to become an even bigger issue than it is at the moment. It is a serious issue because it is cheap. There are price controls and points in smoking, as there are with any other purchase. You will probably see more cigarettes smoked with greater prevalence of chop-chop, not fewer. With chop-chop you will probably see some of the outcomes of the reduced use of filters, for example. It will not always be so, but those who know something about it will know that filters are not necessarily used with chop-chop. So I want to make sure that we are not just transferring a problem from the main street to the back alley. If we have done that and that is the outcome then we have let down a generation of small business people, and that, quite frankly, is not fair.

While I remain unconvinced that this is going to work, I will be supporting it. But there is a bigger issue involved, and that is at what stage personal responsibilities finish and government responsibilities start. At what stage do parental responsibilities start and finish and government interference and intervention start in a legitimate sense? This is a bit like the debate at the moment about takeaway advertising. At what stage do we as parents abrogate any responsibility for our children to the state? It is a bit like what is happening in schools, where our teachers are getting enormous pressure placed on them to be parents. These children are delivered from our loins, not those of the teachers who have responsibility for them at school. So what has happened to parental responsibility in relation to issues such as takeaway? What is it that drives people to say the state must step in at every point in the chain to impose itself on the community? Why do parents continue to abrogate their responsibility for their children in relation to these matters? Children do not hop in motor cars and drive down to takeaway outlets; they are in the main driven down there by parents who have the choice as to whether they go and buy some vegetables and some meat and some fish—whatever it might be—at a supermarket or take those children through the driveway at a takeaway shop.

We can sit back here as legislators and throw our hands up and just say at every stage, ‘We will support the intervention of the state.’ I am simply not prepared to accept that. The challenge for this chamber and for the other place and for the state legislators is to ensure that we do not become the most overgoverned country in this world, and I suspect that is where we are at. We are so darn lucky in this country that I think we have forgotten to take personal and collective responsibility for our own good and we have abrogated it to a group of
faceless people who might be there to do the right thing, but are they necessarily delivering the right outcomes? I need a lot of convincing. If we keep on ceding responsibility to government, which is by design a faceless person, then we deserve the outcome we get, quite frankly.

Some six or seven years ago I prepared a paper in relation to red tape in this country. This debate has prompted me and will drive me to update that. When you look at the level of state interference, be it at a local, state government or Commonwealth level, it is frightening. I have heard some remarkable discussions in this chamber over the last 24 hours about trademarks and trademark protection. If we as a nation are prepared to undermine the sanctity of trademarks in this country then we deserve to die by the sword that will be delivered to us. We must protect the integrity of the trademark, and that is why we will be opposing that particular bill.

But I want to say this before I finish up. I have seen the outcome of cancer in its most insidious state. Senator Di Natale talked about his experiences as a doctor. I fully accept that. I lost three of my closest friends in about 18 months from various forms of cancer; none of them reached the age of 55 and I still desperately miss all of them. But we have to separate out those issues from the bigger issues. We have to make sure that we are not doing things because we think it will make us better or we think that it might work. We must be making these long-term decisions, these government intervention decisions, on the back of facts. There is no doubt that smoking is bad for you. There is no doubt that smoking will kill you. There is some doubt about whether this measure is going to address that issue. If in 10 years time we look back and all we have achieved out of this is an increase in the illicit tobacco trade then we have not just let ourselves down; we have let down those people we are ostensibly here to protect as a result of this legislation. It would give me no joy, I can assure you, Mr Acting Deputy President, if that were the outcome, but I think there is a very serious risk that it will be.

This is a campaign that has been driven by those who I accept have a legitimate health issue and concern, but it is also being driven by an industry of people who want to see the state interfere in every single aspect of our lives. I am not suggesting for a minute that any one person here who has spoken is solely part of that latter group. I certainly would not accuse Dr Di Natale of that. But what I am saying is that there is a group out there that just see this as part of a long-term strategy in relation to increased interference. And we know what is going to be next: it will be the alcohol industry; and then they will just be picked off slowly, slowly, slowly. I think it was Senator Edwards who said it is the thin end of the wedge.

Let us support this bill, let us see if it works, but let us not make this the test case for what we are going to do in the future. Feeling good about doing something is not the reason we are here. We are here to legislate for legitimate outcomes, not faint hopes. If we allow ourselves to slip into the latter then we will allow ourselves to be seduced by the notion of 'feeling good' being the appropriate outcome. And it must never be the appropriate outcome; good governance has got to be the outcome; what is in the long-term interests of this country has got to be the long-term outcome. But what is not in the best long-term interests of this country is for the state to determine our every single movement, our every single activity. I have said before that there is a very substantial risk that we will become totally over-governed in this country.

I hope that this measure works. The jury is very much out. But I will finish where I
started. Do not blame the small business community for their concerns about this legislation. Do not blame them for expressing concern, as I said earlier, that we will see the tobacco industry going from a legitimate business to an illegitimate business. Do not accuse the tobacco companies of being the purveyors of evil. They are operating because we allow them to operate—no more and no less. They are a legitimate business in this country, fully sanctioned by this chamber, by this government and by past governments. If someone wants to do something about that, okay, put your hands up and let us do it. But do not, in these debates, separate these people out and put them into the evil corner without acknowledging that they are there because we allow them to be there. They are legitimate because we make them legitimate. Those small businesses selling this product are there because we make them legitimate. I do not support the trade marks bill. We do not support the trade marks bill. I will support the first bill in the hope that something constructive comes out of it. But I think the jury is very, very much out in relation to that.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:33): I am very pleased to be closing the debate on the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011. Senators in the chamber recognise that these are very important pieces of legislation. Today is a landmark day for tobacco control in Australia. Senators who have spoken in favour of the legislation have demonstrated that they are prepared to put the public health of their constituents absolutely at the top of the list of their priorities and certainly above the partisan politics that we have unfortunately seen from some speakers. They join with the 260 professors of health and medicine, including four former Australians of the Year, who have written to all federal MPs to seek unanimous support for legislation to mandate the plain packaging of tobacco products sold in Australia.

When the Minister for Health and Ageing introduced the bill in July, the minister detailed the toll of death and disease felt by our community each year from tobacco related diseases. The stark reality is that some 15,000 Australians die every year from this deadly product. The purpose of this legislation is to reduce the toll that is felt within our community. Tobacco is a product not like any other product. It kills half the people who use it regularly and as intended. The pack is not opened and thrown away; it is carried around by the smoker, continually brought out of their pocket or purse, put on their desk, held in the public arena and shown to friends—reinforcing the brand and their personal identity and exposing the marketing to many social groups, including children.

Plain packaging joins the range of direct actions that we are taking to tackle tobacco, including the 25 per cent tobacco excise introduced in April 2010, record investments in anti-smoking social marketing campaigns, and legislation to prohibit the advertising of cigarette products on the internet. The first piece of legislation will mandate that packaging can only appear in a standard drab dark brown colour, and the only thing to distinguish one brand from another on the packaging will be the brand and variant name in a standard colour, standard position and standard font size and style. That legislation is being supported by the chamber, and I take this opportunity to thank all senators for the support—albeit some quite grudgingly—of this historic legislation.
The opposition have already said that they will oppose an important part of the legislation package—the second bill, the Trade Marks Amendment (Tobacco Plain Packaging) Bill. There has been a lot of debate in this chamber about this bill. I take this opportunity to thank the Legal and Constitutional Affairs Committee for their inquiry and report into the legislation. The bill is designed to allow the government to act quickly to protect trademark owners' rights if there are unintended consequences for trademark owners and applicants from the practical operation of the plain packaging legislation. Contrary to what many coalition senators have been saying today about the trade marks amendment bill, any regulation made under the new section 231A will not have any effect on the operation of the Trade Marks Act in relation to goods and services that are not covered by the plain packaging bill. So suggestions that this can affect broader trademark legislation for products other than tobacco products are simply not correct. Some of the contributions given by senators opposite about this bill seemed to show a level of misunderstanding that is somewhat bemusing. I do not know whether that level of misunderstanding is somewhat intentional. It does seem a little strange to us that the opposition is going to oppose the second bill, which actually provides additional assurance to tobacco companies that if the interactions between the plain packaging bill and the Trade Marks Act impinge on their legitimate trademark rights to register, maintain or protect trademarks, we would be able to take urgent action to protect those legitimate trademark rights. The enactment of these bills will give effect to Australia’s commitment under the World Health Organisation Framework Convention on Tobacco Control.

A number of senators have made comments about illicit tobacco. The first bill, the plain packaging legislation, allows for tobacco companies to place an origin mark which is an alphanumeric code on the packaging on a voluntary basis to assist the industry in tracking and tracing. It also allows tobacco companies to continue to use other anticounterfeiting measures such as taggart ink and forensic-level differentiation of packaging material. Further, the 2010 National Drug Strategy Household Survey found that the proportion of smokers using unbranded loose tobacco regularly—that is, half the time or more—remained at about 1.5 per cent. That is not a significant change from 2007. I share the concern about chop-chop. I live in Far North Queensland. Mareeba, just west of us, was a tobacco-producing area and chop-chop was around. But this bill actually puts in place some measures which will assist in ensuring that there will not be growth in illicit tobacco use.

The fact that we will be the first country to introduce these measures is very exciting. I am aware that a number of countries around the world are supportive of our legislation. I take this opportunity personally to commend our Minister for Health and Ageing, Minister Nicola Roxon, who has shown great leadership and courage in bringing this legislation forward. She has been recognised both here in Australia and internationally for this leadership. She received the Nigel Grey Award, which is awarded to people who work hard to ensure that tobacco use is diminished in our country. That award is given by tobacco control advocates in our country. But importantly—and we can be enormously proud of this as a nation, and I am not being partisan about this—Minister Roxon was awarded this year, on World Tobacco Day, the Director-General’s Special Recognition Award by the World Health Organisation. She should be commended by us all for that leadership.
The passing of this legislation, Senators, will be another nail in the coffin of tobacco marketing. I commend this legislation to the Senate.

