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the Senate and committee hearings are available at

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SITTING DAYS—2016

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FORTY-FIFTH PARLIAMENT
FIRST SESSION—FIRST PERIOD

Governor-General
His Excellency General the Hon. Sir Peter Cosgrove AK, MC (Retd)

Senate Office Holders
President—Senator Hon. Stephen Parry
Deputy President and Chair of Committees—Senator Susan Lines
Temporary Chairs of Committees—Senators Back, Bernardi, Gallacher, Ketter, Marshall, O’Sullivan, Reynolds, Sterle and Whish-Wilson
Leader of the Government in the Senate—Senator Hon. George Henry Brandis QC
Deputy Leader of the Government in the Senate—Senator Hon. Mathias Cormann
Leader of the Opposition in the Senate—Senator Hon. Penny Wong
Deputy Leader of the Opposition in the Senate—Senator Hon. Don Farrell
Manager of Government Business in the Senate—Senator Hon. Mitchell Peter Fifield
Manager of Opposition Business in the Senate—Senator Katy Gallagher

Senate Party Leaders and Whips
Leader of the Liberal Party in the Senate—Senator Hon. George Henry Brandis QC
Deputy Leader of the Liberal Party in the Senate—Senator Hon. Mathias Cormann
Leader of The Nationals in the Senate—Senator Hon. Nigel Scullion
Deputy Leader of The Nationals in the Senate—Senator Hon. Fiona Nash
Leader of the Opposition in the Senate—Senator Hon. Penny Wong
Deputy Leader of the Opposition in the Senate—Senator Hon. Don Farrell
Leader of the Australian Greens—Senator Richard Di Natale
Co-deputy Leaders of the Australian Greens in the Senate—Senators Scott Ludlam and Larissa Joy Waters
Chief Government Whip—Senator David Christopher Bushby
Deputy Government Whips—Senators David Julian Fawcett and Dean Anthony Smith
The Nationals Whip—Senator Matthew James Canavan
Chief Opposition Whip—Senator Anne Elizabeth Urquhart
Deputy Opposition Whips—Senators Catryna Louise Bilyk and Jennifer McAllister
Australian Greens Whip—Senator Rachel Siewert

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

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Pursuant to section 42 of the Commonwealth Electoral Act 1918, the terms of service of the following senators representing the Australian Capital Territory and the Northern Territory expire at the close of the day immediately before the polling day for the next general election of members of the House of Representatives:

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**Pursuant to section 42 of the Commonwealth Electoral Act 1918, the terms of service of the following senators representing the Australian Capital Territory and the Northern Territory expire at the close of the day immediately before the polling day for the next general election of members of the House of Representatives.**

Chosen by the Parliament of Victoria to fill a casual vacancy (vice S Conroy), pursuant to section 15 of the Constitution.

Vacancy created by the resignation of Senator Bob Day on 01 November 2016.

**PARTY ABBREVIATIONS**

AG—Australian Greens; ALP—Australian Labor Party;
CLP—Country Liberal Party; DHJP—Derryn Hinch’s Justice Party; FFP—Family First Party
IND—Independent; JLN—Jacqui Lambie Network; LDP—Liberal Democratic Party;
LNP—Liberal National Party; LP—Liberal Party of Australia;
NATS—The Nationals; NXT—Nick Xenophon Team; PHON—Pauline Hanson’s One Nation

**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—D Elder
Secretary, Department of Parliamentary Services—R Stefanic
Parliamentary Budget Officer—P Bowen
# TURNBULL MINISTRY

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<td><strong>Prime Minister</strong></td>
<td>Hon Malcolm Turnbull MP</td>
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<tr>
<td><strong>Minister for Indigenous Affairs</strong></td>
<td>Senator the Hon Nigel Scullion</td>
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<tr>
<td><strong>Minister for Women</strong></td>
<td>Senator the Hon Michaelia Cash</td>
</tr>
<tr>
<td><strong>Cabinet Secretary</strong></td>
<td>Senator the Hon Arthur Sinodinos AO</td>
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<tr>
<td><em>Minister Assisting the Prime Minister for the Public Service</em></td>
<td>Senator the Hon Michaelia Cash</td>
</tr>
<tr>
<td><em>Minister Assisting the Prime Minister for Counter-Terrorism</em></td>
<td>Hon Michael Keenan MP</td>
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<tr>
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<td>Senator the Hon Scott Ryan</td>
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<tr>
<td><em>Minister Assisting the Prime Minister for Cyber Security</em></td>
<td>Hon Dan Tehan MP</td>
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<tr>
<td><strong>Assistant Minister to the Prime Minister</strong></td>
<td>Senator the Hon James McGrath</td>
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<tr>
<td><strong>Assistant Minister for Cities and Digital Transformation</strong></td>
<td>Hon Angus Taylor MP</td>
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<tr>
<td><strong>Deputy Prime Minister and Minister for Agriculture and Water Resources</strong></td>
<td>Hon Barnaby Joyce MP</td>
</tr>
<tr>
<td><em>Assistant Minister for Agriculture and Water Resources</em></td>
<td>Senator the Hon Anne Ruston</td>
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<tr>
<td><em>Assistant Minister to the Deputy Prime Minister</em></td>
<td>Hon Luke Hartsuyker MP</td>
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<tr>
<td><strong>Minister for Foreign Affairs</strong></td>
<td>Hon Julie Bishop MP</td>
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<tr>
<td><strong>Minister for Trade, Tourism and Investment</strong></td>
<td>Hon Steve Ciobo MP</td>
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<tr>
<td><strong>Minister for International Development and the Pacific</strong></td>
<td>Senator the Hon Concetta Fierravanti-Wells</td>
</tr>
<tr>
<td><strong>Assistant Minister for Trade, Tourism and Investment</strong></td>
<td>Hon Keith Pitt MP</td>
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<tr>
<td><strong>Attorney-General</strong></td>
<td>Senator the Hon George Brandis QC</td>
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<tr>
<td><em>(Vice-President of the Executive Council)</em></td>
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<tr>
<td><em>(Leader of the Government in the Senate)</em></td>
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<tr>
<td><strong>Minister for Justice</strong></td>
<td>Hon Michael Keenan MP</td>
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<tr>
<td><strong>Treasurer</strong></td>
<td>Hon Scott Morrison MP</td>
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<tr>
<td><strong>Minister for Revenue and Financial Services</strong></td>
<td>Hon Kelly O'Dwyer MP</td>
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<td><strong>Minister for Small Business</strong></td>
<td>Hon Michael McCormack MP</td>
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Thursday, 1 December 2016

The PRESIDENT (Senator the Hon. Stephen Parry) took the chair at 09:30, read prayers and made an acknowledgement of country.

DOCUMENTS
Tabling
The Clerk: I table documents pursuant to statute. The list is available from the Table Office or the chamber attendants.

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

COMMITTEES
Meeting
The Clerk: Proposals to meet have been lodged as follows:

Environment and Communications References Committee—private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 1.15 pm.

Legal and Constitutional Affairs References Committee—private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 11.50 am, for the committee's inquiry into Bell Group litigation.

Rural and Regional Affairs and Transport Legislation Committee—private briefing during the sitting of the Senate today, from 6 pm.

The PRESIDENT (09:31): Does any senator wish to have the question put on any of those motions? There being none, we will proceed.

BUSINESS
Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (09:31): by leave—I move:

That—

(a) consideration of bills under standing order 57(1) (d) (i) relating to private senators' bills shall not be proceeded with and that government business shall have precedence over all other business for 2 hours and 20 minutes;

(b) when consideration of general business concludes, government business shall be called on and considered till 6 pm; and

(c) divisions may take place after 4.30 pm.

In speaking to the motion, I acknowledge the assistance of colleagues around the chamber in the management of this, the final day of sittings for the year. In particular, I acknowledge that the opposition have offered their private senator's bill time today for government business, which is greatly appreciated. I also acknowledge that Senator Hinch has indicated that, at the conclusion of his contribution, he is happy for general business time to revert to government business. I understand that there may be another senator who wishes to make a contribution in general business time, but the motion that we have before us is that, once contributions have finished, we will go to government business.
I should, in particular, thank Senator Farrell, as it was his bill which was going to be debated in private senator's bill time this morning. I also acknowledge the Australian Greens, who indicated at the leaders, managers and whips meeting yesterday that, while they have a range of views on legislation that we have before us today that may be at variance from ours and those of the opposition, nevertheless they—together with the crossbench senators—will be working with us to see that we can conclude the business that is listed before us today. Can I again thank colleagues from across the chamber for their cooperation and for their assistance in making sure that the Senate today will be a place that can transact the people's business.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (09:34): I rise to make a few comments. I will not take up the chamber's time except to say that, after what has been a rather chaotic week in terms of hours and arrangements to extend hours, the opposition will support this motion to enable and facilitate some of the government's urgent bills that need to be dealt with by the end of this year. I think that, at the meeting that was held yesterday to discuss this, everyone in this chamber agreed to facilitate the program today and to enable those bills to be concluded.

I would also point out that this is the second week that the opposition has had to give up time that was allocated for our business in order to facilitate the government's business. Although the manager has acknowledged that fact, I think it is important to note that, of the 10 or so bills—I think there were about eight done last week and six that are being sought to be dealt with today—the majority will have been done in what was the opposition's allocated time. We are agreeing to do that because of the time urgency of the bills, despite some of the other deals that were done for extending hours this week, which did not have the opposition's support.

Question agreed to.

**BILLS**

**Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016**

*Second Reading*

Consideration resumed of the motion:

That this bill be now read a second time.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (09:36): I rise to speak on the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 on behalf of the opposition and indicate at the outset that the opposition will be supporting this bill, with amendments.

The bill is the sixth to be introduced since September 2014, making changes to Australia's national security and counterterrorism laws. It introduces a framework in part 5.3 of the Commonwealth Criminal Code that provides for a continuing detention order regime for high-risk terrorist offenders who are considered by a state or territory Supreme Court judge to present an unacceptable risk to the community. This bill was introduced into the Senate on 15 September of this year and immediately referred to the Parliamentary Joint Committee on Intelligence and Security, of which I am a member. We received 18 submissions, including from the Human Rights Commission, the Law Council, civil liberties and Muslim organisations. A public hearing was held, and the committee tabled its report on 4 November 2016.
Labor has consistently worked with the government to ensure our agencies have the powers they need to keep Australians safe; however, that does not mean that the government is provided with a blank cheque by us. We take a bipartisan stance on all national security legislation, but we believe that it is important that the freedoms which we value so highly in modern Australia are maintained. We should assert our values in how we confront terrorism and security threats as well.

Labor closely scrutinised this bill through the committee process, and we put a concerted effort into ensuring this bill has adequate protections in place such that it strikes the right balance between keeping Australians safe and protecting people's rights and freedoms. As a result of this, the committee made 24 substantive recommendations directed to improving oversights and protections in the bill, and the government has now agreed to implement all of these recommendations, which I acknowledge.

I will start by acknowledging that the bill before us seeks to establish extraordinary powers. That is why Labor sought the confirmation that the Solicitor-General had given advice on the constitutional validity of the final form of this bill. The committee recommended that the government seek advice on the final form, and we are pleased that the government did obtain that advice from the Acting Solicitor-General, Mr Thomas Howe PSM QC.

A number of amendments have been secured as a result to the bill which implement extra safeguards and aim to strike the appropriate balance, as I said, between rights, freedoms and community safety. This includes ensuring that terrorist offenders, subject to continuing detention order proceedings, have access to legal representation and will receive a fair trial.

Labor members were also concerned to ensure that the bill was properly targeted at terrorist offenders. The bill no longer includes treason or offences relating to publishing recruitment advertisements among the offences that would make an offender subject to the continuing detention order regime.

Expert witnesses will play a central role in continuing detention proceedings. The committee's recommendations have ensured that both the Attorney-General as applicant, and the respondent to any application, can both bring forward their preferred experts, and that an expert can be appointed at any time by the court.

Labor has also continued to press for a range of review mechanisms, as has been the approach we have taken in relation to many changes to national security legislation. On this occasion, this includes a 10-year sunset clause and a review of the regime six years after its passage. I note, again, the government's acceptance of these provisions.

The main elements of the proposed continuing detention order regime are contained in schedule 1 to the bill, which proposes to insert a new division 105A into the Criminal Code. Proposed subdivision A of that includes the object of the bill and definitions of key terms. The object of the bill is outlined in proposed 105A.1, which states it is:

… to ensure the safety and protection of the community by providing for the continuing detention of terrorist offenders who pose an unacceptable risk of committing serious Part 5.3 offences if released into the community.

Proposed subdivision B provides that a continuing detention order has the effect of committing the offender to detention in a prison for the period in which the order is in force. The order may be applied to a person, if the person has been convicted of a serious terrorist
offence. In the original version of the bill, a CDO, a continuing detention order, could be applied for against a person who has been convicted for the offence of treason.

A number of concerns were raised by submitters, including the Law Council of Australia, that the definition of treason offences are not necessarily comparable to the other terrorism-related offences proposed for inclusion in the bill. The committee accepted this proposition and also noted that no person in Australia has in fact been prosecuted for treason since the end of the World War II. The committee was concerned to ensure that the scope of offences is rightly limited to terrorism-related activities, and it did not consider that the inclusion of treason to be necessary or appropriate. That is reflected in the PJCIS's recommendations.

Proposed subdivision B also includes provisions about how a person who is detained in prison under a CDO must be treated. Some submitters to the committee inquiry were concerned that it might not be possible for the matters set out in subdivision B to be achieved and that this may result in continuing detention being punitive in breach of article 15(1) of the ICCPR.

The requirement that offenders be detained separately to convicted persons is a safeguard that the United Nations Human Rights Committee viewed as necessary to improve similar Queensland laws that were considered by the that committee in Fardon v Australia and Tillman v Australia. This was also acknowledged by the Parliamentary Joint Committee on Human Rights in its report on the bill. The Parliamentary Joint Committee on Intelligence and Security therefore considered that standards for housing arrangements ought be agreed and implemented across all jurisdictions, and that urgent attention must be given to ensuring that the conditions of detention are appropriate and consistent with Australia's human rights obligations. The committee recommended that it be provided with a timetable for implementation of this issue by 30 June 2017.

I want to turn now to the making of an order, and proposed subdivision C includes provisions about how a continuing detention order can be made. The Attorney-General or his legal representative may apply to a Supreme Court for a continuing detention order not more than six months before the end of the terrorist offender's prison sentence. The application must include certain information, and a copy must be given to the offender within two days, subject to certain exemptions.

A number of submitters to the committee were concerned to ensure that crucial evidence that will be relied upon during the CDO proceedings not be withheld from the offender. The Law Council of Australia indicated that secret evidence provisions undermine an offender's ability to obtain a fair trial. However, we note that the Attorney-General's Department, in a supplementary submission, clarified that secret evidence is not permitted. The committee has recommended that the bill be amended to make explicit that an offender is to be provided in a timely manner with information to be relied on in an application for a continuing detention order.

Proposed subdivision C also includes provisions about the appointment of 'relevant experts', the assessments conducted by relevant experts and experts' reports. A relevant expert is defined as a person 'who is competent to assess the risk of a terrorist offender committing a serious Part 5.3 offence if the offender is released into the community'. The court may make a written continuing detention order under proposed 105A.7 if, following receipt of an application, it is:
... satisfied to a high degree of probability on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence if the offender is released into the community.

And it is:

... satisfied that there is no other less restrictive measure that would be effective in preventing the unacceptable risk.

The court must have regard to a number of factors in forming its opinion about the nature of the risk posed by the offender.

The issue of experts was a matter that the committee received a significant amount on evidence on. A number of submitters raised concerns about the bill requiring the court to appoint experts and then make judgements as to the admissibility of the experts' evidence. There are questions around whether a specialised body of knowledge exists in relation to the prediction of terrorist offenders' likelihood of reoffending. Some submitters also called for the development of a risk assessment tool. The prediction of future terrorist offending for the purpose of continuing detention order proceedings—indeed, for the purpose of national security more broadly—is of a very different nature to the current schemes in Australian jurisdictions which already provide for post-sentence controls to manage certain types of offenders such as sex offenders and violent offenders. There were questions raised before the committee about whether diagnostic tools can be used effectively to assess terrorist behaviour in the same way that they are used to assess high-risk sex offenders which fall within a range of diagnostic categories used by psychiatrists and psychologists to predict future risk. The Law Council raised the issue that there are likely to be challenges to the qualification of people who may be called to provide expert opinions and that this would put courts in an inappropriate position of ruling on objections to the expertise of experts whom the court itself has appointed.

In response to these concerns, the committee recommended that the bill and explanatory memorandum be amended to make explicit that both the Attorney-General, as applicant, and the respondent will be able to bring forward their relevant expert, or experts, and that the court will then determine the admissibility of each expert's evidence. The court also has the discretion to appoint a relevant expert at any point.

The period of a continuing detention order must be no more than three years. However, there is no limit on the number of successive continuing detention orders that may be made. This goes to the nub of why I at the outset acknowledged that these are extraordinary powers. The committee recognised that it is possible for a person to be held for prolonged period beyond their sentence if successive continuing detention orders are applied for and granted by the court.

In its submission to the inquiry, the Australian Human Rights Commission referred to the High Court judgement in Dietrich, noting that Australian law has recognised the inherent power of the court to stay criminal proceedings where an accused does not have legal representation and where legal representation is essential to a fair trial. Accordingly, the committee recommended that the bill be amended to provide that the court has the explicit power to stay proceedings for a continuing detention order and that it be empowered to make an order for reasonable costs to be funded to enable the offender to obtain legal representation.
Recognising that this is extraordinary legislation, Labor has also sought a range of review mechanisms to be incorporated into the bill. We consider that a sunset clause is an appropriate mechanism to ensure that there is a review of the regime after 10 years. As I said, that is appropriate given the extraordinary nature of the provisions of the bill and given that the control order regime and preventative detention regime were also initially subjected to a 10-year sunset clause. The committee is also to complete a review of the regime after six years and the Independent National Security Legislation Monitor is required to complete a review after five years.

In conclusion, this bill does provide for some extraordinary powers. However, particularly as a result of the amendments which have been agreed by the government after the report of the parliamentary joint committee, it will contain a number of safeguards and review mechanisms. We always need to ensure, in confronting national security threats, that we do not let go of the rights and values for which we are fighting. We need to keep Australians safe but also protect those rights. With the inclusion of these safeguards and review mechanisms, the opposition will support this bill.

Senator McKIM (Tasmania) (09:49): I rise to speak on the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. I want to start by reflecting that, recently in this place, we have debated and passed a bill to place control orders on children who have committed no crime and today we are presented with a bill that seeks to keep people in prison after their sentences have been served because they might commit a crime. This offends a basic principle of our justice system. I know that arguments have been put and no doubt will continue to be put that there are other post-sentence detention regimes which exist in Australia and other parts of the world, and that is true—there are—and, to a degree, this legislation shares some similarities with those schemes. But two wrongs or three wrongs or four wrongs or any number of wrongs cumulatively do not make a right. The Australian Greens will not be supporting this legislation before us today. To imprison somebody because they might do something—which is what this legislation seeks to do—represents an unacceptable continuation of the erosion of civil liberties and human rights in this country that we have seen in the name of counter-terrorism, and that erosion has occurred on a bipartisan basis, under governments of both political stripe, all too regularly over the last decade and a half or so.

This bill amends the Criminal Code Act 1995 to establish a continuing detention order regime—that is, a regime that can keep people in prison after they have served the sentence of imprisonment that has been handed by the relevant courts. I want to acknowledge that, even though the Greens do not support this bill, we are pleased to see that the amendments circulated by government have adopted the recommendations of the Parliamentary Joint Committee on Intelligence and Security. I will pause there to note the obvious: the Greens and the crossbench are not represented on that committee, and if the government and the opposition were serious about approaching counterterrorism in a constructive and collaborative way then they would make an offer, through amendment, for either the Greens or other crossbenchers, or both, to have a position or positions on that committee.
We understand and acknowledge that this bill is the result of a COAG agreement where the states and territories agreed to implement a nationally consistent post-sentence preventative detention scheme. It is important to point out that continuing detention order schemes are imposed consequent to civil proceedings, and I want to quote Dr Tamara Tulich, writing in the *UNSW Law Journal*, who said:

Post-sentence preventative detention … orders straddle the civil-criminal divide. While they are connected to a criminal process, in that an individual may be detained … upon the completion of a term of imprisonment, … [it is] at a point in time after that which is traditionally accepted in the criminal justice system. The state may thereby impose significant restrictions upon an individual’s liberty while ‘side-stepping’ the enhanced procedural and evidentiary safeguards that attach to the criminal justice system.

That is one of the points that the Australian Greens want to make in this debate. This bill does effectively sidestep procedural and evidentiary safeguards that attach to the criminal justice system.

I want here to raise the issue of the standard of proof that is contained in this legislation, which is ‘to a high degree of probability’. I would be very grateful if the Attorney, in his response in the second reading, could address that matter of the standard of proof, specifically whether this standard of proof exists in any other Australian legislation and, if so, what that legislation is. I would appreciate it if the Attorney would also explain, in lay terms if you like, where the standard of proof of ‘high degree of probability’ sits in relation to commonly accepted standards of proof such as beyond reasonable doubt, comfortable satisfaction and balance of probability. If the Attorney is able to respond to that in his second reading contribution, that would be appreciated by the Australian Greens. If that response is not given, I indicate that I will seek to go briefly into the committee stage for this legislation and explore that specific matter, but I do not intend to unnecessarily delay the Senate by a lengthy exploration of this bill in the committee stage.

It is important that we place on the record the differences between the classes of people that can have a continuing detention order made under a state scheme and the class of people that this legislation will apply to. State schemes are directed at high-risk sex offenders and high-risk violent offenders. In those cases the offender who is subject to a continuing detention order has committed a serious sexual or violent offence. In contrast, this bill will allow for a continuing detention order to be made against an offender who has committed a preparatory terrorism offence. If it passes in the form that is flagged—that is, its current form with the amendments that are proposed—this bill will be the first piece of legislation in Australia that will allow for the imprisonment of someone who might commit a crime and who has not already been imprisoned for a sexual or violent offence. That is a step that has never been seen in this country before.

In a submission to the Parliamentary Joint Committee on Intelligence and Security, Professor George Williams and others said that this legislation:

… captures within the definition of a ‘serious Part 5.3 offence’ not only the commission of a terrorist act but also a broad range of preparatory conduct. This includes, in the first place, the five preparatory terrorism offences in Division 101 of the *Criminal Code*. These go beyond the traditional inchoate offences by criminalising activities which are merely preparatory to the commission of a terrorist act.
... For example, it is an offence to attempt to possess a thing connected with a terrorist act or to conspire to do an act in preparation for a terrorist act. These offences ‘render individuals liable to very serious penalties even before there is clear criminal intent’ to engage in a terrorist act.

By contrast, the scope of the serious sex offence and serious violence offence post-sentence detention regimes have been carefully confined to circumstances where a particularly serious offence has actually been committed or where a person has attempted or conspired to do so.

To sum up the concerns raised in that submission, which are absolutely and strongly shared by the Australian Greens, this bill goes a significant step further than anything we have seen before in this country in the context of post-sentence detention regimes and captures the act of committing preparatory offences—that is, offences where someone has been found guilty not necessarily of committing a terrorist act but of a range of offences that fall, in chronological sequence, well before the actual commission of a terrorist act.

This bill raises a number of human rights concerns. As I said, it further steps down the road that this parliament has been on for a decade and a half, where we have seen an ongoing erosion of civil liberties and human rights in this country in the name of protecting Australia from terrorism. I want to be clear about the Greens’ view here, and that is that of course a primary responsibility of this parliament needs to be to keep Australia safe. I do not think anyone in this parliament would disagree with that statement.

The issue, of course, becomes: where do we find the balance? Again, I do not think anyone in this house would disagree with that statement. Where there would, however, be differences is where that balance ought lie. As I said, the ongoing erosion of civil liberties and human rights in this country has been delivered on a bipartisan basis by the Liberal and National parties and the Labor Party, and it has been done over governments of both political stripe. This is why the Greens believe that there is an urgent need in this country for a counterterrorism white paper. The erosion of civil liberties and human rights that has occurred in this country has occurred without governments—and I include governments of both political stripe here—making a robust evidentiary case and without putting a constructive and solid argument before this parliament and the Australian people that the erosion of civil liberties and human rights is actually making Australia safer.

I have made this point in the past that it is time for a white paper on this issue. I know the Attorney will be beginning to get sick of me raising this, but I do believe that it is time. I accept a response that has previously been given to me, which is that the counterterrorism landscape is changing quickly, and I agree with that and I accept that. Sorry, I will just withdraw that and clarify it: I accept the response that has previously been given to me that the terrorism landscape is changing rapidly around the world, and that is true. It is also true to stay that the counterterrorism landscape is changing rapidly around the world, and we are dealing with a case of that today. But I make the point that a white paper can be a living document. It can be a document that is able to be carefully and rigorously changed and revised in response to the changing landscape of terrorism around the world. It would be inconceivable that we would move forward in defence policy in this country without the foundation of a white paper, and it ought to be inconceivable that we can move forward in response to the threat of terrorism and violent extremism and with policy responses to respond to terrorism and violent extremism without a white paper process.
I turn to the human rights concerns of this bill. The explanatory memorandum states that, to the extent that it limits some rights, the limitations are reasonable, necessary and proportionate. The Australian Greens do not accept that statement. I will give a couple of examples of our concerns. But, firstly, it is worth placing on the record that the United Nations Human Rights Committee found that the Queensland and New South Wales schemes—these are state-based schemes that relate to sexual offenders or violent offenders—breach the prohibition on arbitrary detention under article 9 of the International Covenant on Civil and Political Rights. Article 9 provides that a person must be detained lawfully and that any detention must not be arbitrary, meaning that it must not be inappropriate or unjust and must be predictable. It is difficult to understand what is just or predictable about being told 12 months before your sentence is due to finish that the government intends to apply to keep you in prison for a further three years. In addition, the Senate Standing Committee for the Scrutiny of Bills commented that continuing detention can plausibly be characterised as retrospectively imposing additional punishment for past offending.

To issue a continuing detention order, a court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorist offence if the offender were to be released into the community. The Australian Human Rights Commission, in their submission, stated:

For any system of preventative detention to be justifiable, it must be possible to make robust predictions about the likelihood of future risk.

Predicting future risk or dangerousness is notoriously difficult. Dr Tulich in a submission to the committee stated:

At present, there is no way to accurately assess the level of risk that a convicted terrorist will reoffend. This is because no validated terrorism-specific risk assessment tools currently exist.

I would ask the Attorney, if possible, during his second reading response, whether there is any information he can place before the parliament about whether, in relation to any of those tools—that is, tools that would allow for the assessment of risk in a terrorism-specific context—there is any work being done by government to develop such an assessment tool.

I also want to make the point that in our prison system—and I accept this is, in the main, a state and territory responsibility—we do not offer an adequate range of rehabilitation programs in our corrections system. If you want to bring crime down in any jurisdiction in the context of this legislation and if you want to minimise the likelihood of people conducting terrorist attacks in this country, you have to invest in rehabilitation programs within our prison system. Investment in those programs ought to be considered a strategic part of the government’s countering violent extremism programs. If we are really serious about not releasing potentially dangerous terrorists into our community, we need to put far more resources into rehabilitation programs in our prisons. If we did that, perhaps legislation like this would either not be necessary, or would not have such arguments that the government and opposition have used to support it.

In the short time left to me, I want go to the issue of statements that have been made by government ministers and legislation that has been passed or flagged by government and their impact on our security agencies' work in engaging with communities in Australia as part of the countering violent extremism program. We have heard Minister Dutton recently make public comments about Lebanese Muslims, which are extremely unhelpful. As the Attorney is
well aware—because he was sitting next to Mr Lewis, the director-general of ASIO, during Senate estimates recently—I asked Mr Lewis about statements made by high-profile Australians that seek to pick off minority groups in our community and what the impact of those statements was on ASIO’s work. Mr Lewis made it very clear—and I make it clear that he was not referring specifically to any person; it was a generic question—that statements of that ilk make the work that ASIO is doing more difficult. The soft work, if you like, that ASIO is doing—reaching out into communities where there is a risk that some people in those communities may become radicalised and working with them to attempt to prevent radicalisation of people in those communities—is made more difficult by public comments of the nature that I have just been speaking about.

It is also worth pointing out that legislation like this has the same effect, in the view of the Australian Greens. There are some communities in Australia who feel that this legislation will disproportionately apply to them, and once again that leads to them circling the wagons, if you like, and again it makes the job of our security agencies more difficult.

Mr Lewis was clear that ASIO is well aware that we cannot arrest ourselves out of the challenge of violent extremism, and he is absolutely right about that. The best and most strategic way, in the long term, to counter violent extremism in this country is to engage in deradicalisation programs and to engage with communities where there is a risk that people may become radicalised and attempt to prevent that from happening, because prevention, in the context of terrorism, is better than responding to terrorist attacks after they occur.

So, while we acknowledge that there may be arguments to bring in legislation that erodes civil and human liberties in the name of keeping Australia safe, we do not believe the argument has been adequately made by government in regard to this legislation. We believe it unacceptably erodes civil liberties and human rights in this country, and on that basis we will not be supporting it.

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (10:09): I rise to speak on the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. I want to take the opportunity to speak to the process that the parliamentary joint committee went through in reviewing this bill. In particular, I would like to highlight some of the issues that Labor members were focused on through the committee process.

Labor supports the intent of this bill. We acknowledge the threat that terrorism poses to Australians and our responsibility to curtail this risk. We also acknowledge the extraordinary nature of the provisions that the bill seeks to establish. Our concern was to ensure that proper scrutiny was applied to the provisions of this bill. As always, we seek to strike the appropriate balance between individual rights and community safety, a balance that is sought in all democratic societies and is always subject to debate.

This bill comes to the parliament with the unanimous support of all states and territories. The communique from the 5 August 2016 meeting of all attorneys-general noted:

Terrorism poses a grave threat to Australia and its people. It is important to manage terrorist offenders who may continue to pose an unacceptable risk to the community following the expiry of their sentences. It is critical that we work together to implement this scheme as early as possible.

The highest priority for Commonwealth, State and Territory Governments is to ensure the safety of the community. We also recognise the importance of balancing that with the protection of basic human rights
Labor supports the principles that are articulated in that communique. However, preventative detention for the purposes of community safety is an extraordinary step, and Labor takes very seriously the parliament's role in ensuring that security legislation is proportionate to the threat. The committee went through a thorough process of assessing the details of the bill and made a number of recommendations to make the bill more proportionate, effective and fair. There are six issues in particular that concerned Labor members of the committee and that I would like to highlight.

First, Labor committee members were concerned about the lack of clarity about what advice the government had sought and received from the Solicitor-General about the constitutionality of the bill in its final form. I note the recommendation in the committee report that the government provide advice regarding the constitutionality of this bill in its final form.

Second, Labor members were concerned to ensure that the bill was properly targeted at terrorism offenders. As originally drafted, the bill included treason amongst the offences that would bring an offender within the continuing detention order regime. The Law Council of Australia gave persuasive evidence that treason was a qualitatively different offence from terrorism offences. Labor members agree with the Law Council that the case has not been made for extending the regime to treason. To the same end, Labor members also considered that inclusion of some of the recruitment offences in part 5.5 of the Criminal Code was inappropriately. Offences relating to the publishing of recruitment advertisements differ qualitatively from other recruitment offences. Labor committee members support the recommendation to exclude these publishing recruitment offences and treason from the offences which enliven the continuing detention order regime under the bill.

Third, Labor members consider that it is necessary to provide procedural fairness to offenders to protect both offenders and the integrity of the process. The committee received numerous submissions about the problems that would arise from allowing offenders to be made the subject of a continuing detention order on the basis of secret evidence. Labor members were concerned that secret evidence provisions would undermine an offender's ability to obtain a fair trial. We were grateful to receive confirmation from the department that, although some information may be protected from public release, all relevant information will be provided to the offender. For this reason, we strongly support recommendation 11 of the report, which seeks to make it abundantly clear that the offender is to be provided with all relevant information in a timely manner.

Labor members also took note of the evidence presented to the committee that the cost of retaining legal representation for a hearing may be beyond the means of many offenders. Continuing detention order proceedings may be lengthy and complex. They are also of extreme importance to the offender, and we consider that it is essential that offenders have access to legal representation as an important safeguard of their rights as well as of the integrity of the continuing detention order process itself. We support the recommendation to empower the court to stay proceedings and make an order for reasonable costs to be funded to enable the offender to obtain legal representation.

Fourth, Labor recognises the central role that expert witnesses play in continuing detention proceedings. A number of witnesses noted the unusual nature of having the court appoint expert witnesses. Labor considers that it is necessary for each party to the proceedings be able
to bring forward expert witnesses. To this end, Labor members support recommendations 9 and 10, which make explicit each party's ability to bring forward their preferred experts. The court will then determine their admissibility.

Fifth, preventative detention is a relatively new part of our legal system. The committee noted:

Considerable work will be required ... to implement the CDO regime ... The scope of this work includes risk assessment tools, rehabilitation programs, housing arrangements and oversight mechanisms.

Labor are cognisant of the need for a robust implementation and review process to be established. We strongly support the inclusion of review mechanisms, including a 10-year sunset period and a review of the continuing detention order regime six years after its passage. These recommendations recognise the issues associated with the implementation of a new regime, as well as the extraordinary powers that are contemplated in the legislation. In particular, Labor committee members strongly supported the inclusion of a sunset clause, hopeful that the security challenges which confront Australia today may ease or alter in coming years, while of course recognising that the circumstances today demand a serious response.

Sixth, Labor members of the committee recognised the importance of a regime for continuing detention orders to be in proper harmony with state based regimes for control orders. Better integration of the two regimes would allow more gradation in the level of control applied to an offender. As observed previously in this chamber, the national terrorism threat level for Australia is 'probable'. Credible intelligence, assessed by our security agencies, indicates that individuals or groups have developed both the intent and the capability to conduct a terrorist attack in Australia. Our task is to develop laws which respond to these circumstances while protecting the liberties and freedoms which characterise our democratic system.

Labor take a bipartisan stance on national security legislation because the priority is to keep Australians safe and it is important our security agencies have the right legislative support in those efforts. It is also important that the freedoms which we value so highly in our democratic society are maintained. We need to strike the right balance between ensuring the safety of the community and protecting human rights. To this end, we are pleased that the government has accepted the recommendations of the PJCIS and that they will be implemented.

Senator LEYONHJELM (New South Wales) (10:16): I rise to oppose the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016. It would effectively allow for life imprisonment of someone who was not originally sentenced to life imprisonment, even when there is no fresh or compelling evidence to question the original sentence and no suggestion that the original sentence was somehow tainted. Various stringent conditions have to be met to achieve effective life imprisonment of someone who was not originally sentenced to life imprisonment. I am happy that these conditions exist, but no amount of window-dressing can hide the fact that this is a fundamental assault on a basic human right. It amounts to imprisonment without trial.

We should not be able to effectively impose life imprisonment on someone who was not originally sentenced to life imprisonment. A court can impose a sentence of life imprisonment...
on someone who engages in a terrorist act or who prepares or plans a terrorist act. If a court that considers all the evidence and all the circumstances does not impose a life sentence, this judgment should not be thrown out when a prisoner's release approaches. To do so would be to effectively deny that person a fair trial. No Australian, no matter how seemingly abhorrent—and I acknowledge this is intended to apply to people who are pretty abhorrent—should be denied a fair trial. Courts are unable to impose a sentence of life imprisonment for acts that fall short of engaging in, preparing or planning a terrorist act. If, after committing such acts, a person is effectively imprisoned for life through continuing detention laws, we are effectively throwing out the statutes that set maximum penalties.

The fact that we have statutes that set maximum terms less than life imprisonment reflects the fact that we want to give people found guilty of certain offences another chance at freedom. We could be 100 per cent safe from reoffenders by locking up every prisoner for life, but that is not what we do. When the government passes a law with maximum penalties, the government is making a promise. It is promising that, if you commit that offence, your penalty will not exceed that maximum. The government undertakes this promise not for the benefit of terrorists; it does this for the benefit of all of us. We should all be able to know how the state will react if we behave in certain ways; otherwise, we are oppressed by the threat of arbitrary state action—like being blindfolded as you cross the street. The fact that people who committed terrorist offences in previous years did so without the threat of continuing detention does not mean that we should retrospectively impose the threat of continuing detention on these people now. Just because they acted oppressively does not mean that we should act oppressively.

When a court finds someone guilty, it must be satisfied beyond reasonable doubt. But proceedings for continuing detention are civil proceedings, and the court need only be satisfied to a high degree of probability that the person poses an unacceptable risk of committing a terrorist offence. The fact that we withhold punishment unless guilt is proven beyond reasonable doubt might sometimes allow the guilty to go free, but it also limits the injustice of people being punished beyond what is deserved. This principle should be retained. We should not be able to effectively impose life imprisonment on someone who was not originally sentenced to life imprisonment. And we do not need to. Courts are able to impose control orders on all terrorist offenders who finish their prison terms. Control orders severely constrain movement, activities and association, and they allow intrusive surveillance. If there is any deficiency in powers for control orders, let's fix them rather than pursue continuing detention.

Senator XENOPHON (South Australia) (10:21): Although I do not intend to make a long speech, the Criminal Code Amendment (High Risk Offenders) Bill 2016 is undoubtedly an important piece of legislation in terms of its significance for public safety, for how we deal with very important questions of legal principle in the criminal law and for the relationship between citizens' security and their liberty. As I have remarked in relation to previous bills in this field, there has been a steady drumbeat of counterterrorism legislation passed by the parliament since September 2001. Much of this legislation has been justified by the threat posed by terrorist groups. That said, the sheer volume of new laws should give us pause for thought. We could reasonably ask, I think, whether successive governments have found it much easier to propose new and often draconian legislation than they have to address more
effectively the causes of terrorism and radicalisation of what are very small groups, indeed individuals, within the Australian community.