Senator FIERRAVANTI-WELLS (New South Wales) (18:40): Mr Acting Deputy President, I request that the question be divided, as some senators wish to vote differently on the two bills. I think this has been foreshadowed sufficiently during the debate, so at this point I would like the question for the second reading to be divided.

The ACTING DEPUTY PRESIDENT (Senator Fawcett): Indeed. We will deal first with the Tobacco Plain Packaging Bill 2011. The question is that the Tobacco Plain Packaging Bill 2011 be read a second time.

Question agreed to.
Bill read a second time.

The ACTING DEPUTY PRESIDENT: The question now is that the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 be read a second time.

Question put. The Senate divided. [18:45]
(The President—Senator Hogg)

Ayes ....................... 35
Noes ....................... 28
Majority .................... 7

AYES
Urquhart, AE
Wright, PL

NOES
Abetz, E
Bernardi, C
Boyce, SK
Bushby, DC (teller)
Colbeck, R
Eggleston, A
Fierravanti-Wells, C
Heffernan, W
Johnston, D
Kroger, H
Mason, B
Parry, S
Ronaldson, M
Sinodinos, A

PAIRS
Brown, CL
Conroy, SM
Farrell, D
Ludwig, JW
Sherry, NJ
Wong, P

AYES
Arbib, MV
Bilyk, CL
Bishop, TM
Brown, RJ
Cameron, DN
Carr, KJ
Collins, JMA
Crossin, P
Di Natale, R
Evans, C
Faulkner, J
Feeney, D
Furner, ML
Gallacher, AM
Hanson-Young, SC
Hogg, JJ
Ludlam, S
Lundy, KA
Madigan, JJ
Marshall, GM
McEwen, A (teller)
McLucas, J
Milne, C
Moore, CM
Polley, H
Pratt, LC
Rhiannon, L
Siewert, R
Singh, LM
Stephens, U
Sterle, G
Thistlethwaite, M
Waters, LJ

NOES
Adams, J
Birmingham, SJ
Brandis, GH
Cash, MC
Edwards, S
Fawcett, DJ
Fisher, M
Humphries, G
Joyce, B
Macdonald, ID
McKenzie, B
Payne, MA
Scullion, NG
Williams, JR

PAIRS
Brown, CL
Nash, F
Ryan, SM
Fifield, MP
Boswell, RLD
Back, CJ
Cormann, M

Question agreed to.
Bill read a second time.

In Committee

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

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:48): I table a supplementary explanatory memorandum relating to government amendments to be moved to the Tobacco Plain Packaging Bill 2011. The memorandum was circulated in the chamber on 7 November 2011. By leave—I move government amendments (1) to (3) on sheet BN220 together:

(1) Clause 2, pages 2 and 3 (table), omit the table (not including the note), substitute:
Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 16 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2. Sections 17 to 27A</td>
<td>1 October 2012.</td>
</tr>
<tr>
<td>3. Sections 28 and 29</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>4. Sections 30 to 32</td>
<td>1 December 2012.</td>
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<td>5. Sections 33 to 36</td>
<td>1 October 2012.</td>
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<tr>
<td>6. Sections 37 and 38</td>
<td>1 December 2012.</td>
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<tr>
<td>7. Section 39</td>
<td>1 October 2012.</td>
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<tr>
<td>8. Sections 40 and 41</td>
<td>1 October 2012.</td>
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<tr>
<td>9. Sections 42 to 46</td>
<td>1 October 2012.</td>
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<tr>
<td>10. Sections 47 and 48</td>
<td>1 December 2012.</td>
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<td>11. Sections 49 to 52</td>
<td>1 December 2012.</td>
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<tr>
<td>12. Sections 53 to 56</td>
<td>1 October 2012.</td>
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<tr>
<td>13. Sections 57 to 80</td>
<td>1 October 2012.</td>
</tr>
<tr>
<td>14. Sections 81 and 82</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>15. Sections 83 to 86</td>
<td>1 October 2012.</td>
</tr>
<tr>
<td>16. Sections 87 to 109</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
</tbody>
</table>

(2) Clause 18, page 21 (lines 7 to 9), omit paragraph (3)(c), substitute:

(c) the inside lip of the cigarette pack must have straight edges, other than corners which may be rounded, and neither the lip, nor the edges of the lip, may be bevelled or otherwise shaped or embellished in any way;

(3) Page 28 (after line 11), after clause 27, insert:

27A Legal effect of sections 18 to 27

Sections 18 to 27 have no legal effect other than to specify requirements, and provide for regulations specifying requirements, for the purposes of the definition of tobacco product requirement in subsection 4(1).

Note: Chapters 3 and 5 contain the offences and civil penalty provisions for failing to comply with a tobacco product requirement.

The government is committed to reducing the national smoking rate to 10 per cent of the population by 2018 and halving the Aboriginal and Torres Strait Islander smoking rate. The Tobacco Plain Packaging Bill 2011 is a crucial step in the government's anti-smoking action which includes the 25 per cent excise increase announced in April of 2010, record investment in anti-smoking social marketing campaigns, legislation to restrict advertising of tobacco products on the internet, listing of nicotine replacement therapies on the PBS and investments in Indigenous tobacco control. Plain packaging will remove one of the last remaining forms of tobacco advertising. It will restrict to industry logos, brand imagery, colours and promotional text.

The bill was passed by the House of Representatives with the accompanying Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 on 24 August of this year. Following delays to parliamentary consideration of the bill and to ensure that there is sufficient time for the industry to comply before the penalty provisions commence the government proposes amendments to the bill. These amendments do not alter the bill's approach to plain packaging of tobacco products. Amendments to the commencement of the bill are proposed in order to allow a longer lead time for implementation of the bill following its delayed package.

Under this proposal the preliminary provisions that previously commenced on 1 January 2012 will now commence on royal assent. The offences relating to prohibition of manufacture of noncompliant product in Australia will now commence on 1 October 2012; previously 20 May 2012. The remaining offences relating to retail sale of noncompliant product will now commence on 1 December 2012; previously 1 July 2012.

In addition amendment to the commencement of clauses 17 to 27 is proposed to move their commencement date to be in line with the commencement of the manufacturing offences on 1 October 2012. This amendment is intended to make clear
that these provisions have no legal effect independent of the offences in chapter 3 and the enforcement provisions in chapter 5 of the bill. This change is supported by the second amendment which inserts a new provision at clause 27A to state that sections 18 to 27 have no legal effect other than to specify requirements or permit regulations that specify requirements to be made for the purposes of the definition of tobacco product requirement in the bill. Finally, I am introducing a minor amendment to paragraph 18(3)(c) to address a technical implementation issue relating to the requirement that the inside lip of cigarette packs have a straight edge. Meeting this would require retooling of machinery, which would lead to implementation delays. The amendment I am introducing will allow the use of rounded corners on the inside lip to avoid the need for change to manufacturing processes, which would be difficult to achieve within the proposed implementation time frames. I commend the amendments to the chamber.

Senator FIERRAVANTI-WELLS (New South Wales) (18:52): I have a number of questions, given the way that the debate is now being structured, in relation to the timetables. I also have some questions in relation to the track-and-trace regimes, some legal ramifications and some questions in relation to the impact on small business. So perhaps we could deal with the timetable issues first.

I note that the bills have only been delayed by approximately two months and that they will still be passed by the Senate before the original time frames were set to start. I note the earliest date of commencement in the original draft was 1 January 2012 but the time lines have been extended for five months from 1 July 2012 to 1 December 2012. My question is: doesn't this show that the government's original time frames were somewhat unrealistic? Was the delay in the Senate the real reason for the extension of time or were there other reasons behind this?

Senator McLucas (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:54): Thank you for the question. The answer to the assertion you made in your question is: no. The government is committed to reducing the national smoking rate to 10 per cent of the population by 2018, and halving the Aboriginal and Torres Strait Islander rate. Plain packaging will remove one of the last remaining forms of tobacco advertising. It will restrict industry logos, brand imagery, colours and promotional text. As I said in my summing up speech, following delays to parliamentary consideration of the bill and to ensure that there is sufficient time for the industry to comply before the penalty provisions commence, the government proposed these amendments to the commencement provisions of the bill.

As I said, I have gone through the extensions of time. I think you understand those. It was simply the delay in getting this legislation into this chamber that necessitated a change to the timetable for implementation.

Senator FIERRAVANTI-WELLS (New South Wales) (18:55): In relation to the amended implementation time frames, the date that the regulation-making power comes into effect, section 27, is now the same date as the implementation date, where under the original time frames the regulation-making power commenced five months earlier than the implementation date. Will the regulations for the tobacco plain packaging bills be promulgated and released prior to the implementation date—

Senator McLucas interjecting—

Senator FIERRAVANTI-WELLS: Yes, I know there is a lot of noise in the chamber.
The CHAIRMAN: Order! Senator Carr and others, if you could just keep the noise down to a minimum that would be great.

Senator Chris Evans: I was trying to tell them to shut up and listen to you.

Senator FIERRAVANTI-WELLS: Thank you, Senators. If senators are waiting for another division I might say that we will not be dividing on the third reading. That might make it easier for some of the—

Senator Carr: Can we just get the amendments done? That would be really helpful.

The CHAIRMAN: Senator Fierravanti-Wells, you have the call.

Senator FIERRAVANTI-WELLS: Maybe we will divide, Senator Carr.

Will the regulations for the tobacco plain packaging bills be promulgated and released prior to the implementation date of 1 October 2012?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:56): The answer to that question is: yes, of course.

Senator FIERRAVANTI-WELLS (New South Wales) (18:57): I have other questions that relate to the bill but not directly to the amendments. So perhaps at this point we could put the amendments so that Senator Carr can go off to whatever he needs to do next. I did not want to inconvenience you, Senator Carr, but I do have other questions relating to the bills generally.

Question agreed to.

Senator FIERRAVANTI-WELLS (New South Wales) (18:57): During the second reading debate a number of speakers have encouraged the government to examine the track-and-trace schemes, which are used in jurisdictions such as Massachusetts, California and Canada. They are an effective way of clamping down on elicit tobacco and this is recognised in the Framework Convention on Tobacco Control. This has been offered as a practical suggestion for the government to adopt. Can you tell me, Parliamentary Secretary, what steps the government has taken to examine track-and-trace schemes for tobacco excise, since the minister offered in August, during her summing-up over the tobacco plain packaging bill in the House?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:58): As I said in my summing-up speech, the plain packaging legislation allows the tobacco companies to place an origin mark on the packet. It is an alphanumeric code which, as I said, will be on the packet. It is on a voluntary basis but I understand the industry is quite interested in protecting their product. It will assist the industry in that tracking and tracing that you referred to.

The legislation also allows for tobacco companies to continue to use other anticounterfeiting measures such as taggart ink and forensic-level differentiation of packaging materials.

Senator FIERRAVANTI-WELLS (New South Wales) (18:59): Could you tell me what organisations the department and/or the minister has met with regarding a practical track-and-trace regime? Is the Department of Health and Ageing considering this or other viable options?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:59): I am sorry; what was the second part of the question?

Senator FIERRAVANTI-WELLS (New South Wales) (18:59): Is the minister and/or the Department of Health and Ageing considering this or any other viable options?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:59): As I said in my summing-up speech, the plain packaging legislation allows the tobacco companies to place an origin mark on the packet. It is an alphanumeric code which, as I said, will be on the packet. It is on a voluntary basis but I understand the industry is quite interested in protecting their product. It will assist the industry in that tracking and tracing that you referred to.

The legislation also allows for tobacco companies to continue to use other anticounterfeiting measures such as taggart ink and forensic-level differentiation of packaging materials.

Senator FIERRAVANTI-WELLS (New South Wales) (18:59): Could you tell me what organisations the department and/or the minister has met with regarding a practical track-and-trace regime? Is the Department of Health and Ageing considering this or other viable options?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (18:59): I am sorry; what was the second part of the question?

Senator FIERRAVANTI-WELLS (New South Wales) (18:59): Is the minister and/or the Department of Health and Ageing considering this or any other viable options?
Carers) (19:00): It is not possible for me to give you a list of who the minister may have met with on this issue. I think I have indicated to you that we have accommodated the position, in the legislation, which goes to the origin mark and the issue around taggart ink and forensic-level differentiation of packaging materials. I think that shows that the government are (1) very well aware of the need to ensure that illicit tobacco is not on the market and (2) that we are working very closely and doing the best we can to ensure that we do not end up with illicit tobacco out there in the marketplace.

Senator FIERRAVANTI-WELLS (New South Wales) (19:00): If it is appropriate, perhaps you could take on notice the part of the question in relation to the organisations.

If I understood your answer correctly, you implied that tobacco companies were going to put origin labels on packaging. As I understand it, that is against WHO best practice, which says that it should be kept out of their hands. Should there not be some degree of neutrality? Could you please explain that? That is as I understand the situation.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:01): I am advised that negotiations on the draft protocol to eliminate illicit trade in tobacco products, which addresses the issue of track and trace, are ongoing. I think the assertion you are making is that the WHO has come to a position. I do not know that that is the case. I understand those negotiations are continuing.

Senator FIERRAVANTI-WELLS (New South Wales) (19:02): Parliamentary Secretary, could you go back to the issue of origin. Did I not understand you to say that the tobacco companies were going to be responsible for putting that information on?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:02): I will read it again:

... the plain packaging legislation allows for tobacco companies to place an origin mark, which is an alphanumeric code, on the packaging on a voluntary basis to assist the industry in tracking and tracing.

It is on a voluntary basis.
It also allows tobacco companies to continue to use other anticounterfeiting measures such as taggart ink and forensic-level differentiation of packaging materials.

Senator FIERRAVANTI-WELLS (New South Wales) (19:03): Much has been said during the debate in relation to potential legal claims. How much has the government budgeted for legal costs as part of this measure?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:03): I cannot give you the answer to that question, if in fact there is one. I will take it on notice and see if Minister Roxon has anything to add.

Senator FIERRAVANTI-WELLS (New South Wales) (19:03): I am surprised. I would have thought it would be prudent, considering that it has been very much in the public arena that tobacco companies could mount a legal challenge. It has been raised by quite a number of speakers here, so I would have thought it would be the first question you could provide an answer to.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:03): I am surprised. I would have thought it would be prudent, considering that it has been very much in the public arena that tobacco companies could mount a legal challenge. It has been raised by quite a number of speakers here, so I would have thought it would be the first question you could provide an answer to.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:04): Senator, that was not a question.

Senator FIERRAVANTI-WELLS (New South Wales) (19:04): In that case, could you tell me from which budget stream this funding is to be appropriated. It was made
very clear at estimates. This has been raised at estimates, Parliamentary Secretary; I am surprised that you do not have an answer here. Could you also take on notice which budget stream this funding is to be appropriated from.

Also, are you confident that you are on strong legal grounds on all potential avenues for legal challenges over this legislation and not just under a claim for acquisition of property on other than just terms?

**Senator McLUCAS** (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:05): In terms of your question about what budget stream it may or may not come from, that it is a hypothetical question. Whilst we have had threats from the tobacco industry, we do not have a legal case. Let's jump that bridge when we get there—or if we get there.

In terms of whether we are on strong legal ground, Minister Roxon has made it very clear that she believes—and the advice she has received does make her believe—that she is on strong legal ground. I would certainly encourage your side of politics to be progressing the success of this legislation rather than almost cheering—it is not from you, Senator Fierravanti-Wells but from others—when certain tobacco companies start the threatening language that they use from time to time.

**Senator FIERRAVANTI-WELLS** (New South Wales) (19:06): It is appropriate that the coalition pursue this line of questioning. Last time you told us that you were on strong legal grounds you ended up in the High Court with your failed Malaysia solution. Having been a government lawyer for 20 years before I came into this place, I repeat: are you confident that you are on strong legal ground, because unfortunately your government does not have a very strong record in relation to this. Indeed, the reason I am asking this here is that unfortunately the coalition were not given the opportunity to ask the minister these questions in the lower house, where our shadow minister responsible was there waiting to ask questions on 15 June. In this debate, comments have been made in relation to Minister Roxon. She has never really come clean over her cosy relationship with the tobacco companies. On that day, when she was supposed to front up to the consideration in detail of the Health and Ageing portfolio in the Main Committee, she just did not show. She did not show because she was running and hiding. Quite frankly, that would have been the appropriate time for questions of this nature to have been dealt with in detail with the minister, but it was very clear that the minister was very embarrassed. She had obviously misled the Australian public, because she had been publicly saying one thing and leading the Australian public to believe that she was taking a certain course of action in relation to tobacco companies, yet privately she was writing to tobacco company executives seeking their financial support. Indeed, it was really quite irresponsible for the minister not to front up, because there were legitimate questions for her to be asked.

Also, a motion was moved by Mr Dutton in the other place on 15 June calling on the minister to attend the chamber and publicly explain certain matters. It was very clear that the government protected the minister on that day when she refused to attend the chamber. The problem with this minister is that, if you do not agree with her 100 per cent, there is this accusation across the chamber that somehow we must be in the pocket of tobacco companies. We have seen it time and time again in this debate. If anybody has been in the pocket of the tobacco companies—and this is a classic case of: people in glass houses should not
throw stones—it was the minister herself. I must say that to this day we still do not know the extent to which that the minister herself was in the pocket of big tobacco. She has been prosecuting this issue with such a degree of zeal, but, of course, that zeal sits very uncomfortably with her hypocrisy.

As Senator Cash, I think, mentioned earlier, it was only recently that, despite the Labor Party's edict, so to speak, to place a so-called ban on the party from taking donations from tobacco companies, you have your New South Wales Australian Labor Party secretary still this year offering Philip Morris $5,000 places at a business dialogue and country business forum. The reason we now have to ask these questions is that the minister at no stage has fronted up to answer these questions.

Parliamentary Secretary, have you sought legal advice on the position under the trade related aspects of individual property rights agreements with regard to the Tobacco Plain Packaging Bill?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:10): There were quite a number of questions there and I will try to assist you where I can. In relation to a question you asked earlier around funding for this hypothetical litigation, I can advise the chamber that no funding has been specifically provided for potential litigation costs. Regarding your question that went to the level of confidence that the government has of its strong legal position, I will quote from Minister Roxon's press conference today, where she said: 'I am very happy to say to the public that we are well prepared. I think we are on very strong legal ground. We won't be bullied by tobacco companies threatening litigation and we are prepared to fight them if they do in fact take that step.' That is very clear.

I also refer to your slurring in some respects of Minister Roxon. Minister Roxon has explained very clearly, and I think most people would have picked this up: 'I have already explained that the letters in 2005 were clearly a mistake. The facts are'—

Senator Cash interjecting—

Senator McLUCAS: You do not make mistakes? You have never made a mistake, Senator Cash?

Senator Cash: I don't make excuses for soliciting political donations like the minister did.

The TEMPORARY CHAIRMAN (Senator Pratt): Order! Senator McLucas has the call.

Senator McLUCAS: She said: 'The facts are: big tobacco did not donate to me. They did not donate to the campaign. They did not attend the 2005 event.' I will come back to you to confirm I am absolutely accurate on that quote. She continued: 'While donations were made to the Labor Party and campaigns prior to 2004, they have not been made since.' I think that makes it perfectly plain.

Senator FIERRAVANTI-WELLS (New South Wales) (19:12): Perhaps you might like to explain to us Minister Arbib's transgressions in this area, which I think Senator Cash also—

Senator Cash: Let's listen to his excuses now.