This bill introduces a new regime into part 5.3 of the Commonwealth Criminal Code that provides for the continued detention of high-risk terrorist offenders who have served a custodial sentence but are still considered by a court to present an unacceptable risk to the community. As senators are no doubt aware, there have been some 19 counterterrorism operations since September 2014, resulting in the charging of 48 persons—and no doubt we are safer as a result of those operations. The Attorney-General has told the Senate that across the country there are a total of 15 terrorist offenders serving a custodial sentence and 37 persons before the courts. This legislation has been brought before the parliament in anticipation that some of those persons currently incarcerated will still pose unacceptable risks to the community if they are released after finishing serving their current custodial sentences.

From time to time we read media reports concerning so-called high-risk terrorist offenders held in the New South Wales prison at Goulburn. It is claimed that some of these prisoners continue to hold extremist beliefs and may pose a significant threat to the community after the end of their sentences if not subject to some form of continuing control and in some cases, perhaps, continued detention. If this is so, I would suggest that the Commonwealth and state governments need to look again at the management of such prisoners, the effectiveness and resources devoted to de-radicalisation programs in our prisons, and the question of whether this legislation is an effort to deal with policy and operational failure in dealing with persons convicted of terrorism offences.

I do not make that claim, and perhaps some of these terrorist offenders are truly incorrigible and they are too much of a risk to the community and must be kept in custody indefinitely, but it bears thinking about. Have we allowed our high-security prisons to become indoctrination centres where Islamic extremism is perpetuated, perhaps strengthened, and in some cases spread to others? Perhaps the Attorney-General could provide the Senate with a detailed account of the measures and programs currently in place that are designed to de-radicalise or otherwise reform terrorist offenders and to prevent the radicalisation of other inmates who might also pose threats to the community.

There are, of course, precedents in state and territory legislation, as well as overseas in the United Kingdom and New Zealand, for post-sentence preventative detention regimes. Existing laws deal with high-risk sex offenders and/or violent offenders. These need to be considered. These laws were somewhat controversial when first introduced but that is a threshold already crossed in the interests of public safety, and that is why I support those sorts of laws regarding high-risk sex offenders and violent offenders. This bill adapts those arrangements to provide for a preventative detention regime for terrorist offenders who may continue to pose an unacceptable risk to the community following the expiry of their sentence.

As senators will be aware, law enforcement agencies can already seek to rely on control orders to manage the risk of terrorist offenders upon their release from prison. However, the Attorney-General has asserted that there may be some circumstances where, even with controls placed upon them, the risk an offender presents to the community is simply too great for them to be released from prison. While not wishing the Attorney to spell out how a person
might evade or circumvent control orders, I think it would assist the Senate if he elaborated on this point and the nature of the potential threats he has in mind.

In his second reading speech, the Attorney-General referred to his consultations with the states and territories and the agreement of the states to enact amendments to existing referrals of power relating to part 5.3 of the Criminal Code to make explicit that state support extends to the post-sentence preventative detention regime. This is important to ensure the proposed regime has a sound constitutional foundation.

Given the implications of the legislation—to provide for potentially indefinite detention of persons who have already served custodial sentences—it is vital that the bill contain a range of important safeguards. The bill will enable the Supreme Court of a state or territory to make two types of detention orders against a person. The first is a continuing detention order, which will enable a person to be detained in prison for up to three years. However, further applications may be made, and there is no limit to the number of such applications. An order can only be made against a person who is currently imprisoned and serving a sentence for specified terrorism related offences under the Criminal Code. The second type of order a court can make is an interim detention order, which can last for up to 28 days. An interim detention order will be available in circumstances where the terrorist offender's sentence or existing continuing detention order will end before the court has had an opportunity to determine the continuing detention order application.

The bill provides that only the Commonwealth Attorney-General may make an application for a continuing detention order to the Supreme Court of the state or territory in which the person is currently imprisoned. The court must be satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious terrorism offence if the offender is released into the community. A serious terrorism offence is an offence in part 5.3 of the Criminal Code that carries a maximum penalty of seven or more years of imprisonment.

The court must also be satisfied that there is no other less restrictive measure that would be effective to ensure community safety against the risk the person presents. This is a very important aspect of the regime. This is a measure to protect the community, but it must also be a measure of last resort. A continuing detention order is appealable and must be reviewed every 12 months. Furthermore, a person must be at least 18 years old when their original sentence ends and cannot be accommodated or detained in the same area of a prison as persons serving ordinary sentences of imprisonment except in certain circumstances.

The Attorney-General appropriately referred this bill to the Parliamentary Joint Committee on Intelligence and Security, a committee that I think I will probably never ever be on, even if I wanted to—

Senator Brandis: I wouldn't say that.

Senator XENOPHON: given it seems to be pretty much a closed club.

Senator Brandis: Not necessarily, Senator.

Senator XENOPHON: The Attorney-General is saying something there—I am sure it is complimentary!

The PJCIS produced a report and recommended that the bill be passed, subject to the implementation of some 23 recommendations. These recommendations include, but are not
limited to, amending the bill to remove treason and the publishing of terrorist advertisements from the scope of offences covered by the legislation, and ensuring that the rules of evidence apply to the matters the court is required to have regard to in its decision as to whether a terrorist offender poses an unacceptable risk of committing a serious terrorism offence if released into the community. It also recommended that, for the avoidance of doubt, the government should amend the Criminal Code to make explicit that a control order can be applied for and obtained while an individual is in prison but that the controls imposed by that order would not apply until the person is released. The final recommendation I refer to is that the government consider whether the existing control order regime could be further improved to most effectively operate alongside the proposed continuing detention order regime.

Significantly, the PJCIS also recommended that the continuing detention order regime be subject to an initial sunset period that expires 10 years after passage of this bill and that reviews of the operation of the regime be undertaken in due course by the Independent National Security Legislation Monitor and the PJCIS. A sunset clause and independent reviews are essential given the fundamental nature of this regime.

The PJCIS has further recommended that the Attorney-General provide the joint committee with a clear development and implementation plan and that such a plan should be provided prior to the second reading debate in the Senate. I would be grateful if the Attorney-General would provide such a plan to all senators as we consider this bill. I also note that the PJCIS has recommended that, following the consideration of all of these recommendations, the government should obtain legal advice from the Solicitor-General on the final form of this bill. I would urge the Attorney-General to do so and to share that advice with the Senate.

As I said on previous occasions, the PJCIS is not infallible, and it is not a substitute for close and careful review by the Senate and its committees of all counterterrorism and national security legislation. In this case, however, I must say the joint committee has done a thorough job in relation to what is an important piece of legislation that raises very important questions of principle. I note that the government has accepted all 24 of the joint committee's recommendations and will be moving amendments to implement recommendations 2, 3, 4, 5, 6, 8, 9, 11, 12, 13 and 15 to 20, and to address issues arising from further consideration of the bill since its introduction. I welcome these amendments and can indicate that my colleagues and I will be supporting this legislation.

Senator HANSON (Queensland) (10:30): I rise today in support of the government's Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016, which amends the Criminal Code Act 1995. Australia has changed over the years, and so has the world, with an Islamic ideology that has brought us to the point where we need to make changes here. Terrorism is part of our life on the Australian streets, and we have seen that with the murder of innocent Australians due to terrorism. We have been fortunate enough to have ASIO, our Federal Police and others, who have done a wonderful job in stopping any other threats of violence and acts of taking people's lives. But we know that this is not always going to be the case. Especially today, outside the front of Parliament House; we have protestors there, and people who have been able to get into a position on top of this house and put a banner up. It beggars belief that this was able to get to the stage that they could be there and put a banner of that size up without being stopped.
We have to look at where Australia is headed and what we are going to do about it. I have always stated that we need to look at the rest of the world and at problems that other countries are having. I would like people to cast their minds back to Lebanon and what has happened to that country. Today, we view from a distance the disaster that is unfolding in the Middle East. Worst though—and one that could be cataclysmic to the civilised world if not prevented—is the obliteration of the last oasis of freedom for Christianity in the region. I refer here to the Christian existence in Lebanon. Sometimes it appears that we turn a blind eye to this dilemma, being thousands of miles away.

Today in the Middle East, Lebanon remains the only place where Christians can live, worship, gather, socialise together, build churches and schools, have political and social rights, and not have to pay duties just to be Christians. We in Australia take these freedoms for granted because we here are free of oppressive entities; however, this liberty, except for Lebanon, ceased to exist for Christians in the Middle East since the onset of Islam. Now the danger bells are ringing aloud in Lebanon as well.

This land has known a free Christian existence since Jesus's days on earth. In fact, Tyre was the first of the Lebanese cities to embrace Christianity. Many of these early Lebanese communities got to know Jesus from his visits to Tyre, Sidon and the Galilee region. The first church in Lebanon was in fact the church of Tyre, established in 34AD, and it is considered to be the earliest outside of ancient Israel. Throughout the 3rd, 4th and 5th centuries, Christianity spread into most of modern day Lebanon—inland into the mountains and the Beqaa Valley. Free Christian worship has continued until now. But if we wish to see this endure we must act now.

This community has suffered immeasurably over the centuries. The oppression of this Christian community began with the rise of Islam in the region from the 7th century onward. From this period forward, the Christians were subjected to many conquests, leading to systematic persecution, forcible conversion and ethnic cleansing. Probably the most brutal periods were during the reign of the Mameluke Sultanates and the Ottoman Empire. Despite their isolation, the Christians of Lebanon managed to survive centuries of persecution and conquests, and, through their sacrifices, managed to keep the Christian faith alive in this hostile region. In more recent times, even after the demise of the Ottoman Empire, attitudes have still not changed and Islam continues to reject Lebanon as a country with Christians as equals. Despite this attitude, Christians continued to work hard to establish Lebanon as a land of freedom.

Modern day Lebanon was built, by the efforts of Christians, to be a beacon of freedom and hope to all its inhabitants. This was in stark contrast to the realities of the region. A new understanding was forged between Christians and Muslims—Sunni, Shiite and Druze—to protect the identities of everyone, including a power-sharing formula. Despite this understanding many attempts have been made by Islamic forces to change the face of modern day Lebanon. The most serious and devastating of these was through the initiation of the civil war in 1975. The circumstances that arose at this time were not dissimilar to the events enveloping other Middle Eastern countries today, namely Syria and Iraq, where a combination of murderous actions by Islamic State, the Assad regime and the Iranian regime have led to occurrences of genocide, ethnic cleansing and mass forced migration of local populations, with minority groups—the Christians especially—being the main victims. The Christian
community in Lebanon faced throughout the civil war the same existential threats and dangers as we see unfolding in terror hotspots around the world today, namely the Assad regime, the forefathers of Islamic State and, later, the Islamic state of Iran.

The situation in Lebanon today is very precarious, and it is on the precipice of the abyss. For example, there are more moderates in the Sunni population of Lebanon currently than there are extremists, who are presently only a small minority. However, the presence of the extremist Shiite face of Islam—and its provocations and incitements—represented by Hezbollah could lead at any instance to the radicalisation of many of these moderate Sunnis. Lebanon today still projects the Free World's values into the region because Christians still have some influence in that country, but, once this influence disappears, the last oasis of freedom in the region will have vanished. Then Lebanon will be torn between the 'Shiite crescent' led by Iran and the form of Sunni extremism projected by al-Qaeda and Islamic State.

The delicate demographic make-up of Lebanon that was already under threat due to the Islamist mentality of nonacceptance of others is now under more pressure due to a recent wave of Syrian refugees in addition to the existence of Palestinian refugees from previous conflicts, the vast majority of whom are Muslims. These refugees in total number close to two million, which represents 50 per cent of the population of Lebanon. To bring this reality into context, imagine if 12 million predominately Muslim refugees landed on our doorstep overnight.

I have stated that because Australia is in a very precarious situation, and we need to take control of our borders and control who comes into our country. We should be very strict and bring in people who are compatible with our culture and our way of life. And we are a Christian country. A lot of Australians will not admit that, and say, 'We are multicultural and can allow other people here.' That is why we have come to the stage that we have, where we see murders on our streets—and I do say 'murders'—and where a lot of people wish to cause us harm because of their political ideology and the way they wish to change our country.

I will not apologise to anyone for my patriotism towards my country. The fact is that we are—our heritage, our culture—a Christian country. We have other religious organisations here; we never hear any terrorist threats from them whatsoever. They live in peace. They live in harmony. They are assimilated into our society.

We would not be discussing this bill or talking about extending sentences for terrorists unless, as I believe, Australians are in fear of what they are faced with every day on our streets—and you cannot close your eyes and minds to what is happening. People are in fear, and that was quite evident when 49 per cent of Australians said, 'No further Muslim immigration into this country.' The main reason was that they do not assimilate into our society and they have no intention of doing so. It is quite amazing that, of that 49 per cent who actually voted for that, or agreed to it, 34 per cent were Greens voters. They are saying they do not want further Muslim immigration into this country.

So let's just stop saying that everyone has a right to come here; start working towards protecting our country; and take notice of what is happening in other countries around the world, whether it be France, Germany or the Netherlands—even what has happened in England, because people voted for Brexit, to get out of the EU, so that they control their borders.
We have to be smart. We are the leaders of this nation. It is up to us to ensure that we make our streets and our communities safe for all Australians. I tell those people out there with the intention of committing terrorist acts on Australians: you are gutless, you are the worst people that I could ever imagine speaking about, and, if you have so much hatred for the Western world, I suggest you go back to another country that suits your beliefs, your ideology. As long as I am here in this parliament and I have a voice for the Australian people, I will continue to speak out against them and I will continue to speak out against those who keep protecting them and shout me down and call me racist or say I am tolerant. Tolerance comes from both sides of the argument.

In closing, I do support the government's bill. I think it is a good start to show some strength about where we are headed and to take control of our own destiny.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (10:42): I thank honourable senators for their contributions to the debate. The Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 responds to a significant public safety issue by establishing a framework for the continued detention of high-risk terrorist offenders serving custodial sentences who are considered by a Supreme Court to present an unacceptable risk to the community. The court must be satisfied to a high degree of probability, on the basis of admissible evidence, that the offender does pose an unacceptable risk of committing a serious terrorist offence if released into the community.

The proposed post-sentence preventative detention scheme is a necessary response to the serious threat that terrorism poses to Australia and its people. Since September 2014, there have been 24 counterterrorism operations in Australia, resulting in criminal charges against 55 persons. Across the country, there are a total of 17 terrorist offenders serving custodial sentences, and 40 persons currently being prosecuted. During his contribution, Senator McKim asked for the robust evidentiary case to justify the bill. There is no clearer and stronger or more robust evidential case than the very significant escalation in the amount of terrorism-related conduct in Australia, as evidenced by those figures.

All state and territory governments agree on the need for this bill, and I want to thank them for their cooperation. This has been a collaborative, cross-jurisdictional, cross-partisan exercise. At the Council of Australian Governments meeting in December 2015, the Prime Minister, premiers and chief ministers agreed to develop a nationally consistent post-sentence preventative detention scheme to enable a continuing period of imprisonment for high-risk terrorist offenders. At a COAG meeting in April, states and territories agreed, in principle, for the Commonwealth to lead the process through Commonwealth legislation, in consultation with the states and territories, to develop such a post-sentence preventative detention regime that could apply uniformly across all jurisdictions. After further discussion between the Prime Minister, the premiers and chief ministers in July, on 5 August I met with state and territory attorneys-general to discuss the issue. All jurisdictions agreed in principle to the creation of a national post-sentence detention regime on the terms of the Commonwealth draft bill. In accordance with the 2004 Intergovernmental Agreement on Counter-Terrorism Laws, states and territories have now all agreed to the form of the bill now before the parliament.

The regime is modelled closely on existing state and territory post-sentence detention regimes for high-risk sex or violent offenders. The bill has had the benefit of extensive
scrutiny by parliamentary committees, including the Parliamentary Joint Committee on Intelligence and Security. In its advisory report on the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016, the committee made 24 recommendations to improve the bill and the explanatory memorandum, and it recommended that the bill be passed once the recommendations were implemented. In their contributions, Senator Wong and Senator McAllister suggested that these recommendations came from Labor members of the committee. The Parliamentary Joint Committee on Intelligence and Security meets privately and has always operated collegially and collaboratively. The recommendations are not recommendations from the Labor Party. They are recommendations of the committee—a committee with a government majority, in fact, in which both government and opposition participants agreed and joined. The government has accepted and has implemented, or will implement, every recommendation. In line with the committee's report, the amendments I will move are primarily directed towards somewhat narrowing the scope of the regime, enhancing the already strong safeguards and strengthening reporting and oversight mechanisms.

Might I address some of the matters that have fallen from the lips of honourable senators in their contributions to the debate? I will begin by thanking those political parties who have indicated that they support the bill. I want to thank the opposition. This is, as Senator Wong pointed out, the sixth major piece of counterterrorism legislation which this parliament has dealt with since September 2014, and all of them have been supported by the opposition. As I said a moment ago, the fact that the PJCIS has recommended in each of those cases amendments which the government has then adopted is an illustration of the dialogue and the interlocutory process between the executive government and the parliament, speaking through its committees. It is an example of our system working as it was designed to work. The executive government, through ministers, in consultation with their departments and agencies, develops legislation to address an identified need. We consult the wisdom of the parliament through its committees. The parliament through, in this case, the PJCIS, considers the proposal, recommends where it sees opportunities to improve the proposal and recommends improvements to what the executive government has put forward. The executive government considers the views of the parliament and, as in this case, adopts those recommendations, and then we move forward to enact the bill in a bipartisan manner. That is not something to be made the subject of political pointscoring. It is something that the government welcomes, and, as I said, it is an example of the system working the way the system was meant to work.

I would also like to thank Senator Xenophon, the leader of the Nick Xenophon team, and Senator Hanson, the leader of One Nation, for their indications of support for the bill. Two interests represented in the Senate, the Greens, represented in this debate by Senator McKim, and Senator Leyonhjelm, have indicated that they oppose the bill. I will deal with the issues that those honourable senators have raised now.

I will deal first with what Senator McKim and Senator Leyonhjelm have had to say. Their contributions are essentially that this bill should be opposed because it impinges upon civil liberties and human rights. The civil liberty point of view should always be heard in a debate like this. Whenever the executive government proposes to extend the power of the state to punish, including policing, then the civil liberties point of view should always be heard in order to challenge why that is necessary. I welcome the contributions of Senator McKim and Senator Leyonhjelm; although, if I may say so, with all due respect, I find the civil liberty
point of view more credibly expressed by a contribution from someone like Senator Leyonhjelm, who adopts a classically liberal or libertarian philosophy, than from Senator McKim, whose party seems to be beloved of the political philosophies of the authoritarian Left. Leaving that to one side, I do welcome the contribution to agitate the issue of civil liberty. These are always compromises as I think, in various ways, Senator McKim and Senator Leyonhjelm have acknowledged.

I will now deal with a couple of the points that Senator McKim has made. Firstly, he raised the question of the standard of proof. The standard of proof, as you have pointed out, Senator McKim, is high degree of probability, and it also requires that the fact-finding tribunal, in this case a supreme court or the judge of a supreme court, act on the basis of admissible evidence. A high degree of probability sits between the traditional civil standard of proof, which is on the balance of probabilities or, if I may hazard the use of layman's language, 'more likely than not' and the criminal standard, which is 'beyond reasonable doubt' so that if there is any reasonable doubt about the conclusion then the conclusion must not be reached. A high degree of probability sits, as I said, between those two standards—higher than the former and lower than the latter.

You asked me, Senator McKim, whether that standard of proof is reasonably well known to the law. The answer to your question is, yes, it is. It is sometimes called the Briginshaw standard after a decision of the High Court as long ago as 1938 in a case called Briginshaw v Briginshaw which discussed the terms 'comfortable satisfaction' and 'reasonable satisfaction'. In general that standard reflects the principle that a court or tribunal determining whether a fact has been established to the civil standard does not undertake a mere mechanical comparison of probabilities. So it elevates the level of satisfaction required of the decision maker beyond a mere balancing of probabilities, which is the civil standard. I see you nodding, Senator McKim. I hope I am addressing the question that you have put to me.

That standard, sometimes called the Briginshaw standard, draws attention to the fact that in certain civil proceedings something more is required than a merely probabilistic conclusion but not as much as the criminal standard of 'beyond reasonable doubt'. That standard is a common feature of legislation of this kind in the states and territories dealing with high-risk sex offenders and high-risk violent offenders.

Senator McKim, you said that a United Nations human rights body has criticised this legislation on the grounds of arbitrariness.

Senator McKim: I was referring to the states—

Senator BRANDIS: I am sorry. You correct me. It has been observed that detention must not be arbitrary. Of course that is right, Senator McKim. But the process, if you care to inspect the legislation closely, of detention beyond the expiry of a sentence of imprisonment is hardly arbitrary. There is a relatively high standard of proof required, as we have been discussing. It requires the Attorney-General, as the moving party who brings the application, to be satisfied of the level of risk to the community. And it is a judicial determination made by a Supreme Court judge. So none of the features of the process have the characteristic of arbitrariness in relation to the exercise of what is admittedly an unusual power and, I might say, a power that we would expect to see exercised very seldom, just as the power to detain beyond the expiry of a period of imprisonment high-risk violent or sexual offenders is used very sparingly and only in the most extreme cases.

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CHAMBER
Senator McKim, you quoted an academic, Dr Tulich, who has observed in an article in the *UNSW Law Journal* the apparent inadequacy of risk assessment tools. Let me address that matter. It is true that this is a relatively new discipline or subdiscipline. It is a relatively new body of technical or perhaps clinical knowledge. But, nevertheless, there is developing expertise that has seen the development of risk assessment tools. I can tell you, Senator, that the Commonwealth has convened an implementation working group with legal, correctional and law enforcement representatives from each jurisdiction to progress all outstanding issues relating to the implementation of the proposed regime, including the development of a risk assessment tool specifically for the purpose of assisting experts under the scheme. Of course one of the categories of evidence which will be before a Supreme Court judge before whom an application for preventative detention is brought will be expert psychological evidence.

The working group to which I referred will analyse existing assessment tools to determine whether an existing tool can be modified or whether new tools need to be developed. The work may result in an existing tool being adopted or a bespoke tool being developed. The existing tools for violent extremist offenders are useful for identifying their degree of radicalisation and what type of intervention approach would be the most appropriate.

The main assessment tool that is utilised in Australia in the countering violent extremism intervention programs is called Radar. Radar was developed by psychologists and criminologists to support interventions to divert people from radicalisation and violent extremism. The working group is looking at the way in which the learnings that have been gleaned from the development of the Radar risk assessment can be applied to the assessment of a person to whom this legislation would apply as they approach the expiry of their term of imprisonment.

Senator McKim, you also raised a point about the scheme applying to preparatory offences. The policy rationale behind the Division 101 offences in the Criminal Code other than the offence of engaging in a terrorist act is the need to criminalise preparatory conduct. The general policy intent underlying the offences is the need to disrupt the preparatory stages of a terrorist attack. That was accepted by the Security Legislation Review Committee—or Sheller committee—and the PJCIS in 2006. It is, if I may say so, inaccurate and facile to regard this as an ordinary exercise in the operation of the criminal law. Once the crime has been committed the system has failed because the terrorism event will have occurred, which is why the focus of the relevant Division 101 of the Criminal Code is on prevention rather than punishment. By focussing on prevention rather than punishment, it criminalises acts done in preparation for the carrying out of the offence. That is the actus reus, as criminal lawyers would say: not the commission of the terrorist act, but the preparation for the terrorist act—just as, in the existing criminal law, conspiracy is a crime and attempt is a crime. A crime is not necessarily only committed when the ultimate event, to which the steps of the criminal are directed, occurs.

Senator Leyonhjelm, you made the observation that the effect of the legislation is to change the length of the sentence. Certainly it is the case that a person who is the subject of an order under this bill will find themselves detained for a longer period of time, but this is not a sentence. Conceptually, it is quite different. This is not a sentence of imprisonment as the punishment for an offence; it is a decision of a judge applying a different standard of proof, applying different considerations and being asked to decide whether it is necessary, in order...
to keep the community safe, for a very, very unusual power to be exercised in a particular case. So, although that might be the functional effect, it is not the purpose. It would not be jurisdictionally competent for a subsequent court, years later, to extend a sentence—after the appeal period had expired, at least.

Senator Xenophon, you asked me about programs to prevent radicalisation in prisons. It is an important issue that you raise. There are several such programs, particularly in New South Wales and Victoria, where almost all of the terrorism-related offenders in custody are currently undergoing their sentences of imprisonment. Those programs have been developed across jurisdictions through a body called the prisoner management and reintegration working group, and the learnings of the jurisdictions are shared through that group. The Commonwealth is assisting to fund those programs, in particular through the development of the Radicalisation and Extremism Awareness Program, which is one of the programs that addresses the problem you identify. There is a program in New South Wales called the Proactive Integrated Support Model, or PRISM, which the Commonwealth is part-funding over the coming four years, and a program operated within the Victorian system called the Community Integration and Support Program, or CISP. These programs are designed to address the issues you raised, Senator Xenophon. I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Marshall): The question is that the bill be read a second time.

The Senate divided. [11.07]

(The Acting Deputy President—Senator Marshall)

Ayes .................46
Noes ..................9
Majority..............37

AYES

Back, CJ
Birmingham, SJ
Burston, B
Cameron, DN
Chisholm, A
Culleton, RN
Duniam, J
Fawcett, DJ (teller)
Gallagher, KR
Hanson, P
Hume, J
Ketter, CR
Lambie, J
Marshall, GM
McCarthy, M
McKenzie, B
O’Neill, DM
Paterson, J
Reynolds, L
Ruston, A
Sinodinos, A
Sterle, G
Williams, JR
Bilyk, CL
Brandis, GH
Bushby, DC
Cash, MC
Cormann, M
Dodson, P
Farrell, D
Gallacher, AM
Griff, S
Hinch, D
Kakoschke-Moore, S
Kitching, K
Lines, S
McAllister, J
McGrath, J
Moore, CM
O’Sullivan, B
Pratt, LC
Roberts, M
Seselja, Z
Smith, D
Watt, M
Xenophon, N
Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (11:10): by leave—I move amendments (1) through to (58) on sheet HU159 together:

(1) Schedule 1, page 4 (before line 4), before item 1, insert:

1A At the end of section 72.3 of the Criminal Code
Add:

Note: A court that is sentencing a person who has been convicted of an offence against this section must warn the person about continuing detention orders (see section 105A.23).

1B At the end of section 100.1 of the Criminal Code
Add:

Note: A court that is sentencing a person who has been convicted of an offence against this Part, the maximum penalty for which is 7 or more years of imprisonment, must warn the person about continuing detention orders (see section 105A.23).

1C Subsection 104.2(5) of the Criminal Code
Repeal the subsection, substitute:

(5) To avoid doubt, a senior AFP member may seek the Attorney-General's consent to request an interim control order in relation to a person even if:

(a) such a request has previously been made in relation to the person; or
(b) the person is detained in custody.

Note: An interim control order in relation to a person who is detained in custody does not begin to be in force until the person is released from custody (see paragraph 104.5(1) (d)).

1D Paragraph 104.5(1) (d) of the Criminal Code
Repeal the paragraph, substitute:

(d) state that the order does not begin to be in force until:

(i) it is served personally on the person; and
(ii) if the person is detained in custody—the person is released from custody; and

1E After paragraph 104.5(1B) (a) of the Criminal Code
Insert:
(aa) if the person to whom the order relates is detained in custody—any other matter relating to the person’s detention that the court considers relevant; and

1F After subsection 104.5(1B) of the Criminal Code
Insert:
(1C) To avoid doubt, if the person is detained in custody, the person has a right to attend court on the day specified for the purposes of paragraph (1) (e).

1G After subsection 104.5(2) of the Criminal Code
Insert:
(2AA) To avoid doubt, if a control order is in force in relation to a person, the control order does not cease to be in force merely because the person is detained in custody.

Note: However, if a person is detained in custody, and a control order is made in relation to the person, the control order does not begin to be in force until the person is released from custody (see paragraph (1) (d)).

1H At the end of subsections 104.10(3) and 104.12(1) of the Criminal Code
Add:
Note: For the personal service of documents on a person detained in custody, see section 104.28B.

1J After subsection 104.12(3) of the Criminal Code
Insert:
(3A) Paragraphs (1) (b) and (c) do not apply if the person in relation to whom the interim control order has been made is detained in custody and it is impracticable for the AFP member to comply with those paragraphs.

1K At the end of subsections 104.12A(2) and (4) and 104.17(1) of the Criminal Code
Add:
Note: For the personal service of documents on a person detained in custody, see section 104.28B.

1L After subsection 104.17(2) of the Criminal Code
Insert:
(2A) Paragraphs (1) (b), (c) and (d) do not apply if the person in relation to whom the interim control order has been declared void, revoked or confirmed is detained in custody and it is impracticable for the AFP member to comply with those paragraphs.

1M At the end of subsections 104.20(3) and 104.26(1) of the Criminal Code
Add:
Note: For the personal service of documents on a person detained in custody, see section 104.28B.

1N Subsection 104.26(3) of the Criminal Code
Omit "interim control order", substitute "control order".

1P After subsection 104.26(3) of the Criminal Code
Insert:
(3A) Paragraphs (1) (b), (c) and (d) do not apply if the person in relation to whom the control order has been made is detained in custody and it is impracticable for the AFP member to comply with those paragraphs.

1Q After section 104.28A of the Criminal Code
Insert:
104.28B Giving documents to persons detained in custody
A document that is required under this Division to be given to a person (the prisoner) personally who is detained in custody at a prison is taken to have been given to the prisoner at the time referred to in paragraph (3) (b) if the document is given to the following person (the recipient):

(a) the legal representative of the prisoner;
(b) if the prisoner does not have a legal representative—the chief executive officer (however described) of the prison, or a delegate of the chief executive officer.

Note: The obligation to inform the prisoner of the matters referred to in paragraphs 104.12(1) (b), 104.17(1) (b) and 104.26(1) (b) and (c) might not apply if it is impracticable for an AFP member to comply with the obligation (see subsections 104.12(3A), 104.17(2A) and 104.26(3A)).

The recipient must, as soon as reasonably practicable, give the document to the prisoner personally.

Once the recipient has done so, he or she must notify the Court and the person who gave the recipient the document, in writing:

(a) that the document has been given to the prisoner; and
(b) of the day that document was so given.

Schedule 1, item 1, page 4 (before line 15), before the definition of continuing detention order in section 105A.2, insert:

Commonwealth law enforcement officer has the meaning given by Part 7.8.

Schedule 1, item 1, page 4 (line 21), omit "order.", substitute "order; or".

Schedule 1, item 1, page 4 (after line 21), at the end of the definition of continuing detention order decision in section 105A.2, add:

(c) a decision made under section 105A.15A (when a terrorist offender is unable to engage a legal representative).

Schedule 1, item 1, page 4 (after line 23), after the definition of continuing detention order proceeding in section 105A.2, insert:

intelligence or security officer has the meaning given by Part 10.6.

Schedule 1, item 1, page 5 (lines 25 and 26), omit subparagraph 105A.3(1) (a) (ii).

Schedule 1, item 1, page 5 (line 29), omit "recruitment); and", substitute "recruitment), except an offence against subsection 119.7(2) or (3) (publishing recruitment advertisements); or".

Schedule 1, item 1, page 5 (after line 29), at the end of paragraph 105A.3(1) (a), add:

(v) an offence against the repealed Crimes (Foreign Incursions and Recruitment) Act 1978, except an offence against paragraph 9(1) (b) or (c) of that Act (publishing recruitment advertisements); and

Schedule 1, item 1, page 6 (after line 10), at the end of subsection 105A.3(2), add:

Note 3: The offender may not be eligible to be released on bail or parole while the continuing detention order is in force (see section 105A.24).

Schedule 1, item 1, page 7 (line 7), omit "6", substitute "12".

Schedule 1, item 1, page 7 (after line 14), after subsection 105A.5(2), insert:

(2A) The Attorney-General must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer or intelligence or security officer that would reasonably be regarded as supporting a finding that the order should not be made.

Schedule 1, item 1, page 7 (after line 19), after paragraph 105A.5(3) (a), insert:

(aa) include:

(i) a copy of any material in the possession of the applicant; and
(ii) a statement of any facts that the applicant is aware of;

Note 3: The offender may not be eligible to be released on bail or parole while the continuing detention order is in force (see section 105A.24).
that would reasonably be regarded as supporting a finding that the order should not be made; and
(13) Schedule 1, item 1, page 7 (line 32), omit "do any of the following", substitute "take any of the following actions".
(14) Schedule 1, item 1, page 8 (line 5), omit paragraph 105A.5(5) (c).
(15) Schedule 1, item 1, page 8 (after line 7), at the end of section 105A.5, add:
(6) However, the applicant must give the offender personally a complete copy of the application:
   (a) if the Attorney-General later decides not to take any of the actions referred to in any of paragraphs (5) (a) to (d), or after the Attorney-General takes such action the Court makes an order—within 2 business days of the Attorney-General's decision or the order (as the case requires); and
   (b) in any case—within a reasonable period before the preliminary hearing referred to in section 105A.6.

   Note: For giving the offender documents, see section 105A.15.
(16) Schedule 1, item 1, page 8 (lines 15 to 18), omit subsection 105A.6(3), substitute:
   (3) The Court may, either at the preliminary hearing or at any later time in the proceeding, appoint one
   or more relevant experts if the Court considers that doing so is likely to materially assist the Court in
deciding whether to make a continuing detention order in relation to the offender.
(3A) The Attorney-General, the offender, or a legal representative of the Attorney-General or offender,
may nominate one or more relevant experts for the purposes of subsection (3).
(17) Schedule 1, item 1, page 8 (after line 28), after subsection 105A.6(5), insert:
(5A) None of the following is admissible in evidence against the offender in criminal or civil
proceedings:
   (a) the answer to a question or information given at the assessment;
   (b) answering a question or giving information at the assessment.
(18) Schedule 1, item 1, page 8 (lines 29 and 30), omit "subsection (5) and paragraph 105A.8(b)",
substitute "subsections (5) and (5A) and paragraph 105A.8(1) (b)".
(19) Schedule 1, item 1, page 8 (line 32), omit "must include", substitute "may include any one or more
of".
(20) Schedule 1, item 1, page 9 (after line 21), at the end of section 105A.6, add:

Other relevant experts

(8) This section does not prevent the Attorney-General, the offender, or a legal representative of the
Attorney-General or offender, from calling his or her own relevant expert as a witness in the
proceeding.
(21) Schedule 1, item 1, page 9 (line 37), omit "Note", substitute "Note 1".
(22) Schedule 1, item 1, page 9 (after line 37), at the end of subsection 105A.7(1), add:

   Note 2: The rules of evidence and procedure for civil matters apply when the Court has regard to
matters in accordance with section 105A.8, as referred to in paragraph (1) (b) of this section (see
subsection 105A.8(3) and section 105A.13).
(23) Schedule 1, item 1, page 10 (line 18), before "In deciding", insert "(1)".
(24) Schedule 1, item 1, page 11 (line 8), after "any offence", insert "referred to in paragraph 105A.3(1)
(a)".
(25) Schedule 1, item 1, page 11 (lines 11 and 12), omit paragraph 105A.8(g), substitute:
   (g) the offender's history of any prior convictions for, and findings of guilt made in relation to, any
offence referred to in paragraph 105A.3(1) (a);
(26) Schedule 1, item 1, page 11 (lines 13 and 14), omit "the relevant sentence of imprisonment", substitute "any sentence for any offence referred to in paragraph 105A.3(1) (a)".

(27) Schedule 1, item 1, page 11 (line 16), omit "offence;", substitute "offence."

(28) Schedule 1, item 1, page 11 (line 17), omit paragraph 105A.8(j).

(29) Schedule 1, item 1, page 11 (after line 17), at the end of section 105A.8, add:

(2) Subsection (1) does not prevent the Court from having regard to any other matter the Court considers relevant.

(3) To avoid doubt, section 105A.13 (civil evidence and procedure rules in relation to continuing detention order proceedings) applies to the Court's consideration of the matters referred to in subsections (1) and (2) of this section.

(30) Schedule 1, item 1, page 11 (after line 23), after subsection 105A.9(1), insert:

1A On receiving the application for the interim detention order, the Court must hold a hearing to determine whether to make the order.

(31) Schedule 1, item 1, page 11 (lines 34 to 37), omit paragraph 105A.9(2) (b), substitute:

(b) the Court is satisfied that there are reasonable grounds for considering that a continuing detention order will be made in relation to the offender.

(32) Schedule 1, item 1, page 12 (lines 21 to 29), omit subsection 105A.10(1), substitute:

1A The Attorney-General, or a legal representative of the Attorney-General, must, before the end of the period referred to in subsection (1B), apply to a Supreme Court of a State or Territory for a review of a continuing detention order that is in force in relation to a terrorist offender.

Note: For when an application is not required to be made, see subsection (2).

(1B) The application must be made before the end of the period of 12 months after:

(a) the order began to be in force; or

(b) if the order has been reviewed under this Subdivision by a Supreme Court of a State or Territory—the most recent review ended.

(1) On receiving the application, the Court must begin the review of the order before the end of that period.

Note: For the process for reviewing a continuing detention order, see section 105A.12.