Senator FIERRAVANTI-WELLS: Let us hear his excuses as well in relation to taking donations. Parliamentary Secretary, has the government sought legal advice on its position under the Australia-Hong Kong bilateral investment treaty and the possibility of being sued?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:13): I think you are asking me to
give you an indication of our legal advice. As a lawyer of some standing—

Senator Fierravanti-Wells: I simply asked: have you sought advice? I have not asked what that advice was.

The TEMPORARY CHAIRMAN: Senator McLucas has the call.

Senator McLucas: Those sorts of questions do go to the nature of the advice. It would be silly in the extreme for the government, with the sorts of threats that we have been receiving from the tobacco industry, to be going to the nature of the legal advice that we may have. I am somewhat astonished, to be frank, given your profession, prior to entering this place, as a lawyer and particularly a government lawyer.

Senator Fierravanti-Wells interjecting—

The TEMPORARY CHAIRMAN: Senator Fierravanti-Wells, you should wait to receive the call before you speak. You now have the call.

Senator FIERRAVANTI-WELLS (New South Wales) (19:14): Parliamentary Secretary, if you had listened to my question, it was simply: has the government sought legal advice on their position under the Australia-Hong Kong bilateral investment treaty? I ask that question because this was one of the very important issues raised by the Senate Legal and Constitutional Affairs Legislation Committee. In particular, they were concerned that the legislation may violate the 1993 Australia-Hong Kong investment treaty. The possibility was raised that Philip Morris may sue the Commonwealth over plain packaging under the expropriation and investor state dispute settlement provisions of the treaty. As Ms Gleeson and Mr Legge of the School of Public Health and Human Biosciences at Latrobe University explained:

Expropriation, in ordinary usage, means dispossessing property owners of their property.

This was raised in the hearing. My question is not what is the legal advice; it is simply whether you have sought legal advice.

Senator McLucas (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:15): The government has received substantial legal advice on its proposed tobacco plain packaging requirements. The government is pursuing tobacco plain packaging as a public health measure and is confident that the measures are consistent with the Constitution and Australia's international legal obligations. The government, of course, does not comment on the content of its legal advice. The government will defend any challenges to the measures.

Senator FIERRAVANTI-WELLS (New South Wales) (19:16): That does not answer my question specifically about the Australia-Hong Kong investment treaty. I repeat: have you sought legal advice on your position in relation to that treaty?

Senator McLucas (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:16): I can advise that the government is reviewing the statement of claims made by Philip Morris under the Hong Kong bilateral investment treaty. We are confident that plain packaging is consistent with Australia's international obligations.

Senator FIERRAVANTI-WELLS (New South Wales) (19:16): Thank you. I take that as a yes. Has the government assessed the practical impacts of this legislation on small business and small retailers?

Senator McLucas (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:17): While the advisers are seeking further information on that question, Senator, can I say that what we are trying to
do is to stop people smoking cigarettes. That is the intention of this legislation. The intention is to remove a piece of marketing that they currently have in the cigarette packet, which is put into and taken out of a shirt pocket or a purse sometimes 20 to 30 times a day. Every time that happens, it is like a billboard. It is a reminder. You wonder why these packets are gold and silver, and glossy with beautiful silvery bits on them. They want them to look glamorous. These things kill people. They kill 15,000 people a year. Our job is to stop people using them. Fifteen thousand families a year lose someone whom they love. Fifteen thousand people a year use our hospital system and our health system, and cost us an enormous amount of money. The intent of this is to stop that pain, anguish and cost to our community. That is the goal.

In January and February 2011, the department consulted with the following organisations representing small retailers about implementation of the plain-packaging measure: Council of Small Business Organisations of Australia, Australian Newsagents Federation, Master Grocers Australia, Service Station Association, Tobacco Station Group and National Independent Retailers Association. The consultations with the retailers took as the starting point the department's approach in testing visibility of font from one metre to enable ready brand identification in retail settings.

Senator FIERRAVANTI-WELLS (New South Wales) (19:19): Thank you. Will the government be monitoring the impact on small business of this measure after its implementation, and how will that be done?

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:20): In respect of your previous question, I am advised that a post-implementation review will be required to assess the regulatory impact on business. There will be a post-implementation review, so I think that answers your question on monitoring the impact on small business. On neutral track and trace, we will have to take that one on notice. It seems to be a term not known by the advisers I have here.

Senator FIERRAVANTI-WELLS (New South Wales) (19:21): I want to go to articles 15 and 20 of the World Health Organisation framework, which recommend implementing a track-and-trace regime for tobacco products and strengthening the legislation against illicit trade in tobacco products. My concern is that the government has instead let the tobacco companies manage their own tracking of tobacco products, on a voluntary basis, and this is despite article 7.2 of the draft protocol to eliminate illicit trade in tobacco products, as published by the World Health Organisation, and article 7.12, which states:

Obligations assigned to a Party—
of the framework convention on tobacco control—
shall not be performed by or delegated to the tobacco industry.

Minister, I am surprised that your advisers are not aware of those provisions, given that they were also the subject of consideration in the committee hearing.
Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:23): As I indicated earlier, there is no World Health Organisation recommendation for a mandatory government-run track-and-trace system for tobacco products. Negotiations on the draft protocol to eliminate illicit trade in tobacco products which address the issue of track and trace are ongoing.

Senator FIERRAVANTI-WELLS (New South Wales) (19:23): As I understand it, it is a recommendation. As I understand it, despite the recommendation of the World Health Organisation, you are going to a voluntary scheme, where the tobacco companies manage their own tracking, rather than following the recommendation of the World Health Organisation, which is basically talking about a track-and-trace regime. I just want to understand the nuance between the position that the government is taking and what the World Health Organisation is recommending.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:24): I will say it really clearly. You are saying that the World Health Organisation is recommending it. This is a draft document. It is still being negotiated. To jump to say that this is a WHO recommendation set in concrete, set in stone, is probably not accurate. These negotiations are ongoing as we speak, so to say that we are not following a WHO protocol would, I think, be inaccurate.

Senator FIERRAVANTI-WELLS (New South Wales) (19:24): I am going on the basis of articles 15 and 20 of what I understand to be a World Health Organisation framework that makes certain recommendations. I will not pursue it at this point, but I would appreciate it, Parliamentary Secretary, if you could take some of these issues on notice, because there appears to be a difference—at least a difference in nuance and perhaps a practical difference—in relation to these matters.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:25): To assist, I hope: the government continues to play an active and constructive role in the negotiations for the draft World Health Organisation Framework Convention on Tobacco Control to eliminate the illicit trade in tobacco products. We are negotiating. We are playing an active part. It is a draft protocol.

Tobacco Plain Packaging Bill 2011, as amended, and Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 agreed to.

Tobacco Plain Packaging Bill 2011, as amended, and Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 reported; report adopted.

Third Reading

Senator McLUCAS: I move:

That these bills be now read a third time.

Senator McEWEN (South Australia—Government Whip in the Senate) (19:28): I note that Senator Xenophon was unable to be in the chamber today for personal reasons. He has requested that it be recorded in the Hansard that, had he been able to be in the Senate, he would have voted in support of both the Tobacco Plain Packaging Bill 2011 and the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011.

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:28): I know it is a little unusual to make a third reading speech, but this will be very short. I have commended the Minister for Health and Ageing for her leadership in this case. I think it is also appropriate that we recognise that our
department, the Department of Health and Ageing, has shown enormous leadership, both here in Australia and internationally, and we should commend the many officers of that department who have done so much to get us to this point.

Senator FIERRAVANTI-WELLS (New South Wales) (19:29): by leave—Before I ask that the question be divided, I will just make a short statement. Can I say once again for the record that the coalition has sought at all stages to support—and indeed we are supporting—the passage of this legislation. I place on the record that it has been most disappointing the way Minister Roxon has chosen, in public fora and through media release, to seek to blame the coalition for the delays. I reiterate that it is not the coalition's role to determine what is or is not listed for debate in this chamber—that is proposed by the government. I say once again that on the last occasion the way the minister acted in relation to this legislation was appalling. I will not reiterate the comments I made in my speech in the second reading debate but I would say that on the last occasion, on 12 October, it was the Manager of Government Business, Senator Ludwig, who called for a debate on a change of hours and a variation in the business on that morning, which, of course, meant that the government on that day decided the order of business. So, if there was any delay, it was a delay which can be laid fully at the feet of the government. I take great exception to the minister's continued false assertions that the coalition was responsible for the delay of the passage of these bills. I ask that the question be divided, given that the coalition will be supporting one bill and not the other. We will not call the vote on the third reading, but could those comments be noted.

The ACTING DEPUTY PRESIDENT (Senator Pratt): The first question is that the Tobacco Plain Packaging Bill 2011 now be read a third time.

Question agreed to.

The ACTING DEPUTY PRESIDENT (Senator Pratt): The question now is that the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 now be read a third time.

Question agreed to.

Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011

First Reading

Bill received from the House of Representatives.

Senator McLUCAS: I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (19:32): I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time

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

Leave granted.

The speech read as follows—

The Safety Rehabilitation and Compensation (Fair Protection for Firefighters) Bill 2011 seeks to amend section 7 of the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) to ‘fast-track’ workers’ compensation claims by firefighters covered by the Commonwealth’s Comcare Scheme who have contracted a range of occupational cancers.
The presumption proposed by the Bill would be accessible only by firefighters that are covered by the SRC Act.

The Bill includes a new subsection 7(8) which provides that, should a firefighter be diagnosed with one of twelve primary site cancers after a set number of years of being employed as a firefighter (with a specified qualifying period for each cancer type), the employment is taken to have contributed to a significant degree to the contraction of the cancer, unless the contrary is established. If the latter occurs, the particular firefighter's claim will be assessed under the normal provisions in the SRC Act.

The creation of this legal presumption is designed to simplify access to workers' compensation for those who qualify.

International research, mainly from the United States and Canada, has indicated that the twelve cancers listed in the Bill have been found to occur at a significantly higher incidence and at an earlier time in life for firefighters than for the general population. Similar legislation has been enacted over the last decade in nine out of the twelve Canadian provinces, and in twenty-two states in the United States of America.

The Government also introduced several technical amendments into the Bill which ensure that the Bill will operate in a fair and sustainable way and that is consistent with the requirements under the rest of the Act.

The Government amendments were the subject of consultation with the ACT Government, which is a major employer of firefighters covered by this Bill, as well as the United Firefighters Union.

The Bill also includes a new subsection 7 (9), which provides that the firefighter must have been involved in firefighting duties as a substantial portion of his or her duties, in order for subsection 7 (8) to apply. It also allows firefighters who have been employed for several periods that add up to the qualifying period to have been taken to be employed for the qualifying period. This will avoid the risk of not covering firefighters who have accrued two rather than “several” periods of employment as the original Bill prescribed.

For the purposes of establishing the date of injury of a disease, subsection 7(4) of the SRC Act provides that an injury is ‘sustained’ at the earlier of the following:

- the date on which the employee first sought medical treatment for the disease; or
- the date on which the disease resulted in the death, incapacity or impairment of the individual.

The date of injury for these cancers will be the date a cancer is ‘sustained’ as provided in subsection 7(4).

A new paragraph 7(8)(d) will enable additional conditions to be attached to cancers which might be added over time by way of regulation.

Subject to passage of the Bill, the Government intends to prescribe primary site lung cancer. This is consistent with the Senate Education, Employment and Workplace Relations Committee’s recommendation and North American firefighters’ legislation.

However, also in line with North American firefighters’ legislation, the addition of primary site lung cancer will be limited to non-smokers. The proposed amendment will allow that condition to be included, which the Government intends to develop in consultation with experts and key stakeholders.

The Government has replaced the phrase “dominant cause” in the previous Bill with “significant degree”, which is the terminology currently used throughout the Act.

A new subsection at the end of subsection 7(9) further defines ‘firefighter’. The subsection will limit the provisions of the Bill to a firefighter employed by the Commonwealth, a Commonwealth authority or a corporation licensed under the SRC Act.

The effect of this provision would generally be to limit the Bill to career firefighters who are mainly involved in fighting structural fires. This reflects the current state of scientific knowledge about the links between cancer and firefighting work.

However, should new evidence emerge suggesting a link between bush firefighting (including for volunteer firefighters) and cancer...
then this could be considered, including as part of any legislative review of the amendments.

The Bill does not limit an employee’s right to have their claim assessed under other provisions of the Safety, Rehabilitation and Compensation Act.

The Bill also requires an independent review of the amendments to be conducted by 31 December 2013. This is consistent with best practice regulation and will require that a written report be provided to the Minister and published on the Departmental website.

Finally, the Bill sets an operative date for these new provisions for firefighters and will apply to diseases ‘sustained’ on or after 4 July 2011 the date the Bill was introduced into the House of Representatives.

Every day firefighters risk their health and safety to protect the lives and property of other people. Their contribution to the community cannot be underestimated.

The Government believes that the Bill will simplify the processing of claims for a specific sector of the workforce engaged in particularly hazardous work.

Ordered that further consideration of the second reading of this bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

**COMMITTEES**

Rural Affairs and Transport References Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Pratt): The President has received a letter from a party leader seeking to vary the membership of a committee.

Senator McLUCAS: by leave—I move:

That Senator Colbeck replace Senator Heffernan on the Rural Affairs and Transport References Committee for the committee's inquiry into biosecurity and quarantine arrangements on 29 November 2011, and Senator Heffernan be appointed as a participating member.

Question agreed to.

**ADJOURNMENT**

Senator McLUCAS: I move:

That the Senate do now adjourn.

**Australian Women's Land Army**

Senator FAULKNER (New South Wales) (19:34): Tonight I want to take the opportunity to update the Senate about recognition of the Australian Women's Land Army. I raised this issue in the Department of the Prime Minister and Cabinet Senate estimates hearings on 23 May and 17 October this year and then later on 19 October 2011 with the Department of Defence. I also spoke about appropriate recognition of the Australian Women's Land Army in an adjournment speech in this chamber on 13 September this year.

For some time I have been encouraging the government to use the occasion of the 70th anniversary of the formation of the Australian Women's Land Army, which occurs next year, to recognise the crucial role of the AWLA to the Australian war effort in World War II and to provide appropriate recognition to those who served in the Australian Women's Land Army. I have previously spoken about ways that this recognition might be made. Some suggestions have been put forward: the presentation of a brooch to surviving AWLA members—and I note that in 2008 a badge was awarded to members of the United Kingdom Women's Land Army and Women's Timber Corps; the development of a memorial history book or booklet, which could include a nominal roll of those who served in the AWLA; and the presentation of a formal certificate recognising service in the Women's Land Army. There may well be other avenues of recognition and I encourage consideration of them, but the key point is
this: recognition is long overdue. I stress that there is no time to waste, because the number of surviving members of the AWLA is declining. This evening I would like to acknowledge the evidence given by Mr Duncan Lewis, the Secretary of the Department of Defence, at the recent Defence estimates hearing. Mr Lewis said this:

... we get back to the issue of your concern regarding the identification of which department now should be taking this matter forward. I acknowledge the awkwardness that you have faced in the last couple of hearings. I have spoken with Secretary Watt. I have spoken with several ministers. I think it is clear that there is a general shared view that recognition should be made. It remains now for me, Dr Watt and our respective departments to provide to government a recommendation and then it is entirely a matter for the government as to whether that recommendation was accepted.

Mr Lewis went on to say:

Senator Faulkner, I ask that you either acknowledge or indeed accept that I will work with Dr Watt and the Department of the Prime Minister and Cabinet around this to ensure that between us, either individually or collectively, one way or the other, that the matter will be put before government.

After some further questions I thanked the two departments involved—the Department of the Prime Minister and Cabinet and the Department of Defence—for the commitment that Mr Lewis had given. This work by officials is crucial but I am the first to accept that a minister, or ministers, will need to make final decisions on these matters, and that the onus is on the government to act.

It was the Curtin government in 1942 that established the Australian Women's Land Army. I have noted before that Prime Minister Curtin recommended that the Women's Land Army be recognised as the fourth service, and the then Minister for Labour and National Service, Eddie Ward, said that the importance of the Women's Land Army's contribution to the scheme of rural labour could not be overestimated. Senators here tonight may be interested in a paragraph of cabinet agenda 413—perhaps today we would call it a cabinet submission—dated 22 December 1942. That paragraph—under the subheading 'General'—states this:

... The case for A. W. L. A., having regard to the shortage of rural labour has already been admitted—(vide inter alia Cabinet's adoption of the report of the Departmental Committee on Manpower) and there is abundant evidence of the success of similar armies in Great Britain and New Zealand. In view of the critical manpower position the Commonwealth is clearly justified in incurring expenditure on the A. W. L. A., provided such is reasonable in relation to the manpower shortage, relief provided and the results obtained. Moreover, it is vital to the success of the scheme that the A. W. L. A. be accepted as a national Women's Service of vital importance in the Australian war effort—a fourth Auxiliary—not necessarily recognised as such by law but accorded the distinction and recognition of national service well rendered.

Those words speak volumes. Mr President, for the interest of senators and others in the community, I would seek leave to table a cabinet memorandum of 18 January 1943 and its attachment, an agendum considered by cabinet on 22 December 1942 which contains the paragraph I have just quoted.

Leave granted.

Senator FAULKNER: I thank the Senate. I am pleased that we have made progress on this issue but I stress again: time is short. I strongly encourage the government to continue to work to ensure that appropriate recognition of those who served in the Australian Women's Land Army is given when the 70th anniversary of its formation is celebrated next year.
McCartney, Dr Anthony

Senator CASH (Western Australia) (19:42): Tonight I rise tonight to pay tribute to a great Australian and, more particularly, a great Western Australian: Professor Dr Anthony McCartney. Dr McCartney was a godsend to women in Australia and globally. Why? Because he was a pioneer in gynaecological cancer care and because he gave hope and, indeed, life to so many ovarian and gynaecological cancer patients, both here and around the world. Dr McCartney was a father of four children—John, Caroline, Clare and Tom—and the loving husband of Jacinta. He passed away on 22 October 2011, aged 70, after a brief battle with cancer.

He is someone who gave decades of tireless, selfless and dedicated professional service to his community and had genuine concern and compassion for ordinary human beings and in his specialist field gave so much to women.

Dr McCartney was the recipient of a special award from the Royal Australian and New Zealand College of Obstetricians and Gynaecologists for services to gynaecology and the treatment of cancer in women. After a long and highly distinguished career, he was, in 2007, appointed as the inaugural Professor of Obstetrics and Gynaecology at the University of Notre Dame in Fremantle. In 2008, the Australian Medical Association bestowed on Dr McCartney a Hippocratic Award for his dedicated and distinguished services in gynaecological cancer surgery. He was a finalist for WA Senior of the Year in 2008.

What was so inspiring about Dr McCartney was that he worked tirelessly and gave his all to his patients, right up until the week before he died. Dr McCartney was the first doctor in Australia to train as a specialist in gynaecological oncology. After training in New York, Dr McCartney, along with Dr Victor White, founded the Western Australian Gynaecologic Cancer Service, which was then located at the King Edward Memorial Hospital for Women in Perth. This important and life-saving cancer service has expanded across Perth and is now available at Hollywood Private Hospital as well as St John of God hospitals in Murdoch and Subiaco.