(33) Schedule 1, item 1, page 12 (line 30), omit "However, a review is", substitute "Despite subsection (1), an application for a review, and a review, are".

(34) Schedule 1, item 1, page 13 (line 1), omit "The review is to be conducted by", substitute "The application must be made to".

(35) Schedule 1, item 1, page 13 (after line 2), at the end of section 105A.10, add:

(4) If an application is not made in accordance with this section, the order ceases to be in force at the end of the period referred to in subsection (1B).

(36) Schedule 1, item 1, page 13 (before line 28), before subsection 105A.12(3), insert:

Relevant experts

(37) Schedule 1, item 1, page 13 (after line 30), after subsection 105A.12(3), insert:

3A The Attorney-General, the offender, or a legal representative of the Attorney-General or offender, may nominate one or more relevant experts for the purposes of subsection (3).

3B Subsection (3) does not prevent the Attorney-General, the offender, or a legal representative of the Attorney-General or offender, from calling his or her own relevant expert as a witness in the review.

(38) Schedule 1, item 1, page 14 (line 12), omit "Note", substitute "Note 1".
(39) Schedule 1, item 1, page 14 (after line 12), at the end of subsection 105A.12(4), add:

Note 2: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 105A.8, as referred to in paragraph (4) (a) of this section (see subsection 105A.8(3) and section 105A.13).

(40) Schedule 1, item 1, page 14 (before line 15), before subsection 105A.12(6) (after the heading), insert:

(5A) The Attorney-General must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer or intelligence or security officer that would reasonably be regarded as supporting a finding that the order should not be affirmed.

(41) Schedule 1, item 1, page 14 (after line 16), after subsection 105A.12(6), insert:

(6A) The Attorney-General, or the legal representative of the Attorney-General, must present to the Court:

(a) a copy of any material in the possession of the Attorney-General or legal representative; and

(b) a statement of any facts that the Attorney-General or legal representative is aware of;

that would reasonably be regarded as supporting a finding that the order should not be affirmed.

(42) Schedule 1, item 1, page 15 (lines 1 to 4), omit subsection 105A.13(2), substitute:

(2) Despite anything in the rules of evidence and procedure, the Court may receive in evidence in the proceeding evidence of:

(a) the level of the offender's compliance with any obligations to which he or she is or has been subject while on release on parole for any offence; and

(b) the offender's history of any prior convictions for, and findings of guilt made in relation to, any offence.

(43) Schedule 1, item 1, page 15 (lines 11 to 15), omit subsection 105A.15(1), substitute:

(1) A document that is required to be given under this Division to a terrorist offender who is detained in a prison is taken to have been given to the offender at the time referred to in paragraph (3) (b) if the document is given to the following person (the recipient):

(a) the legal representative of the offender;

(b) if the offender does not have a legal representative—the chief executive officer (however described) of the prison, or a delegate of the chief executive officer.

(44) Schedule 1, item 1, page 15 (line 16), omit "chief executive officer", substitute "recipient".

(45) Schedule 1, item 1, page 15 (line 18), omit "chief executive officer", substitute "recipient".

(46) Schedule 1, item 1, page 15 (line 19), omit "officer", substitute "recipient".

(47) Schedule 1, item 1, page 15 (after line 22), after section 105A.15, insert:

105A.15A When a terrorist offender is unable to engage a legal representative

(1) This section applies if:

(a) a continuing detention order proceeding relating to a terrorist offender is before a Supreme Court of a State or Territory; and

(b) the offender, due to circumstances beyond the offender's control, is unable to engage a legal representative in relation to the proceeding.

(2) The Court may make either or both of the following orders:

(a) an order staying the proceeding for such period and subject to such conditions as the Court thinks fit;
(b) an order requiring the Commonwealth to bear, in accordance with the regulations (if any), all or part of the reasonable costs and expenses of the offender's legal representation for the proceeding.

(3) The regulations may prescribe matters that the Court may, must or must not take into account in determining either or both of the following:

(a) whether circumstances are beyond the offender's control;
(b) reasonable costs and expenses of the offender's legal representation for the proceeding.

(4) This section does not limit any other power of the Court.

(48) Schedule 1, item 1, page 17 (line 5), omit "force; and", substitute "force;".

(49) Schedule 1, item 1, page 17 (after line 5), at the end of paragraph 105A.18(1) (a), add:

(v) an appeal against a decision under section 105A.18A to stay a continuing detention order proceeding in relation to a terrorist offender (including a decision under that section to stay a proceeding for a specified period or to impose a specified condition); and

(50) Schedule 1, item 1, page 19 (line 14), after "continuing detention order", insert "or interim detention order".

(51) Schedule 1, item 1, page 19 (lines 16 and 17), after "continuing detention order", insert "or interim detention order".

(52) Schedule 1, item 1, page 19 (line 32), after "made", insert "by terrorist offenders".

(53) Schedule 1, item 1, page 20 (after line 6), at the end of Subdivision F, add:

(1) A court that is sentencing a person who is convicted of an offence referred to in paragraph 105A.3(1) (a) must warn the person that an application may be made under this Division for a continuing detention order requiring the person to be detained in a prison after the end of the person's sentence for the offence.

(2) A failure by the court to comply with subsection (1) does not:

(a) affect the validity of the sentence for the offence; or
(b) prevent an application from being made under this Division in relation to the person.

105A.24 Effect of continuing detention orders on bail or parole laws

(1) A person in relation to whom a continuing detention order or an interim detention order is in force is not eligible to be released on bail or parole until the order ceases to be in force.

(2) Subsection (1) does not prevent the person from applying, before the order ceases to be in force, to be released on bail if the person is charged with an offence while the order is in force.

Note: Although the person can apply to be released on bail, as a result of subsection (1), the person cannot be released on bail until the continuing detention order ceases to be in force.

(3) This section applies despite any law of the Commonwealth, a State or a Territory.

105A.25 Sunset provision

A continuing detention order, and an interim detention order, cannot be applied for, or made, after the end of 10 years after the day the Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016 received the Royal Assent.

(54) Schedule 1, item 2, page 20 (before line 12), section 106.8 (after the heading), insert:

(1) The amendments of section 104.2 made by the Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016 apply in relation to any control order, whether made before or after this section commences.

(2) The amendments of subsections 104.5(1) and (1B) and section 104.12 made by that Act apply in relation to a control order if the request for the control order is made after this section commences.
(3) Subsections 104.5(1C) and (2AA), as inserted by that Act, apply in relation to any control order, whether made before or after this section commences.

(4) The amendments of section 104.17 made by that Act apply in relation to any interim control order that is declared to be void, revoked or confirmed after this section commences.

(5) The amendments of section 104.26 made by that Act apply in relation to any control order varied after this section commences.

(6) Section 104.28B, as inserted by that Act, applies in relation to the giving of documents after this section commences.

(55) Schedule 1, item 2, page 20 (line 12), omit "Division 105A, as inserted by the Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016,"; substitute "(7) Division 105A (except section 105A.23), as inserted by that Act, ."

(56) Schedule 1, item 2, page 20 (after line 20), at the end of section 106.8, add:

(8) Section 105A.23, as inserted by that Act, applies in relation to any sentence imposed on a person after this section commences, whether the offence in relation to which the sentence is imposed was committed before or after that commencement.

(57) Schedule 1, page 20 (after line 20), at the end of the Schedule, add:

3 At the end of section 117.1 of the Criminal Code

Add:

Note: A court that is sentencing a person who has been convicted of an offence against this Part (except subsection 119.7(2) or (3)) must warn the person about continuing detention orders (see section 105A.23).

(58) Schedule 2, page 21 (before line 4), before item 1, insert:

Crimes Act 1914

1A Paragraph 3ZQU(1) (e)
Omit "or 105", substitute ", 105 or 105A".

1B Paragraph 3ZZEA(1) (d)
Omit "or 105", substitute ", 105 or 105A".

1C At the end of subsection 16F(1)

Add:

Note: A court that is sentencing a person who has been convicted of an offence referred to in paragraph 105A.3(1) (a) of the Criminal Code must warn the person about continuing detention orders (see section 105A.23 of the Code).

Independent National Security Legislation Monitor Act 2010

1D After subparagraph 6(1) (a) (i)

Insert:

(i) without limiting subparagraph (i), Division 105A of the Criminal Code and any other provision of that Code as far as it relates to that Division; and

1E After subsection 6(1B)

Insert:

(1C) The Independent National Security Legislation Monitor must complete the review under subparagraph (1) (a) (ia) before the end of 5 years after the day the Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016 received the Royal Assent.

Intelligence Services Act 2001
1F After paragraph 29(1) (ca)

Insert:

(cb) without limiting paragraphs (baa) to (bac), to review, before the end of 6 years after the day the Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016 received the Royal Assent, the operation, effectiveness and implications of Division 105A of the Criminal Code and any other provision of that Code as far as it relates to that Division;

I also table a supplementary explanatory memorandum relating to the government amendments. The government amendments to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill give effect to the government’s acceptance of all 24 recommendations of the Parliamentary Joint Committee on Intelligence and Security, and also some further amendments, arising from further consideration, of a minor nature. All states have indicated their agreement to these amendments under the terms of the Intergovernmental Agreement on Counter-Terrorism Laws. The amendments improve the safeguards, operations and oversight of the post-sentence preventative detention scheme for high risk terrorist offenders.

The amendments will provide that an application for a continuing detention order may be commenced up to 12 months, rather than six months, prior to the expiry of a terrorist offender's sentence. The scope of the offences to which the scheme applies will be limited by removing offences against subdivision B of division 80 of the Criminal Code—that is, the offence of treason—and offences against subsections 119.72 and 119.73 of the Criminal Code—that is, the offence of publishing recruitment advertisements. The government has accepted the view of the PJCIS that those two categories of criminal offences are not appropriate to be comprehended within the regime of the post-sentence detention scheme. The Attorney-General must apply to the Supreme Court for a review of a continuing detention order at the end of the period of 12 months after the order began in force or 12 months after the most recent review has ended, and the failure to do so will mean that the continuing detention order will cease to be in force.

The amendments provide that the Attorney-General must undertake reasonable inquiries to ascertain any facts known to a Commonwealth law enforcement or intelligence or security officer that would reasonably be regarded as supporting a finding that a continuing detention order should not be made or is no longer required. They provide that the application for a continuing detention order or a review of a continuing detention order must include a copy of any material in the possession of the Attorney-General or any statements of facts that the Attorney-General is aware of that would reasonably be regarded as supporting a finding that an order should not be made. They provide that on receiving an application for an interim detention order the court must hold a hearing where the court must be satisfied that there are reasonable grounds for considering that a continuing detention order will be made in relation to the terrorist offender.

The amendments also provide that each party to the proceeding may bring forward their own preferred relevant expert or experts, and the court will then determine the admissibility of each expert's evidence. They provide that any responses to questions or information given by the terrorist offender to an expert during an assessment will not be admissible in evidence against the offender in criminal or other civil proceedings. They provide that the criminal history of the offender that the court must have regard to in making its continuing detention
order will be confined to convictions for those offences referred to in paragraph 105A.31A of the bill, that is terrorism offences. They provide that if the offender due to circumstances beyond his or her control is unable to obtain legal representation, the court may stay the proceeding and/or require the Commonwealth to bear all or part of the reasonable costs of the offender's legal representation in the proceeding.

The amendments provide that when sentencing an offender convicted under any of the provisions of the Criminal Code to which the continuing detention scheme applies the sentencing court must warn the offender that an application for continuing detention could be considered. Finally, they provide that the continuing detention scheme will be subject to a sunset period of 10 years after the day the bill receives royal assent.

Further, to enhance oversight of the continuing detention scheme, the amendments also provide that the Independent National Security Legislation Monitor Act 2010 will be amended to require the Independent National Security Legislation Monitor to complete a review of the continuing detention scheme five years after the day the bill receives royal assent, and the Intelligence Services Act 2001 will be amended to require that the committee review the continuing detention scheme six years after the day the bill receives royal assent.

Senator McKIM (Tasmania) (11:15): The Australian Greens will support these amendments on the basis that they make the legislation less bad and less draconian than it otherwise would have been.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (11:15): In line with the comments made by Senator Wong in her contribution to the second reading debate and consistent with the recommendations of the Parliamentary Joint Committee on Intelligence and Security, the opposition will be supporting the government's amendments this morning.

The TEMPORARY CHAIR (Senator Marshall): The question is that government amendments (1) to (58) be agreed to.

Question agreed to.

Senator McKIM (Tasmania) (11:15): I wish to ask the Attorney some questions that I flagged in my contribution to the second reading debate—which he did respond to, to be fair to him, in his summary on the second reading. But I want to indicate that his responses have raised further issues in the minds of the Australian Greens. Firstly, I just want to reject the categorisation of the Australian Greens as a left-wing authoritarian party—although it is reassuring to me that you believe that, Attorney, because it says to me that you do not understand what drives the Australian Greens, and while you do not understand what drives us you will never defeat us. So, it is reassuring to me that you have miscategorised the Australian Greens so egregiously.

With regard to the standard of proof, you have referred the Senate to the Briginshaw standard. I mentioned the Briginshaw standard, not by name but by effect, in my second reading contribution when I mentioned the term 'comfortable satisfaction'. Now, you said in your summary on the second reading that the standard of proof that this legislation creates, which is 'a high degree of probability', falls between the civil standard of 'balance of probability' and the criminal standard of 'beyond reasonable doubt'. You then referred us to the Briginshaw standard of 'comfortable satisfaction'.

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So, Attorney, I have a couple of questions for you. Firstly, if it is your intent that the courts interpret a standard of high degree of probability as the Briginshaw standard of comfortable satisfaction, why did you not use those words—'comfortable satisfaction'—in this legislation? Secondly, can you please confirm that it is your intent that the courts interpret 'high degree of probability' as 'comfortable satisfaction'? I do think it is important that you place it on the record, because the courts may well come back to this debate in order to assist them in interpreting the legislation. Thirdly, I want to remind you that I have asked you whether there is any other legislation in any Australian jurisdiction that establishes a standard of proof of high degree of probability or comfortable satisfaction. That is a question specifically in regard to legislation, not to jurisprudence and previous decisions of any court in this country. Finally, could you also, if you are able, point the Senate to any other legislation, anywhere in the world, that uses the Briginshaw standard or the term 'high degree of probability' in establishing a standard of proof?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (11:19): To deal with the last point first, every state, other than South Australia, uses the term 'high degree of probability' as the standard of proof in relation to state laws concerning the postsentence detention of serious violent offenders or serious sexual offenders. You are looking questioningly at me, Senator McKim, but that is what I am advised. In fact, in preparing this legislation we have been very mindful of trying to ensure that we have followed the existing state legislation quite closely, because the existing state legislation was upheld in the High Court some years ago in a case called Fardon's case. Therefore, to inoculate this legislation against the possibility of a constitutional challenge, we wanted to ensure that we based it on legislation which, as I said, the High Court has upheld.

I am reminded that Tasmania does not have a postsentence detention regime. Perhaps that is why you were looking at me doubtfully a moment ago, Senator McKim. But all of the other five states do, and, of the other five states, only South Australia does not use the term 'high degree of probability'.

Senator McKim, you also invited me to comment on the difference between the so-called Briginshaw standard, 'comfortable satisfaction', and the standard of 'high degree of probability'. I think it is prudent to leave that to the courts; I do. In closing the second reading debate I did respond to some questions you raised as to where 'high degree of probability' sits in the hierarchy of standards of proof between the traditional civil standard, 'balance of probabilities', and the traditional criminal standard, 'beyond reasonable doubt'. I think it is uncontroversial to say that it sits above the former and beneath the latter, as does the Briginshaw standard. In a parliamentary debate, to commentate on the way in which courts might interpret the standard and apply it to a particular case is I think something best avoided. I think that the application of an acknowledged and well-established standard of proof is something best left to the courts, before whom applications under this legislation will be brought, so I will refrain from doing that.

You asked me whether there is any other jurisdiction in the world which has such a standard. Senator McKim, I know that in the United Kingdom, with whose Attorney-General and Home Secretary I have had discussions, there is legislation very much akin to this. I
believe that is the case in other states the European Union as well. Certainly, in the United Kingdom there is legislation akin to this.

Senator McKIM (Tasmania) (11:22): Thank you, Attorney-General, for your response. I will check the other state legislation to which you have referred. The reason I was looking doubtfully at you is that the advice you have just provided to the Senate is not consistent with the advice I have, but I am happy to double-check that. I do not seek to challenge you on that today. My advice is that some of the statutes at a state level actually do require a standard of proof beyond reasonable doubt, not a high degree of probability. But I will check that and, if necessary, we can resume the conversation a later date.

I wanted to now go to your view that an interpretation of where 'high degree of probability' sits in relation to the Briginshaw standard of 'comfortable satisfaction' is best left courts. I think the view that that is best left to the courts reflects to a degree, if I might say, your legal background here. As you know, I do not have a formal legal background and would regard myself more as parliamentarian than a lawyer, if I can put it in those terms. I will just respectfully say that I do not agree with you. I think it is the parliament's job to be clear with the courts about how they ought to interpret legislation. It remains my view the you ought offer some guidance to the courts in this debate in regards to how they ought to interpret the term 'high degree of probability' in relation to or in comparison to the Briginshaw standard of 'comfortable satisfaction'.

But I wanted to ask you a further question, which goes to the policy intent of this legislation. It is very simple one: why have you decided to make the standard of proof 'high degree of probability' rather than 'beyond reasonable doubt', which is obviously the criminal standard? I might add, that is standard those who the legislation applies to will have been convicted using.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (11:25): Senator McKim, I acknowledge your point about the parliament, being the authors of the legislation, being perfectly entitled to entertain a discussion about the meaning of terms in the legislation; but I do think it is a little dangerous, where we are dealing with nuanced language that has to be applied by courts, to in this debate be making remarks that might be regarded as too prescriptive.

In relation to the policy issue that you raise, I think it is very simple: this is an unusual power. The reason for your opposition to it, and of Senator Leyonhjelm's opposition to it, is that you do not think the state should have this power. I acknowledge the force of that argument. It is for me to make the case that the circumstances are so exceptional, the safeguards are so extensive and the resort to these powers by government is so rare that we ought to create an exception to the general rule. The general rule is where a person has served their period of detention, if they receive a custodial sentence upon conviction for a crime, then they are a free man or woman. That is the basic position of the criminal law. It is the basic proposition upon which the penal system works. What we are doing is adding a new jurisdiction which will be rarely used and only in circumstances of extremity, defined by a serious risk to public safety in relation to likely recidivist terrorist criminals.

For that very reason, we do not think that the ordinary civil standard of proof—which, as I say, in layman's terms might be expressed as 'more likely than not'—is good enough. We do
not. Just as we do not think that the civil standard is appropriate for the conviction of a crime upon criminal trial nor do we think the civil standard is appropriate to make such a serious order affecting the liberty of a person whose term of imprisonment has expired. But nevertheless, if this unusual jurisdiction is to be exercised, then it seemed appropriate to us— because this is not an application of the criminal law; this is a protective measure and not a punitive measure—that something more than the civil standard but something less the standard of proof in a criminal trial was the appropriate level of satisfaction that the decision-maker, a Supreme Court judge, needed to have.

I might say, in relation to that, that it is also relevant to point you to another provision of the act. That is, that a judge before whom an application of this kind is brought also has to be satisfied that there is not a less invasive way of dealing with the risk posed by the criminal who sentence is about to expire, such as, for example, a control order. The decision-maker, the judge, needs to be satisfied not only of the level of the risk but of the appropriateness of preventative detention as the most invasive form of protecting community safety in such a case.

Senator McKIM (Tasmania) (11:29): I just want to address a couple of points there, Attorney. Firstly, we will just have to agree to disagree on the wisdom or otherwise of you, as the country’s Attorney-General, offering more prescriptive guidance to the courts. I still maintain the view that it would be appropriate for you to do so, but, nevertheless, you have determined that, in your view, it is not, and that is a matter on which we will simply have to agree to disagree.

With regard to the standard of proof, you have spoken about the high degree of probability in the context of both the civil standard of proof and the criminal standard of proof. Just for clarity, I am not arguing that, if you are going to proceed with legislation of this type, you should be applying a lower standard of proof—that is, the civil standard of proof. I am not arguing that at all. I am actually arguing you ought to be applying a higher standard of proof, which is the criminal standard of proof.

I just need to make the point again that the people to whom this legislation might apply will have been convicted under criminal law using a standard of proof of ‘beyond reasonable doubt’. I am just saying this to place it on the record. I know I am not going to convince you to change your view here, Attorney, but I do think it needs to be placed on the record. You are now proposing that the courts can imprison someone because they might commit a crime, and that they can do so using a standard of proof that is significantly lower than the criminal standard of proof. I just think that needs to be placed very clearly on the record.

You have categorised this as an unusual power, and that is a matter on which we completely agree. This is a very unusual power. You have indicated, Attorney, that it is your view that this power will be used sparingly, and I am paraphrasing you here. And can I say that, if I have paraphrased you correctly, that is a matter in which I join you in fervent hope—that it will only be used sparingly. But I do want to place on the record, Attorney, that you cannot make commitments on behalf of future parliaments, future attorneys-general or future holders of statutory offices in this country. You are simply not in a position to make commitments.

History is replete with examples of the misuse of powers that have been previously created. I could take you to those at length, if you wish, but I think that, given where we are on the last
day of sitting, I will restrain myself. But I simply want to say that there are plenty of examples through history of parliaments that have created powers for a specific purpose to address a specific perceived issue and then in the future, and sometimes a long way in the future, those powers have been arguably misused. So the Greens still maintain our view here that there is a possibility that these powers would be used more often than sparingly in the future. We acknowledge that there is a sunset clause now attached to this legislation, but our concerns remain, and we remain opposed to this legislation.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (11:33): Senator McKim, thank you for that contribution. Given it is the last sitting day of the year I do not want to prolong the debate, but I think the observations that you make do deserve a reasonably full response. The criminal standard 'beyond reasonable doubt' is just not apt to make what is essentially an evaluative judgement in the application of this legislation. The test that the Supreme Court judge has to turn his or her mind to under proposed section 105A.7(1)(b) says:

… after having regard to matters in accordance with section 105A.8—

to which I will come—

the Court is satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence if the offender is released into the community …

It also says:

(c) the Court is satisfied that there is no other less restrictive measure that would be effective in preventing the unacceptable risk.

The term 'unacceptable risk' is not a defined term, so that is why I say there is a level of evaluation in this judgement that the court must make. The criminal standard 'beyond reasonable doubt', which means you cannot have a reasonable doubt if you are going to reach a deferment of conclusion on the basis of the criminal standard, is just not apt in the application of that test because I daresay it could be always asserted that there is a reasonable doubt as to whether or not an offender—a prisoner, I should say—convicted of a serious terrorism offence would pose an unacceptable level of risk.

The criminal standard of proof is, in fact, a very rigid standard, and it is, as I say, just not apt to apply to a decision which involves a degree of evaluation of this kind. The matters to which the court has to have regard in proposed section 105A.8 include:

… the safety and protection of the community—

the report of any relevant expert—

… any report, relating to the extent to which the offender can reasonably and practically be managed in the community … prepared by—

competent bodies; the offender's participation in—

… any treatment or rehabilitation programs—

while in prison—

… the level of the offender's compliance with … obligations to which he or she has been subject while—

imprisoned, on release, on parole or—

CHAMBER
… subject to a continuing detention order or interim detention order;
… the offender's criminal history …
… the views of the sentencing court at the time—
of the conviction; and any other information that the court may have regard to. All of those
matters set out quite a comprehensive list of relevant considerations to which the court needs
to have regard. Those matters are only considered on the basis of admissible evidence, by the
way—so hearsay is not allowed and other forms of information that are often allowed before
decision-making bodies of this kind are not allowed here. It has to be admissible evidence,
and the court has to make that evaluative judgement as to the unacceptable level of risk the
offender poses to the community. That is why we have not used the very inflexible and, in
this case, I suspect, practically impossible to satisfy, criminal standard of proof.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive
Council and Leader of the Government in the Senate) (11:39): I move:

That these bills be now read a third time.

Question agreed to.

Bill read a third time.

Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill
2016

Second Reading

Consideration resumed of the motion:

That these bills be now read a second time.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business
in the Senate) (11:39): The Register of Foreign Ownership of Agricultural Land Amendment
(Water) Bill 2016 amends the Register of Foreign Ownership of Agricultural Land Act 2015
to establish a Register of Foreign Ownership of Water Entitlements, creating a national
foreign-owned water register to be administered by the Commissioner of Taxation. The bill is
enabling legislation to allow for the collection of information and publication of statistics
about foreign holdings of registrable water entitlements and long-term contractual water
rights, and Labor supports the bill.

It is clear to all Australians that water is precious. It is valuable, and it should be conserved,
harnessed and treated with the utmost respect. It is therefore common sense that we as a
nation should know and understand who owns our water, who has the right to use it, trade it
and sell it. We know that many Australians are anxious about foreign ownership, not only for
residential and rural land but also for water resources. Labor believe it is critical to
generating the confidence, trust and support of our community in our foreign investment
regime that the utmost transparency is given to understanding the level and value of both land
and water resource holdings by foreign interests. This is not to say that Labor are opposed to
foreign investment. We are certainly not. We understand the many benefits of foreign
investment: jobs, growth, access to new markets and additional export opportunities, just to
name a few. But we also understand that it is a vital part of the social contract that Australians have all the facts in front of them. That way there is no room for urban myths, for mischievous claims or for outright lies to be peddled by those who want to sow the seeds of distrust and disharmony in the community.

The Turnbull government agreed to establish a register of foreign owned water entitlements in a deal with the Greens to pass the Foreign Acquisitions and Takeovers Legislation Amendment Bill in 2015. That bill lowered the Foreign Investment Review Board's threshold for foreign land acquisitions from $252 million to $15 million and for foreign agribusiness proposals to $55 million. The Register of Foreign Ownership of Agricultural Land Act includes a sunset provision moved by the Greens party which means that the act will lapse on 1 December 2016 if legislation providing for a register of foreign ownership of water entitlements does not commence before that time. In effect, the bill before us today is tangible proof of the Greens' lack of trust in the government that they would deliver on their deal to lower the Foreign Investment Review Board's threshold for foreign land acquisitions in exchange for a water register.

It is also important to acknowledge that it was Labor who initially proposed the Register of Foreign Ownership of Agricultural Land back in 2012. Labor's plan was to allow every Australian, with the click of a mouse, to see who owns what, where and what they paid for it. Going into the 2013 election, the then Abbott-led opposition promised to do the same. Unfortunately, what subsequently transpired as a land register has drawn substantial criticism, including from the National Farmers Federation former chief executive, who said that assessing foreign farm ownership on land area does not really reveal much more than would be expected.

As my colleague the member for Hunter pointed out when speaking on this bill in the other place, while the current land register provides a picture of square meterage held, we still do not have a picture of the value of the land held by foreign interests. The current land register, which commenced on 1 December 2015, requires foreign persons to notify the Commissioner of Taxation of all the agricultural land held as at 1 July 2015. They are also required to notify if they start or cease to hold agricultural land. The register is divided into two parts, the first containing the details of the identity of the foreign person and the land holdings. The second part contains statistics derived from the individual listings in the first part of the registry, which prevents the identification of any individuals. These statistical details are then published on the commission's website. The minister must also table in parliament the commissioner's annual report on the operation of the act, including statistics derived from the register. In short, we get an aggregate picture of the land holdings but no detail. Labor rightly questions whether this is the level of detail that Australians should be satisfied with on such a sensitive issue as foreign investment in land holdings. The government claims that there are privacy concerns which prevent further transparency. We are not satisfied that we have been given a full explanation as to why the land register is so inadequate in giving a robust picture of who owns our land.

Item 27 of the bill amends the register of foreign ownership act to insert new parts 3A and 3B. The effect of the amendments is that the water register will operate in a similar way to the existing land register. So, again, we get an aggregate picture but no detail. The explanatory memorandum points out that an estimated 767 foreign persons will be affected by the
provisions in the bill. It is also anticipated that there will be a degree of overlap between persons who have agricultural holdings and water entitlements. There were 806 agricultural businesses with some level of foreign ownership as at 30 June 2013, and it is estimated that 604 foreign persons who hold agricultural holdings will need to register water entitlements. The EM also says that the bill’s definition of a registrable water entitlement is broad, stating that it will impact not only on the agricultural sector but also on mining; irrigation; irrigation infrastructure operators; manufacturing; and energy, electricity and waste services.

It is also important to note that a contractual water right—item 6—will only be required to be notified if that right is likely to exceed five years. Affected foreign persons who, at the end of 30 November 2017, hold or will hold a registrable water entitlement or a contractual water right that is likely to exceed five years must give notice to the commissioner during the notification period, which commences on 1 July 2017 and ends on the later of 30 November 2017 or the 30th day after the day that the person starts to hold that entitlement or right.

While these dates are important, if technical, aspects of the bill, senators should note that the Bills Digest highlights the problems the ATO experienced in developing online registration forms for the preceding land register. Given the recent technical problems this government has overseen, such as the Census debacle, we can only hope that the commencement date of 1 July next year will give sufficient time for the relevant technical modifications to the existing register to be made to incorporate the additional water entitlement information. As the member for Hunter pointed out in his speech in the other place, the water register will be a good thing if it is effectively executed.

As I said at the beginning, Labor support this bill, but we do not believe the current level of transparency for both the land register and the proposed water register are sufficient. We believe they are underdone. Properly designed registers will help build public confidence in foreign capital, and more transparency is crucial to this task. Unfortunately, Labor believe that yet again this government has put forward policy that lacks transparency and delivers platitudes based on: ‘Trust us.’

Senator RICE (Victoria) (11:46): I rise today to speak to the Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016. The bill before us today would fulfil a longstanding commitment of the Greens to create a register of water holdings by foreign nationals. Indeed, this is the second stage of our foreign agricultural reform package, following last year’s passage of legislation to develop a Register of Foreign Ownership of Agricultural Land and to lower the Foreign Investment Review Board’s threshold of agricultural sales to foreign investors. As part of that package, the government agreed to the development of a foreign water holdings register. It is because of the hard work of Senator Siewert and Senator Whish-Wilson, and before them Senator Milne, that we are here today debating this bill.

A register of foreign water holdings will increase the transparency of our relatively new water markets so that the public has access to information about who, where and how much water is held by foreign citizens. Since the beginning of the water reform period in the 1990s, we have seen water trading have some limited successes in incentivising water efficiency and returning environmental flows—despite the best efforts of some on the government benches, including Minister Barnaby Joyce and his cheerleaders. Potential abuses of power in water entitlements and allocations, particularly in times of drought and water scarcity, have been
identified, so the concern amongst both policy experts and farmers is real. One of the first steps in dealing with these problems is to make information on market concentration and ownership structures better available to the public. Building broad awareness of the risks, opportunities, dangers and the current state of the concentration of water ownership by foreign investors would lay the groundwork for future tackling of problems with our water markets.

This brings us to the bill before the Senate today. From 1 July 2017, foreign persons will be required to register their legal interests in registrable water entitlements and contractual water rights with the Australian Taxation Office. A stocktake period will be conducted between 1 July 2017 and 30 November 2017. A foreign person who holds a registrable water entitlement or a contractual water right on 1 July 2017 will have until 30 November to register that entitlement or right with the ATO. A person who holds a registrable water entitlement or a contractual water right on 1 July 2017 but disposes of it before 30 November will not need to register that interest. Following the stocktake period, foreign persons will be required to register their registrable water entitlements and contractual water rights, or changes to their holdings, 30 days after the end of each financial year.

With this information, the ATO will publish an annual register of the proportion of Australian water entitlements held by foreign persons, the level of foreign interests in water by country of origin, the level of foreign interests in water ownership and lease, and the use of water rights held by foreign persons. Most importantly, our discussions with the government have indicated that the government's intention is to record holdings within surface and groundwater basins as defined by water planning instruments, including water resource plans, in each of the water-trading jurisdictions. This register would then produce the level of foreign ownership by water system. For example, in the Murray-Darling Basin there are 20 surface water resource plan areas, 22 groundwater resource plan areas and six combined groundwater and surface water resource plan areas. Foreign persons registering in respect of water holdings in the Murray-Darling Basin would be expected to register against the relevant surface, groundwater or combined water resource plan areas.

There are still some privacy implications for investors that will affect how detailed the data is going to be, but we have it on good faith from the government that they will attempt to maximise the degree of information without imposing onerous costs or breaching privacy law. Although the Greens were pleased with the first release of the land register, we were disappointed with the lack of granularity and detail that is in the foreign land register. We believe that what is being promised for the water register will be a significant improvement on the situation with the land register. By building on both the successes and the limitations of the agricultural land register, this bill will be a win for accountability and transparency in our water markets.

This debate needs to be held in the context of the changes that are happening to our climate and the knock-on effect of these changes on the hydrological cycles in our major river systems. I am still hopeful that the world is going to see sense on climate change and that we will take the required action to prevent dangerous and irreversible climate change. It is difficult to still feel optimistic, given the positions put by our current government and some of the crossbenchers here, but I am hopeful that we will act. But if we do not meet our global climate targets—and again, with the current positions held by governments here and the
incoming Trump presidency, it is not looking promising—Australia is going to continue to shift to being an even more water-scarce country.

At this stage of the year in 2016, we are generally feeling a bit more relaxed about water flow, because across much of the country, and particularly across the Murray-Darling Basin, we had an exceptionally wet winter. But what global warming means is that those dry years that we have struggled through in the last 15 years are going to come around more and more frequently, and the years like the one that we have just had will become very rare indeed.

The South Eastern Australian Climate Initiative, which was a joint project of CSIRO, the Commonwealth, the Victorian state government and the Murray-Darling Basin Authority, found in their phase 2 study that two degrees of warming—and we are currently heading for three or four degrees of warming—would result in approximately a six per cent decline in rainfall and a 20 per cent reduction in run-off in the Murray-Darling Basin. To take the Murray-Darling Basin as an example of the impact of climate change on water markets, it is hard to see how we are going to equitably manage a 20 per cent decrease in run-off in a system that is already proving impossible for the current government to manage. In the basin today there is massive competition between flows sufficient to support struggling estuarine and river mouth ecosystems and the demands of the communities upriver, the irrigators and farming communities. It does not even bear thinking about the impact of four degrees of warming and beyond on these conflicts.

Worse, under conditions of water stress and drought, when water is scarce and farmers are desperate, there is always the potential for the formation of large oligopolies and exploitative behaviour by water traders. Market concentration is a very real threat. The flow-on of this concentration into food, fodder and fibre prices could have very large impacts for our rural communities. So it is through measures such as the one in this bill that we are going to be able to ensure that our water-trading system remains as equitable, transparent and fair as possible.

I want to clarify here that, although the Greens remain cautious about the role of foreign investment in Australia's water, we are equally cautious about domestic investments.

Debate interrupted.

The PRESIDENT: Senator Rice, you will be in continuation. We now move to general business.

PETITIONS

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

Bass Strait: Ferry services

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

The petition of the undersigned shows:

That the Australian Government has for nearly two decades, been incapable of equitably linking the State of Tasmania to the rest of the nation.

Circumstances relating to this inability are that—

Nearly a quarter of a century ago a citizen led group asked the Federal Government to properly connect Tasmania to the national road transport network. They sought a maritime highway crossing Bass Strait, using ferries - passenger and vehicle movement to be pegged to the cost of road travel.

Business and political support came from across Australia.
The proposal was sensible and justified. It was subsequently agreed to and well funded by the Federal Government from September 1996. The Bass Strait Passenger Vehicle Equalization Scheme was introduced.

Uncapped and adequate demand driven funding continues to this day. The scheme has cost over half a billion dollars and about $45 million last year.

The aim was to close the only interstate gap in the national highway network and treat access to and from Tasmania equally with other interstate transport connections. Bass Strait was to be part of the National Highway. Sea freight is equalized by Canberra under a parallel arrangement.

Total fares reduced substantially and the scheme was an outstanding success. It was the underlying cause of Tasmanian Premier Jim Bacon’s economic revival. Two new ferries were subsequently introduced, each capable of crossing twice a day, with enough sit up or stay up capacity for at least day time equalized crossings.

Then gradually the scheme moved away from highway equalization.

Now, contrary to the positive stance taken by Prime Ministers Keating and Howard to this issue in 1996, and again by John Howard in 2001, under Malcolm Turnbull the funding is confirmed to be no longer about 'equalization'.

It now seems to be about subsidies related to Tasmania. Over time, these could be moved away from Bass Strait altogether.

Subsidies don’t drive whole of state economies. They encourage ongoing dependency and skew normality. Tasmania just needs equal transport links to compete with other states, based on its close geographical location, not the nature of the intervening terrain.

Equalization objectives, if met, would give the nation fair access to the rest of Australia by offering all-year, low cost, consistently priced travel between Tasmania and Australia’s largest population corridor.

An equalized link would boost state economies, positively changing the very framework of doing business - about 70% of gross state product is generated by people related activities that critically need access to people.

Equalization would also maximize the use of existing and future public and private investment in Tasmania. It would also impact positively on Victoria, increasing the flow of surface travel between the two states and beyond - price and capacity being found to be the major determinants of crossing the Strait by sea. A new market of frequent A to B interstate travelers would open up.

The Hume Highway would extend to Hobart.

Regrettably, the transport barrier of Bass Strait, described by the Coalition in 1996 as, ”the single most serious impediment to the growth of jobs, investment and population for Tasmania”, seems likely to remain under Malcolm Turnbull.

The intent of federation was to "link the colonies through the movement of both people and freight into a national integrated economy".

Why hasn’t the barrier been removed and the full purposes of federation met?