To say that Dr McCartney was a trailblazer and a brilliant innovator when it came to gynaecological cancer does not do justice to what this gifted man did for women with these potentially life-threatening conditions. Professor McCartney's work is internationally renowned and inspired other professionals around the world to follow his lead. In addition to his extensive medical training, Dr McCartney thought outside the box and in doing so invented a device and a new approach to treating early stage cancer of the lining of the uterus resulting in less tissue damage, less blood loss, less pain and a shorter stay in hospital. This innovative piece of medical equipment was heralded as Dr McCartney's most substantial contribution to gynaecology. It was a device known as the McCartney tube, developed after he turned his attention to developing new ways to perform laparoscopic surgery in the early 1990s.

The McCartney tube revolutionised the way hysterectomies and keyhole vaginal surgeries were performed, allowing complicated laparoscopic work to be performed more easily. Motivated by wanting to make surgery less complicated for doctors and recovery easier and faster for women, he invented the tube-shaped implement, made from polypropylene with a liquid silicone rubber cap, which gave doctors better access for surgery and provided other benefits like reduced blood
loss as well as reduced risk and lower pain levels for patients post surgery.

The McCartney tube also made work on cancers simpler. Endometrial cancer patients were found to have a lower rate of infection if they had been operated on by a surgeon using the tube rather than by means of open surgery. The patients also had shorter stays in hospital and were able to resume normal activities far more quickly. Just as importantly, Dr McCartney was the first doctor to remove major tumours as part of the management of advanced ovarian cancer. Patents for the tube have been granted all over the world, including in New Zealand, Singapore, the United States, Vietnam, Japan and across Europe.

Dr McCartney also supported and was involved in the Women and Infants Research Foundation and its activities. What is often most critical for a doctor, especially for the very personal nature of gynaecological surgery, is bedside manner. In the many public acknowledgements recognising the dedicated professionalism of Dr McCartney, the one thing that appeared over and over again on news pages, on blogs and in articles about Dr McCartney was the message that he truly cared about each and every patient he attended to. Patient after patient has paid testimony to Dr McCartney on a tribute website set up in his honour. One says:

Thank you for your patience, kindness and reassurance over the past five years as one of your many very grateful patients. You were a kind and gentle man. Whilst I never looked forward to my visits to your surgery, I always came away with a smile and a positive outlook.

Another says:

In respectful memory of Dr McCartney, whom I first met on Melbourne Cup Day 1992 at SJOG—St John of God—
I still remember—as I waited in my nervousness—him popping in and out of the waiting room varyingly to take interest in the Cup on TV, give a new Mum and bub a congratulatory hug, and to escort patient after patient like they were long lost friends. When it was my turn, he greeted me as if I was the very first person in his very busy day. Tony, thank you for all your consistent care and carefulness over 19 years.

Leisa Munro and Kara Garratt said in their message of remembrance:

Tony, you will forever be remembered by the many women whose lives you saved—one being our Mums. Your genuine kindness and caring will not be forgotten. We are eternally grateful.

And Denise wrote:

You came into my life, saved my life, touched my heart and gave me the greatest gift of all. The chance to watch my daughter grow up, hand over heart, thank you and goodbye.

As reported in the West Australian newspaper on 24 October 2011:

Cancer survivor and former patient Norma Hutchins, who was diagnosed with advanced ovarian cancer in 2006, said Dr McCartney was willing to take on cases others might shy away from.

"He was an absolutely amazing surgeon—he was a wonderful man" …
"He would walk out of his surgery with his arm around you."

Ovarian Cancer Australia has also paid tribute to Dr McCartney on its website.

After retiring from work at King Edward Memorial Hospital in 2007 after 31 years service there, Dr McCartney continued as Head of Gynaecologic Oncology at St John of God Hospital in Subiaco. Dr McCartney saved the lives of so many women and he trained doctors from Europe, the UK and Australia after the establishment of a program at King Edward Memorial Hospital. Trainees are still learning how to perform surgery there today, 23 years after the training centre was founded.

It is a testament to his success and his dedication that his procedures and the McCartney tube continue to be used all over
the world. I am pleased to say that the McCartney Gynaecological Cancer Research and Education Fund has been established to commemorate the life and work of Professor Tony McCartney. I am proud to say Professor McCartney was a Western Australian. I am, like all women, indebted to his dedication to his work and to advancing specialist techniques and methods of surgery. I know that his enormous legacy will live on through the work of the many doctors he has trained and the many, many lives that he touched and the lives that he saved.

In closing, I would like to quote one more obituary published online by the West Australian newspaper:

McCARTNEY (Anthony): Tony McCartney, treasured husband of Jacinta, beloved father of John, Caroline, Clare and Tom, passed peacefully at his home on the morning of 22nd of October 2011 surrounded by his adoring family. We will remember his passion for life, joyful sense of humour, his endless generosity and dedication to helping others. He will remain with us always. “Unable are the loved to die, for love is immortality.”

Remembrance Day

Senator MADIGAN (Victoria) (19:51): Sixty years ago tomorrow the following statement was read out on radio across Australia. Although it was written for another time, it is still relevant today, possibly even more than it was then. I would like to read it again today:

There are times in the histories of peoples when those charged with high responsibilities should plainly speak their minds.

Australia is in danger.

We are in danger from abroad. We are in danger at home.

We are in danger from moral and intellectual apathy, from the mortal enemies of mankind which sap the will and darken the understanding and breed evil dissensions. Unless these are withstood, we shall lack moral strength and moral unity sufficient to save our country and our liberties.

Our present dangers are a challenge to us: but in meeting the challenges of history, peoples grow in greatness.

The dangers demand of all good Australians, community of thoughts and purpose. They demand a restoration of the moral order from which alone true social order can derive.

We remind all Australians that we are members one of another, dependent, even for our daily bread on the work of many. From the community we have our livelihood, culture, protection in a reign of law. To the community we owe a just return of loyalty and service.

We believe that each of us has a duty to defend the community against evil designs and aggression and to preserve for our children that which was given to us.

We believe that each of us has a duty to deal fairly with his fellows in the transactions of life;

We believe that each of us has a duty to himself and to his fellows of honest work;

We believe that the development of a true community amongst ourselves and with all peoples of good will is the one way to peace at home and abroad.

Therefore we call for a new effort from all Australians to advance moral standards. We ask for it from individuals in their personal and vocational relationships; in and through the lives of families; in and through all our voluntary associations; trade unions; employers and professional groups, the organisations of women, of servicemen, and all the societies which our people have created to express their cultural, social and economic interests.

We call for an adequate understanding of the nature of law and of its necessity as the principle of order in a free society.

We call on all Australians to take the active concern in public affairs proper to citizens of a free society.

We call on each Australian to examine his conscience and his motives in all his associations with his fellows. If each does his part, the whole community will be renewed.
We call on all our people to think now of the future into which our children go, that we may shape it well and wisely for them.

We call on all our people to remember those whose labours opened this land to the uses of mankind; those who bore and reared the children of a new nation; those who died in battle for us, bringing splendour to Australian arms; those who worked with mind and muscle for the heritage which we, please God, shall hold and enlarge for our children and their children.

And that this may be so, we ask that each shall renew in themself the full meanings of the call which has inspired our people in their highest tasks and in their days of danger.

11th November 1951

This statement was signed by the heads of the Presbyterian, Methodist, Anglican and Catholic churches in Australia as well as by the senior Jewish chaplain to the Commonwealth and the president of the Australian Council of the World Council of Churches. It was also signed by the chief justices of the supreme courts of Victoria, New South Wales, Queensland, South Australia, Tasmania and Western Australia—all six states of the Commonwealth of Australia. The Prime Minister of the time, Robert Menzies, described it as 'a challenge to Australians in every walk of life to face up to their moral responsibilities as citizens in a free democracy'. Both he and Dr Evatt, Leader of the Opposition, commended it to the Australian people.

I read this tonight not only because it is the 60th anniversary of its original reading but also because tomorrow is Remembrance Day, the 93rd anniversary of the day when the guns fell silent in what became known as the Great War.

In 1918 our nation was new. The ink had barely dried on the Constitution before we saw our best sent to the slaughter of the First World War. They returned to build a nation, and every year we remember the sacrifice they and others made to give us the freedom we treat so casually today.

Tomorrow we remember those who have given their lives so future generations of Australians can live in liberty. I cannot help but wonder if they feel their sacrifice has been adequately returned. Today our lives and our decisions are determined not by the needs of our families and communities but by the demands of the economy and of the environment.

Fear is a challenge we have met before. Australians have often confronted fear, whether personal or collective, in economic crises or potential invasion. Our families have faced tragedy and death, our communities have faced hardship and adversity, and our nation has faced depression and onslaught but through it all we have remained determined and confident. Our history is one of courage in the face of fear.

Mark Twain, a man who knew human nature, once said:

Courage is resistance to fear, mastery of fear—not absence of fear.

We have known fear and we have fought fear, and our weapon against fear was courage and our confidence in our nation, in our history and in each other.

Today, however, our nation is challenged not only by fear but also by guilt. Our children are not encouraged to dream, to hope and to be innocent but to fear and to rebel and to despair. They are taught to fear for our future and to feel guilt for our past. Their nation’s history is shown to them as a reason for shame instead of an example of inspiration. How will this develop confident, determined and courageous leaders for the future of our nation and for the generations to come? Be not afraid. Courage is the resistance to fear; resist with confidence. Courage is the mastery of fear; master it with...
determination. Courage is the greatest of human qualities, because it is the quality that guarantees all others.

Commonwealth Heads of Government Meeting

Senator PRATT (Western Australia) (20:00): A lot has been going on in parliament this week, but I think some other quite significant recent achievements should not pass without note. I am talking about the Commonwealth Heads of Government Meeting in my home city of Perth at the end of October. Tonight I thank the wonderful people of Perth for doing such a fantastic job in hosting that event, particularly the many hundreds of volunteers who assisted. They had a great diversity of roles, from driving and greeting people at the airport to hosting people. In most instances people would have assumed that such people were paid, but in fact they were not. They were very worthy, terrific volunteers who put themselves forward to participate in those roles. They did such a fantastic job. It was a real pleasure to interact with so many of them in the course of the week. They were wonderfully professional but also very proud and friendly in showing off our wonderful state of Western Australia. It was a great event for Perth.

Many people question the place of the Commonwealth in the world but I, for one, as a result of this experience, certainly do not. CHOGM brought together representatives from 54 nations across six continents. I believe it is an important alliance when it comes to facing issues in the world. The theme for this year's CHOGM was 'Building National Resilience, Building Global Resilience'. It reflected a range of concerns across the Commonwealth of Nations and its people.

What was also important about the Commonwealth Heads of Government Meeting was that there were a number of other programs running in conjunction with it. They included the Commonwealth Business Forum, the Commonwealth Youth Forum and the Commonwealth People's Forum. These programs are particularly significant because without civil society, without global business and—clearly—without our young people the Commonwealth does not work. The fabric of the organisation is not just about governments; it is about its people and the networks we have among each other. I was delighted to be able to participate in parts of the Commonwealth People's Forum. The People's Forum aimed to raise the profile of the issues that civil society advocates for within the Commonwealth. They had a very successful meeting with the foreign ministers and were able to put their views forward. The People's Forum enabled people to learn from each other about important issues within the Commonwealth. There was a great amount of discussion between civil society organisations, culminating in key issues being raised at the meeting with foreign ministers. They raised really important issues such as the forced early marriage of girls, the impact of the criminalisation of homosexuality in many Commonwealth countries and the impact that that criminalisation is having on HIV transmission.

There were many other issues discussed, including the impact of colonial laws inherited from Britain on property rights and, indeed, the negative impact that had in particular on women and indigenous peoples throughout the Commonwealth. In a sense, some have not really reformed their laws in the way that nations like Australia have, where we now have native title and have taken the sexism out of our property laws. It is important to note that the legacy of being part of the Commonwealth has not always been great and that those are historical issues.
which many nations still struggle with. That is why civil society is so important. Civil society plays a key role in advancing the issues and interests that citizens of the Commonwealth want to address.

The Commonwealth will grow in relevance if it listens to its civil society organisations and responds to the issues that they raise. Civil society challenged heads of government to respond to a range of critical issues at the Commonwealth Heads of Government Meeting. I am pleased that CHOGM made good progress on some of them, but there was not progress on all of them. Many of them, such as a framework for the Commonwealth to address human rights, are critical questions.

To me this experience underscored the significance of civil society organisations networking and working together internationally. They are the drivers of good democratic practice, human rights, development and health right across the globe. Australia really should play a role now and into the future, when it works within Commonwealth organisations, to strengthen the participation of civil society in those organisations. Indeed, as I look up to you, Mr President, I recall the Commonwealth Parliamentary Association general meeting that took place in the building a few days ago. I am reminded of our own role as parliamentarians in participating in the Commonwealth and of the importance of our personal connections with civil society organisations, both here in Australia and overseas. We have much work to do to advance the interests of the Commonwealth. As parliamentarians we have a key role to play, and we have a forum through the Commonwealth Parliamentary Association to do that.

The People's Forum was organised by the Commonwealth Foundation and hosted by the Western Australian Council of Social Service with the support of the Australian government and the Western Australian government. I commend the Western Australian government for the amazing level of work that it did in putting this event on. I congratulate everyone involved in the People's Forum and particularly the Western Australian Council of Social Service. I was very pleased to see CHOGM address important issues such as global food security, climate change, transparency in extractive industries and health care with, importantly, an emphasis on maternal and reproductive health. The polio campaign that has been going on around the globe had a fantastic win with a major announcement, supported by Australia, of funding to eradicate polio globally. Polio affects a number of Commonwealth countries. Polio has been eradicated from most of them, but we really need to now do that last bit to eradicate polio around the globe. It can be done. Now I believe we have the financial backing, thanks to the commitment of Australia and other countries, to do that. I think that is a wonderful thing.

I was very proud to hear our Prime Minister speak of the commitment of leaders to strengthening the Commonwealth, particularly the commitment of the Commonwealth to an earlier and more constructive engagement where countries are diverting from the path of democracy, the rule of law and human rights through the provision of criteria for action and a graduated measure that the Commonwealth Ministerial Action Group can take in responding to situations of concern around the Commonwealth where human rights and democracy start to fail. It is an important reform that has been attempted on previous occasions but has failed. I think it is really important that this reform means not chucking countries out of the
Commonwealth as a very last resort but helping nations respond as they start to have difficulties.

The eminent persons group put forward a number of reforms which the Commonwealth heads of government have in part responded to. I believe the Commonwealth should consider and indeed support a great many of the worthy issues put forward by that group, including the decriminalisation of homosexuality and other important human rights issues.

The position of women and girls in the Commonwealth was also a significant agenda item for civil society, the youth forum and the heads of government meeting. I was delighted to attend when the Prime Minister led a panel of distinguished female leaders, including the Prime Ministers of Trinidad and Tobago and Bangladesh, to discuss how to achieve gender equity in leadership positions across the Commonwealth. It really was a wonderful discussion.

As a republican I have no hesitation in expressing my excitement at seeing Her Majesty the Queen. She is the Queen of the Commonwealth after all. There are plenty of republics in the Commonwealth and they all recognise the Queen, just not as their head of state. As Michael Kirby said: 'History has gifted to us an organisation that has brought together two billion people. In a world with so many divisions we need to make sure that organisations like the Commonwealth retain their relevance.'

**Campion College**

Senator BERNARDI (South Australia) (20:10): I recently had the great honour of attending a function for a young institution building on our shared history and carving a very bright future: Campion College. The President, Dr David Daintree, made a brief address at this function, which I believe contains an important message for the Australian people. He began:

There's a saying, 'You can't see the wood for the trees.' We talk sometimes about crises in education but the real crisis is almost too big to be visible. It is not about class sizes or funding or lack of physical resources. The real crisis is specialisation—too much and too soon. It is the loss of the common shared culture. It is the failure to ground students deeply in history and language, ethics, reasoning, skills and faith. We're producing generations of people who are spiritually blind and historically tone deaf. The result is moral and intellectual atrophy. People who have no sense of history can have no sense of direction, no formed or mature sense of where they are heading.

Belief in God, which should be the most natural thing in the world, has been sidelined so effectively that it now appears perverse and crazy to people who put their trust in crystals and astrology and reincarnation and silly pseudoscientific notions of multiple universes. To many people now in this dysfunctional and disordered world whales are more important than babies, endangered possums more precious than old people in nursing homes, smoking a more grievous sin than infidelity.

The way back, if by God's good grace it's not too late, will be hard to win. Perhaps you can't teach wisdom but you can certainly cultivate and nourish the seedbed in which wisdom can grow. The vital purpose of Campion is to strike at the roots of the crisis, not merely the symptoms. Let others focus on teaching practical knowledge. Our efforts are directed to a deeper purpose. We offer an education that forms Catholic minds, that blends faith and reason in the classical Christian way, that is intellectually rigorous and religiously faithful. That is the special contribution which Campion trusts to make to the Church and the nation.

I often quote Edmund Burke: 'No-one could make a greater mistake than he who did nothing because he could only do a little.' Though we are small, we will strive to do more than a little. By the end of this year we will have sent a total of 70 graduates out into the world—a very evangelical
number that—and they will make a difference. Campion has the potential to be a bright beacon in a darkening world.

Question agreed to.

ADDRESS BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

The PRESIDENT: I remind honourable senators that they have been invited to attend a meeting of the House of Representatives on Thursday, 17 November 2011 to hear an address from the Hon. Barack Obama, President of the United States of America.

Senate adjourned at 20:14

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]


Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Order 20.9 Amendment Instrument 2011 (No. 2) [F2011L02289].

Customs Act—Tariff Concession Orders—1111201 [F2011L02310].

1112410 [F2011L02312].

1114533 [F2011L02308].

1114758 [F2011L02301].

1114759 [F2011L02311].

1115678 [F2011L02307].

1115810 [F2011L02309].


147/2011 [F2011L02288].

149/2011 [F2011L02290].


152/2011 [F2011L02298].

154/2011 [F2011L02303].

155/2011 [F2011L02299].


159/2011 [F2011L02297].


147/2011 [F2011L02288].

149/2011 [F2011L02290].


152/2011 [F2011L02298].

154/2011 [F2011L02303].

155/2011 [F2011L02299].


159/2011 [F2011L02297].


147/2011 [F2011L02288].

149/2011 [F2011L02290].


152/2011 [F2011L02298].

154/2011 [F2011L02303].

155/2011 [F2011L02299].


159/2011 [F2011L02297].


Migration Act—

Direction under section 499—Direction No. 53—Assessing the genuine temporary entrant criterion for student visa applications.


QUESTIONs ON NOTICE

The following answers to questions were circulated:

Foreign Affairs
(Question No. 927)

Senator Johnston asked the Minister representing the Minister for Foreign Affairs, upon notice, on 18 August 2011:

How many debtors have been refused a passport renewal under section 16(1) of the Australian Passports Act 2005.

Senator Conroy: The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

Since 2005 one (1) debtor has been refused a passport after a competent authority made a request under subsection 16(1) of the Australian Passports Act 2005 (the Act). This was in 2011.

Treasury: Code of Conduct Investigations
(Question Nos 1044, 1079 and 1080)

Senator Abetz asked the Minister representing the Treasurer, the Assistant Treasurer and the Minister representing the Minister for Financial Services and Superannuation, upon notice, on 29 August 2011:

(1) How many Code of Conduct investigations have there been within the Minister's portfolio for the financial years: (a) 2010-11; and (b) 2011-to date.

(2) How many investigations established: (a) a breach; or (b) no breach, of the Code of Conduct.

(3) In each case, what provisions of the Code of Conduct were thought to have been breached.