Instead, we have seen the impact of an equalization scheme being progressively eroded and, now finally destroyed by an almost meaningless federal policy vacuum, making a mockery of Coalition equalization promises and federal party endorsement.

Federal monitoring has mainly considered the impact of the scheme on just a limited leisure travel accommodation market in Tasmania. Monitoring, under highway equalization, should have measured the impact of all interstate surface travel connecting two states and updated the scheme to the cost of road travel.
Current parameters encourage the movement of cars, value adding to trips to Tasmania for a few, not more passengers in a car or foot passengers. They do not control, in the absence of sea based competition, the total price of the interstate transport of people as would a road.

The residual public benefit of the scheme, as it is now applied, seems to be very minimal.

Parts of the Tasmanian leisure travel accommodation sector, possibly contribute somewhere under 10% of gross state product. They and a few others seem to clearly benefit instead of the scheme applying equalization principles to meet the wider, two-way needs of the major drivers of the South Eastern Australian economy. These include sectors such as broader tourism and its flow on impact on community activities - also large sectors, such as education, health, retail, transport, and construction and more. These sectors need increased population by reducing Tasmania's remoteness and or volume visitation.

Equalization is about immediate growth and productivity in circumstances where the interests of the major stakeholders and the public are aligned. In such a case, it would seem folly for any Prime Minister to just follow entrenched minority positions.

Scheme expenditure is now far in excess of the cost of a roughly equivalent 1996 Keating proposal. Why is it not now delivering comprehensive equalization?

As the scheme is applied, cars crossing the Strait are funded by the Australian Government, $220, each way. On top of that, a recent random inquiry for overnight travel resulted in a return fare of $1163 off peak, $3088 peak season for a car, including 5 passengers, sit up.

Excluding the federal contribution, these travel costs far exceed the cost of all year, highway travel estimated at 66 cents a km over 427 km each way, or $563 return.

The uncertainty caused by daily fare variance, advance purchase restrictions and limited availability fares also impacts on and restricts A to B sea highway travel.

In 2001, after our second campaign, Prime Minister John Howard proposed an each-way $50 passenger fare, on top what was then a 'car carried free'. This was the second attempt by Howard to achieve a fully equalized link.

The Bass Strait link could not have been better resourced.

This proposal was apparently not wanted by a tourism group in Tasmania. Their wishes were followed.

At the time, the Coalition announced that they intended to enhance the scheme. Scheme funding was moderately increased. Shortly after, the highway equalization indexation formula was removed from Ministerial directives and the scheme, still under the name of equalization, became a subsidy.

This erosion should never have occurred.

In March 2015, the Australian Government said, 'The aim of the BSPVES does not extend to equalizing the cost of inbound and outbound travel across Bass Strait'. They then gave a loose indication that they may, 'after a reasonable length of time', 'properly consider the broader economic impact of the scheme, including the broader tourism industry, and the implications for competition between transport modes any change to the scheme would have'.

Why can't the Bass Strait crossing be fixed now, and the scheme used more efficiently, when regular punts and ferries continue to connect the rest of the world - all this, at a time when far more costly land-based surface links are being strengthened at Canberra's expense.

As with other states, regular air and highway transport options need to be encouraged to compete. Also, all states should be required to compete fairly with other states through both air and equalized surface links. Air services are likely to increase with growing economies.

Competition between air and sea driving and accommodation packages is not enough.
The 2015 Government response is astonishing. To reverse equalization, and then to suggest further consideration of matters already examined and settled two decades ago is untenable.

Under Malcolm Turnbull, are we now to fight the same unfounded policy fears already overcome by us? Is democracy to work in 20 year cycles? In the interim, is it now really Canberra's intention to unnecessarily postpone and limit the vital needs of major stakeholders, the public and state economies?

Having being burnt twice, by Canberra not directing its funding for equalization, how can we enter the arena again with this reversal and vague outcome?

We have lost trust and hope that sound governance will be directed to achieve effective Bass Strait transport equality.

Our case is watertight and already well funded. Shipping infrastructure and other resources are in place.

The express wish of the nation is being ignored and our substantial voluntary efforts, undermined. Benefits from the significant funding we obtained are being largely and unjustifiably gifted to others.

Parts of the leisure travel accommodation sector in Tasmania have every right to look after their patch, but its Canberra's duty to meet the needs of the rest of the economy

When is the will of the people going to be respected and scheme benefits passed directly to them? Other interstate highways are not destroyed within a decade or two. Why this one? What sort of message does this experience send about the effectiveness of our democracy? Or, is an invisible hand, rather than the needs of the people or market place, controlling it? If so, Canberra should clearly identify the source of and reasons for such control.

The equalization promises were well justified and documented - the current application of the scheme, and justification for its comparatively low flow on impact, is far less transparent.

Encouraging a well justified equalization scheme, to be just another direct or indirect federal subsidy relating to the Apple Isle is inappropriate and wrong.

Large subsidies of the size of this scheme would never have been endorsed by our nation unless warranted on the basis of providing interstate highway equalization.

Bass Strait is a vital national interstate transport corridor and blockages caused by lack of ferry-based equalization on the existing inter-capital highway reduces the use of that highway - also, the effectiveness of Tasmania's natural and developed strengths and the level of its GST contribution. Billions of dollars in lost revenue across two states is the result.

Following a text book lobby, the case for linking Tasmania gained very rare bipartisan support in 1996.

Fair interstate surface links are as vital today as they were then.

Fixing Bass Strait is the right national solution to many of Tasmania's woes.

If Canberra only made the scheme available to operators who included a range of fares offering highway equivalence, total fares could be highway equalized overnight. An average all-year, each-way passenger fare, with or without a car, of about $56, with optional ferry-hotel services, could then be expected.

The economy of South Eastern Australia would be transformed in weeks. Transport equity would be restored facilitating comprehensive leisure travel, travel both ways for 'visiting friends and relatives' and for commercial or business travel, as the ferries again equate to a new bridge.

This link is likely to be the greatest infrastructure connection for Victoria and Tasmania since the sea lanes equally connected the colonies.

Clearly history and national priorities have now been forgotten by Canberra.
Will the most vital and simplest of solutions, already well supported, researched, funded and endorsed, be again 'properly considered' by Canberra?

In this case, Canberra's track record doesn't seem to instil confidence and the nation has run out of patience.

**Your petitioner asks that the Senate:**

Promptly call on her Majesty the Queen to use her royal prerogative to commandeer two passenger and vehicular ferries from somewhere in her realm and to operate them in a way that fairly meets the obligations of the Commonwealth of Australia to the people of Tasmania.

by Senator Abetz (from 1 citizen).

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**Tax Avoidance**

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

The petition of the undersigned shows:

Our outrage at the scale of tax evasion and avoidance and other wrong-doing that the Panama Papers leak has exposed. Multinational corporations and wealthy individuals have employed a labyrinthine system of shell companies with secret ownership to cheat society of the taxes they should be paying and, in the case of some high net worth individuals, hide money stolen through fraud and embezzlement.

Your petitioners ask the Senate to:

- Ensure Australia's company register remains in public hands and introduce laws to establish a public registry of company ownership in which the real owners and controllers of companies must be revealed.
- Make it an offence for an Australian resident to act as a front person for a shell company in which the real owners and controllers of the company have not been revealed.
- Introduce laws to protect and reward whistleblowers who expose wrong-doing in the private sector. The laws should mirror the protection already given to public servants who act as whistleblowers.
- Amend the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 so that lawyers, accountants and corporate service providers (companies that set up companies) are unable to set up shell companies with concealed ownership.

by Senator Whish-Wilson (from 474 citizens).

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Introduce laws to protect and reward whistleblowers who expose wrong-doing in the private sector. The laws should mirror the projection already given to public servants who act as whistleblowers.

Amend the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 so that lawyers, accountants and corporate service providers (companies that set up companies) are unable to set up shell companies with concealed ownership.


Petitions received.

NOTICES

Presentation

Senator O'Neill to move:

(1) That the Senate—

(a) notes the national framework agreed to by the Council of Australian Governments (COAG) in 2008 to tackle Indigenous disadvantage and the six priority areas for change identified by COAG;

(b) further notes that reports are presented by the Prime Minister to the Australian Parliament annually on progress in meeting these 'Closing the Gap' targets;

(c) is of the view that the presentation of these annual reports should be marked by a special parliamentary procedure in recognition of the significance of these initiatives to all Australians;

(d) therefore proposes to the House of Representatives that it consider marking the presentation of the Prime Minister's annual report on 'Closing the Gap' by:

(i) hosting a meeting of the House to which senators are invited in a similar manner as senators are invited to attend addresses by foreign Heads of State, and

(ii) inviting senior Indigenous leaders to be present when the Prime Minister's annual report is presented; and

(e) resolves that, on its presentation to the Senate, the Prime Minister's annual report on 'Closing the Gap' and accompanying ministerial statement be listed for consideration as a government business order of the day, and that the Government undertake to provide for at least 2 hours consideration of the statement during government business time, not more than eight sitting days following the presentation of the report to the Senate.

(2) This order have continuing effect.

Senator Williams to move:

That the Army and Air Force (Canteen) Regulation 2016, made under the Defence Act 1903, be disallowed [F2016L01455].

Senator Williams to move:


Senator Williams to move:

That the Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 4) Regulation 2016, made under the Financial Framework (Supplementary Powers) Act 1997, be disallowed [F2016L01583].

Senator Williams to move:

That the Private Health Insurance (Prostheses) Amendment Rules 2016 (No. 3), made under the Private Health Insurance Act 2007, be disallowed [F2016L01596].
Committees
Selection of Bills Committee
Report
Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (11:56): I present the 10th report of 2016 of the Selection of Bills Committee. I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 10 OF 2016

1. The committee met in private session on Wednesday, 30 November 2016 at 7.31 pm.

2. The committee resolved to recommend—That—

(a) contingent upon its introduction in the House of Representatives, the provisions of the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016 be referred immediately to the Economics Legislation Committee for inquiry and report by 16 February 2017 (see appendix 1 for a statement of reasons for referral);

(b) the provisions of the Corporations Amendment (Crowd-sourced Funding) Bill 2016 be referred immediately to the Economics Legislation Committee for inquiry and report by 13 February 2017 (see appendix 2 for a statement of reasons for referral);

(c) the provisions of the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 16 February 2017 (see appendix 3 for a statement of reasons for referral);

(d) the provisions of the Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 14 February 2017 (see appendix 4 for a statement of reasons for referral); and

(e) the provisions of the Veterans’ Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 14 February 2017 (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:

- Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2016
- Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 (No. 2)
- Passenger Movement Charge Amendment Bill (No. 2) 2016
- Telecommunications and Other Legislation Amendment Bill 2016
- Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016.

The committee recommends accordingly.

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

- Agriculture and Water Resources Legislation Amendment Bill 2016
• Excise Levies Legislation Amendment (Honey) Bill 2016
• Airports Amendment Bill 2016
• Customs and Other Legislation Amendment Bill 2016
• Customs Tariff Amendment Bill 2016
• End Cruel Cosmetics Bill 2014
• National Health Amendment (Pharmaceutical Benefits) Bill 2016
• National Integrity Commission Bill 2013
• Racial Discrimination Amendment Bill 2016
• Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016
• Superannuation Amendment (PSSAP Membership) Bill 2016
• Therapeutic Goods Amendment (2016 Measures No.1) Bill 2016
• Transport Security Legislation Amendment Bill 2016
• Treasury Laws Amendment (2016 Measures No. 1) Bill 2016.

(David Bushby)
Chair
1 December 2016

APPENDIX 1

Proposal to refer a bill to a committee:
Name of bill:
  Competition and Consumer Amendment (Misuse of Market Power) Bill 2016
Reasons for referral/principal issues for consideration:
  Bill proposed a significant reform to competition policy that should be subject to public scrutiny.
Possible submissions or evidence from:
  Business sector
  Trade unions
  Academics
  Government agencies
Committee to which bill is to be referred:
  Economics
Possible hearing date(s):
  First quarter 2016
Possible reporting date:
  First quarter 2016
  Senator Rachel Siewert

APPENDIX 2

Proposal to refer a bill to a committee:
Name of bill:
  Corporations Amendment (Crowd-Sourced Funding) Bill 2016
Reasons for referral/principal issues for consideration:
To apply proper scrutiny to the effect of the legislation. To give opportunity for affected stakeholders to provide evidence about how the legislation would operate. To ascertain the possible consequences of the program. To examine thoroughly the Bill to ensure there are no unforeseen or unintended consequences.

Possible submissions or evidence from:
Employee Ownership Australia Ltd
Supplementary to submission
Fat Hen Ventures Ltd
Australian Private Equity & Venture Capital Association Limited (AVCAL)
Confidential
VentureCrowd
Financial Ombudsman Service Australia
Dr Marina Nehme
Law Council of Australia (Corporations Committee, Business Law Section)
Australian Small Scale Offerings Board (ASSOB)
Business Council of Co-operatives and Mutuals (BCCM)
Attachment 1
ASX Ltd
Pitcher Partners Advisors Proprietary Limited
Solutions4Strategy
Chartered Accountants Australia and New Zealand
CrowdfundUP
King & Wood Mallesons
Macpherson Greenleaf
BDO Australia
Crowd Ready
Mills Oakley Lawyers
Equitise
Mr Paul Niederer

Committee to which bill is to be referred:
Senate Economics Legislation

Possible hearing date(s):
To be determined by the committee

Possible reporting date:
Monday 13 February
Senator Anne Urquhart
APPENDIX 3
Proposal to refer a bill to a committee:
Name of bill:
Reasons for referral/principal issues for consideration:
   This is a large omnibus bill which updates 16 different pieces of Commonwealth legislation across
   11 Schedules.
   Given the complexity and volume of amendments to Commonwealth legislation contained in the
   Bill, it would be appropriate to refer the Bill to committee for careful consideration.
Possible submissions or evidence from:
   Law Council of Australia, the Australian Federal Police, the Australian Federal Police Association,
   State, Territory and International Bar Associations, Anti-Slavery Australia, the Uniting Church,
   Australian Catholic Religious Against Trafficking in Humans, World Vision, the Red Cross and other
   advocacy organisations.
Committee to which bill is to be referred:
   Senate Legal and Constitutional Affairs Legislation Committee
Possible hearing date(s):
   Can be done on the papers
Possible reporting date:
   16 February 2017
Senator Anne Urquhart

APPENDIX 4
Proposal to refer a bill to a committee:
Name of bill:
   Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016
Reasons for referral/principal issues for consideration:
   The complex nature of the Migration Act and the impact any change may have on people seeking a
   visa, industry bodies, Australian business and residents warrants further consultation and investigation.
Possible submissions or evidence from:
   • Affected industry bodies.
   • Concerned residents.
Committee to which bill is to be referred:
   Senate Legal and Constitutional Affairs Legislation Committee
Possible hearing date(s):
   To be determined by Committee.
Possible reporting date:
   14 February 2016
Senator Anne Urquhart
APPENDIX 5

Proposal to refer a bill to a committee:

Name of bill:
Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016

Reasons for referral/principal issues for consideration:
- Without the final guidelines for Schedule 2 of this bill it cannot be considered in detail;
- There needs to be a wider examination of the effects of Schedule 2 and its requirements, and whether there are sufficient legislative protections for the veterans' community to justify Schedule 2 of the bill,
- The circumstances should be provided in which the Department would find it necessary to publically release the personal details of veterans; and,
- Concerned the Government has not taken into consideration wider stakeholder engagement

Possible submissions or evidence from:
- Returned and Services League (RSL)
- Australian Defence Service Organisations (AD50)

Committee to which bill is to be referred:
Senate Foreign Affairs, Defence and Trade Legislation Committee

Possible hearing date(s):
To be determined by the committee

Possible reporting date:
14 February 2017

Senator Anne Urquhart

Senator BUSHBY: I move:
That the report be adopted.

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:56): The Telecommunications and Other Legislation Amendment Bill 2016, which is contained in the Selection of Bills Committee report, which I sought to refer last night and about which we could not agree at the Selection of Bills Committee meeting, gives the Attorney-General an extreme power and therefore should be investigated by the Legal and Constitutional Affairs Committee—a committee that has its inquiries on the public record—and not by the secretive Parliamentary Joint Committee on Intelligence and Security, which I am given to understand the bill has been referred to. That does not allow open scrutiny of these measures and does not include a Greens senator or member of the other place. Therefore, those of us who take a very deep interest in these issues, and who may have an alternative view to the other parties, do not get an opportunity to be involved in the investigation. I put on record we are extremely disappointed that we were not able to have an inquiry through the Legal and Constitutional Affairs Committee.

Question agreed to.
BUSINESS

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (11:58): I move:

That the order of general business for consideration today be as follows:

(a) general business notice of motion no. 160 standing in the name of Senator Hinch relating to children in care; and

(b) orders of the day relating to documents.

I again thank Senator Hinch for making available general business time for government business this afternoon, after he has made his contribution in the general debate. I understand there may be another colleague who wishes to do so, but thank you to Senator Hinch.

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:59): Can I just flag that there may be another colleague who wishes to make a comment as well.

Question agreed to.

NOTICES

Postponement

The Clerk: Postponement notifications have been lodged in respect of the following:

General business notice of motion no. 127 standing in the name of Senator Hinch for today, relating to Australia’s justice system, postponed till 15 February 2017.

COMMITTEES

Environment and Communications References Committee

Rural and Regional Affairs and Transport References Committee

Reporting Date

The Clerk: Notifications of extensions of time for committees to report have been lodged in respect of the following:

Environment and Communications References Committee—recent fires in remote Tasmanian wilderness—extended from 1 December to 8 December 2016.

closures of electricity generators—extended from 1 February to 29 March 2017.

Rural and Regional Affairs and Transport References Committee—airport and aviation security at Australian airports—extended from 7 February to 30 March 2017.

PARLIAMENTARY ZONE

Approval of Works

The PRESIDENT (12:00): I move:


Senator DI NATALE (Victoria—Leader of the Australian Greens) (12:01): I seek leave to make a short statement.
The PRESIDENT: I understand, Senator Di Natale, you are seeking leave for longer than one minute.

Senator DI NATALE: If I could have two minutes, that would be great.

The PRESIDENT: Is leave granted for two minutes? Leave is granted for two minutes.

Senator DI NATALE: I want to put on the record that the Greens will not be supporting this motion to increase the security arrangements at Parliament House. The Greens have huge concerns about this particular proposal. We have concerns because we believe it attacks the fundamental principle on which this parliament was built—that is, this parliament was built to ensure that it welcomed the community into the parliament and to ensure that it was politicians who were connected to the work of ordinary members of the community. In fact, the very design was made in such a way that it was politicians that served at the feet of the people—that politicians would be subservient to the people. Integral to the design is this grass roof that allows people to walk above us. I think that says something very profound about the Australian democracy. It is hugely disappointing that these changes go to the very heart of that and they ring fence parts of the parliament to prevent ordinary people from communicating with their politicians.

I think this goes to the heart of the problem that democracies right around the world are experiencing—that is, there is a growing disconnect between politicians and ordinary people. We are here with this measure to further entrench the developing gulf that exists between modern democracy and the people it purports to represent. While we understand that it is important to always remain vigilant and do everything we can to keep people in this building safe, we think these changes go far too far and really do change the fundamental principle that we are here to serve the people.

The PRESIDENT (12:03): Before I put the motion, I wish to make some comments in relation to the proposal before the Senate for the security works. The Speaker in the other place gave some information to the House of Representatives this morning, and I intend to also pass on some information and to dispel some myths.

First of all, the Speaker and I take the role of parliamentary security exceptionally seriously. For the last couple of years, we have been working with a security task force. We receive constant professional advice from the Australian Federal Police, from ASIO, from the Attorney-General's Department and also from departmental officials. This advice is always taken into consideration when considering hardening security arrangements within the building and on the external perimeter. The reason this has come before the parliament is that we are required by law to present matters to the parliament where there is a change to or erections on the exterior of the building, which we are doing. The capital works are required to be presented to both chambers. The House of Representatives has passed that without dissent this morning.

Can I just dispel some myths, and these have been in the media in the last couple of days. Firstly, this package of measures will not do some things. It will not restrict the current entry to Parliament House that the public enjoy. In fact, some of the security measures and some of the enhancements within this package will actually make it easier for members of the public to move into the public entrance. The public will still be able to come across the forecourt enter and be screened as normal. But we are enlarging the entrance and enabling more people.
to come through at a quicker pace. Secondly, this will not in any way change the ability for people to walk over the top of Parliament House. In fact, in 2005 fences were put in place to restrict people from walking over Parliament House. For over 10 years you have not been able to walk over Parliament House. We are realigning fences; we are moving fence lines to a more appropriate position. The fence lines will also be less obtrusive. The fence lines will have no cross members. They have been tested to provide the security enhancement we need but also be less visually obtrusive. Also, some of the security measures will involve the planting of hardened shrubs, which will have an aesthetic appeal as well as providing a security measure. People will still be able to access the roof of Parliament House like they always have done, certainly in the last two years, and that is by elevator. After they have been screened, they can go up to the roof of Parliament House and still walk on the top of Parliament House.

These matters have been placed before the Standing Committee on Appropriations, Staffing and Security Committee. Also, as a number of senators in this room would attest to, I have briefed the Senate leadership meetings on a regular basis. We have had professionals attend those meetings, and every party and every independent senator has been represented at those meetings. I have also made it available in the statement I also tabled yesterday that if any senator wished to view any of the detailed diagrams and detailed plans in relation to those works they had that opportunity to do so. Some senators have taken me up on that offer and I briefed some senators again as recently as yesterday.

Does any other senator wish to seek leave to make any comment? Senator Hinch.

Senator HINCH (Victoria) (12:06): I oppose this. I know the severity of it is because of the security aspects. We must take it seriously, and this is post 9/11. But I think what you are planning is like putting barbed wire on the Opera House. This is an aesthetic building; it is the people’s building. I accept what you say, and it is true that since 2005 you have had that fence at the very top. It is unobtrusive. It is almost an optical illusion. You do not see it when you drive in. I checked again this morning, and you barely see it. But your plan to put in place this huge fence, whether it is vertical or not, the way you described it to me—I think it is too much. I cannot see why you cannot amend the situation, and I realise how serious it is. But, where you come up the drive and come into the Senate area, or its mirror image on the other side, you could put the big fence where the building starts, take it down to the ring-road down there, put the big doors across that you have to have and keep the retractable bollards there. All of that I agree with 100 per cent.

I am just asking you to reconsider taking away the thing that the building's architects won prizes for. They won awards for this building because of the sweep of that hillside—because it was a building built under a hill. It is so Australian, and to me what you are doing is totally ruining the aesthetics. I know people will look at me and say, 'The stupid aesthetics don't count when it comes to security.' I am sounding like a member of the Greens here! But the aesthetics do count, and I think these works are something that future generations will regret. I accepted it is post 9/11, I accept that these things have to be done, but I would ask you to just not put that there. You already have a fence to stop people going up the top.

The PRESIDENT: I will just say that leave is granted for two minutes for each speaker.

Senator LAMBIE (Tasmania) (12:08): I am wondering if we could find out about the debacle yesterday, when we had protesters who came in from the roof of parliament.
The PRESIDENT (12:08): That was today, Senator Lambie, and I do not particularly want to enhance any aspect in this public forum. But suffice to say that, if the measures that the Speaker and I have put before both chambers had been implemented, that most likely would not have occurred.

Senator HANSON (Queensland) (12:09): I rise to support this motion. None of us want to see this. It is a beautiful Parliament House the way it was designed—and, yes, to be open to the public. We would all dearly love to live in a utopian world; it does not exist. We are now faced with terrorism, murder on our streets and threats of bombings. It is the police and ASIO only that have protected us. It is not about having a connection with the public, as Senator Di Natale said, and for them to have access to us. We also have a responsibility to the public that come to this place. They have to feel safe when they come here.

When I arrived this morning and I saw protesters putting up a huge banner—and it would have taken a lot of time to get it to that stage—and scaling the walls, I was very concerned about that and I questioned the security here. No, I do not want to see barriers and fences. No, I do not want to see this cost to the taxpayer. But I know friends and other people who are frightened to go to the shopping centre.

Senator Hinch made the comment about the look of it. Well, then, I question him about his own home. Has he got security grilles on it? Has he got a huge fence? Does he protect his own house from people who may want to invade it? What harm does he live in fear of? Because we all live in fear.

So the fact is I do support this. I am sorry to see it, but this is a fact of life, and I say to the other senators here: wake up.

The PRESIDENT (12:10): Before I put the motion, I indicate that this is not about protecting parliamentarians. This is about protecting the 3,500 building occupants who are here on an average day. It is about protecting the one million visitors that come through this place every year, of whom 100,000 are schoolchildren. This is about the occupants of the building, not about parliamentarians. With those words, I put the motion. The question is that business of the Senate notice of motion No. 166 standing in my name, relating to security works at Parliament House, be agreed to.

The Senate divided. [12:15]

(The President—Senator Parry)

Ayes .................... 53
Noes ............... 9
Majority .............. 44

AYES

Abetz, E
Birmingham, SJ
Bushby, DC (teller)
Canavan, MJ
Collins, JMA
Dastyari, S
Duniam, J
Fawcett, DJ
Fifield, MP
Gallagher, KR

Back, CJ
Burstyn, B
Cameron, DN
Chisholm, A
Culleton, RN
Dodson, P
Farrell, D
Fierravanti-Wells, C
Gallacher, AM
Griff, S

CHAMBER
Thursday, 1 December 2016

SENATE

3947

AYES

Hanson, P
Kakoschke-Moore, S
Kitching, K
Leyonhjelm, DE
Macdonald, ID
McAllister, J
McGrath, J
Moore, CM
O'Sullivan, B
Paterson, J
Reynolds, L
Ruston, A
Seselja, Z
Smith, D
Urquhart, AE
Williams, JR
Xenophon, N

Hume, J
Ketter, CR
Lambie, J
Lines, S
Marshall, GM
McCarthy, M
McKenzie, B
O'Neill, DM
Parry, S
Pratt, LC
Roberts, M
Ryan, SM
Sinodinos, A
Sterle, G
Watt, M
Wong, P

NOES

Di Natale, R
Hinch, D
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Hanson-Young, SC
McKim, NJ
Rice, J
Waters, LJ

Question agreed to.

The PRESIDENT (12:18): Senators, we have quite a lengthy list of motions to be discovered in formal business. I may deal with a number that I believe to be not contestable in the first instance, and then, when we get back to contestable motions, the bells will be rung for four minutes for any divisions.

COMMITTEES

Economics References Committee

Reference

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (12:18): I move:

That the following matter be referred to the Economics References Committee for inquiry and report by 22 March 2017:

The impact of non-payment of the Superannuation Guarantee (SG), with particular reference to:

(a) the economic impact on:
   (i) workers, their superannuation balances, and retirement incomes,
   (ii) competitive neutrality among employers, and
   (iii) government revenue, including forgone superannuation contributions, earnings taxes, and SG charge penalties, over both the forward estimates and the medium term;

(b) the accuracy and adequacy of:
(i) information and data collected by the Australian Taxation Office (ATO), the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission on SG non-payment,

(ii) information and data collected by other agencies, such as the Fair Work Ombudsman, on SG non-payment, and

(iii) any legislative, privacy, or other reporting barriers preventing the collection of accurate information and data on SG non-payment;

(c) the role and effectiveness of:

(i) the ATO monitoring, investigations, and recovery of unpaid SG, including technology and data collection to predict and prevent non-payment,

(ii) resources and coordination between government agencies and other stakeholders to prevent non-payment,

(iii) legislation and penalties to ensure timely and fair payment of SG,

(iv) superannuation funds in detecting and recovering unpaid SG,

(v) employment and contracting arrangements, including remedies to recoup SG in the event of company insolvency and collapse, including last resort employee entitlement schemes, and

(vi) measures to improve compliance with the payment of SG;

(d) the appropriateness of responses by:

(i) the ATO receiving complaints and 'tip-offs' about SG non-payment,

(ii) members of Parliament asked to assist and support constituents who have been impacted by SG non-payment, and

(iii) accountants, auditors, creditors and financial institutions who become aware of SG non-payment; and

(e) any other related matters.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:18): I seek leave to make a short statement.

The President: Leave is granted for one minute.

Senator McGrath: The government treats the issue of the non-payment or underpayment of the super guarantee very seriously. Employees require and have an expectation that employers will meet their legal obligations. The government continues to work with the ATO to protect employees from being ripped off, including targeting illegal phoenixing. This is being done through the Serious Financial Crime Taskforce and the Phoenix Taskforce to prevent the practice of deliberately liquidating a company to avoid paying creditors, including employee entitlements. The Inspector-General of Taxation is also working on a project reviewing the ATO's employer-obligation-compliance activities.

Question agreed to.

Community Affairs References Committee
Reference

Senator Siewert (Western Australia—Australian Greens Whip) (12:20): I, and also on behalf of Senator Xenophon, move:

That the following matter be referred to the Community Affairs References Committee for inquiry and report by 10 May 2017:

________________________
CHAMBER
Inquiry into the complaints mechanism administered under the Health Practitioner Regulation National Law, with particular reference to:

(a) the implementation of the current complaints system under the National Law, including the role of the Australian Health Practitioner Regulation Authority (AHPRA) and the National Boards;

(b) whether the existing regulatory framework, established by the National Law, contains adequate provision for addressing medical complaints;

(c) the roles of AHPRA, the National Boards and professional organisations, such as the various Colleges, in addressing concerns within the medical profession with the complaints process;

(d) the adequacy of the relationships between those bodies responsible for handling complaints;

(e) whether amendments to the National Law, in relation to the complaints handling process, are required; and

(f) other improvements that could assist in a fairer, quicker and more effective medical complaints process.

Question agreed to.

MOTIONS

Australian Defence Force

Senator LAMBIE (Tasmania) (12:20): I, and also on behalf of Senator Hinch, Senator Hanson, Senator Roberts and Senator Burston, move:

That—

(1) The Senate notes in relation to the 'Jedi Council' sex scandal:

(a) in a secret New South Wales Police report, prepared by Detective Sergeant Mark Carter, Strike Force CIVET found that the actions of a number of Australian Defence Force Investigative Service (ADFIS) staff and other sections of the Australian Defence Force (ADF) to deliberately lie, withhold evidence, fabricate information... [mean] the conduct of future investigations [by NSW police] into and with the ADF as [a] whole and ADFIS as a body must be viewed with caution and concern;

(b) the personal information of many innocent ADF members, including retired Lieutenant Colonel Dubsky, was provided to the media, in breach of their right to privacy and other fundamental human rights, and without regard for their mental and physical wellbeing;

(c) the original ADFIS investigation into the alleged actions of the 'Jedi Council' was limited and was conducted without direct contact with any alleged members of the 'Jedi Council';

(d) the ADFIS investigation was limited in scope and did not include appropriate follow-up regarding some of the allegations;

(e) the ADFIS investigation did not include interviews with alleged victims of material created or distributed by the 'Jedi Council'; and

(f) a number of the conclusions reached by the ADFIS were not consistent with the evidence presented to the ADFIS as part of the investigation.

(2) The matters raised by New South Wales Police Strike Force CIVET, and other related matters, be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 7 February 2017.

Question agreed to.

Financial Services

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (12:21): I, and on behalf of Senator Culleton, move:
That—

(a) the Senate notes that:

(i) confidence and trust in the financial services industry has been shaken by ongoing revelations of scandals, which have resulted in tens of thousands of Australians being ripped off, including:

(A) retirees who have had their retirement savings gutted,

(B) families who have been rorted out of hundreds of thousands of dollars,

(C) small business owners who have lost everything, and

(D) life insurance policy holders who have been denied justice,

(ii) it is clear from the breadth and scope of the allegations that the problems in this industry go beyond any one bank or type of financial institution,

(iii) the Australian Labor Party, the Australian Greens, crossbench, Liberal and Nationals parliamentarians have supported a thorough investigation of the culture and practices within the financial services industry through a Royal Commission, which is the only forum with the coercive powers and broad jurisdiction necessary to properly perform this investigation,

(iv) Australia has one of the strongest banking systems in the world, but Australians must have confidence in their banks and financial institutions, making it necessary to sweep away doubt and uncover and deal with unethical behaviour that compromises that confidence, and

(v) the case for a Royal Commission into misconduct in the banking and financial services industry has only become stronger over time;

(b) the Senate calls on the Government to request His Excellency the Governor-General of the Commonwealth of Australia issue Letters Patent to establish a Royal Commission to inquire into misconduct in the banking and financial services industry, including their agents and managed investment schemes; and

(c) this resolution be communicated to the House of Representatives for concurrence.

Question agreed to.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (12:21): I seek leave to make a statement of one minute or less.

The PRESIDENT: Leave is granted for one minute.

Senator WILLIAMS: On 31 August and 1 September I stood in this place in response to a Labor motion calling for a royal commission into banks. I said then and I will say again that if we are going to go to the time and expense of a royal commission we should do it right. We should broaden it to take in all white collar crime. We should broaden it to take in industry super funds and the fees that they have siphoned off to the unions and then into Labor's war chest. I wonder if people in this chamber are aware that, as I read recently, over the past two years industry super funds paid more than $5.4 million to unions and the ACTU, with a fair portion of that flowing to the Labor Party. Get the terms of reference in, give us the detail and make sure you include industry super funds, group insurance and the strong connection between the Labor Party and the union movement. Let's have a proper royal commission is what I am saying.

Senator CULLETON (Western Australia) (12:22): by leave—I table documents in relation to the terms of reference.

Question agreed to.
World AIDS Day

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (12:23): I, and also on behalf of Senators Pratt and Rice, move:

That the Senate—

(a) notes that:

(i) 1 December 2016 is World AIDS Day, which is held every year to raise awareness about the issues surrounding HIV and AIDS, and is a day for people to show their support for people living with HIV and to remember those who have died,

(ii) the aim of World AIDS Day 2016 is to encourage Australians to educate themselves and others about HIV, to take action to reduce the transmission of HIV by promoting prevention strategies and to ensure that people living with HIV can participate fully in the life of the community, free from stigma and discrimination,

(iii) while significant advancements in treatment and diagnosis have been made, 30 years after the discovery of the HIV virus the HIV epidemic remains one of the greatest public health challenges facing Australia, its region and the world, and

(iv) Australia's response to HIV and AIDS has always been driven by strong multi-party support and rigorously based on science and evidence;

(b) reaffirms the united support for the Seventh National HIV Strategy in setting the direction for Australia to reverse the increasing trend of new HIV diagnoses and working towards the virtual elimination of HIV transmission by 2020;

(c) welcomes the commitment by all state and territory Governments to work with the Australian Government in the development of the Eighth National HIV Strategy; and

(d) welcomes the pledge by the Australian Government for an additional $220 million to the Global Fund to Fight AIDS, Tuberculosis and Malaria at the Fifth Replenishment meeting in Montreal, Canada.

Question agreed to.

High Court of Australia

Senator KAKOSCHKE-MOORE (South Australia) (12:24): I seek leave to amend general business notice of motion No. 156 standing in my name to incorporate paragraph (d).

Leave granted.

Senator KAKOSCHKE-MOORE: I, and also on behalf of Senators Waters, Moore and Watt, move:

That the Senate—

(a) congratulates the Honourable Justice Kiefel on her appointment as Chief Justice of the High Court of Australia;

(b) notes that:

(i) Justice Kiefel became the first woman in Queensland to be appointed Queen's Counsel in 1987,

(ii) Justice Kiefel is the first female appointed to the highest judicial office in Australia,

(iii) Justice Kiefel's legal career serves as an inspiration to aspiring women lawyers across Australia,

(iv) the gender profile of the legal profession is becoming more gender balanced with female solicitors making up 48.5 per cent of the profession on the most recent figures from the National Profile of Solicitors 2014,
(v) more females are entering the profession, with an increase of 19.3 per cent on previous 2011 figures,
(vi) whilst women are entering the profession in greater numbers than men, the gender profile of the profession overall remains weighted towards male lawyers, particularly in senior positions, and
(vii) data from the Australian Bureau of Statistics, from August 2015, reveals that women are under-represented in the judiciary with 65.4 per cent of Commonwealth judges and magistrates being men;
(c) calls on the Government to continue to develop strategies to promote women in leadership roles, including in the legal profession; and
(d) acknowledges the exemplary work over the past eight years of Chief Justice French, who leaves a legacy of important contributions to the law, notably in his commitment to Indigenous justice.
Question agreed to.

Murray-Darling Basin Plan

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (12:25): I, and also on behalf of Senators Wong, Farrell and Gallacher, move:

That the Senate—
(a) recognises the achievement of the Murray-Darling Basin Plan as a historically unprecedented way forward to deliver a healthy, working river system;
(b) notes the importance of the Basin Plan in supporting the economic and social needs of river communities, and maintaining the health of important ecosystems requiring water flows; and
(c) condemns attempts to undermine the Basin Plan for political gain.
Question agreed to.

Regional Forest Agreements

Senator RICE (Victoria) (12:26): I seek leave to amend general business notice of motion No. 161 standing in my name for today relating to regional forest agreements.
Leave granted.

Senator RICE: I move:

(a) notes that:
(i) Regional Forest Agreements (RFAs) have been in place as 20-year agreements, designed to manage the conservation and forestry industry considerations for key areas of Australia’s public native forests,
(ii) the first Regional Forest Agreement (RFA), the East Gippsland RFA, expires in February 2017,
(iii) the existing RFAs are now out of date and need to be reconsidered to support conservation goals and the impacts and mitigation of climate change – RFAs have exemptions from the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act), and these exemptions need to be reviewed in light of key threatened and endangered species living within the designated areas,
(iv) the required RFA reviews have not been completed, or not completed on time, for the RFAs in place – the review process was designed to improve the operation of RFAs but significant delays and deficiencies in reviews have hampered such improvements,
(v) during the period since the establishment of the RFAs, the context and conditions informing each has changed significantly – these factors include climate change, bushfire, and markets for wood products, and
(vi) the work undertaken by a variety of communities, organisations and scientists to improve forest management for sustainable environmental, social and economic outcomes; and

(b) calls on the Government to adopt forest management policies which ensure that the social, environmental and economic values of forests are effectively protected and managed for future generations.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:26): I seek leave to make a short statement.

The President: Leave is granted for one minute.

Senator McGrath: The coalition government maintains its support for long-term regional forest agreements. RFAs strike a balance between the competing economic, environmental and social uses and values of Australia's public native forests and have been effective as a forest management framework since implementation. We can have strong forest industries and world-class environmental protection. The RFAs contribute to industry certainty, provide for ecologically sustainable forest management and have established a comprehensive, adequate and representative reserve system based on nationally agreed criteria.

Question agreed to.

COMMITTEES

Joint Select Committee on Government Procurement

Appointment

Senator Xenophon (South Australia) (12:27): I move:

(1) That a joint select committee, to be known as the Joint Select Committee on Government Procurement, be established to inquire and report by 31 May 2017 on the following matters:

(a) the Commonwealth procurement framework;

(b) consideration of the Commonwealth Procurement Rules to come into force on 1 March 2017 (CPR17) and, in particular:

(i) clauses 10.10, 10.18, 10.30, 10.31 and 10.37 (the 'new clauses'),

(ii) how the new clauses can most effectively be implemented,

(iii) weighting and other mechanisms that should apply to any Commonwealth procurement decision making, taking into account CPR17, and

(iv) its interaction with any other Government policies and programs (including grants), instruments, guidelines and documents relating to procurement, including the Department of Finance's Resource Management Guide No. 415;

(c) the extent to which CPR17 and any related instrument and rules can be affected by trade agreements and other World Trade Organisation (WTO) agreements, including:

(i) existing trade agreements Australia has entered into, and

(ii) trade agreements that the Commonwealth Government is currently negotiating, including the WTO Agreement on Government Procurement; and

(d) any related matters.

(2) That the committee consist of 10 members, 2 members of the House of Representatives to be nominated by the Government Whip or Whips, 2 members of the House of Representatives to be nominated by the Opposition Whip or Whips, 1 member of the House of Representatives to be
nominated by any minority party or independent member, 2 senators to be nominated by the Leader of
the Government in the Senate, 2 senators to be nominated by the Leader of the Opposition in the Senate
and 1 senator to be nominated by any minority party or independent senator.

(3) That participating members may be appointed to the committee, may participate in hearings of
evidence and deliberations of the committee, and have all the rights of a member of the committee, but
may not vote on any questions before the committee.

(4) That every nomination of a member of the committee be notified in writing to the President of the
Senate and the Speaker of the House of Representatives.

(5) That the members of the committee hold office as a joint standing committee until the House of
Representatives is dissolved or expires by effluxion of time.

(6) That the committee elect as its chair a member nominated by the Leader of the Government in the
Senate.

(7) That the committee elect a non–Government member as its deputy chair who shall act as chair of the
committee at any time when the chair is not present at a meeting of the committee, and at any time
when the chair and deputy chair are not present at a meeting of the committee the members present shall
 elect another member to act as chair at that meeting.

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

(9) That 3 members of the committee constitute a quorum of the committee, provided that in a
deliberative meeting the quorum shall include 1 Government member of either House and 1 non-
Government member of either House.

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

(11) That the committee appoint the chair of each subcommittee who shall have a casting vote only, and
at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the
members of the subcommittee present shall elect another member of that subcommittee to act as chair at
that meeting.

(12) That 2 members of a subcommittee constitute a quorum of that subcommittee, provided that in a
deliberative meeting the quorum shall include 1 Government member of either House and 1 non-
Government member of either House.

(13) That members of the committee who are not members of a subcommittee may participate in the
proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of
a quorum.

(14) That the committee or any subcommittee have power to call for witnesses to attend and for
documents to be produced.

(15) That the committee or any subcommittee may conduct proceedings at any place it sees fit and sit in
public or private.

(16) That the committee or any subcommittee have power to adjourn from time to time and to sit during
any adjournment of the Senate and the House of Representatives.

(17) That the committee may report from time to time, but that it present its final report no later than 31
May 2017.

(18) That the provisions of this resolution, so far as they are inconsistent with the standing orders, have
effect notwithstanding anything contained in the standing orders.

(19) That a message be sent to the House of Representatives seeking its concurrence in this resolution.

Question agreed to.
Finance and Public Administration References Committee

Reference

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (12:28): I move:

That the following matter be referred to the Finance and Public Administration References Committee for inquiry and report by 24 February 2017:

The operation of the Administrative Arrangements Order, the effectiveness of the division and performance of responsibilities under it, and any other related matters.

The PRESIDENT: The question is that the motion moved by Senator McAllister be agreed to.

The Senate divided. [12:32]

(The President—Senator Parry)

Ayes ......................41
Noes ......................26

Majority ...............15

AYES

Bilyk, CL
Burston, B
Chisholm, A
Culleton, RN
Di Natale, R
Farrell, D
Gallagher, KR
Hanson, P
Hinch, D
Ketter, CR
Lambie, J
Lines, S
McAllister, J
McKim, NJ
O’Neill, DM
Pratt, LC
Rice, J
Siewert, R
Urquhart, AE (teller)
Watt, M
Xenophon, N

Brown, CL
Carr, KJ
Collins, JMA
Dastyari, S
Dodson, P
Gallacher, AM
Griff, S
Hanson-Young, SC
Kakoschke-Moore, S
Kitching, K
Leyonhjelm, DE
Marshall, GM
McCarty, M
Moore, CM
Polley, H
Roberts, M
Sterle, G
Waters, LJ
Whish-Wilson, PS

NOES

Abetz, E
Birmingham, SJ
Canavan, MJ
Duniam, J
Ferravanti-Wells, C
Hume, J
McGrath, J
Nash, F
Parry, S

Back, CJ
Bushby, DC (teller)
Cash, MC
Fawcett, DJ
Fifield, MP
Macdonald, ID
McKenzie, B
O’Sullivan, B
Paterson, J
Question agreed to.

NOTICES

Postponement

Senator WHISH-WILSON (Tasmania) (12:35): by leave—I move:
That business of the Senate, notice of motion No. 5 standing in my name for today, relating to Australia's oil and gas resources, be postponed until the next sitting day.
Question agreed to.

Withdrawal

Senator O'SULLIVAN (Queensland) (12:35): With the concurrence of my co-sponsors, I withdraw business of the Senate notice of motion No. 1.

MOTIONS

Judiciary

Senator CULLETON (Western Australia) (12:36): I, and also on behalf of Senator Lambie, move:
That the Senate notes the many issues in this country in relation to proper process not being followed in judicial and other matters.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:36): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator McGrath: The government does not support the motion. Australia is very fortunate in having a judiciary that is professional, well trained and fiercely independent from government. Australia's courts, both state and federal, administer the law of the land without fear or favour. This is reflected in the level of confidence Australians have in their courts. In the most recent Essential poll on trust in institutions, the High Court was the third most trusted institution, behind federal and state police.

Senator CULLETON (Western Australia) (12:36): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator CULLETON: I give notice that, on the next day of sitting, I shall move:
That—
(a) the Senate notes that:

(i) on 25 November 2016, solicitors on behalf of the Commonwealth Attorney-General filed a Statement of Agreed Facts in the High Court sitting as the Court of Disputed Returns in the matter of Re Rodney Culleton,

(ii) paragraph 1 of the Statement of Agreed Facts includes the following statement: the Magistrate in convicting Senator Culleton as an absent offender was precluded by section 25 of the Crimes (Sentencing Procedure) Act 1999 (NSW) from making an order for a sentence of imprisonment, and

(iii) the facts set out above and agreed by solicitors acting on behalf of the Commonwealth Attorney-General were not before the Senate on Monday 7 November 2016 when it considered the motion moved by Senator Brandis to refer the matter to the High Court under section 378 of the Commonwealth Electoral Act 1908;

(b) the Senate calls on the Attorney-General (Senator Brandis) to attend the chamber and clarify this matter; and

(c) at the conclusion of the explanation any senator may move to take note of the explanation.

(Time expired)

The PRESIDENT: I will take that as a statement, Senator Culleton, even though you said you were going to move on the next day of sitting. But that was part of your statement so we will take it as a statement. The question is that notice of motion No. 150, moved by Senator Culleton, be agreed to. Is a division required? Ring the bells for one minute.

A division having been called and the bells having been rung—

Senator Siewert: Mr President, can we clarify things. We understood this was the motion, 150, under which the Senate notes the many issues in this country in relation to proper process not being followed in judicial and other matters, whereas Senator Culleton actually read out a statement that relates to 163. That comment confused things, so can we clarify what we are voting on.

The PRESIDENT: This is definitely notice of motion No. 150. It was called on that way and I did clarify at the end of Senator Culleton’s statement that I took his comments as a statement and not a reference to 163. If Senator Culleton wishes to inform the chamber that he may have confused us, I am happy to hear from Senator Culleton—otherwise we are voting on No. 150. I hear no dissent from Senator Culleton, so the question before the chair is that we agree to No. 150 standing in the names of Senators Culleton and Lambie.

Senator Culleton: There is no confusion on my behalf, Mr President.

The PRESIDENT: The question is that notice of motion No. 150 be agreed to.

Senator Culleton: Hang on, maybe there is confusion. I can read—

The PRESIDENT: I do not wish you to read anything; I want you to clarify the position. Are we voting on 150 that you have just moved?

Senator Culleton: It is 150.

The PRESIDENT: I have just put the question. Does anyone wish to move before I appoint the tellers? If no-one wishes to move, I appoint Senator Urquhart teller for the ayes and Senator Bushby teller for the noes.

The Senate divided. [12:42]

(The President—Senator Parry)
Ayes .................... 25
Noes .................... 39
Majority ............... 14

AYES

Bilyk, CL
Carr, KJ
Collins, JMA
Dodson, P
Gallacher, AM
Hinch, D
Kitching, K
Lines, S
McAllister, J
Moore, CM
Polley, H
Sterle, G
Watt, M

Brown, CL
Chisholm, A
Culleton, RN
Farrell, D
Gallagher, KR
Ketter, CR
Lambie, J
Marshall, GM
McCarthy, M
O’Neill, DM
Pratt, LC
Urquhart, AE (teller)

NOES

Abetz, E
Birmingham, SJ
Bushby, DC (teller)
Cash, MC
Duniam, J
Fierravanti-Wells, C
Griff, S
Hanson-Young, SC
Kakoschke-Moore, S
Macdonald, ID
McKenzie, B
O’Sullivan, B
Paterson, J
Rhiannon, L
Ruston, A
Scullion, NG
Siewert, R
Smith, D
Whish-Wilson, PS
Xenophon, N

Back, CJ
Burston, B
Canavan, MJ
Di Natale, R
Fawcett, DJ
Fifield, MP
Hanson, P
Hume, J
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Reynolds, L
Rice, J
Ryan, SM
Seselja, Z
Sinodinos, A
Waters, LJ
Williams, JR

PAIRS

Cameron, DN
Dastyari, S
Ludlam, S
Singh, LM
Wong, P

Cormann, M
Nash, F
Payne, MA
Bernardi, C
Brandis, GH

Question negatived.
Whaling

Senator WHISH-WILSON (Tasmania) (12:43): I seek leave to amend general business motion No. 153 so that paragraph (b) reads 'calls upon the Government to honour their election and policy commitments to send a patrol vessel to the Southern Ocean over the coming summer to monitor whaling activities and to collect further evidence for additional international legal action' and, in paragraph (c), omitting 'the Japanese Government for'.

Leave granted.

Senator WHISH-WILSON: I move the motion as amended:

That the Senate—

(a) notes that:

(i) Australia successfully pursued legal action in the International Court of Justice (ICJ) against the Japanese Southern Ocean whaling program, JARPA II,

(ii) the Federal Court of Australia found the Kyodo whaling company guilty of contempt relating to illegal whaling in the Australian Whale Sanctuary, and the company was issued a fine of $1 million,

(iii) Japan has subsequently pulled out of the ICJ jurisdiction in relation to whaling, and has restarted a new whaling program, NEWREP-A,

(iv) the NEWREP-A whaling fleet left port in Japan on 18 November 2016 to hunt 333 minke whales from the Southern Ocean, and

(v) a recent poll found that 75 per cent of Australians supported sending a patrol boat to monitor this whaling activity;

(b) calls on the Government to honour their election and policy commitments to send a patrol vessel to the Southern Ocean over the coming summer to monitor whaling activity and to collect further evidence for additional international legal action; and

(c) condemns the flouting international law by recommencing illegal whaling activity in the Southern Ocean.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:44): I seek leave to make a short statement.

The President: Is leave granted? Leave is granted for one minute

Senator McGrath: We are deeply disappointed that Japan's whaling fleet has left port to continue its whaling program in the Southern Ocean at this summer. We have made clear representations urging Japan not to resume whaling, and will continue to do so. The government continues to review its position on possible options in response to Japan's decision to go whaling. Australia will continue working through the International Whaling Commission to bring about a permanent end to all forms of commercial and so-called scientific whaling. The science is clear. All information necessary for the management and conservation of whales can be obtained through nonlethal methods.

Question agreed to.
Consideration resumed of the motion:
That this bill be now read a second time.

Senator RICE (Victoria) (12:45): As I was saying, on the issue of water holdings and private water holdings, I want to clarify that although the Greens remain cautious about the role of foreign investment in Australia's waters we are equally as cautious about large domestic investors. And the Greens are committed to working towards greater transparency in the agricultural land and water holdings of all investors, not just foreign ones. This chamber knows from experience that market concentration and abusing differences in knowledge held by different parties are by no means tactics that are unique to foreign investors. These same abuses are part and parcel of the business model of many domestic Australian investors. So, the Greens will continue to investigate options for greater detail in public registers of these assets, although we do appreciate the existing limits on the tax office in both protecting privacy and balancing information collection with the costs of reporting requirements.

In conclusion, I want to comment on the amendments that have been circulated in the chamber. The Greens will be supporting the amendment by Senator Leyonhjelm. We did not support Senator Leyonhjelm's original amendment to insert a sunset clause into the Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016. And although we disagree with the necessity of a Productivity Commission review of the legislation within the next five years, we believe that Senator Leyonhjelm has put forward this compromise amendment in good faith and we will support it to ensure as broad a consensus as possible on this bill. I commend this bill to the Senate.

Senator XENOPHON (South Australia) (12:47): I support the Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016 on behalf of my colleagues, Senators Kakoschke-Moore and Griff. I just want to make a couple of observations. I think Senator Rice has elegantly set out the framework of the legislation in terms of what it is meant to do, but I am concerned that it will not be effective enough. We do need this register. We do need to find out who owns the water. The disaggregation of water and land was something that happened a number of years ago, and that was a controversial move at the time, but it helped facilitate water trading in this country. That is the reality of what we now have. Having an effective water register is fundamental in terms of transparency. My concern is that our land ownership register has not been as transparent as it could be. We have seen articles in Fairfax media by Michael Koziol, the political reporter, based here in Canberra, which raised real issues about the efficacy of the land ownership register. I have concerns about whether the water ownership register will similarly have problems in relation to that.

We do not oppose the legislation, and I note that my colleague in the other place, Rebekha Sharkie MP, the member for Mayo, also supported this bill. She made a very good point that Australian people expect more transparency. This bill makes some inroads on that policy theme, but the concern is that those inroads may be very limited because of potential loopholes we have seen in this legislation. The statistics released earlier this year regarding
foreign ownership of land were less than satisfactory. For instance—and the point that Ms Sharkie made:

The Australian public now knows that 13.6 per cent of our farmland is owned by international interests, but where is the detail? What is the dollar value of that land? Where is the detail on the total number of farms owned? Where is the easy public access? Where are the region-specific statistics? We have taken the first steps towards greater public access, but it is limited. We could provide, and we should provide, much greater transparency.

Those words of Rebekha Sharkie MP, the member for Mayo, really sum up our concerns here in the Senate with respect to this.

I note that no less than Alan Jones, the broadcaster, has criticised the government for 'an utter betrayal of public trust', for 'whitewashing' the foreign land ownership register. I just hope we will not have that whitewashing with respect to this register. So, I think it is important that there is continued scrutiny as to how it operates. I hope that the government would have learnt from the criticisms regarding the land ownership register. Whilst we support this bill and we hope it does what it is meant to do, there must be constant vigilance to ensure that it does live up to its promises. No doubt I and my colleagues, in the Senate estimates process, will be asking questions about how it actually operates. With those few words, we support this bill, but we just hope it does what it is meant to do.

Senator LEYONHJELM (New South Wales) (12:51): The Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016 requires foreigners who own various water rights to report to the government so that the government can let the rest of us know. What a great idea! But why stop there? Let's require foreigners to report on their ownership of other inputs to agricultural production, like diesel, fertiliser and seed. This could be even more important than reporting on water rights, because foreigners cannot take water rights out of the country—even though I am sure they would dearly love to—but they might be able to take diesel, fertiliser and seed out of the country. This would cut Aussie agriculture off at the knees. And why stop at agriculture? Let's require foreigners to report on any business inputs they own here. They could be accumulating a stockpile of Aussie utes and besser blocks, for all we know!

Why stop at foreigners? There are plenty of other minority groups in Australia who might own Aussie things. Let's require anyone who is not a straight, white Aussie to report to the government on what they own! Sure, it will take up a lot of their time, but it least during that time the rest of us can be sure that they were not up to mischief. After all, idle hands make the devil's work! Sure, they might feel singled out and unwelcome while they fill out their forms under threat of penalty, but isn't that what this is all about? Isn't that exactly the point?

Finally, I advise the Senate that I will be moving an amendment that will require the Productivity Commission to investigate, within three years, the effectiveness of this register. I am confident it will find it is an utter waste of time and money.

Senator HANSON (Queensland) (12:53): I rise today in support of the Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016. I believe it is very important. Under this bill, from 1 July 2017, foreign investors will be required to register, with the Australian Taxation Office, details of both their existing ownership of water rights and any subsequent rights that they purchase. This is a long overdue measure, as currently there is no comprehensive source of information on this. Currently, the only official source of
national data on foreign ownership of Australian water is ABS's Agricultural land and water ownership survey, also known as the ALWOS, which was conducted in 2010 and 2013.

The ALWOS paints an alarming image of a 55 per cent increase in foreign ownership between 2010 and 2013 alone. The survey reveals that by 2013, 14 per cent of Australian water rights were subject to foreign ownership. Western Australia and the Northern Territory have no records of foreign ownership or a disclosure list. Even these Agricultural land and water ownership survey figures are an underestimate, as they do not consider foreign ownership of water rights used for mining, manufacturing and energy production. Most of the increases, and the highest increase, came in Queensland, where foreign ownership of water rights increased from six per cent to 26 per cent between 2010 and 2013.

I now draw attention to Agenda 21 of 1992, which was the Earth Summit. Under Agenda 21, it states in chapter 18 to go out around the world and look at the prospects of privatising water throughout the world in First World countries. This is exactly what is happening. There should be no foreign ownership of water in Australia. Water should belong only to the Australian people. No-one has a right over it; it should not be bought and sold on the open market. We must protect our water rights. It is the lifeblood of this nation. The farming sector depends on it, manufacturing depends on it and everyday families depend on it.

Under Agenda 21, it is stated that if you have a dam on your property, you can only capture 10 per cent of that water. The rest must flow to the rivers and creeks, otherwise you will be paying a tax on it. This is undersurveyed, but it does happen. It is surveyed by the satellite system. We are having places now in Australia where the councils are now saying, 'You will start paying a tax on the rainwater that you collect in your tanks.' We cannot allow this to head down this path and allow governments and councils to have foreign ownership of our water in Australia. If we allow that happen, we are then opening up for them to control where industries, manufacturing, development and housing happen and for them to take over control of our country.

A major part of this wholesale foreign buyout of Queensland water rights came from the shameful sale of Cubbie Station in 2012 for $240 million to a consortium dominated by the Shandong RuYi Scientific and Technological Group. Clearly, that was not in the national interest. The Australian government allowed the Chinese buyout of the massive Cubbie Station cotton plantation contrasts sharply with the fact that the Chinese government does not allow foreigners to buy any Chinese property. If we are to prevent a continuing fire sale of our national resources, as a starting point we at least need to know what in already in foreign hands. Accordingly, this bill is an essential measure so that Australians can know whether there is an ongoing foreign takeover of our water entitlements.

However, one apparent omission from this bill is the absence of significant penalties for foreigners who fail to comply with this new law. In the event of a foreigner failing to disclose a purchase of water rights, the current wording of the bill only provides for a minor administrative penalty, pursuant to subsection 286C in the schedule of the Taxation Administration Act 1953. There is widespread flouting of Australia's laws prohibiting foreign purchases of existing residential properties. There is a case in point as to this as well: we have a rising cost in housing in Australia, where ordinary Australians cannot buy housing due to foreign ownership. Under our laws, foreign owners can only buy new housing and not established housing. That needs to be policed a lot more.
What One Nation proposes is that identification must be presented at point of sale, whether it be by passport, birth certificate or some identification. That is so that—at the point of sale, when you sign-off on that contract—you present that documentation that states that you have the right to buy the property and are not some foreign investor who has not gone through the financial review board. Also, the real estate agents must be made accountable to ensure that the property has been sold to an Australian—so that right of a permanent resident or an Australian citizenship to buy that property—and that it is not foreign ownership.

We know that there are investors in this country who will disregard our laws if they see a profit in it and if they think that they can get away with it. I call on the government to impose significant fines that are at least equal to the value of the rights on foreign buyers of Australian water rights who fail to comply with this law and register their interest with the ATO. I would rather see no foreign ownership. At least there is a register now that has been set up by the government, but I do not believe that any foreign buyer should own our water, our land or anything in Australia. It should always remain in the hands of the people of Australia, and I do not believe in foreign ownership, as well, of our services, such as electricity, gas, telecommunications or any part of our defence forces. I do welcome this bill and that we are now going to have a register. I think that is important, but it needs to go a lot further. Thank you.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:00): I thank all senators who have contributed to this debate and commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Sterle): The question is that the bill now be read a second time.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LEYONHJELM (New South Wales) (13:01): I move my amendment (1) on sheet 7968 revised:

(1) Schedule 1, page 18 (after line 7), at the end of the Part, add:

34 Before section 35

Insert:

34A Productivity Commission inquiry—Parts 3A and 3B

(1) Before the end of the period of 3 years after the commencement of this section, the Minister administering the Productivity Commission Act 1998 (the Productivity Minister) must, under paragraph 6(1) (a) of that Act, refer to the Productivity Commission for inquiry the matter of the effectiveness of the scheme set out in Parts 3A and 3B of this Act, including an assessment of the costs and benefits of that scheme.

(2) In referring the matter to the Productivity Commission for inquiry, the Productivity Minister must:

(a) under paragraph 11(1) (b) of the Productivity Commission Act 1998, specify that the Productivity Commission must submit its report on the inquiry to the Productivity Minister within 5 years of the commencement of this section; and
(b) under paragraph 11(1) (d) of that Act, require the Productivity Commission to make recommendations in relation to the matter.

Note: Under section 12 of the Productivity Commission Act 1998, the Productivity Minister must cause a copy of the Productivity Commission’s report to be tabled in each House of the Parliament.

(3) For the purposes of paragraph 6(1) (a) of the Productivity Commission Act 1998, the matter mentioned in subsection (1) of this section is taken to be a matter relating to industry, industry development and productivity.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:02): I just want to indicate that the government will be supporting this amendment moved by Senator Leyonhjelm proposing a review.

The TEMPORARY CHAIR (Senator Sterle): The question is that the amendment moved by Senator Leyonhjelm be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with an amendment; report adopted.

Third Reading

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:03): I move:

That the bill be now read a third time.

Question agreed to.

Bill read a third time.

Criminal Code Amendment (War Crimes) Bill 2016

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (13:04): I rise to speak on the Criminal Code Amendment (War Crimes) Bill on behalf of the opposition. We will be supporting this bill, and we recognise the importance, as I previously indicated today, of seeking to work in a bipartisan fashion on national security matters.

The bill before us aims to ensure that Australia’s domestic laws are consistent with changes in international law in relation to the treatment of members of organised armed groups in international armed conflict. This will reduce legal uncertainty for our armed forces. Our forces should not have to face such uncertainty when engaging with nonstate armed groups, such as Daesh, during armed conflict. Contemporary international conflict has seen the nonstate actors, such as Daesh, become a significant threat to our national security.

This bill provides the legal certainty needed for the ADF to target members of organised armed groups with lethal force without the risk of potentially, and I stress potentially, falling foul of Australia’s domestic law. The bill amends the Criminal Code at division 268, which concerns offences in the area of genocide, crimes against humanity, war crimes and crimes against the administration of justice in the ICC. These are changes that will clarify that these offences will only apply to personnel affected who are:
… neither taking … part in hostilities nor are members of an organised armed group; and
… the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the—
affected—
… persons are neither—
active in—
… hostilities nor are members of an organised armed group.

Other parts of this bill amend sections of the Criminal Code which apply proportionality, which is a principle of international law, in relation to attacks on military objectives in non-international armed conflict. These accompany other small amendments reflecting progress in international law.

As with other bills relating to national security, including the Criminal Code Amendment (High Risk Terrorist Offenders) Bill, which was considered this morning by the Senate, the Parliamentary Joint Committee on Intelligence and Security, of which I am a member, has thoroughly scrutinised this bill. I would note other members of this committee include my Labor colleague Mr Kelly, the member for Eden-Monaro, who has expertise in international law as a distinguished former member of the Australian Army Legal Corps. The committee took evidence from a range of experts, including professors Tim McCormack and Ben Saul. AGD, the Attorney-General's Department, and DoD, the Department of Defence, also provided evidence to the committee.

One of the issues the committee considered was the meaning of the term 'members of an organised armed group'. Such groups can often contain a number of different actors, including support personnel and administrative support, in addition to combatants. Nonstate groups, by their very nature, are formed of different kinds of personnel than national armies, often not as organised or as professional—although one would suggest that Daesh is an exception to this proposition. Professor Saul, in his evidence, suggested that the definition of 'members of an organised armed group' should be defined as 'those with a continuous combat function within that group'.

Australia's key coalition partners and allies already operate in accordance with international law. As I said, this bill extends the provisions of the Criminal Code to ensure they are consistent with international law. It recognises that organised armed groups are on an equal footing with state armed forces and recognises that members of those groups, whether acting as direct combatants, providing combat service support or similar, are all contributing to the efforts of those groups and thus ought not be given the same protection as civilians in armed conflict. The explanatory memorandum accompanying this bill explains that 'organised armed group' is to be interpreted in a constrained way. This makes sure that persons in civilian-type functions in territory controlled by such a group will not be considered members of the group.

The battlefields of the 21st century are far less defined and rigid than were conflicts in the past. Such conflicts are not constrained by state borders and national jurisdictions. We face scenarios that transcend national borders. We face scenarios with nonstate groups originating and operating in multiple states. International law has developed a response to these dynamics and to regulate the conflicts which we continue to face. It is important that our domestic laws adapt to these changes in international law.
I want to take this opportunity to again recognise the admirable work of Australia's armed forces. All of us in this place support the work of Australia's Defence Force personnel. We continue to have the second largest on-the-ground presence in the fight against Daesh, after the United States. It is a contribution that is recognised by coalition partners. We are combating Daesh at its source to make Australian shores safer. This legislation provides legal certainty for our forces engaged in Iraq and Syria and allows them to do their job properly. We recognise and thank our armed forces for their continued service and courage for the Australian people.

I again highlight the work of the Parliamentary Joint Committee on Intelligence and Security and particularly acknowledge the work of the secretariat. They produce an enormous amount of work on highly difficult, complex and nuanced matters. Some of the bills that are before the committee, whilst they may not be unrivalled in terms of their complexity, are certainly highly complex. They have been able to hold five inquiries and prepare an equal number of reports in a very short period.

I again note that we have taken a bipartisan approach on these matters and will continue to do so. We have reached agreement as a committee on a number of difficult matters, and I want to recognise the work of my fellow committee members in that. I look forward to working in a cooperative manner with the government on matters of national security and I commend the bill to the Senate.

Senator McKIM (Tasmania) (13:10): I rise to speak on the Criminal Code Amendment (War Crimes) Bill 2016. I start by saying that this bill is disappointing on several levels. A few months ago the Australian Defence Force advised government of a legitimate policy concern—the need to provide our defence forces with legal clarity around their actions in conflict zones. So why did the ADF request clarity? The reason is that the nature of war has changed in the last 15 years since Australia ratified the Rome Statute and implemented domestic legislation to criminalise war crimes as a member of the International Criminal Court. Since 2002 we have seen a significant rise in nonstate actors like, for example, Daesh, taking part in conflict.

I think all of us in this chamber would agree it is vitally important to make sure we are all on the same page on what constitutes a war crime in this changing environment and to make sure that our understanding is aligned with international law. Unfortunately, as we have seen so often, the government has fluffed this legislation. In particular, the Attorney-General has fluffed it, which is unsurprising, given his record of political fluffing. In seeking to provide clarity for the ADF, the government has, as it often does, gone too far. Backed by the ALP, it is proposing to weaken safeguards that protect civilians when our forces are involved in overseas conflicts. This is irresponsible and it is negligent. It fails the Australian people, it fails the ADF and, perhaps most importantly of all, it fails innocent civilians who may be caught up in overseas conflict and who, if this bill passes, will be even more vulnerable and at risk of injury and death.

Before I get into the specifics, let me voice my concerns about the process by which this bill has made its way into the Senate. It should not surprise us that the government has opted for a rushed, secretive process to pass this bill. Of course, the Attorney-General has form at this, in preventing his own colleagues from seeking expert legal advice from the Solicitor-General and then of course forcing the SG out of office. But, in this case, which is quite
literally a matter of life and death for civilians in conflict zones overseas, we might have hoped for even just the veneer of a transparent review process in line with law.

These changes seriously alter the governance of ADF personnel in combat. They change the definition of a war crime. It is a highly charged, complex topic in which civilians in war zones on the other side of the world have no voice at all. Australian forces operate under much more stringent rules of engagement than many of our allies do, including the US. Anything that creates a risk of that changing needs to be very carefully scrutinised. But the government has sidelined parliament and sidelined parliamentary committees. There has been no real possibility of establishing why these changes are necessary. The legislation went to the PJCIS in a referral outside its statutory functions. The PJCIS refers matters relating to Australia's intelligence agencies as well as some aspects of the AFP's work like, for example, counter-terrorism and certain aspects of data retention and citizenship legislation. This bill is clearly intended for the benefit of the ADF, which is not amongst the agencies reviewed by the PJCIS.

Of course, it is worth pointing out that the PJCIS is a closed bipartisan shop which shuts Senate crossbenchers—and, in fact, House of Representatives crossbenchers—out of its processes. The purpose has been clear—that is, to limit genuine scrutiny of a critically important piece of legislation. The shadow Attorney-General, Mr Dreyfus, claimed last week the bill was thoroughly scrutinised by the PJCIS. This is blatantly untrue. We need to ask ourselves why the coalition and Labor closed the door on the crossbench. Might it be so that we can unquestioningly follow the US into whatever battle it wants us to, even though it is not a signatory to key international humanitarian law treaties like the Rome statute?

The committee inquiring into this bill only received three submissions. This is not only because it is a highly specialised area of international law, it is also because the process was deliberately rushed. Some stakeholders told us they were advised on Friday afternoon of a public committee hearing they were expected to front up for in Canberra before 9 am on a Monday morning. That is not good enough, Attorney-General. In order to give this bill the scrutiny it deserves, the Greens tried to refer it to the proper committee—the Senate Standing Committee on Foreign Affairs, Defence and Trade—but of course this was denied. These actions fit with a government too willing to compromise on principle and international law and an opposition in zombie lock step with the government, blindly following in the misguided interest of a 'bipartisan approach in all matters of national security'.

Now I will address part 1 of the bill, which deals with the issue of who exactly constitutes a member of an organised armed group and, therefore, whether they can be targeted with lethal force. The Greens acknowledge there has been considerable controversy in international humanitarian law about targeting members of organised armed groups. But we are lucky because we can turn to experts in the field who can provide advice on these matters. An authoritative touchstone in international humanitarian law is the International Committee of the Red Cross's *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*, which they published in 2009. The ICRC's guidance brings together all sources of international humanitarian law from treaties like the Rome statute and from jurisprudence like cases heard at the international criminal court to the writings of legal experts and different state practices. This bill does not square with the ICRC's interpretation
of international humanitarian law. That interpretation states that only those serving continuous combat functions are members of an armed group.

The Greens are standing with international humanitarian law experts such as Professor Ben Saul, the Challis Chair of International Law at the University of Sydney and a visiting professor at Harvard. In his submission to the Parliamentary Joint Committee on Intelligence and Security—one of the very few submissions, I might add—Professor Saul proposed an amendment to better align the bill with the ICRC's interpretation of international humanitarian law. He urged the government to amend the legislation to make sure that it is not interpreted too expansively—in other words, to make sure that people who Australia currently regards as citizens are not legally killed by Australian forces. We will be moving an amendment in line with Professor Saul's recommendation to make it clear that only those serving a continuous combat function are members of an armed group. Ultimately, the spirit of international humanitarian law is about protecting civilians. This bill seeks to lower the current level of legal protection for potential targets of Australia's military, thereby increasing the likelihood that civilians will be killed—even if they are killed unintentionally. I urge the Senate to support the amendment so that we can limit the chances of the ADF's killing civilians.

I want to now go to the notion of proportionality—that is, that any attack must not cause civilian death or injury that would be excessive in relation to the military advantage anticipated. Again, the government has got it wrong here. Again, to quote Professor Saul:

… the proportionality principle is not confined to ‘the time the attack was launched’—
which is what the bill says—
but is rather a continuing obligation that endures throughout an attack.
Imagine a case where coalition forces, including the ADF, make a decision to launch an attack on a bridge. Let's say the bridge is in Syria. Taking out the bridge might be a significant strategic victory for the coalition. At the time the attack is given the go-ahead, it seems unlikely there will be any casualties. But shortly after the attack is launched, a school bus is driven over the bridge. Surely, in that circumstance, if the attack can be aborted it should be. Everyday compassion for victims of war says it should be. International humanitarian law says it should be. But my colleagues in the coalition and the Labor Party do not think that this should be enshrined in Australia's legislation. Shame on them for taking that position. We will be moving an amendment to properly reflect the proportionality principle in this legislation. I urge the Senate to support it.

Others in this chamber will repeatedly say during this debate that Australian law is more restrictive than that of some of our coalition partners and that we cannot fully participate in military operations without changing the law in the way this bill proposes to do. We say we should not be comparing ourselves to countries like the United States, which, shamefully, has not even signed the Rome statute relating to war crimes, crimes against humanity and genocide. Why on earth would we want to position ourselves in that sort of company?

I want to now talk about drones. I ask myself: why is it so critical that this bill be whisked through the Australian parliament in such a rushed way and with such poor process and lack of scrutiny? I understand the desire for the ADF to have clarity, but surely something like this is too important to rush. Surely we do not want to make a mistake with this legislation. Make no mistake about it: this bill is very deeply enmeshed in our security relationship with the
United States. The government, facilitated as usual by the opposition, is making it easier than ever for us to follow the US into every battle. We are fawning away, betraying our principles yet again, in the name of our alliance with the US. Now more than ever, with someone like Donald Trump, an erratic demagogue, about to become the US commander-in-chief, we should be making sure that we have the capacity to differentiate ourselves from the United States. I ask rhetorically: is the government planning to amend our laws so that we can legally waterboard people in this country?

This bill gets to the very heart of this government's secrecy around our military operations overseas, and it is quite clearly aimed at our participation in drone strikes. Here in this chamber, we may—and I am sure most of us do—feel very removed from what is happening in the far-flung corners of the globe, but right now in Syria, Iraq, Somalia, Pakistan and, frankly, who knows where else, lethal drones are homing in on people. They are homing in on and killing civilian people. In Syria and Iraq, Australia is involved in at least supporting this mission.

Don't you think, Attorney, the Australian people deserve to know what our forces are doing as part of Operation Okra against IS in Syria and Iraq, and any other similar operations for that matter? The Australian Greens say they do. They do have a right to know that. For that reason, we are moving a second reading amendment calling on the government to release a monthly report on the ADF's involvement in military operations involving drones or autonomous weapons which result in civilian casualties. I move:

At the end of the motion, add:

"but the Senate notes, in the context of these proposed amendments, the Australian Defence Force's participation in military operations involving drones or autonomous weapons is currently surrounded in secrecy and calls on the Government, where these operations result in civilian casualties, to publish a monthly report detailing the date, location, target, number of civilian casualties and level of Australian assistance to these operations.".

This very basic level of transparency is nowhere near unprecedented. Indeed, in July this year even the US released statistics on how many combatants and non-combatants the US drone program had killed since 2009. The US administration said that between 64 and 116 civilians had been killed, although many experts estimate that the figure is most likely higher. If even the US can implement some level of transparency, surely Australia can and should too. This openness is even more important given that the evolution of warfare is making it harder and harder for the media, NGOs and the general public to scrutinise our actions in conflict. Releasing basic information about our participation in drone strikes goes some way to remedying the secrecy that shrouds conflict zones.