(4) What penalties were applied where the Code of Conduct was broken.

(5) How many investigations are ongoing.

Senator Wong: The Treasurer has provided the following answer to the honourable senator's question:

Treasury

(1) Treasury had one investigation during 2010-11 and currently has one investigation underway for 2011 – to date period.

(2) The one investigation during 2010-11 established a breach of the Code of Conduct. The 2011 investigation is still ongoing.

(3) During 2010-11, the one investigation revealed a breach in Element C – S 13 (3).

(4) The staff member of the 2010-11 investigation received counselling, re-assignment of duties and reprimand as penalty.

(5) There is currently one investigation that is ongoing for the 2011- to date period.

Australian Securities and Investments Commission


(2) Two investigations were finalised and two established that there was a breach of the Code.

(3) Section 13 (1), 13 (4), 13 (8), 13 (10), 13(11).

(4) Termination of employment, Deduction by way of fine, Reprimand.

(5) 2.
Australian Taxation Office

(1) 207 ATO code of conduct investigations were conducted in 2010-11 and 23 in 2011-12 to date (as at 29 August 2011).

(2) (a) 200 ATO investigations established a breach in 2010-11. In 2011-12 to date, 22 investigations established a breach and one case where a resignation took place before the breach could be proven or disproven. (b) 7 ATO investigations established no breach in 2010-11 and nil in 2011-12 to date.

(3) —

<table>
<thead>
<tr>
<th>2010-11</th>
<th>2011-12 to date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section of the Public Service Act</td>
<td>Number of breaches under this section of the Act *</td>
</tr>
<tr>
<td>13 (1)</td>
<td>36</td>
</tr>
<tr>
<td>13 (2)</td>
<td>4</td>
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<tr>
<td>13 (3)</td>
<td>12</td>
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<td>13 (4)</td>
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<td>13 (6)</td>
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<td>13 (7)</td>
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<td>13 (8)</td>
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<td>13 (9)</td>
<td>20</td>
</tr>
<tr>
<td>13 (10)</td>
<td>7</td>
</tr>
<tr>
<td>13 (11)</td>
<td>11</td>
</tr>
</tbody>
</table>

* The total number of breaches exceeds the number of investigations as each investigation can involve multiple elements of the code of conduct.

(4) Penalties applied by the ATO where the code of conduct was broken:

<table>
<thead>
<tr>
<th>2010-11</th>
<th>2011-12 to date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty/outcome</td>
<td>Number #</td>
</tr>
<tr>
<td>Termination</td>
<td>13</td>
</tr>
<tr>
<td>Reassignment of duties</td>
<td>3</td>
</tr>
<tr>
<td>Reduction in Classification</td>
<td>18</td>
</tr>
<tr>
<td>Reduction in salary</td>
<td>45</td>
</tr>
<tr>
<td>Fine</td>
<td>87</td>
</tr>
<tr>
<td>Reprimand</td>
<td>158</td>
</tr>
<tr>
<td>No sanction</td>
<td>4^</td>
</tr>
<tr>
<td>Resignation</td>
<td>19</td>
</tr>
</tbody>
</table>

^ A determination that misconduct has occurred does not necessarily mean that a sanction must be imposed. A decision can be taken that other remedial action may be appropriate. (Australian Public Service Commission, Handling Misconduct Guide). Reasons for no sanction being applied in these
instances included officers retiring, employment contracts expiring and in one instance, no sanction deemed to be warranted.

(5) 21 investigations are ongoing as at 29 August 2011.

**Australian Competition and Consumer Commission**

(1) (a) There were two Code of Conduct investigations undertaken in the 2010-2011 financial year.
(b) There have been two Code of Conduct investigations undertaken in the 2011 financial year to date.

(2) (a) A breach was found in two of the completed cases. (b) The residual two cases are unfinished and therefore no determination has as yet been made.

(3) **Case No 1**
An APS employee must behave honestly and with integrity in the course of APS employment.
An APS employee must act with care and diligence in the course of APS employment.
An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
An APS employee must at all times behave in a way that upholds the APS values and the integrity and good reputation of the APS.

**Case No 2**
An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
An APS employee must use Commonwealth resources in a proper manner.

(4) **Case No 1**
Termination of employment.
**Case No 2**
Reduction in classification.

(5) There are two investigations that are still ongoing.

**Australian Bureau of Statistics**

(1) (a) 2, (b) 1.
(2) (a) 2, (b) 0.
(3) Case 1 s13(1), s13(3), s13(11).
**Case 2** s13(3), s13(11).

(4) **Case 1** - Fine & Reprimand.
**Case 2** - Termination of Employment.

(5) 1.

**Australian Office of Financial Management**

(1) (a) 1, (b) 0.
(2) (a) 1, (b) 0.
(3) **Case 1** – 13(5), 13(4).
(4) **Case 1** – a reprimand.

(5) 0.
Australian Prudential Regulations Authority

(1) APRA has its own Code of Conduct established under Section 48AC of the Australian Prudential Regulation Authority Act 1998. There have been no investigations pursuant to APRA's Code of Conduct during the financial years 2010 and 2011.

(2) None.
(3) Not applicable.
(4) Not applicable.
(5) None.

Corporations and Markets Advisory Committee

(1) Nil.
(2) Nil.
(3) Not applicable.
(4) Not applicable.
(5) Nil.

Inspector-General of Taxation

(1) (a) 2010-11 – one. (b) 2011-to date - nil.
(2) How many investigations established:
(a) a breach: one.
(b) no breach, of the Code of Conduct: nil.
(3) In each case, what provisions of the Code of Conduct were thought to have been breached: section(s) 13(1), 13(4), 13(5), 13(8) and 13(11).
(4) What penalties were applied where the Code of Conduct was broken: Termination of employment.
(5) How many investigations are ongoing: nil.

The National Competition Council

(1) The National Competition Council has not conducted any Code of Conduct investigations in the financial years (a) 2010-11; and (b) 2011-to date.
(2) Not applicable.
(3) Not applicable.
(4) Not applicable.
(5) No investigations are ongoing.

Royal Australian Mint

Nil

Productivity Commission

Nil
Murray-Darling Basin
(Question No. 1110)

Senator Birmingham asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, on 12 September 2011:

In regard to the Murray-Darling Basin:

(1) What regulation exists around the construction of levee banks.

(2) What analysis has the department or the Murray-Darling Basin Authority done into the impacts of levee banks on downstream flows and floods.

(3) Has any advice been sought or received on the impact of levee banks since the floods in 2010 and 2011; if so, can details be provided.

Senator Conroy: The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator's question:

(1) Regulation of construction on floodplains is primarily a responsibility of state and/or local governments.

The Murray-Darling Basin Agreement requires the Murray-Darling Basin Authority to be informed of any new proposals for environmental works by a contracting government or a public authority which may significantly affect the flow, use, control or quality of any water in the upper River Murray and in the River Murray in South Australia.

Any new levees proposed for the purpose of flood protection are referred to the Murray-Darling Basin Authority for advice only. The responsibility for the approval of these works rests with state governments and/or local governments.

It should also be noted that many of the levees within the system are relatively old and may predate the referral requirements under the Murray-Darling Basin Agreement.

The Australian Government also has a role in regulating proposals for new levees that may impact on matters of national environmental significance protected by the Environment Protection and Biodiversity Act 1999.

(2) and (3) Most levees that have been built for protection of urban areas and agricultural land have a local impact that is not discernable at a system scale. The few levees that do have a material impact at a system scale are explicitly or implicitly included in the water resource models that are used to analyse the system response to changes in operation. In that context the Department of Sustainability, Environment, Water, Population and Communities has not undertaken specific analysis of the impact of levee banks on downstream flows and floods.

The Murray-Darling Basin Authority has an interest in the operations of the River Murray system. Its water resource models, which include system scale effects of levees, are based on analysis of the impacts of the relevant levees.

For Murray-Darling Basin Authority projects which require specific levee bank construction (specifically the Koondrook and Gunbower Environmental works projects), detailed hydraulic and hydrological analysis has been undertaken and designs have been developed so that when the regulators are left open the total package of works, (including levees and regulators), will have minimal impact on downstream flow regimes and no change to current conditions. Any levees being constructed for projects have been designed to comply with state requirements and all necessary approvals are granted prior to construction commencing.

No advice has been sought or received by the Department of Sustainability, Environment, Water, Population and Communities or the Murray-Darling Basin Authority on the impact of levee banks on downstream flows and floods since the floods in 2010 and 2011. Management of levees and floodplain...
flows is the responsibility of local governments (typically for urban areas) and state agencies (typically for agricultural areas).

The Victorian Parliament is currently undertaking an inquiry into flood mitigation infrastructure in Victoria. The Murray-Darling Basin Authority has made a submission to the inquiry. A copy of this submission, which is a public document, is available from the Senate Table Office. The submission notes that the Murray-Darling Basin Authority is not involved in the management or maintenance of flood levees.

**Aid Program**

(Question No. 1250)

**Senator Johnston** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 22 September 2011:

Since 24 November 2007, how many cataract surgeries have been performed in the Asia-Pacific region.

**Senator Conroy:** The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

The Australian aid program has supported over 80,000 cataract and sight restoring surgeries performed in the Asia-Pacific region since 24 November 2007.

**Aid Program**

(Question No. 1252)

**Senator Johnston** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 22 September 2011:

Since 24 November 2007, what amount of funding has been spent on eye screening of primary school children (ages 5 to 12 years) in the Asia-Pacific region.

**Senator Conroy:** The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

Since 24 November 2007, about $55 million has been spent on eye health in the Asia-Pacific region. This has included funding for eye screening for over 150,000 school aged children in Cambodia, Nepal, Papua New Guinea, Pakistan, Solomon Islands and Vietnam.

Specific age disaggregated data is not available on a financial basis for all of the countries in which Australia provides funding for avoidable blindness.