In conclusion, Attorney, we will not be supporting this legislation. As I said earlier, this is a matter of life and death. At a very basic level, international humanitarian law aims to limit the effects of armed conflict for humanitarian reasons. It is about balancing the achievement of military objectives on one hand against limiting human pain and suffering on the other. The Greens are the only voice in this parliament willing to stand up and make sure we get the balance right. I want to be very clear here: if the government had gone through a proper process and got the balance right, I am not standing here suggesting that we would not support legislation to clarify our obligations and the legality of the actions of the ADF. We
acknowledge the desire of the ADF to have these matters clarified, but the government has not got the balance right.

This legislation may very well result in greater civilian deaths perpetrated by Australia's own Defence Force. Only a month ago we saw coalition forces launch an air strike on a medical facility in Iraq that killed eight civilians. We need to make sure that we do not increase the risk of Australian forces being involved in strikes like that. No-one should want that outcome—not the Australian people, not the ADF and not a single elected representative of this parliament.

This bill has been the subject of a rushed and secretive committee assessment. The parliament has been shown no clear evidence of the operational need for the measures contained in this legislation. For those reasons and the others I have stated in this speech, we will be opposing this bill regardless. But I do urge all senators to consider and support our amendments, which will go some way to aligning this bill with the ICRC's interpretation of international humanitarian law and to increasing transparency around Australia's actions in war zones.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (13:27): The passage of the Criminal Code Amendment (War Crimes) Bill will align Australian domestic law with international law in relation to the treatment of members of organised armed groups in non-international armed conflict. The bill will provide ADF personnel with the legal certainty they require to conduct more effective operations against members of organised armed groups. This is especially relevant in the context of current coalition operations against the military element of Daesh in Iraq and Syria.

As the Prime Minister noted in his National Security Statement on 1 September 2016, the decision to amend the criminal code was made following a review by the government of its policy on targeting members of organised armed groups. The bill has been subjected to careful scrutiny by the Parliamentary Joint Committee on Intelligence and Security, which concluded that the amendments would provide appropriate protection for civilians while maintaining the capacity to conduct operations against legitimate military targets. The committee also correctly noted that the bill will harmonise Australian law with the interpretation of international humanitarian law applied by our key allies and coalition partners.

I want to thank the PJCIS for recognising the urgency of these amendments and for working within a tight time frame to thoroughly review this bill and ultimately recommend that it be passed. I also want to recognise and highlight the bipartisan support that these amendments received. This is a very good example of the constructive, cooperative approach that this parliament—or at least most of it—is taking on questions of national security. We must continue to work together to support and empower our military, in accordance with international law, in the ongoing operations against Daesh in Iraq and Syria.

The only senators who have spoken in relation to the bill are Senator Wong and Senator McKim. Senator Wong spoke in support of the bill, so there is nothing I need to address in her remarks. Senator McKim—having made, I thought, a very measured and intelligent contribution to the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 earlier in the morning—has disappointingly descended into very belligerent and very
inaccurate rhetoric in addressing international legal notions which he does not understand. This bill was developed by the Office of International Law within the Commonwealth Attorney-General's Department, which is the location of the best international law and international humanitarian law experts to be found in this country.

Senator McKim asserts that the amendments will reduce protections for civilians in non-international armed conflicts. That is incorrect. Whoever has told you that, Senator McKim, is wrong. A central purpose of these amendments is to more clearly recognise the distinction that exists in international humanitarian law between civilians and members of organised armed groups under Australian domestic law. These amendments do not alter the protections afforded to civilians and other protected persons under international humanitarian law, such as medical and religious personnel and persons who are hors de combat. The bill is also consistent with the international humanitarian law principle of proportionality, which prohibits attacks which may be expected to cause incidental civilian death or injury that would be excessive in relation to the military advantage anticipated. Members of the ADF operate under strict rules of engagement which are always in compliance with Australia's international legal obligations, including the principles of distinction and proportionality. As well, they operate under Australian domestic law.

Senator McKim, you addressed some remarks to a submission made by Professor Ben Saul. The committee's conclusion in relation to the issue of membership of organised armed groups is that a practicable definition of membership of an organised armed group is applied to a constrained definition, which provides appropriate protection for civilians whilst also maintaining the ADF's capacity to strike legitimate military targets. So the principle of proportionality has been observed and respected. The continuous combat function test—and this is the recommendation of Professor Saul—produces an inequity in the law: an attack on a member of an organised armed group with no continuous combat function is prohibited, while a member of a state's armed forces who performs no combat related duties could be attacked at any time. The approach taken in the bill aims to treat organised armed groups as analogous with state armed forces for the purpose of targeting. The bill recognises that all members of such groups who perform combat, combat support or combat service support functions are contributing to the military effort of the group and should not be afforded the same protection as civilians in an armed conflict. It also harmonises Australian law with the interpretation of international humanitarian law applied by our key allies and coalition partners.

Senator McKim, the international humanitarian law principle of proportionality to which you refer but do not appear to understand is the prohibition against attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. The principle of proportionality is codified in treaties binding on Australia, and it is accepted as a norm of customary international law in both international and non-international armed conflicts. The rule reflects the balance inherent in international humanitarian law between considerations of humanity and considerations of military necessity. Australia's understanding is that the term military advantage, in the context of proportionality, refers to the advantage anticipated from the military attack considered as a whole. This understanding was clarified by Australia in its declaration in relation to the articles of Protocol 1 Additional to the Geneva Conventions, which addresses proportionality.
in an international armed conflict. Australia is obliged under international law to minimise the risk of injury to civilians and damage to civilian property. In addition, the prohibition against deliberate acts directed at civilians not directly participating in hostilities remains a fundamental principle of international humanitarian law, and this prohibition is reflected in division 268 of the Criminal Code and in the bill.

The bill clarifies that, consistent with the international humanitarian law principle of proportionality, relevant offences will not have been committed where the relevant death or injury results from an attack on a military objective launched in circumstances where the person reasonably did not expect the attack would cause incidental death or injury that is excessive in relation to the concrete and direct military advantage anticipated. This is the test under international humanitarian law. So what the bill in fact does, Senator McKim, as the PJCIS understood, is to ensure that the international humanitarian law principle of proportionality already enshrined in division 268 of the code is made more explicit. This will align the Australian domestic law position with the position in international law.

With those words to address and correct some of the misunderstandings under which Senator McKim labours, I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Gallacher): The question is that Greens amendment (1) on sheet 7991, moved by Senator McKim, be agreed to.

The Senate divided. [13:40]

(The Acting Deputy President—Senator Gallacher)

Ayes ...................... 8
Noes ...................... 39
Majority ................. 31

AYES
Di Natale, R
McKim, NJ
Rice, J
Waters, LJ

NOES
Back, CJ
Birmingham, SJ
Bushby, DC
Cormann, M
Dodson, P
Farrell, D
Fifield, MP
Gallagher, KR
Hinch, D
Ketter, CR
Lambie, J
Marshall, GM
McGrath, J
Moore, CM
Paterson, J
Pratt, LC

Hanson-Young, SC
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Bilyk, CL (teller)
Brandis, GH
Chisholm, A
Culleton, RN
Duniam, J
Fawcett, DJ
Gallacher, AM
Hanson, P
Hume, J
Kitching, K
Macdonald, ID
McCarthy, M
McKenzie, B
O’Neill, DM
Polley, H
Reynolds, L

CHAMBER
Question negatived.
Original question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator McKIM (Tasmania) (13:43): Without reflecting on the vote that has just occurred, I do want to respond to something that the Attorney-General said, and that is that he either misinterpreted or misrepresented Professor Saul’s advice. Attorney, you noted the difference between legal treatment of organised armed groups and legal treatment of armies, but what you failed to do was mention that this can be justified because organised armed group members not involved in conflict could actually be civilians. For example, they might be forced into conflict. I just wanted to place that very clearly on the record so that it was a matter of public record in the context of this debate, and also to say how disappointed we are that a basic transparency measure has been rejected by the Senate.

All that our second reading amendment would have done was to call on the government, where ADF operations result in civilian causalities, to publish a regular report detailing certain specific matters associated with those casualties, including the number of civilian causalities. What is so extraordinary about publishing to the Australian people on a regular basis the number of civilian casualties that have been caused by Australian Defence Force?

The TEMPORARY CHAIR (Senator Gallacher): Senator Brandis, on a point of order.

Senator Brandis: Senator McKim is debating the second reading amendment which has just been voted on and defeated. This is now the committee stage of the bill. There are three committee stage amendments that have been moved by the Greens. Senator McKim should be addressing the committee stage of the bill, not trying to redebate a debate on which the senators just voted.

Senator McKIM: On that point of order, to assist the Attorney-General and the committee, I will now be moving directly to my amendments. Unless you feel the need to make a ruling, I intend to do just that. By leave—I move Australian Greens amendments (1), (2), (3) and (4) on sheet 7988 together:

(1) Schedule 1, item 2, page 3 (line 17), after "who", insert "are not performing a continuous combat function or".

[aligning offences with international humanitarian law]

(2) Schedule 1, item 4, page 3 (line 31), after "who", insert "are not performing a continuous combat function or".

[aligning offences with international humanitarian law]
(3) Schedule 1, item 6, page 4 (line 13), after "who", insert "are not performing a continuous combat function or".

[aligning offences with international humanitarian law]

(4) Schedule 1, item 7, page 4 (line 18), after "person", insert "performing a continuous combat function".

[aligning offences with international humanitarian law]

As I indicated in my second reading speech, this is the amendment that we believe is in line with Professor Saul's recommendation to the parliamentary joint committee, to make it clear that only those serving a continuous combat function are members of an armed group. As I said in my second reading contribution, the spirit of international humanitarian law is about protecting civilians. We still maintain, notwithstanding the Attorney's assurances, that this bill seeks to lower the current level of legal protection of potential targets of Australia's military, thereby increasing the likelihood that civilians will be killed, even if they are killed unintentionally.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (13:47): Dealing with the four amendments on sheet 7988, the government does not accept the amendments. The amendments in these terms were considered and rejected by the PJCIS, which concluded that the approach taken in the bill and the explanatory memorandum, in which a practicable definition of membership is applied to a constrained definition of an organised armed group, provides appropriate protection for civilians whilst also maintaining the ADF's capacity to strike legitimate military targets.

As I said, Senator McKim, in winding up the second reading debate, the continuous combat function test, which is what was recommended by Professor Saul, produces an inequity in the law. An attack on a member of an organised armed group with no continuous combat function is prohibited, while a member of a state's armed forces who performs no combat-related duties can be attacked at any time. The bill aims to treat organised armed groups as analogous with state armed forces for the purposes of targeting. As the PJCIS has noted, this approach aligns with the interpretation of international humanitarian law also adopted by our key allies.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (13:49): This is not an amendment the opposition will support. We believe the bill appropriately ensures Australia's domestic laws are consistent with changes in international law in relation to the treatment of members of organised armed groups in non-international armed conflict.

The PJCIS did consider the issue that Senator McKim has raised. It is the case that in his submission to the PJCIS, Professor Saul suggested that there should be a continuous-combat-function-based test for membership of an organised armed group. However, the PJCIS considered that the approach taken in the bill, which has a practicable definition of membership as applied to a constrained definition of an organised armed group, will provide appropriate protection for civilians whilst also maintaining the capacity to strike against legitimate military targets. It will also harmonise Australian law with the interpretation of international humanitarian law applied by our key coalition partners and allies.

Question negatived.
Senator McKIM (Tasmania) (13:51): by leave—I move Australian Greens amendments (1), (2), (3) and (4) on sheet 7989 together:

(1) Schedule 1, item 8, page 5 (line 9), after "launched", insert "and during the attack".

(aligning proportionality with international humanitarian law)

(2) Schedule 1, item 9, page 5 (line 23), after "launched", insert "and during the attack".

(aligning proportionality with international humanitarian law)

(3) Schedule 1, item 10, page 6 (line 7), after "launched", insert "and during the attack".

(aligning proportionality with international humanitarian law)

(4) Schedule 1, item 11, page 6 (line 22), after "launched", insert "and during the attack".

(aligning proportionality with international humanitarian law)

As I flagged in my second reading speech, these amendments go to the proportionality principle. Proportionality requires that any attack must not cause civilian death or injury that would be excessive in relation to the military advantage anticipated. Again, I want to quote from Professor Saul who says that the proportionality principle is:

… not confined to ‘the time the attack was launched’ (as per the Bill’s clauses) but is rather a continuing obligation that endures throughout an attack.

I did give an example—admittedly, a hypothetical example—of an attack on a bridge where at the time the attack is authorised it seems unlikely that there will be any civilian casualties but then shortly after the attack is launched a school bus full of schoolchildren drives over the bridge. I made the point that if that attack can be aborted it should be.

I am not suggesting that the attack would not be aborted in the absence of the amendments that we are moving. I would hope that any reasonable person in the defence forces would abort the attack in the circumstances that I have outlined, all other things being equal. However, I make the point that international humanitarian law as interpreted by the International Committee of the Red Cross says that the attack should be aborted and we believe that it is not unreasonable in those circumstances to attempt to enshrine the matter through these amendments that we are proposing in the legislation that we are debating.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (13:53): The government does not accept the proposed amendments. The amendments in these terms were considered and rejected by the PJCIS. The text of the bill is consistent with customary international law and reflects the Rome statute offence of intentionally launching in an international armed conflict an attack which may be expected to be disproportionate.

This has already been implemented by section 268.38(1) of Division 268 of the Criminal Code, which makes it an offence in an international armed conflict to the launch an attack that will cause death or injury to civilians that is excessive in relation to the concrete and direct military advantage anticipated. I am advised that it is also consistent with rule 14 of the International Committee of the Red Cross's customary international humanitarian law study.

As explained by Major-General Frewen of the Department of Defence during the PJCIS hearing, the ADF would observe proportionality throughout all stages of an operation as it unfolds, not merely in relation to the launch of an attack. So, once again, Senator McKim is
wrong in law. His speech disregards the existing provision of section 268.38(1) of the code. The amendments will be opposed by the government.

Senator Wong (South Australia—Leader of the Opposition in the Senate) (13:55): The opposition will be opposing the amendments for the same reasons that have been outlined by the Attorney for the government. This matter of proportionality was considered by the committee. The Attorney-General’s Department advised that the bill reflects the Rome statute in relation to international armed conflict—namely, that the obligation exists at the launching of the attack. The committee did note that the drafting of the bill intentionally reflects and deliberately does not go beyond the Rome statute provisions in relation to international armed conflict.

Senator McKim (Tasmania) (13:55): I will be very brief here. I thank the Attorney for informing the Senate, to paraphrase him, that the ADF does act proportionally at all times. That paraphrases what he said, but I believe it is an accurate reflection of what he said.

Senator Brandis: Yes.

Senator McKim: I will simply make this point: if that is the case, what is wrong with enshrining it in legislation? If that is what the ADF do anyway, why wouldn’t we require them to do it? I just simply make that point and urge the Senate to support the Greens amendments.

Question negatived.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator Brandis (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (13:57): I move:

That these bills be now read a third time.

The President: The question is that the bill be now read a third time.

The Senate divided. [14:01]

(The President—Senator Parry)

Ayes .................58
Noes .................8
Majority.............50

AYES

Abetz, E
Bilyk, CL
Brandis, GH
Burston, B
Cameron, DN
Carr, KJ
Chisholm, A
Cormann, M
Dodson, P
Farrell, D
Fierravanti-Wells, C
Gallacher, AM
Griff, S

Back, CJ
Birmingham, SJ
Brown, CL
Bushby, DC (teller)
Canavan, MJ
Cash, MC
Collins, JMA
Culleton, RN
Duniam, J
Fawcett, DJ
Fifield, MP
Gallagher, KR
Hanson, P
AYES

Hinch, D
Kakoschke-Moore, S
Kitching, K
Lines, S
McAllister, J
McGrath, J
Moore, CM
Parry, S
Payne, MA
Pratt, LC
Roberts, M
Ryan, SM
Seselja, Z
Smith, D
Urquhart, AE
Williams, JR

Hume, J
Ketter, CR
Lambie, J
Marshall, GM
McCarthy, M
McKenzie, B
O'Neill, DM
Paterson, J
Polley, H
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Sterle, G
Watt, M
Xenophon, N

NOES

Di Natale, R
Hanson
McKim, NJ
Hanson-Young, SC
Rhiannon, L
Rice, J
Siewert, R (teller)
Waters, LJ
Whish-Wilson, PS

Question agreed to.
Bill read a third time.

QUESTIONS WITHOUT NOTICE

Economy

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (14:05): My question is to the minister representing the Prime Minister, Senator Brandis. I refer to the current Prime Minister, who said, on announcing that he would challenge the former Prime Minister, Tony Abbott, for the Liberal Party leadership:

It is clear enough that the government is not successful in providing the economic leadership that we need.

I refer to Mr Turnbull's series of failed thought bubbles for tax reforms: $50 billion in tax cuts to big business, which he will not even bring forward for debate in the parliament, and his bungled handling of the backpacker tax. Is this the economic leadership Mr Turnbull had in mind when he deposed Mr Abbott?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:05): Senator Bilyk, thank you very much for giving me the opportunity to, on the last day of the parliamentary year, reflect upon the many achievements of the Turnbull government in the past year. With an election having been fought and won by Mr Turnbull, our national economic plan, our policies and our commitments have been endorsed by the Australian people. What a year of achievement it has been. In particular, what a period of achievement it has been for this Senate. The government
is governing and the Senate is functioning effectively. We have delivered tax cuts for more than half a million middle-class Australians by ensuring that they were not pushed into higher tax brackets. We have passed important changes to Australia's superannuation system in securing $6 billion in savings and ensuring that the system is sustainable and fair for all Australians. In only a matter of months, we have delivered $20 billion of measures for budget repair.

Meanwhile, out of the chamber, we have expanded our big export trade deals by entering into an enhanced strategic partnership with Singapore, delivering $2 billion in new investment in Queensland, in particular, and more opportunities for our exporters. We amended the Fair Work Act to protect Victoria's volunteer firefighters from the CFA, we passed the registered organisations bill to ensure that union bosses are subject to the same transparency and accountability obligations as company directors, and of course we have now passed the ABCC bills to bring the rule of law to the construction sector. (Time expired)

The PRESIDENT: Senator Bilyk, a supplementary question.

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (14:08): After that very mediocre response I refer to the ABS data showing Australia is experiencing the lowest rate of wage growth since the ABS started collecting data in 1998, the lowest workforce participation rate in more than 10 years and employment growth which has collapsed by half in only three months. Is this the economic leadership Mr Turnbull had in mind when he deposed Mr Abbott?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:08): Senator Bilyk, what we mean by economic leadership is economic growth at over three per cent per year; strong growth in exports, up 9.6 per cent year on year to June 2016; strong growth in new dwelling construction, up by 10½ per cent through the year to 2016; and a rate of economic growth faster than any G7 nation and double the rate of the G7 nation whose economy compares most directly with that of Australia, namely Canada. The labour market is resilient. Our unemployment rate is at 5.6 per cent. Everyone accepts that the headline measure of the resilience of the labour market is the unemployment rate—unemployment at 5.6 per cent is at the lowest level it has been for three years, with over 450,000 new jobs since September 2013. (Time expired)

The PRESIDENT: Senator Bilyk, a final supplementary question.

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (14:09): In every month since Mr Turnbull became Prime Minister Australia has had a trade deficit, taking us to 30 consecutive monthly trade deficits under the coalition—a cumulative deficit of $68 billion. Is this the economic leadership Mr Turnbull had in mind when he deposed Mr Abbott?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:10): Mr President, through you: Senator Bilyk, of all the metrics of economic success you could settle upon, I am very surprised that you decided to settle on trade, because trade has been one of the standout performances of this government. We have a free trade agreement with Japan, a free trade agreement with South Korea, a free trade agreement with China and the comprehensive strategic partnership with Singapore that I just mentioned. These free trade agreements were
objectives that were the apple of the eye of Mr Kevin Rudd and yet for all the years the Rudd government pursued free trade agreements with our key economic partners, particularly our Asian economic partners, they eluded the Rudd government, they eluded the Labor Party. But in three years the coalition has delivered the key free trade agreements that Australia so desperately sought. *(Time expired)*

**National Security**

**Senator FAWCETT** (South Australia—Deputy Government Whip in the Senate) (14:11): My question is to the Attorney-General, Senator Brandis. Can the Attorney-General update the Senate on actions the government has taken to strengthen our nation's security?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:11): Thank you, Senator Fawcett. I acknowledge your deep and longstanding interest in this area. I can inform you that today the government has secured the passage of yet another significant piece of national security legislation, as Senator Wong herself remarked in her speech on the second reading of the Criminal Code Amendment (High Risk Terrorist Offenders) Bill—the sixth major instalment of national security legislation since September 2014. The government has delivered the most significant program of reform of our national security in the past two years or so, since the passage of the Intelligence Services Act way back in 2001. Those reforms have been in response to the unprecedented shift in our national terrorism threat environment following ISIL's declaration of a caliphate on 29 June 2014.

Honourable senators will recall that on 12 September 2014 the national terrorism level was elevated on the advice of our national security agencies, and the threat level has remained since that time at the equivalent of probable, which means that a terrorism event in Australia continues to be assessed as likely. Since the threat level was raised Australia has experienced four terror related attacks, three of them lethal and one involving serious injury to an innocent man. However, importantly, during the same period our agencies and the police have disrupted 11 imminent terrorist attacks on Australian soil against innocent Australians. Those disruptions are testament to the professionalism and skill of the law enforcement and policing agencies and the fact that this government gave them the powers they needed to keep our community safe.

**The PRESIDENT:** Senator Fawcett, a supplementary question.

**Senator FAWCETT** (South Australia—Deputy Government Whip in the Senate) (14:13): Could the Attorney-General explained to the Senate the importance of a strong, consistent approach to national security?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:14): It has been the longstanding position on both sides of the parliament to maintain bipartisanship on national security, and by and large, I should say, that bipartisan posture has been maintained in this parliament and the last, with the Labor Party supporting the six instalments of national security legislation to which I have referred. Unfortunately it is not an unmixed record, because in recent weeks we have seen a breakdown of bipartisanship on important aspects of our national security, as Mr Shorten, under pressure from the Left, puts his own political survival ahead of the interests of the Australian people. We are seeing the breakdown of bipartisanship in relation to the new...
measures that Mr Dutton announced to keep our borders safe, and we have seen confusion in
the Labor Party's position on the critical issue of the American alliance, with an op-ed by
Senator Wong, the foreign affairs spokesman— (Time expired)

The PRESIDENT: Senator Fawcett, a final supplementary question.

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (14:15): Is the minister aware of any threats to this strong and consistent approach to national security?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:15): I was in the process of telling you about them, Senator Fawcett—through you, Mr President. Senator Wong, in an op-ed in the Fairfax papers some two weeks ago, for the first time that I can recall by the Australian Labor Party, called into question the nature of our relationship with the United States of America and called the election of President Trump 'a change point'.

It has historically always been the position of the Australian Labor Party that the relationship endures unaffected by whether it be a Democrat or a Republican administration and unaffected by the identity of the President of the United States. Yet, Senator Wong, you settle upon the election of a candidate not to your liking as the President of the United States to announce a change point in the relationship between Australia and the United States of America, our most important strategic partner. (Time expired)

Turnbull Government

Senator MOORE (Queensland) (14:16): My question is to the Minister representing the Prime Minister, Senator Brandis. During the 2016 election the Prime Minister promised he would deliver 'stable government'. Since the election we have seen coalition backbenchers publicly dictate the Turnbull government's position on superannuation, backpacker tax policy, the banking royal commission and section 18C of the Racial Discrimination Act. Is this the kind of stable government Mr Turnbull had in mind?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:17): Senator Moore, I understand that, coming from the political culture from which you come, the idea that there might be a discussion about policy issues is asserted by you as evidence of instability. Rather, coming from the political tradition from which those on my side of the chamber come—

Opposition senators interjecting—

The PRESIDENT: On my left!

Senator BRANDIS: we are unafraid of a debate—in fact, we welcome it. We welcome the perspectives of all members of our team. Every last one of them has something to contribute. But a government is judged by the results it achieves. It is judged by the results, and the results are in on this government: record economic growth; a three-year record low unemployment—

Opposition senators interjecting—

The PRESIDENT: On my left!

Senator BRANDIS: consumer confidence and business confidence at continuing high levels; 450,000 new jobs created since the coalition came to power in September 2013—

Senator Kim Carr interjecting—
The PRESIDENT: Senator Carr and Senator Cameron!

Senator BRANDIS: wages continue to grow faster than the CPI at 1.9 per cent year-on-year to September, compared with CPI of 1.3 per cent; and exports, as I said in answer to my question to your colleague Senator Bilyk, are growing at 9.6 per cent higher than they were a year ago—indeed, the fastest year-on-year growth since the Olympic Games were held in Sydney in the year 2000. That, Senator Moore, is what we mean by successful government. We mean successful and stable government that delivers the results on the economy, delivers the results, as I mentioned in my answer to Senator Fawcett, in relation to national security policy, delivers the results in keeping our borders secure, delivers the results in—(Time expired)

The PRESIDENT: Senator Moore, a supplementary question.

Senator MOORE (Queensland) (14:19): I believe I was being insulted, but I could not hear the answer. I refer to the Senate vote on the disallowance of regulations banning the importation of the Adler A110 shotgun, in which not one National senator voted in support of the Prime Minister's position. Is this the kind of stable or successful government Mr Turnbull had in mind?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:19): Senator Moore, I hope you were not accusing me of insulting you. I was merely pointing out that, in the political culture from which you come, the vigorous discussion of ideas is not regarded as a virtue. But on my side of the chamber, Senator Moore, it most certainly is, because we believe that a vigorous debate produces the best outcomes. Turning to your question—

The PRESIDENT: Order! Pause the clock!

Senator Cameron: Mr President, I rise on a point of order on relevance and also on the conduct of the Attorney-General. For 30 seconds he has been addressing Senator Moore directly, which is not proper, and he has not dealt with the question.

Senator Ian Macdonald: Mr President, on the point of order: talking about the demeanour of the chamber, I can barely hear Senator Brandis. I am pleased to say that Senator Wong, with a bit of help from you and me, is now behaving herself, but because of the rest of them, I simply cannot hear Senator Brandis.

Opposition senators interjecting—

The PRESIDENT: I will first of all remind all senators to keep the noise down, especially senators on my left at present. Secondly, on the point of order, Senator Cameron, one part of your point of order was correct—the Attorney-General should direct his remarks to me and not to Senator Moore. On the second point, in relation to relevance, the minister was relevant. In fact, he started addressing the question quite directly. Attorney-General, you are in order, and please address your remarks to the chair, as all senators should.

Senator BRANDIS: Thank you, Mr President. I will do so. Through you, Mr President, to Senator Moore: the National Firearms Agreement is something that is very, very important. It is supported by state and territory governments of both political persuasions—and it is supported by the Commonwealth government, because we believe that there should be
appropriate controls of firearms, and we have delivered on that. Senator Moore, once again, judge a government by its results. On the issues that you raised, the results are in. *(Time expired)*

**The PRESIDENT:** Senator Moore, a final supplementary question.

**Senator MOORE** (Queensland) (14:22): Thank you, Mr President; I cannot wait. Contrary to the Prime Minister's commitments, the Deputy Prime Minister has refused to back away from his statement that the 450 gigalitres due under the Murray-Darling Basin Plan did not have a 'hope in Hades' of being delivered. Is this the kind of stable government or results based government Mr Turnbull had in mind?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:22): Again, Senator Moore, through you, Mr President, the government is committed to the Murray-Darling Basin Plan. Senator Moore, I could not pretend to explain the Murray-Darling Basin Plan to you with the eloquence with which Senator Canavan has explained it on several occasions this week. But I can assure you, Senator Moore, that the Prime Minister, the Deputy Prime Minister and all members of the government are strongly in support of the Murray-Darling Basin Plan.

As you know, Senator, the Murray-Darling Basin Plan is based on an approach to water management that delivers three objectives: a healthy basin that supports productive industries; confident communities; and a resilient environment. It is the objective of this government and the outcome to which we are working, in collaboration with the states, to achieve all three of those outcomes.

**Dental Services**

**Senator DI NATALE** (Victoria—Leader of the Australian Greens) (14:23): My question is for the Minister representing the Minister for Health. On 31 December this year—only 30 days away—Commonwealth funding for public dental services to the state and territories through the national partnership agreement will expire. So here we are on the last day of parliament, and the minister today has made no public commitment whatsoever in relation to what the government intends to do to ensure that Australians continue to have access to these vital public dental services. So will the minister now take the opportunity to explain what funding will be in place beyond the end of this year; and will she give an assurance that there will not be any cuts to public dental funding?

**Senator NASH** (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:24): I thank the senator for his question and for some notice of the topic. I can advise the chamber that the advice that I have received is that the minister will be making some announcements about the future funding in the near future as part of broader reforms.

What I can indicate to the chamber is that we propose some very sensible changes relating to dental reform. Under the Child and Adult Public Dental Scheme, we were going to see all children under 18, 5.3 million children, and adults with concession cards, five million adults, able to access a new scheme. We wanted to move away from the old scheme, the Child Dental Benefits Schedule, because it failed to reach a significant number of children. Only one in three of the eligible children were treated. It was only used by a third of the three
million children that had been promised by Labor. There are $4 million worth of incorrect claims under investigation.

What we have been trying to do is to put in place a scheme that was better. That scheme was going to give states certainty for the first time by enshrining that in legislation, and that certainty, as we all know, for the states and territories is very important.

The senator does raise the question, clearly, about 31 December. I can indicate that an announcement will be made in the near future, but it is very clear that what we were trying to do—and had there been agreement from the other side, we could already have in place that Child and Adult Public Dental Scheme, which was going to provide better outcomes for people across the country in relation to dental.

The PRESIDENT: Senator Di Natale, a supplementary question.

Senator DI NATALE (Victoria—Leader of the Australian Greens) (14:26): Given that we are here today on the last day of parliament and the minister has refused to make any commitment to guarantee ongoing funding, can we assume that the minister is trying to avoid the scrutiny of this parliament in an effort to ensure that cuts made to public dental services do not get the scrutiny of the parliament?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:26): No, I reject that categorically: it would not be appropriate to assume that in any way, shape or form. Clearly, this is a situation for the minister where she has to discuss the broader reforms with states and territories about the best way forward. So it is certainly not the case that you should assume that; it is the case, however, that those opposite, the Greens and those others opposite would realise that there are negotiations taking place to get a better outcome for people across the country, particularly those children and those on concessional arrangements, who would get great benefit out of the new scheme. If only that had been agreed to at the time, we could have already had this in place and we would have better outcomes for those people.

The PRESIDENT: Senator Di Natale, a final supplementary question.

Senator DI NATALE (Victoria—Leader of the Australian Greens) (14:27): The minister rightly indicated that certainty was necessary to enable dental clinics to plan their programs, to recruit staff and to provide assurances to patients about services. How on earth is not making any public commitment 30 days from when a program is set to expire providing those public dental services with the certainty that you quite rightly say they need?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:28): That certainty could have been provided some time ago, if it had been agreed. Clearly, as I have already outlined, the benefits would have been there in moving to that system; however, as I understand it, negotiations are still underway.

I do understand that the minister is in discussions with those opposite about those broader reforms and I do find it very unfortunate that Senator Di Natale should stand today complaining about a lack of appropriate timeliness when this could have been dealt with long before now—moving to what people would recognise would be a much more beneficial scheme for the people that it is intended to help as opposed to, as I outlined in my first
response, the great deficiencies in the current Child Dental Benefits Schedule, which would have been alleviated by moving to the coalition government's policy.

**Attorney-General**

Senator KITCHING (Victoria) (14:29): My question is to the Minister representing the Prime Minister, Senator Brandis. I refer to answers given by the Prime Minister yesterday in question time. Can the minister explain why the Prime Minister refused to rule out appointing Senator Brandis to a diplomatic or judicial post before the next election?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:29): I have actually seen the Prime Minister's answer. I found it quite flattering, actually, Senator Kitching. But I think the point that the Prime Minister was at pains to make is the extraordinary obsession the shadow Attorney-General, Mr Dreyfus, has with me. Senator Kitching, this is the point of the Prime Minister's answer. Senator Dreyfus, I am sorry to say, Senator Kitching, has developed a very, very unfortunate reputation around this place in the last year or two as the man who cried wolf, because every time Senator Dreyfus has mounted a political attack on me it has fallen flat. Do you know why it has fallen flat, Senator Kitching? Do you know why it has fallen flat?

**The President:** Point of order, Senator Gallacher.

Senator Gallacher: My point of order is that Senator Brandis should refer to people in the other place by their correct title.

**The President:** I know. I did note he promoted him to senator, but he's not a senator; he is Mr Dreyfus. Senator Kitching, on the point of order.

Senator Kitching: On the point of order, I hate to keep pointing out the Attorney-General's lack of knowledge of the standing orders, but, under standing order 193, I do not think he can refer to the shadow Attorney-General in the way he just has. I refer particularly to sub order 3.

**The President:** And, that is, reflecting on a member in the other place. I will remind all senators to refer to members in the other place by their correct title and also not to reflect adversely on members of the other place. The Attorney-General has the call.

Senator BRANDIS: Mr President, I do owe the Senate an apology in referring to Mr Mark Dreyfus as a senator. I am sure every senator would be embarrassed by that misattribution. Senator Kitching, the reason everyone of Mr Mark Dreyfus's political attacks on me have fallen flat is the absence of one essential ingredient, and that is relevant facts or evidence. That is the problem.

**The President:** Order! Pause the clock. A point of order, Senator Wong.

Senator Wong: Unsurprisingly on relevance. The question was why the Prime Minister refused to rule out appointing Senator Brandis to a diplomatic or judicial post before the next election.

**The President:** I think the Attorney-General has been on track in relation to the question with the answer he is providing. Attorney-General.

Senator BRANDIS: Thank you, Mr President. I was asked about the Prime Minister's answer and I was referring to it directly. So, Senator Kitching, if you are going to mount a political attack on somebody, you ought to make sure you have the evidence. We know that
the Hayden royal commission had plenty of evidence about you, Senator Kitching. We know the Hayden royal commission had enough evidence about you, Senator Kitching, to refer not one, not two but in 11 criminal prosecutions to the police or the Fair Work Authority. But, nevertheless, in relation to what Mr Dreyfus has said about me from time to time, it would strengthen his hand if he had any relevant facts. *(Time expired)*

**The PRESIDENT:** Senator Kitching, a supplementary question.

**Senator KITCHING** (Victoria) (14:33): Given Australia's current High Commissioner to Britain, Alexander Downer, was furious about rumours Senator Brandis would be handed the job in London, has the Prime Minister reached out to Mr Downer to reassure him he will not be giving his job to Senator Brandis?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:33): Senator Kitching, and returning to Mr Dreyfus, who asked this question of Mr Turnbull yesterday—

**The PRESIDENT:** Order! Point of order, Senator Wong.

**Senator Wong:** Mr President, do I even need to explain it? He is flouting the standing orders.

**The PRESIDENT:** Senator Wong, I think the nature of the question is bordering on not even being relevant. I have allowed it to happen. If you are raising points of order about relevance, Senator Brandis has been addressing the question, considering the nature of the question, I think quite well.

**Senator Wong:** I seek your indication, Mr President, of how a question about the Prime Minister's actions in relation to Mr Downer has anything to do with Mr Dreyfus.

**The PRESIDENT:** I will allow the Attorney-General to answer the question, in the frame it has been asked of him, as he wishes. Senator Brandis.

**Senator BRANDIS:** If I may say so, Mr President, I am being directly relevant to the Prime Minister's answer, because, in the Prime Minister's answer, he pointed out the morbid and unhealthy and—to use Senator Fifield's words—slightly icky obsession that Mr Dreyfus appears to have with me. But, of course, it is not just with me that Mr Dreyfus has an obsession, Senator Kitching. Mr Dreyfus has threatened to resign from the parliament if Senator Kitching were to be appointed to the Senate.

**The PRESIDENT:** Order! Senator Wong, point of order.

**Senator Wong:** Mr President, you ought not allow him to flout the standing orders in this way. If he wants to give a speech about these matters, he is entitled to do so. We will deal with that. This is question time, Mr President.

**The PRESIDENT:** Senator Wong, it is question time. I adjudicate on the information before me. Senator Brandis has indicated that the Prime Minister's answer contained exactly the information that he is reporting to the Senate, and that is what the question inquired about. The question inquired about the Prime Minister's answer. The Attorney-General is completely relevant in relation to this question. Attorney-General.

**Senator BRANDIS:** Thank you, Mr President. If you ask an open-ended question, you must expect the answer that you get. Mr Dreyfus is not just obsessed with me, Senator Kitching; he is obsessed with you. Why otherwise did he say that he would resign if you were
appointed to the Senate? We are waiting to see Mr Dreyfus come good on his threat. *(Time expired)*

The PRESIDENT: A final supplementary question, Senator Kitching.

Senator KITCHING (Victoria) (14:36): Just in the last three months, the Attorney-General has faced controversies relating to his attempted muzzling of the Solicitor-General, his appointment without process of mates to the Administrative Appeals Tribunal and his attempt to hand over $300 million to his Liberal mates in Western Australia. Does the Prime Minister agree with the Attorney-General's Liberal-National Party colleague who was prepared to tell the *Courier Mail*: 'London can't come soon enough'?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:36): Senator Kitching, in the spirit of the season I will overlook the jibe and I will say to you that what we have achieved—as recently as today, by the way, as I addressed in my answer to Senator Fawcett—is to concentrate on what really matters to the Australian people, in my portfolio and in the portfolio of every minister represented along this front bench. In my portfolio, had you bothered to attend the debate, which you did not, you would have seen two important national security bills passed by the chamber as recently as this morning, and you would have seen, earlier this week, the Prime Minister and I announce the appointment of the first woman to be the Chief Justice of Australia, something I would have thought you would have celebrated. That is the difference, Senator Kitching: you may choose to waste your time in question time on political gossip and tittle tattle but we in the government get on with real achievements.

Legal Aid

Senator ROBERTS (Queensland) (14:38): My question, as a servant to the people of Queensland and Australia, is to a fellow servant to the people of Queensland and Australia, the Attorney-General, Senator Brandis. As the Attorney-General would be aware, one of the most serious issues facing a vast number of Australians daily is being able to afford legal representation in the court system, and particularly in the family law courts, including the Federal Circuit Court. Is the senator aware that it is estimated legal aid agencies require an urgent additional funding injection in the order of $200 million to be able to provide to needy litigants a decent level of legal representation? What additional funding have the government made available to meet this funding deficit? If they have not made additional funding available in this crisis area, when will they?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:38): Thank you very much indeed, Senator Roberts. I know you, like your leader, Senator Hanson—through you, Mr President—take a deep and serious interest in this issue.

Senator Waters interjecting—

Senator Sterle: In seats in Queensland—you've got it.

Senator BRANDIS: I hear interjections coming from the other side. I would have thought that the way in which we deal with family breakdown, families and relationships in distress, and women and children facing family violence is not something that ought to be the subject of partisan interjection and political point-scoring.
Senator Roberts, it is a deeply serious question you raise, and I thank you for raising it. There is pressure on the family law system; there is no doubt about that. And there is pressure on the legal assistance budget. But I can tell you where that pressure comes from primarily.

Senator Jacinta Collins: Your cuts!

Senator BRANDIS: Four years ago—I take your interjection, Senator Collins. Four years ago, in the final budget of the Labor government, the former Attorney-General, Mr Dreyfus, who continues to haunt this Senate today, apparently, like the ghost of Christmas past, announced a four-year funding program which would terminate in 2017. That is what members of the sector refer to as the 'Dreyfus funding cliff'. The expiry of that program on 30 June 2017 is not the result of any decision taken by me or any decision taken by this government; it is the result of a decision taken by Mr Mark Dreyfus in his submission to the 2013—the final—Labor budget.

During this government we have announced a national partnership agreement for legal funding that provides $1.62 billion over five— (Time expired)

The PRESIDENT: Thank you, Attorney-General. A supplementary question, Senator Roberts?

Senator ROBERTS (Queensland) (14:41): In terms of the distribution of such funding to community legal aid, Aboriginal legal aid and legal aid generally, would the Attorney-General advise whether or not he has advised those bodies that their funding is to be reduced by 30 per cent in the next allocation?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:41): The only decision that this government has made has been through the national partnership agreement, which provides, as I was saying in my answer to your initial question, $1.62 billion over five years to legal aid commissions, CLCs and Indigenous legal assistance providers, which will increase the funding in nominal terms and maintain it in real terms. The only cut of which I have had to advise members of the sector is the cut arising from the Dreyfus funding cliff as a result of a decision in the last Labor budget, when Mr Dreyfus took a submission to the Labor government's budget committee, whatever it is called, and decided that additional funding would terminate in 2017.

The PRESIDENT: Senator Roberts on a final supplementary question.

Senator ROBERTS (Queensland) (14:42): Has the Attorney-General and/or his department conducted an actuarial analysis of the resultant additional costs caused by delays at the call-overs due to the extended time required by the judiciary in having to give advice to self-represented parties on such matters as procedure or their failure to comply with prior orders, and the resultant adjournments and further hearings—firstly, costs to litigants who may be legally represented and whose hearing call-overs are consequentially delayed; and, secondly, the additional costs incurred by the court system resulting from these delays? (Time expired)

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:43): I will come to your question immediately but, if I may, let me just say this in two sentences: This government maintained legal assistance funding in real terms. The only reductions in the amount of money going to
the sector are as a result of the funding cliff decided upon by Mr Dreyfus in the last Labor
budget.

Coming directly to the subject matter of your question, the problem of self-represented
litigants is a problem with which judges, practitioners and everyone in the family law system
are extremely familiar. That has been a feature of the system, by the way, for many years. It is
why it is desirable to ensure, as the government has done, that legal assistance funding is
maintained at real levels. It is why it was such a disastrous decision to build into future legal
assistance funding the funding cliff that the last Labor Attorney-General, Mr Mark Dreyfus,
did. (Time expired)

Mobile Black Spot Program

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:44): Mr
President, can I take this opportunity to wish you, all the senators and especially the chamber
staff all the best for Christmas and the New Year.

Honourable senators: Hear, hear!

Senator WILLIAMS: My question is to the Minister for Regional Development and
Minister for Regional Communication, Senator Nash. Can the minister update the Senate on
the rollout of the coalition government's Mobile Black Spot Program?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for
Regional Development, Minister for Local Government and Territories and Minister for
Regional Communications) (14:44): I thank the senator for his question and acknowledge his
incredible, longstanding efforts for the people of regional Australia. I am absolutely delighted
to stand here today and advise the chamber that this morning, with the Prime Minister, I
announced round 2 of the coalition's mobile phone black spot program—a further $60 million
invested into expanding our mobile phone black spot program.

It is not only the $60 million. With the telecommunications companies and state and
territory governments leveraging around an extra $150 million, we have seen a total of $213
million invested into expanding mobile phone coverage across this country. There are 266
new base stations, which is a great achievement. This will provide new or upgraded coverage
across rural and regional communities—6,300 homes and businesses will now have new or
upgraded coverage—and 17,700 square kilometres across Australia's land now has increased
or new mobile phone coverage. We have seen 1,900 kilometres of our major roads now
covered and able to get mobile phone coverage. In round 2 we have now addressed 1,400
black spots where we did not have coverage before.

Senator Ian Macdonald interjecting—

Senator NASH: I will take the interjection from Senator Macdonald who said, 'That is
just amazing.' Thank you so much, Senator Macdonald. This is a great outcome driven by the
coalition and driven initially, I might say, by the Prime Minister as communications minister
and continuing to be driven by him as the Prime Minister. We have achieved great outcomes
for people in regional Australia.

The PRESIDENT: Senator Williams, a supplementary question.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:46): I thank
the minister for her answer and also the lovely cherries from the Young district. Thanks, as
always. Can the minister outline how the Mobile Black Spot Program is improving mobile coverage for people living in the regions?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:46): One of the great things about this program is that, while we talk about the numbers and the great investment, this is improving and changing the lives of people out on the ground in our communities at places like Mount Chalmers in Queensland, where the Livingstone Shire Council has made a contribution to a base station to bring mobile coverage to 114 farming, grazing and residential properties—when completed the base station will also provide coverage to the 1,344 vehicles that move through the area on a daily basis—and at places like Clarke Creek in Queensland between Rockhampton and Gladstone, where the installation of the mobile tower has been a game changer for the local Clarke Creek school. They will now get 4GX mobile broadband service under the program. I have to commend my colleague Michelle Landry, the member for Capricornia, for her tireless work in ensuring that this was delivered.

The PRESIDENT: Senator Williams, a final supplementary question.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:47): Is the minister aware of any alternative approaches to improving mobile coverage in regional Australia?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:48): I am indeed. I thought that this might best be done by way of a scorecard, because those opposite, the Labor Party, have a very different approach. Black spots being covered by the coalition: 4,400; Labor: zero. The phone towers being delivered by the coalition: 765; those delivered by Labor: zero. Square kilometres of new hand-held coverage delivered by the coalition: 86,300 square kilometres; Labor: zero. Funding delivered under the coalition: $220 million. Colleagues, how many dollars do we think Labor delivered? Zero! They delivered absolutely nothing. It is this coalition that will continue to deliver for the people of regional Australia.

Rural and Regional Health Services

Senator KAKOSCHKE-MOORE (South Australia) (14:49): My question too is to Senator Nash, the Minister representing the Minister for Health. On 3 May 2016, when Senator Nash was the Minister for Rural Health, a motion moved by Senator Xenophon was passed, which noted the tragic death of South Australian woman, Gayle Woodford, who worked as a remote area nurse in the APY Lands in South Australia. The motion called on the government to (1) immediately review the adequacy of current safety measures for remote area nurses; (2) abolish single nurse posts in remote areas, or mitigate the risks they pose; (3) implement a policy that remote area nurses attend out-of-hours emergencies in pairs; (4) require that all emergency services vehicles be fitted with GPS technology; and (5) allocate the necessary funding. Can you please advise what action has been taken by the government to carry out the terms of that motion?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for
Regional Communications) (14:50): I thank Senator Kakoschke-Moore for her question and also for some advance notice of it. Correctly, I was the minister at the time responsible for this. It was absolutely tragic. It really was a tragic set of circumstances.

The issue around the remote delivery of health care, though, is not one that is primarily a direct responsibility for the Commonwealth. What we see is, predominantly, the Aboriginal medical services delivering that health care to those remote communities. Also, some of the state governments have a role in delivering that health care through those services. A number of the points that Senator Kakoschke-Moore referred to are actually not in the direct purview of the Commonwealth. What we did, though, is recognise how important it was for the Commonwealth to be part of trying to find some solutions to this. On 22 April Minister Ley and I announced $1½ million of extra funding for the Nganampa Health Council because they were facing some immediate challenges after the tragic death of Gayle Woodford. That was around some critical infrastructure and maintenance measures that they had deemed needed to be done. The decisions around the way forward following this tragic circumstance are primarily for those services themselves and those that run them, but we are working very closely with them.

In addition, CRANAplus has been doing a great deal of work in terms of the learning modules and resource materials that are there to address local safety and security issues. They have done some tremendous work around this. We as the government are providing more than $240,000 to the organisation to undertake the work around reviewing the policies and procedures, because it was very much felt that that structure had to be right in terms of improving the circumstances.

The PRESIDENT: Senator Kakoschke-Moore, a supplementary question.

Senator KAKOSCHKE-MOORE (South Australia) (14:52): In his short statement in relation to Senator Xenophon's motion, Senator Ryan stated that an urgent roundtable was convened to address this issue. What recommendations were made by the roundtable, and what action has been taken to implement those recommendations?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:52): As the minister responsible at the time, I immediately convened a roundtable of all of those across the sector to come together and discuss what was going to be the best way forward. I felt that the advice that I would get from those people directly involved in the sector was going to be the most useful in how we went forward. I wrote to all of the state and territory health ministers at the time given that this was something that had to be responded to in collaboration.

In relation to the senator's question, there were not any specific recommendations that resulted after that meeting, but there was very much a collective view that we needed to address the priorities, particularly as CRANAplus had put them forward, around zero tolerance of violence for every health professional workforce, all of the after-hours call-outs to be accompanied, a national safety working group to be established, work around the work health and safety issues, and working on models to look at duress systems. They put forward some very good proposals that we have collectively been working on. (Time expired)

The PRESIDENT: Senator Kakoschke-Moore, a final supplementary question.
Senator KAKOSCHKE-MOORE (South Australia) (14:53): Are remote area nurses now attending out-of-hours emergencies in pairs?

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (14:53): As I have indicated, that is not a decision for the Commonwealth to make. What we were very focused on doing, and have been since, is working really closely with those services. As the Commonwealth, we are not going to tell those who run those services what to do. Particularly as minister at the time, I worked very closely with the Indigenous health sector and had—and still do have, even though I am no longer the minister responsible—a great deal of respect for how they run those services and for those organisations that do a great job. So that is a decision for those individual services. We will continue to work very closely. We all want to ensure the safety of our workers in those remote communities. There are specific challenges out there. We in this chamber, I think, all know that those challenges do exist, but the approach that we have taken is collectively working with the states and territories, with the services themselves and with local communities on the ground. We will get the best outcomes for safety for the workers. (Time expired)

Turnbull Government

Senator DASTYARI (New South Wales) (14:54): My question is to the Minister representing the Prime Minister, Senator Brandis. I refer to the Prime Minister, who on Tuesday said: 'I have an excellent ministry. I am delighted with the work that my colleagues are undertaking.' Was the Prime Minister referring to (a) a backpacker tax that has gone from 32 per cent to 10.5 per cent to 19.5 per cent to 15 per cent; (b) the hateful, divisive, expensive and ultimately failed marriage plebiscite; or (c) the 'continuity with change' campaign that lost him 14 elected members?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:55): Senator Dastyari, when the Prime Minister said on Tuesday he had an excellent ministry, I will tell you he what he was referring to: he was referring to the excellence of his ministry. Just look at the excellent ministers who sit in this chamber. There is my deputy, Senator Cormann, the best finance minister Australia has had in living memory, who has devoted himself heart and soul to trying to fix up the mess which we inherited from the worst finance minister in Australian history, Senator Wong, who sits across from me. There is Senator Mitch Fifield, the Minister for Communications and the Arts, who has delivered on the NBN so that it will be brought in at lower cost and years sooner than it ever would have been under the Labor Party's failed plan under former Senator Stephen Conroy.

And who can forget the peerless Senator Michaelia Cash, the champion of the volunteer firefighters in Victoria and the Joan of Arc of the owner-drivers, whom the Labor Party wanted to drive out of business? Senator Michaelia Cash, as recently as this week, has secured the passage of two vital pieces of industrial relations reform, the registered organisations bill and the ABCC bill, bills that will restore the rule of law to the construction industry and ensure that those who run trade unions—the bosses and thugs who pull your strings, Senator Sam Dastyari—are accountable to their members and that their conduct is transparent.
Then we have Senator Simon Birmingham, a finer education minister than whom it would be impossible to imagine. *(Time expired)*

**The PRESIDENT:** Senator Williams, do you have a point of order?

**Senator Williams:** Mr President, could you give me some guidance. I am just seeking an extension of time for Senator Brandis on an answer.

**The PRESIDENT:** There is no point of order, Senator Williams. Senator Dastyari, do you have a supplementary question?

**Senator DASTYARI** (New South Wales) *(14:58)*: I do. As fantastic as it was to watch the Leader of the Government in the Senate beg for his job, I do have a supplementary. I again refer to the Prime Minister’s statement, ‘We are getting the runs on the board.’ Was he referring to (a) Senator Brandis describing his colleagues as ‘very, very mediocre’; (b) Senator Joyce’s APVMA pork-barrelling exercise; or (c) the failed WA deal, a $300 million wink and nod?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) *(14:58)*: You know, Senator Dastyari, I was wondering if you might give me something for Christmas, and you have delivered. You have delivered with a very generous Christmas question, the last question of the year. When the Prime Minister was referring to runs on the board, he was referring, for example to the runs that Senator Simon Birmingham had put on the board in his reforms of the VET sector and training, which have saved the Australian taxpayer billions of dollars by salvaging a scheme which your side, in government, made a complete and abject mess of. He is referring to people like Senator Arthur Sinodinos, the cabinet secretary, a wiser and more experienced servant of the Australian people—

**The PRESIDENT:** A point of order, Senator Watt?

**Senator Watt:** Mr President, I noticed that in congratulating and pointing out a number of excellent ministers the Attorney-General has not mentioned himself, and I am wondering whether he is going to point himself out as one of the excellent ministers.

**The PRESIDENT:** There is no point of order.

**Senator BRANDIS:** And then we have Senator Concetta Fierravanti-Wells and Senator Ryan and Senator Scullion and Senator Nash, every one of whom has more achievements in their little finger than any minister of your previous, failed government. *(Time expired)*

**The PRESIDENT:** Senator Dastyari, a final supplementary question?

**Senator DASTYARI** (New South Wales) *(15:00)*: The Prime Minister also stated: We are delivering, the 45th Parliament is working, the government is governing … Was the Prime Minister referring to (a) trading guns for votes or (b) making history as the first government to vote against itself, which the government did again today? And can I just say, Senator Brandis, if this is the last opportunity in the house to say this: you will be missed.

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) *(15:00)*: When the Prime Minister said the government is delivering, he was referring to the achievements the government has seen in particular on the floor of this Senate in recent months and indeed in recent weeks and days, like the ABCC legislation, to which I will return, because it is such a signal achievement of
this government and of this minister, Senator Michaelia Cash in particular, to restore the rule of law to a lawless construction sector. That never happened under a Labor government, of course, because you are the indentured slaves of the union thugs who run the CFMEU. Nor did the passage of the registered organisations bill, the other trigger piece of legislation, which will ensure that trade union officials have the same obligations of accountability and transparency as company directors. It would not have happened under your watch, Senator Dastyari—never under a Labor government. (Time expired)

Broadband

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (15:02): My question is to the Minister for Communications, Senator Fifield. Can the minister update the Senate on the rollout of the National Broadband Network?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (15:02): Thank you, Senator Smith, for the question and for your deep interest in regional communications, in particular in Western Australia. I think all of us in this chamber would agree that the NBN is a very exciting project. We tend to talk an awful lot, though, in this place about the NBN as an end in itself rather than about what the NBN can achieve and is achieving for Australians—how it can improve job prospects for young people, how it can assist people in regional areas to stay in touch, how it can open businesses to the global marketplace and how it can make online transactions simpler for households. These are all good things that are happening now. It is because of what the NBN can deliver that, when we came into government, we decided that we would take a technology-agnostic approach, a multitechnology mix, letting NBN choose the technology that would see it rolled out fastest and at lowest cost, and that is exactly what is happening.

I am very pleased to be able to advise colleagues that the NBN hit a new milestone this week with fibre to the node connections overtaking brownfields fibre to the premise connections. We now have 1.1 million premises to fast broadband via fibre to the node. That has taken just over a year. Contrast that with Labor’s technology—fibre to the premise—whereby it took more than five years to connect the same number of premises by fibre to the premise. So, the multitechnology mix is working—fibre to the node, fixed wireless, satellite, using the HFC pay TV cables. We are delivering the NBN. Australians want the NBN. They want it soon, and under this government, because of our approach, they will have the NBN six to eight years sooner than would have been the case under those opposite, and at $30 billion less cost.

The PRESIDENT: Senator Smith, a supplementary question?

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (15:04): Can the minister outline how these achievements contrast with the NBN rollout under the former, Labor, government?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (15:04): Thank you, Senator Smith. I can, actually, provide a contrast with the approach of our predecessors. Colleagues may have forgotten that when we came into office in 2013 the NBN was in effect a failed project, that contractors had downed tools in four states and, despite about $6½ billion having been spent
over the best part of five or so years by those opposite, that there were only 51,000 paying customers on the NBN. Also, those opposite could not even work out how much the NBN was costing to deliver. Those opposite thought that it cost between $2,200 and $2,500 per premise to deliver the NBN. When we came into office we found out that it was actually costing $4,400 per premise. The project was a failure. As of this week, we now have over 1½ million Australians who are on the NBN.

The PRESIDENT: Senator Smith, a final supplementary question?

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (15:05): Can the minister explain to the Senate how the coalition government is making the NBN as cost-effective to taxpayers as possible?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (15:06): I can. This government has said that there would be an equity cap of $29.5 billion, and that remains the case. This project was always going to be a mix of equity and debt, and we recently outlined what the debt funding arrangements will be.

I should point out that Senator Dastyari in Senate estimates the other day took a particular interest in the issues of debt and equity, and we explored those to some extent. I was wondering why Senator Dastyari had such an interest in Commonwealth debt issues. Then I thought, well, of course Senator Dastyari does: he had one of the most famous Commonwealth debts in Australian history. It was a relatively small debt, we know. And if the Commonwealth Department of Finance considered that they had equity in Senator Dastyari—I do not think so. But Senator Dastyari found a unique way to resolve that debt. What I wonder is whether the person who paid that debt thought they had equity. (Time expired)

The PRESIDENT: Before I call the Attorney-General, I just want to particularly acknowledge that this will be the last time the Clerk will be in the chamber during question time. I am sure she is delighted that it is the last time with the level of noise today! But it is worth marking the occasion. I do note that we will have time later in the day to properly acknowledge the Clerk. I just wanted to make that mark. Thank you, Clerk.

Honourable senators: Hear, hear!

Senator Brandis: I ask that further questions be placed upon the Notice Paper.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Health Care

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (15:08): I rise to incorporate additional information in response to a question without notice from Senator Hinch on Tuesday, 29 November.

Leave granted.

The answer read as follows—

ADDITIONAL INFORMATION IN RESPONSE TO QUESTION WITHOUT NOTICE FROM SENATOR HINCH TO MINISTER NASH (REPRESENTING THE HEALTH MINISTER) ON TUESDAY, 29 NOVEMBER:
To date, the TGA has received 184 adverse event reports, involving 207 patients, associated with the use of these devices. Compared with the 100,000 devices estimated to have been sold in Australia since 2000, this represents 0.2% - a significantly lower rate than reported in the current literature.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Attorney-General

Senator WATT (Queensland) (15:08): I move:

That the Senate take note of the answers given by the Attorney-General (Senator Brandis) to questions without notice asked by Opposition senators today.

As the President has indicated, this is likely to be the last day of this parliamentary year. That being the case, I know that there are a number of traditions that are observed on the last sitting day. Most importantly, to thank all of my colleagues in the Senate and the various staff members who keep his place running. I want to place on record my gratitude for the assistance that they have provided me and my staff as a new member of this place. I also want to acknowledge those who occupy special roles in this chamber, in particular the President and Deputy President, for the great work that they have done. Again, as has been observed, this is likely to be the Clerk's last time in this chamber. I do want to record my thanks to her for the fantastic service that she has given this chamber over the years.

There are other important roles in this chamber that it is important to acknowledge on the last day of the year as well. It would be remiss of me to not recognise Senator Macdonald, who often goes by the title of the Father of the Senate. Some of us, with Christmas coming, prefer to think of him as a certain relative who shows up to Christmas and is not really that welcome. I would never think that myself, spending so many wonderful hours with him in committee meetings! I would also like to acknowledge the conspiracist-in-chief, Senator Roberts, for his contributions over the course of this year, particularly on Twitter.

But there is another important tradition that it is important to observe on the last sitting day—that is, valedictory speeches. Just before Senator Macdonald gets excited, I am not giving my own personal valedictory speech. I intend to be back here to work with him so cooperatively next year. To the contrary, I do want to give a valedictory speech on behalf of one very long-serving senator who is leaving the chamber today. Unfortunately, that senator has omitted to give his own valedictory speech, so the responsibility falls to me to deliver it on his behalf. I am, of course, referring to the Attorney-General, Senator Brandis! Look, a valedictory speech is obviously supposed to traverse the achievements of someone over their parliamentary career. With Senator Brandis, someone as accomplished as him, there really, really is a long list of accomplishments to recognise.

It will be interesting to see how many I can fit in in the remaining time that I have. I would like to return to one of the early stages of his career in 2004, when Senator Brandis called then Prime Minister John Howard a 'lying rodent'. It was a beauty, and I know Senator Cameron has often referred to that one. In 2006, Senator Brandis achieved the rare honour of becoming a Queen's Counsel barrister, the highest honour a barrister can receive, despite having been overlooked by the bar association when he was last a barrister and not having practiced for six years. In 2006, he tried to stop the distribution of a children's book because called Robert Menzies a 'tyrant'.

CHAIRMAN
If we jump ahead to 2013, he was forced to pay back over $15,000 after using entitlements to attend a wedding and then refused to apologise for it. He got accustomed to spending taxpayers' money. In 2014, he spent $15,000 on some custom-built bookshelves that were too big to move into his new office. They were a very good use of taxpayers' funds! In 2014—it was a great year for him—he tried to amend section 18C, something that we are hearing a bit more about again. Of course, he recognised the very important human right to be a bigot. He has always been a defender of those kinds of human rights. He also thought it was important to recognise the human rights of people being tortured when, in 2014, he did not want to explicitly ban the torture of foreign spies.

He got his own rights bestowed on him in 2014—and I know Senator Collins is very interested in this—when he became a member of the Savage Club, an exclusive men's only club. I have it on good authority that there may not be a Savage Club in London, but there certainly is in Wellington. Perhaps he might be headed for the High Commission of New Zealand rather than London! In 2014 again, who can forget that he could not explain what metadata was. I would really like to recite the quotes from that interview, but I do not have time. He was censured along the way, he misled the Senate and then, most seriously of all, in 2015 he committed a criminal offense—a very serious thing for an Attorney-General to do. I am talking about him wearing that grey jumper! That crime against fashion that Senator Brandis committed, which we will never forgive him for!

But we should, of course, turn to this year, because it is important to go out with a bang in your last year and has he gone out with a bang this year! In May, he issued a directive that the Solicitor-General was no longer allowed to provide independent advice. In July, he was forced to reappoint commissioners of an inquiry after appointing the wrong people two days before. In September, he stacked the independent AAT with Liberal Party mates. In October, he misled the public about the Solicitor-General's advice. He then was caught on camera calling his LNP colleagues in Queensland 'very mediocre'. We wish him very well in his retirement! (Time expired)

Senator REYNOLDS (Western Australia) (15:13): I too rise to take note. I would like to join in the spirit of those opposite in this taking note and take the opportunity to thank many people. First of all, again my behalf, a very deep and profound thank you to the Clerk, Dr Rosemary Laing, for her guidance and support and her leadership of her team, who I have found to be most instructive and helpful in their roles. Dr Laing, good luck in the future. I know you will be ably succeeded by your current deputy. I would also like to thank the Black Rod's Office, who again have been highly professional in their conduct and the support that they provide this chamber. And it certainly would not be a thank you without thanking all of the attendants here who do an amazing job on our behalf and never miss a beat. Back to you—thank you. We are very grateful for the wonderful work that you do so professionally on our behalf.

I would also like to thank many of my colleagues in this place, and particularly many of you on the other side of the President's chair. What is a shame is that, quite often in this place, all that the public sees is what they see through media reports and also in some of the television reporting of some of the more sensational things in this place. But one of the joys I have had in this place is working with many of you on the other side and on the crossbench on the many committees that we work on, and I just wish that some of the amazing work that we
do do together is more widely reported because I think it might help to provide people with a little more appreciation of what we do get done in this place.

I am particularly thinking of the work that the Community Affairs committee does. That committee has had some of the most confronting inquiries that I have attended. Some of the evidence that we have had has really shocked me to the core on many, many issues, but I do want to thank people like Senator Moore and Senator Siewert for their support and guidance. We delivered and tabled a report yesterday on the very fractious issue of Lyme disease and the many thousands of people in Australia who suffer because of a label. I do just want to acknowledge that. I also want to say to all Australians: my hope is that next year you will hear a little bit more about the things that we do get done in this chamber, in particular, the inquiries and reviews that we do. I see Senator Urquhart here. I am very grateful for working with her on committees and for her guidance and support when I started off as a committee chair—it was greatly appreciated.

In particular, I would like to acknowledge the new members of the crossbench who have worked very closely with all in this chamber to deliver what I think has been quite a profound change from the last parliament. Obviously, in the 45th Parliament, it has not always been a very pleasant experience working in this chamber or on inquiries, but I have to commend and thank all of you on the crossbench for your engagement, because we have been able to get through and deliver a significant amount of reforms on behalf of the nation. I would say that having a more diverse view, representative of our broader community, has only enhanced what we do here in this chamber. So I would like to thank all of you for bringing that richness and diversity of thought and opinion, and I think it bodes very well for next year in terms of what we can do on behalf of the nation.

I think that the amendments that have been brought through to legislation in recent weeks have actually made the legislation stronger, and, ultimately, the fact is that we have delivered for this nation. I think everybody in this chamber should return home to their families, their friends and their local communities very proud of that fact. While it has been robust in this chamber, nobody should confuse the robustness of our discussions here with chaos, because we have got things done. I think that robustness has been very, very good for Australian democracy. We have had a few ding-dongs in this chamber and outside, but we have been able to get together in the best interests of all Australians. On that note, I wish everybody here a very Merry Christmas, particularly to all the staff who support us. Thank you.

Senator POLLEY (Tasmania) (15:18): I would like to join with other colleagues to say thank you to the Clerk of the Senate—I am sure that this last question time would have been quite memorable for her! But it is the festive season, so we have to talk about the gift that we have from Senator Brandis that keeps giving over and over again. I think it is probably the Christmas gift of all Christmas gifts, because what we have seen from Senator Brandis since he became the Leader of the Government in the Senate and the Attorney-General is a reinforcement of how out of touch he really is. He is incompetent and we know he misleads—some people may even say he lies. The amount of gaffs keep building up day after day when it comes to the leader of the government in this place.

It was not that long ago that Mr Turnbull knifed Tony Abbott, and he did that while giving a commitment and a promise to the Australian people that he would lead an agile, innovative, 21st-century government. Well, we have seen from the leader of the government in this place
anything but that. I would not go as far as Senator Watt did to actually make any comments about the good senator's dress sense, but I do recall seeing the photo of that jumper, and it still haunts me! But what we will talk about today is the fact that the Prime Minister gave a commitment to the Australian people that he was going to be better than Mr Abbott. But what we have seen now is that it is not just those on this side of the chamber who have lost confidence in Senator Brandis but also those on his own side.

People in the community are asking me, 'How many more stuff-ups will this take before Mr Turnbull actually sacks Senator Brandis?' We know that that is not going to happen, because it is the spirit of Christmas. We know that the Prime Minister will wait until he is out of parliament, and then he will do what he has done before, and that is he will have a reshuffle. And, yes, we have seen already that Senator Brandis is more than willing to throw his former colleagues under the bus, because it was only this week when it all unravelled—the rorting, the dishonesty around what happened in Western Australia and how the Attorney-General tried to insist that the Solicitor-General go easy when putting his case in relation to the Constitution and the taxation that was in question. We know that there are still a lot of questions in the Senate inquiry into the $300 million. It is not $300—we are talking about $300 million. That has really drawn Senator Brandis's integrity and honesty into question, so I am looking forward to that.

We know that what he wanted to do, and what he did was throw Joe Hockey under the bus—that is what he did with his colleague. When I was out on the doors this morning I was celebrating the fact that it was almost 5½ months ago that I came into this chamber and said, 'Adios, amigos' to the three Tasmanian amigos in this place. In the spirit we are in now, with the festive season, I was going to bring my sombrero into the chamber, but, out of respect, because I knew you were going to be in the chair, Deputy President Lines, I did not want to do that today.

There is no doubt whatsoever that the Prime Minister will have a reshuffle. It might not be before Christmas, but I suspect it will be, because it will allow the new ministers to come to terms with their new responsibilities. I wanted to say 'Adios' to George Brandis as well.

I am sorry, Madam Deputy President, I know my phone is not supposed to be ringing in here, so I had it on silent, but I have got a call coming in from London. I do not think it is for me—it is for George Brandis, and it is from Alexander Downer—

The DEPUTY PRESIDENT: Senator Polley, I do remind you to refer to Senator Brandis by his proper title.

Senator POLLEY: Senator Brandis—it is Alexander Downer. I think he is feeling a little bit uncomfortable. The call is coming in from London. I hear that that is not just a whisper in this place; it is almost a fact. I would like to say: travel safe, get on your horse and, once again, get outta town!

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:23): My colleagues on the other side started off so well, particularly Senator Watt. I would like to support his comments and also those of my colleague Senator Reynolds in thanking the many people who make this place work; clearly, the Clerk first and foremost amongst them. Unfortunately, the comments then descended into what you could only call an imputation on
the character and conduct of Senator Brandis, when the question was actually around the government and what it has achieved around economic progress and stability.

One of the things I think Senator Reynolds mentioned that is really important is that much of what is occurring in this nation that is positive and good often goes under the radar. We have the headline things. We have seen the $20 billion of savings, the super tax reforms that have saved $6 billion, and the securing of the borders and the fact that we have stopped people drowning at sea. We have closed down detention centres and we have got children out of detention. Many of those things are in the headlines, which is great. But there are other things that never quite make the headlines.

A lot of the work that goes on in this place, as Senator Reynolds pointed out, does occur in a spirit of bipartisanship. Just today, for example, we passed the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016, another measure to secure our nation. The bill was referred to the Parliamentary Joint Committee on Intelligence and Security, which I am pleased to be a part of. The committee worked in a very bipartisan manner to deal with a range of difficult issues and with concerns that were raised by stakeholders. We worked diligently to come up with a solution which is balanced and which provides the options needed by government and agencies to deal with those who present unacceptable risks in our community, but with appropriate safeguards so that we remain the kind of nation that we want to be.

That leads me to another committee, the Joint Standing Committee on Foreign Affairs, Defence and Trade, which I have the privilege to chair. The Human Rights Subcommittee, chaired by my colleague and friend in the other place Mr Kevin Andrews, has just received a reference to look at human rights, particularly article 18 of the Universal Declaration of Human Rights, which looks at freedom of religion and belief, and that is particularly appropriate as we come into this Christmas season.

As we get to enjoy Christmas here in Australia and everything that goes along with it, I would ask members in this place and those who are perhaps listening to the broadcast or reading the transcript to bear in mind that, right at the moment, members of the Australian Defence Force are engaged in a war in northern Iraq to free the city of Mosul. In that region, the world has seen one of the worst genocides that have occurred in many years. Yazidis, Christians and some Muslim minorities have been systematically persecuted. Men and boys have been arbitrarily killed and women have been sold off for slavery on the basis—the discriminatory point—of their religion. In fact, Christians—it may surprise many people to hear it—are now the most persecuted group in the world. Where there is religious based persecution, Christians are the most persecuted group in the world.

As we come into this Christmas season, one of the central parts of which is remembering the birth of Christ and the start of the Christian faith in the world, can I encourage those of you of that faith to be open about what you are celebrating. Do not feel constrained by political correctness to talk about 'Xmas' or to not sing Christmas carols. Be open. Celebrate the freedom that we have in this country, that men and women in uniform have fought and died for over the years so that we have the freedom to have faith and belief and conscience. Whether you have a faith or you do not, or whether you want to change your faith, we have those freedoms here, which people in other countries do not have.
As we enter this Christmas season, not only should we reflect on the achievements of the government and not only should we thank the members who work in this chamber, as well as Hansard and Broadcasting and the people who make the place run; can I ask you to think on those big things—those significant things about our globe, about the global population and the values that we hold dear and should be prepared to argue for in this place and, where necessary, to fight for, literally, in global conflict. With that, I take note of the answers given and I wish my colleagues and staff a very merry Christmas.

Senator CHISHOLM (Queensland) (15:28): I too want to echo the sentiments of other senators in thanking the staff. As a new senator, I have found them particularly helpful, so it has been a really welcoming start. One of the things I am really disappointed with in starting in the Senate is that I thought I would be looking forward to hearing from one of Queensland’s finest legal minds, but after five months I can report that I am bitterly disappointed in what I have seen from Senator Brandis. The performance of the senator has indeed been very mediocre—not only today in answering the questions that were put to him in question time but since the election and throughout his political career.

Senator Watt attempted to go through a litany of the senator’s errors. He did a pretty good job, but I think there were some that he missed. I am going to mention some of them. Senator Watt mentioned the $15,000 bookshelf to show how learned the senator was. I do not think he got to the disgraceful episode of the senator’s reading poetry during an estimates session. Senator Watt mentioned the 18C changes and the senator’s statement about the right to be a bigot, which has set off a very unsavoury debate in this country. He mentioned the poorly treated President of the Human Rights Commission, Professor Gillian Triggs. He also mentioned the senator’s claim that he had consulted with Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, before establishing the Don Dale royal commission, when no such consultation occurred. Then there were the false claims to have consulted with the Solicitor-General; that relationship was so strained that the Solicitor-General was forced to resign. This week we saw him throw Joe Hockey under the bus over the Bell litigation and the dodgy deal with the Western Australian government. This has all been very mediocre from the Leader of the Government in the Senate, who has been a ball and chain around the Prime Minister’s leg for so long now. Surely that chain is going to be cut over the Christmas break.

The question that people are asking is: where will Senator Brandis end up? Let’s go through some of the options. He could go to the Netherlands for a well-earned break and maybe catch up with his good buddy former senator Brett Mason! I do not think that is likely, given that he rolled him out of the Senate only a couple of years ago. He could go to Washington and catch up with his former mate Joe Hockey, but after his performance this week—where he threw Ambassador Hockey under the bus—I think that is unlikely. The other problem with the US is that, as Senator Roberts knows, they are very much cracking down on elites, so Senator Brandis would not be welcome in America at the moment. It looks like London is the destination, and it looks like Alexander Downer will be the victim of Senator Brandis being dumped from the Senate! I am sure he will be able to keep himself busy with the bookshelves, the plays in the West End et cetera.

Let’s look at his legacy. This is something that is really important. At a time when politicians are treated with great cynicism, what we have seen from Senator Brandis and his
performance since I have been in this place—both in this chamber and also in Senate committees—has only added to that cynicism. Senator Brandis has had very serious questions to answer, but we get obfuscation and failure to answer adequately. I am sure he goes back to his office, high-fives his staff and says: 'We nailed it today. We got through another question time.' But the damage to his career, the damage to this government and the increase in public cynicism are things that we all have to deal with. When looking at his legacy, it is really important to see the whole picture. The performances that we have seen here and during questioning in the Senate committee process leave a lot to be desired. As a result, all politicians feel the increase in public cynicism that is caused from performances such as that we have seen from Senator Brandis.

Once again, I want to thank all staff in this chamber and in the parliament for being so welcoming of a new senator. I would like to wish everyone a Merry Christmas. Senator Brandis, I hope you enjoy a white Christmas!

Question agreed to.

COMMITTEES

Senate Standing Committee of Privileges

Report

Senator JACINTA COLLINS (Victoria) (15:33): I present the 163rd report of the Senate Standing Committee of Privileges, which is a preliminary report on the committee's inquiry into the status of documents seized under search warrant.

Ordered that the report be printed.

Senator JACINTA COLLINS: I move:

That the Senate adopt the recommendation at paragraph 1.41 of the report.

The committee makes this preliminary report to the Senate on the disposition of documents seized under search warrants. While the Australian Federal Police can seek to execute search warrants in the premises of members or where privileges may be involved, they are required to follow the national guideline which allows members to make claims of parliamentary privilege where they consider materials seized under warrant. Senators will be aware that former Senator Conroy made a claim of privilege over documents seized in the execution of search warrants at his Melbourne office and at the residence of one of his staff members in May this year and in the execution of a third warrant at Parliament House in August.

The member for Blaxland, the Hon. Jason Clare, also made a claim of privilege in the House of Representatives over material seized at Parliament House. The House of Representatives today adopted a motion upholding Mr Clare's claim, resolving that documents be returned to him and withheld from the Australian Federal Police investigation. The House privileges committee report on the matter, which was tabled on Monday, relies on a presumption that the documents connected to a member's portfolio responsibilities are likely to be proceedings in parliament and, accordingly, protected by privilege. Absent any evidence to disturb that presumption, it appears the House committee and the House itself readily accepted and upheld the claim of privilege.

For reasons outlined in the report that I have just tabled, the Senate committee has chosen to take a different approach. The committee has started gathering information about the
privilege claim and considers it appropriate to properly consider that information. The committee also has before it a contempt inquiry arising from the execution of the warrants, which will be better informed by further consideration of this matter. The underlying facts of the contempt inquiry also raised concerns that the guideline does not sufficiently protect members' information.

In this vein, this week the committee received a new reference about the adequacy of parliamentary privilege as a protection for parliamentary material against the use of intrusive powers by law enforcement and intelligence agencies. Again, further consideration of the current matter will better inform the inquiry.

Finally, and of particular concern to the committee, evidence provided by the Australian Federal Police as background to its inquiry indicates that the Australian Federal Police investigation of the matter initially involved pre-warrant inquiries to departments and private entities about members' offices and their staff. The evidence to the committee indicated that there are no particular protocols applying in relation to making and responding to such inquiries, so the sorts of protections required in the execution of search warrants may be entirely absent here. Again, these matters will be investigated as part of the matter referred this week.

The motion I have moved would provide the committee with access to the documents currently in the custody of the Clerk and enable the committee to take the next steps in the inquiry which are set out in the report. I commend the report and the motion to the Senate.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (15:38): I would like to speak briefly to the motion moved by Senator Collins. This report deals with a matter that goes to the very heart of Australian democracy, which is parliamentary privilege. As Senator Collins said, an analogous report in relation to Mr Clare's claim for parliamentary privilege was published yesterday, I think, or maybe earlier this week.

An honourable senator: Monday.

Senator WONG: Monday, thank you. That is how quickly the week has gone! I want to take the opportunity to make some remarks about parliamentary privilege first because I think it is extremely important that we again reassert the importance of and the centrality of the principle of parliamentary privilege.

As you know, Madam Deputy President, 'parliamentary privilege' refers to the special legal rights which apply to the houses of parliament, its committees and members. The principal legislative basis in Australia is the Parliamentary Privileges Act 1987, which was enacted following a number of privilege issues raised during the 1980s. The power to legislate stems from the Constitution at section 49. However, the powers incorporated into Australian law have their origins in the 1688 Bill of Rights. Parliamentary privilege has a history dating over 300 years and came as a fundamental response to the grievances of Westminster against the Crown.

Fundamentally, parliamentary privilege is designed to protect the rights of the legislature from incursion by the executive and by the judiciary. It ensures that all of us enjoy a right to freedom of speech in the debates and proceedings in parliament that ought not to be impeached or questioned in any court or place out of the parliament. It is a fundamental right
that ensures that all of us can raise issues in this place and hold the government to account without fear of reprisal, without fear of arrest and without fear of prosecution. It is a right that has been jealously guarded for a very long time, and rightly so, by all members and senators—indeed, by all members of parliaments in the Westminster tradition. Without this right, this parliament would be a facade of democracy, and it is for this reason that this Senate has always carefully guarded its privileges.

*Odgers' Australian Senate Practice* provides a comprehensive outline of the history and implementation of parliamentary privilege. There is also a chapter in *House of Representatives Practice*. The Senate has also a number of privilege resolutions designed to assist with the handling of matters of privilege.

Senator Collins in her speech spoke about the protocol which exists to help govern the interaction between police action and parliamentary privilege. I note her comments in her contribution which suggest that it may be timely to consider whether or not the protocol deals with the full extent of the matters it ought to, given the circumstances of the matters that her committee has been considering. It was a protocol developed to ensure that privilege is not compromised in circumstances such as those that are the subject of both the House report and the Senate report. Protections under the protocol were of course utilised by members of parliament in order to protect their privileges.

I do want to say this. The circumstances which gave rise to both the House and the Senate committees' inquiries were extraordinary. Televised raids on the offices and homes of a Labor shadow minister, a former Deputy Leader of the Opposition and an opposition staffer in the middle of the election campaign were not a sight I think any of us ever expected to see. It was not just a raid on the opposition party in the context of an election campaign, which was hotly contested. I would also assert that it was a direct result of a Prime Minister who sought to go after those who sought to embarrass him, to cover up his failings.

The government insists that there was no political aspect to these raids, that it was the police doing their job. We fully accept that it was the police doing their job. We make no suggestion of political partisanship by the Federal Police. They were doing their job as a direct result of a request from the government to investigate material about the NBN which had exposed many of the things being said by the Prime Minister about the NBN as not being accurate.

The problem we have is that there was no similar request resulting in a televised public raid when vital national security information was leaked. There was no similar request resulting in televised public raids when major security breaches embarrassed former members of this government about the handling of submarine construction. There was no similar request resulting in televised public raids when journalists received highly confidential cabinet documents in the effort to embarrass the Australian Labor Party about policy costings. And yet, in the middle of an election campaign, we saw, as a result of the government's actions, the unprecedented spectacle of the raids on offices of Labor parliamentarians. It does raise the question that Labor raised previously about consistency. Why is it that the government is happy to call in the police in some circumstances but not others?

I am happy to speak at length on another occasion about some of the matters that the Prime Minister was extremely embarrassed about. They include the fact that the NBN, we now know, will cost far more than Australians were told before the election. Mr Turnbull promised
that the maximum funding of the second-rate NBN would be $29.5 billion. That cost has nearly doubled. It has blown out to $54 billion. He promised Australians world-class faster broadband, yet Australia's internet speeds have actually fallen from 30th to 60th globally, I believe. So it is understandable that the Prime Minister was extraordinarily sensitive about having his failings exposed. But instead of being shamed into action and instead of fixing those problems, the government was intent on targeting those who were disclosing those failings.

Parliamentary privilege is, as I said, an extremely important principle—one that has been an aspect of our Westminster democratic tradition for some three centuries. I am pleased that this matter is being appropriately handled by the Privileges Committee. I look forward to their continued sensible conduct of this matter.

Senator IAN MACDONALD (Queensland) (15:45): As deputy chair of the Privileges Committee, I want to just indicate support for Senator Collins's statement. I make no reference to the contribution that the Leader of the Opposition in the Senate just made. She cannot help herself in trying to score political points out of everything.

This is a committee that works very well in the interests of the parliament and the Senate. I congratulate Senator Collins—as I have done privately to her and in the committee meetings—on the way she chairs this committee in quite an exemplary way. There is no politics in this committee. It is disappointing that the Leader of the Opposition in the Senate comes in and tried to make political points in talking about this otherwise very sensible, very appropriate and very tripartisan report of the committee.

This report relates to a very serious matter. It relates to matters not just of this parliament but of future parliaments. Under Senator Collins's leadership, we are trying to assess some other aspects of the whole issue, which may be useful in the future. The report deals very fairly with the discussions of the committee, which, as I say, have been very extensive discussions. We have had a lot of very good advice from the clerk assisting us, Mr Pye, who I guess will not be with us anymore after his elevation. Is that right? That is probably a shame. Also, we have had very good sound advice, as always, from the Clerk of the Senate on matters we should look at.

Some of what Senator Wong said in her contribution on background is very relevant, and it is about senators and members being able to do their duty without fear or favour. But there are other questions involved. Should parliamentarians be dealing with stolen documents? I am not for a moment suggesting that in this case the documents were stolen, but clearly that is an issue we have to look at. It is also a very interesting case, and I think Senator Collins may have mentioned this: where the same sort of set of circumstances arises in both the House of Representatives and the Senate what is the conflict of powers between the Senate and the House of Representatives? That is something that the Clerk has given only a little thought to at this stage but which she will have to give some more thought to. I do recall the Clerk's advice. They are issues which do need to be addressed. Some of the issues involved happened in this building, but some others involving a member of the Senate happened in an electorate office outside of this building, in another town. So they are all interesting questions, and the further inquiry that the Senate has agreed to do, on the suggestion of the chairman and the committee, will look at some of these issues.
I am pleased that the committee has decided at this stage not to follow the report or the conclusions of the House of Representatives committee, which I might add just as an aside, apropos of absolutely nothing, is a committee with a government majority in the House of Representatives. I only mention that to say that these are issues which are beyond the political realm; they are issues that really are for the good of parliament and of the people who serve in the parliament, to ensure that they can serve without any restrictions.

But there are some issues that I mentioned to do with stolen documents. Again, I am not suggesting that these are stolen; that is not our role. They are issues that have to be looked at. There are also a couple of other quite technical issues. Again, my purpose in speaking today is to indicate that the coalition members on the committee also support the comments made by Senator Collins and, of course, this report, to which we are all signatories.

Question agreed to.

Appropriations and Staffing Committee

Report


Ordered that the report be printed.

BUDGET

Consideration by Estimates Committees

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:52): I present additional information received by committees relating to estimates.

COMMITTEES

Senate Publications Committee

Report

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:52): On behalf of Senator Reynolds, the Chair of the Senate Publications Committee, I present the third report of the Publications Committee.

Ordered that the report be adopted.

Parliamentary Joint Committee on Human Rights

Report

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:52): On behalf of the Chair of the Parliamentary Joint Committee on Human Rights, I present the 10th report of 2016, Human Rights Scrutiny report.

Ordered that the report be printed.

Senator FAWCETT: I seek leave to have the tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Report 10 of 2016.
The committee's report examines the compatibility of recent bills and legislative instruments with Australia's human rights obligations. Eight new bills are assessed as not raising human rights concerns and the committee has also concluded its consideration of a number of matters, two of which I will speak to today.

However, before I do so, I would like to take this opportunity to speak a little about the role of the committee and its statutory mandate.

The committee is one of three parliamentary committees established or administered by the Federal Parliament specifically tasked to scrutinise legislation against specified principles. Legislative scrutiny committees undertake technical assessments of bills and legislation against scrutiny criteria or, in the case of this committee, established international human rights norms. It is a different role to other joint, House and Senate committees which focus on policy merits.

The role of committee members has been and is to ensure that committee reports are legally and technically credible, as well as consistent with past practice. However, scrutiny committee members are not and have never been bound by the contents or conclusions of scrutiny committee reports and, like all parliamentarians, are free to otherwise engage in debates over the policy merits of legislation according to the dictates of party, conscience, belief or outlook.

In performing its function the committee receives legal advice in relation to the human rights compatibility of legislation. The committee is served by an external legal adviser to the committee, Dr Aruna Sathanapally, and secretariat staff.

Clearly, parliamentary committees such as this one have an important role to play in informing parliamentarians about the human rights implications of legislation and ensuring better understanding of human rights more broadly.

Two of the concluded entries in today's report are strong examples of positive engagement, with the committee, and its mandate.

In the committee's previous consideration of the Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016, the committee sought advice from the Minister for Social Services as to the compatibility of the bill with the right to equality and non-discrimination on the basis of age relating to ceasing a mobility allowance for people aged over 65.

The information provided by the Minister indicated that there is a range of programs in place, including transitional arrangements, to assist in providing appropriate ongoing support even after the mobility allowance is discontinued under the bill. The committee therefore concluded, in light of this information, that ceasing the mobility allowance is likely to be compatible with the right to equality and non-discrimination on the basis of age.

In respect of the Australian Public Service Commissioner's Directions 2016, which provide that decisions to terminate the employment of an ongoing APS employee for breach of the Code of Conduct must be published in the Gazette, the committee sought further advice from the Commissioner in relation to the human rights compatibility of this measure with the right to privacy.

In his response, the Commissioner noted that the committee raised valid questions about whether the limitation on the right to privacy is a reasonable or proportionate measure, and has undertaken to review the publication of termination decisions in light of these concerns.

I encourage my fellow Senators and others to examine the committee's report to better inform their understanding of the committee's work.

With these comments, I commend the committee's Report 10 of 2016 to the Senate.
Finance and Public Administration References Committee

Additional Information

Senator URQUHART (Tasmania—Opposition Whip in the Senate) (15:53): On behalf of the Chair of the Senate Finance and Public Administration References Committee, I present additional comments from Senator Lambie to the report of the Finance and Public Administration References Committee on the Commonwealth funding of Indigenous Tasmanians.

Ordered that the report be printed.

Economics References Committee

Report

Senator KIM CARR (Victoria) (15:53): I present the interim report of the Economics References Committee on the future of Australia's steel industry, on behalf of Senator Ketter, the committee chair.

Ordered that the report be printed.

Senator KIM CARR: I move:

That the Senate take note of the report.

This inquiry is at a time when there is grave concern being expressed across the country about the future of Australia's steel industry, particularly the uncertainty around the future of the Arrium steelworks in Whyalla. I remain confident that, with the right policy settings, Australia's steel industry can survive and flourish.

If domestic production were to cease, our construction and infrastructure sectors, which employ more than a million people, would be vulnerable to further import delays, fluctuations in global prices and of course increased transport costs. The loss of these capabilities would have serious repercussions throughout the economy.

At a local level, the prosperity of Whyalla and the surrounding region is built on steel. The steelworks, as I think all in this chamber would acknowledge, are the town's major employer, and Arrium's workforce generates much of the demand for other local businesses and services, including health care and education. For many thousands of people in Whyalla, their prosperity depends on the success of the steelworks. Simple matters, like being able to buy or sell a house, depend on the capacity to ensure the steelworks survive.

The future of the steelworks is too precious and strategically too important to this country for governments to sit idly by and watch it disappear. In Arrium's submission to the Senate inquiry, the company said quite clearly:

The continuation of the status quo will, from Arrium’s point of view, almost certainly result in the closure of steelmaking facilities in Australia.

They put it to us:

It is simply not sustainable, given the current low margins and prices and the ongoing pressure from cheap imports, for Australian steelmakers to continue to operate as they are.

Around the world, governments are taking action to support their steel industries. We are seeing what is happening in the United Kingdom, for instance—

Senator Canavan interjecting—
Senator KIM CARR: As you know, I am only too happy to take that interjection. I have no trouble at all on the question of ensuring the maintenance of our coal industry. But the particular issue before the chair is the steel industry, Minister Canavan.

I am very concerned that the Australian government, under this Prime Minister, has shown little enthusiasm. At best, you could say the support that has been provided has been lacklustre. To date, the best proposition put forward by this government in regard to the future of the steelworks is a line of credit through the Export Finance and Insurance Corporation. We understand that an Efic loan is a line of last resort: it is very, very expensive. But it is nowhere near satisfactory for what is actually required under the circumstances. It simply does not go far enough for the sorts of policy reforms that are needed to secure the future of the industry.

As we debated just yesterday, this chamber recognises that governments have a critical role to play in ensuring we have strong and sustainable Australian industries. Frankly, that is something the neoliberals and right-wing conservatives in this place and in the media fail to recognise.

Although the outcome of the sale and recapitalisation process for Arrium is not yet determined, it is clear that a range of measures will be required to secure the future of the steelworks in Whyalla. In this case, we are talking about trade policy, implementation of changes to procurement policy, enforcement of Australian standards, use of Australian steel in infrastructure projects, access to finance, and support for the supply chain in the Australian steel industry. So I urge senators on all sides of this chamber to study this committee's report carefully. I urge the government to adopt these recommendations to help secure the future of this vital and strategically important industry for the future of this nation. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DOCUMENTS

Australian Pesticides and Veterinary Medicine Authority
Cashless Debit Card Trial Progress Report
Minamata Convention on Mercury
National Red Imported Fire Ant Eradication Program
United Nations Framework Convention on Climate Change
Order for the Production of Documents

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (16:00): I table documents relating to the orders for the production of documents concerning the Australian Pesticides and Veterinary Medicines Authority, Cashless Debit Card Trial Progress Report, Minamata Convention on Mercury, National Red Imported Fire Ant Eradication Program and the United Nations Framework Convention on Climate Change.
BILLS

Broadcasting Legislation Amendment (Media Reform) Bill 2016

First Reading

Bill received from the House of Representatives.

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (16:01): 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 CANAVAN (Queensland—Minister for Resources and Northern Australia) (16:01): I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Broadcasting Legislation Amendment (Media Reform) Bill 2016 will amend media control and ownership rules in the Broadcasting Services Act 1992 and establish new local television programming obligations for regional commercial broadcasters.

These reforms will allow media businesses to gain the scale necessary to compete in an increasingly fragmented and global media environment while ensuring that Australians continue to have access to a diversity of sources of news and information.

Much of the legislative framework governing the Australian media was developed in the analogue era when the industry was dominated by the three established media platforms: commercial television, commercial radio and associated newspapers. This structure allowed the development of predictable numerical tests as a proxy for media diversity.

The modern media environment is significantly different, and some of these tests have lost their relevance. While traditional commercial television and radio platforms are still well-loved by Australians, they are not the only sources of video, audio and news content. Australians are increasingly using new sources of news and entertainment content, including subscription and online platforms, which are not subject to regulations restricting their investment decisions and operating structure.

Australia’s domestic media businesses are placed at risk by their constrained ability to compete, and elements of the regulatory framework originally designed to protect media diversity are now impeding the capacity of local businesses to deal with the change underway in the industry and continue to provide quality professional journalism and reporting.

This Bill seeks to repeal two control and ownership rules that no longer make sense in the digital media environment: the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’. These rules are antiquated and do little to support media diversity. Their removal will allow regulated media companies to achieve greater scale in their operations and, subject to the general law, to structure their businesses to make the most of opportunities as they emerge.

The ‘75 per cent audience reach rule’ prohibits a person, either in their own right or as a director of one or more companies, from controlling commercial television broadcasting licences whose combined reach exceeds 75 per cent of the Australian population. This rule effectively prevents any major
commercial television network (Seven, Nine or Ten) from merging with or acquiring the regional television networks of Prime, WIN and Southern Cross, or vice-versa.

In the digital media environment, the '75 per cent audience reach rule' is irrelevant. Online platforms allow content to be accessed by viewers all over Australia and the world. In practical terms, the rule acts as a barrier to commercial television broadcasters competing with scale in this environment. This rule also does little to further media diversity.

- Viewers in regional areas already receive the same number of commercial television services, and the same commercial television programming, as their metropolitan counterparts due to affiliation agreements, including many news services.
- Two of the three metropolitan commercial networks now provide streamed versions of their services which are available in regional markets across Australia.
- Any merger between metropolitan and regional commercial television broadcasters – should this occur – would generally involve the replacement of one television 'voice' with another, due to the fact that the metropolitan and regional networks generally operate in separate licence areas.

The '2 out of 3 rule' is also redundant. This rule prevents mergers or changes in control that involve more than two of the three regulated media platforms in any commercial radio licence area. Online media is no longer viewed as something distinct from the more traditional media platforms. Audiences in Australia and overseas now discover and access news from multiple sources across a range of media platforms, including online, social media, television, radio and newspapers. It is no longer appropriate that commercial television, commercial radio and associated newspapers be restricted by this rule when unregulated platforms are free to consolidate and adapt their businesses as much as they see fit, subject to wider considerations like competition rules.

Like the '75 per cent reach rule', the '2 out of 3 rule' is also not significantly contributing to media diversity. In most of the licence areas around Australia, the '2 out of 3 rule' is not in play as these licence areas do not include operations from all three regulated platforms: commercial television, commercial radio and associated newspapers. The removal of the rule would therefore have no bearing on cross-media ownership in these markets.

In around a third of the remaining areas, further media transactions of any sort will be prohibited because they are all at or below the 'diversity floor' of a minimum of four 'voices' under the 5/4 rule, which provides that at least five independent media groups must at all times be present in metropolitan commercial radio licence areas and four such groups in regional commercial radio licence areas.

Any consolidation that may arise from the removal of the rule would therefore be limited to the metropolitan and larger regional markets, where diversity issues are unlikely to arise given the greater numbers of media outlets in operation.

Together, the repeal of the '75 per cent reach rule' and '2 out of 3 rule' will reduce regulatory burden on the media industry, allow media businesses to operate more flexibly in the market, and help ensure they can continue to provide high quality news and entertainment services to Australians.

The Government has carefully listened to stakeholders and parliamentary colleagues who have expressed their concern that television sector consolidation could lead to reductions in local programming. This Bill therefore includes a package of measures which will ensure the availability of local content in most regional areas and strengthen links between local content and the communities it is broadcast to.

Communities in regional Australia have told the Government how important it is to maintain locally relevant news and information in their area. Not only is local news and commentary valued, but local content also supports jobs and investment in regional communities where such programming is produced locally. While there are clear benefits associated with services that provide local television
content, there are also significant costs and investment outlays associated with it, and market forces alone may not ensure that local content is provided at optimal levels.

Additionally, regional commercial broadcasters are under increasing pressure from new and emerging services, and from internet streaming of metropolitan broadcasts into regional areas. In the absence of regulation, the high costs of local content production and the structural changes underway in the media more broadly will create incentives for broadcasters to achieve efficiencies, placing pressure on the continued supply of local programming at current levels.

Currently, the Broadcasting Services Act requires regional commercial television licensees in certain types of markets to provide local content — termed material of local significance in the Act — within specified areas. The framework for allocating commercial free-to-air television broadcasting licences divides Australia into various commercial television broadcasting licence areas that broadly reflect population distribution. Licence areas are then divided into local areas, however in some cases the local area is equal to the licence area.

Under the current arrangements, regional commercial television licensees in aggregated markets and Tasmania are required to provide approximately 120 points of material of local significance per week to local areas within the licence areas. Material of local significance is material that is broadcast to a local area and relates directly to either the local area or the licence area. The aggregated markets include the following licence areas: Northern New South Wales, Southern New South Wales, Regional Victoria and Regional Queensland.

Currently there are no local content obligations in non-aggregated markets which include Darwin, the major regional population centres in South Australia and Western Australia, and parts of Western New South Wales, Victoria and Queensland.

The Bill will extend and increase local content obligations for regional commercial television licensees. The new obligations will apply to regional commercial television broadcasting licences which, as a result of a change in control (called a 'trigger event'), become part of a group of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the Australian population. The additional local content obligations will commence six months after the Bill receives Royal Assent.

Under the Broadcasting Services Act, currently local programming targets are expressed as 'points' where each minute of material of local significance is worth one point, and each minute of news that relates directly to the local area is worth two points.

Where a trigger event takes place the Bill will:

- increase local programming requirements for regional commercial television licensees in aggregated markets and Tasmania that are subject to a trigger event by 30 points per week; and
- introduce new local programming requirements for regional commercial television licences in non-aggregated markets that are subject to a trigger event. These include smaller regional licence areas in Mildura and Griffith, where currently no local programming is provided and regional licence areas in Darwin, Broken Hill, Spencer Gulf, Riverland, Mt Gambier, Geraldton, Kalgoorlie and South West and Great Southern Western Australia where some local programming is provided. The Bill will require licensees to provide approximately 60 points of material of local significance per week to each local area, with a minimum of 45 points each week.
The additional local content obligations will take effect for each licensee six months after the trigger event. This will allow the licensee sufficient time to implement the necessary business and investment decisions in order to broadcast the required amount of local programming.

The additional obligations are aimed at ensuring that there is local content in nearly all regional licence areas following a change in control, including those where there is none currently. However, broadcasts to remote areas of Australia, predominantly in Western and Central Australia, will be excluded given the large geography and lack of large population centres.

Licences allocated under sections 38A and 38B of the BSA will also be excluded. These licences are allocated by the Australian Communications and Media Authority (hereinafter referred to as 'the ACMA') to existing licensees to ensure that regional audiences receive all three main television networks, where there are less than three broadcasters in the licence area. To place local programming obligations on section 38A and 38B licences would represent an unrealistic financial burden on the original 'parent' broadcaster in each regional licence area.

To maximise the relevance of local content to served markets, this Bill includes an incentive for local news to be filmed in the local area. To achieve this the Bill introduces a new three point category under the local programming points system for licences affected by a trigger event. Under the revised points system, each minute of local news programming that depicts people, places or things in the relevant local area will be allocated three points. The local programming points system will otherwise replicate the current material of local significance points system under the Broadcasting Services (Additional Television Licence Condition) Notice 2014.

The Bill will require the ACMA to make a new Local Programming Determination which would identify the local areas for the purposes of the local programming obligations. The delayed introduction of the additional local programming obligations in the Bill by six months will allow the ACMA sufficient time to make the Local Programming Determination before the commencement of the new obligations.

The Bill will require licensees to provide the ACMA with two reports detailing their compliance with the obligations from twelve months after their new obligation commences and another a year later.

In order to evaluate the extent to which the Bill achieves its objective, the ACMA will review the operation of the new local programming provisions within two years following the commencement of the additional obligations.

Prior to the commencement of schedules 1 and 2, it is the Government's expectation that prospective changes to the law should not be relevant to the ACMA's consideration of any prior approval applications made under sections 67, 61AJ and 61AMC of the Broadcasting Services Act. The Government considers that the ACMA would continue to consider applications for prior approval of temporary breaches of the control and ownership rules without reference to these proposed amendments (in other words, to consider such applications on the law as it stands at the time). This will avoid any party gaining a 'first mover advantage' in pursuing transactions that may be permitted only once schedules 1 or 2 have commenced.

A previous incarnation of the Media Reform Bill was introduced into the former Parliament in March 2016. The Senate referred the Bill to the Senate Environment and Communications Legislation Committee for inquiry and report. Public hearings were held in Canberra on 31 March 2016 and in Melbourne on 29 April 2016.

On 5 May 2016, the committee released its report which made two recommendations. Recommendation 1 was that the Government consider amending the 'trigger event' provision in schedule 3 to the Media Reform Bill. The definition of a 'trigger event' did not cover changes in control where a regional broadcaster came to be in a position to control a metropolitan broadcaster, and as a result the proposed additional local programming obligations would not apply. Recommendation 2 was that the Media Reform Bill be passed.
The Government thanks the committee for its report and agrees with the committee's recommendations. The Government has made the suggested amendment to the 'trigger event' provision in the Media Reform Bill.

The Government is committed to reforming legislation in areas where archaic regulation is holding Australian businesses back. This Bill is yet another step in removing restrictive and redundant regulation, and ensuring independent sources of news, current affairs and similar programming continue to be available to all Australians, particularly those in regional areas.

The ACTING DEPUTY PRESIDENT (Senator Back): In accordance with standing order 111, further consideration of this bill is now adjourned to 7 February 2017.

Building and Construction Industry (Improving Productivity) Bill 2013
VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016

Returned from the House of Representatives
Message received from the House of Representatives agreeing to the amendments made by the Senate to the bills.

BUSINESS
Rearrangement

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (16:02): by leave—I move:

Prior to general business being called on, the discovery of formal business, interrupted earlier today, be resumed.

Senator McGrath: I seek leave to make a very short statement.

The ACTING DEPUTY PRESIDENT: Leave is granted for one minute.

Senator McGrath: I just wanted to make sure that the Senate is aware that this has come about because of discussions through the parties in order to facilitate the business as such. I think all parties thank each other for making it happen.

The ACTING DEPUTY PRESIDENT: Are you seeking clarification, Senator Pratt?

Senator Pratt: What is the intention of the motion that was just moved?

The ACTING DEPUTY PRESIDENT: Minister, can you further explain the intention?

Senator McGrath: The intention is to enable the remaining formal motions to be dealt with.

The ACTING DEPUTY PRESIDENT: Thank you.

Question agreed to.

MOTIONS
Disability Support Pension

Senator Siewert (Western Australia—Australian Greens Whip) (16:05): I move:

That the Senate—
(a) notes that people with disability face many barriers to finding and maintaining secure work and are poorly represented in the workforce;

(b) acknowledges that the report of the Australian Council of Social Service, *Poverty in Australia 2016*, reported 510900 adults with a disability were living below the poverty line in 2013-14, not including people with disability with core activity limitation, and that, in 2014, 36.2 per cent of Disability Support Pension recipients were living below the poverty line; and

(c) calls on the Government to abandon its attacks on supports for people with disability, including moving people with disability off the Disability Support Pension and making access to the Mobility Allowance tougher.

**Senator McGrath:** I seek leave to make a short statement.

**The Acting Deputy President:** Leave is granted for one minute

**Senator McGrath** (Queensland—Assistant Minister to the Prime Minister) (16:05): The government rejects the assertions made in this motion. The government is providing significant support to people with disabilities through disability employment services and ensuring that the NDIS is fully funded. The coalition government’s policy is to ensure that only people in genuine need can access the disability support pension. Those assessed with the capacity to work are provided with significant support to find employment. It is well noted that where people have the capacity to work, gainful and meaningful employment leads to significantly better life outcomes than a life on welfare.

**The President:** The question is that notice of motion No. 164 moved by Senator Siewert be agreed to.

The Senate divided. [16:10]

(The President—Senator Parry)

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Leave granted.

Senator WILLIAMS: I, and on behalf of Senators O'Sullivan and McKenzie, move the motion as amended:

That the Senate—

(a) supports the 53 000 workers directly employed by the coal industry;
(b) recognises that the forced closure of coal-fired power stations would increase the living expenses of Australian families through increased electricity prices;
(c) acknowledges that the forced closure of coal-fired power stations would jeopardise Australia’s energy security and put thousands of jobs at risk in our manufacturing sector, which relies on access to cheap and affordable power;
(d) acknowledges that coal is an affordable, abundant and increasingly clean domestic energy resource that is vital to providing reliable low-cost electricity, and that it will continue to be integral to Australia; and
(e) supports technology neutral policies that deliver emission reduction targets.

Senator WATERS (Queensland—Co-Deputy Leader of the Australian Greens) (16:13): I, too, seek leave to move an amendment to general business notice of motion No. 154.

Leave granted.

Senator WATERS: I move:

That the Senate—

Omit paragraphs (b) to (e), substitute the following:

(b) calls on the Government to develop a just transition plan to support affected workers and communities as Australia replaces coal-fired power with renewables.

An honourable senator: I have a copy of the substantial motion but not the amended one.
The PRESIDENT: It is a very basic amendment. It is omit paragraphs (b) to (e), substituting the following, and that is (b) ‘calls on the government to develop a just transition plan to support affected workers and communities as Australia replaces coal-fired power with renewables’. The question now is that the amendment moved by Senator Waters be agreed to.

An honourable senator interjecting—

The PRESIDENT: I will just clarify that.

Senator Dastyari interjecting—

The PRESIDENT: Senator Dastyari, let me clarify. There is a new paragraph (b). The original paragraphs (b) to (e) are to be substituted with a single paragraph (b), which I read out.

An honourable senator: I am still seeking a copy of the amendment.

The PRESIDENT: I understand it has been circulated. It is deleting paragraphs (b) to (e) and putting in a new paragraph (b). The question is that the amendment moved to the motion by Senator Waters, in the terms circulated in the chamber, be agreed to.

A division having been called and the bells having been rung—

The PRESIDENT: Even though I have locked the doors, I am not going to put the question just for a moment, until there is some clarity. Can I just clarify with the Leader of the Opposition—what if we defer this motion until further down the list? The doors can be unlocked and we will not proceed with the division. We have a number of motions still to deal with.

Debate interrupted.

Budget

Senator Di NATALE (Victoria—Leader of the Australian Greens) (16:18): I move:

That the Senate—

(a) notes the many pieces of legislation arising from the 2014-15 and 2015-16 Budgets that would create greater income inequality in Australia that have been previously rejected, and will not secure passage through this Senate;

(b) requests the Government to withdraw these previously rejected Budget measures from the Mid-Year Economic and Fiscal Outlook so as to more accurately represent the true fiscal position of the Commonwealth; and

(c) instructs the Government that, in its preparations for the 2017-18 Budget, this Senate resolves that, for the duration of the 45th Parliament, any proposed measures which further attack the most vulnerable Australians, increase their disadvantage or social exclusion, or disproportionately benefit the highest income Australians, will not pass into law.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (16:18): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator McGrath: Since the commencement of the 45th Parliament, the coalition government has passed, with the support of the Senate, more than $20 billion of budget savings, including measures from the 2014 and 2015-16 budgets. The government continues to work constructively with the parliament to pass its agenda, and notes inequality will worsen for future generations of hardworking Australians if the budget is not repaired. The
government's economic approach is focused on targeting help to those who need it most and enabling hardworking Australians to benefit from their own efforts.

**The PRESIDENT:** The question is that motion No. 155, moved by the Leader of the Greens, Senator Di Natale, be agreed to.

The Senate divided. [16:20]

(The President—Senator Parry)

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<tr>
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**AYES**

- Bilyk, CL (teller)
- Carr, KJ
- Collins, JMA
- Di Natale, R
- Farrell, D
- Hanson-Young, SC
- Ketter, CR
- Lambie, J
- Marshall, GM
- McCarthy, M
- Moore, CM
- Pratt, LC
- Rice, J
- Sterle, G
- Watt, M
- Cameron, DN
- Chisholm, A
- Dastyari, S
- Dodson, P
- Gallacher, AM
- Hinch, D
- Kitching, K
- Lines, S
- McAlister, J
- McKim, NJ
- O'Neill, DM
- Rhiannon, L
- Siewert, R
- Waters, LJ
- Whish-Wilson, PS

**NOES**

- Back, CJ
- Burston, B
- Canavan, MJ
- Culleton, RN
- Fawcett, DJ
- Fifield, MP
- Hume, J
- Macdonald, ID
- McKenzie, B
- Parry, S
- Reynolds, L
- Ruston, A
- Scullion, NG
- Sinodinos, A
- Williams, JR
- Birmingham, SJ
- Bushby, DC
- Cash, MC
- Duniam, J
- Fierravanti-Wells, C
- Hanson, P
- Leyonhjelm, DE
- McGrath, J
- Nash, F
- Paterson, J
- Roberts, M
- Ryan, SM
- Seselja, Z
- Smith, D (teller)

Question agreed to.

**Hobart Light Rail**

**Senator McKIM** (Tasmania) (16:23): I move:

That the Senate—
(a) notes that a recent poll in *The Mercury* newspaper found strong public support for light rail in Hobart;

(b) notes the significant benefits of light rail in Hobart, including:
   (i) the reduction in greenhouse gas and particulate emissions,
   (ii) the reduction in traffic congestion and associated improvements in amenity and productivity,
   (iii) the increase in value of property along and around the rail corridor,
   (iv) the opportunities for business growth along and around the rail corridor,
   (v) incentivising infill developments to limit urban sprawl, and
   (vi) the benefit to Tasmania’s tourism industry of a direct rail link between Hobart and MONA; and

(c) supports light rail for Hobart.

**Senator McGrath** (Queensland—Assistant Minister to the Prime Minister) (16:24): I seek leave to make a short statement.

**The President:** Leave is granted for one minute.

**Senator McGrath:** The commitment of the Tasmanian government, at the recommendation of Infrastructure Tasmania, to preserve the existing rail corridor from Macquarie Point to Granton is a sound decision. The project is at a very early stage and Infrastructure Tasmania has recommended further investigation to establish project feasibility, as there is insufficient information at this time to support an investment commitment. The project is not currently a priority for the Tasmanian government, who advise that priority should be given to other projects which address more immediate concerns. The Australian government will continue to engage with the Tasmanian government on infrastructure priorities within the state.

Question agreed to.

**Coal Industry**

Consideration resumed of the motion:

That the Senate—

(a) supports the 53 000 workers directly employed by the coal industry;

(b) recognises that the forced closure of coal-fired power stations would increase the living expenses of Australian families through increased electricity prices;

(c) acknowledges that the forced closure of coal-fired power stations would jeopardise Australia’s energy security and put thousands of jobs at risk in our manufacturing sector, which relies on access to cheap and affordable power;

(d) acknowledges that coal is an affordable, abundant and increasingly clean domestic energy resource that is vital to providing reliable low-cost electricity, and that it will continue to be integral to Australia; and

(e) supports technology neutral policies that deliver emission reduction targets.

to which the following amendment was moved:

Omit paragraphs (b) to (e), substitute:

(b) calls on the Government to develop a just transition plan to support affected workers and communities as Australia replaces coal-fired power with renewables.
The PRESIDENT (16:25): Senator Williams, under No. 154 we got to the stage where a division was called. Is everyone happy if I move back to that point where the division was called? Is everyone clear?

Senator Ian Macdonald: I seek leave of the Senate to add my name to Senator Williams's very good motion—also, perhaps, could I add the name of Premier Annastacia Palaszczuk, who agrees with this motion?

The PRESIDENT: You cannot—that is not in order. But we can certainly add your name. Is the Senate happy for me to put the question on 154, as we tried to do earlier? It is the amendment moved by Senator Waters to Senator Williams's motion. Is everyone clear what we are voting on?

Senator Wong (South Australia—Leader of the Opposition in the Senate) (16:26): by leave—Mr President, can I indicate my gratitude to you and the chamber for your forbearance on the previous occasion as I sought to get some instructions. Can I indicate this on behalf of the opposition: I understand that the amendment has not been provided. I appreciate Senator Waters would say it has been circulated in the chamber, but it certainly was not brought to the attention of the relevant shadow ministers. In those circumstances we are not in a position to support it, notwithstanding the fact that Labor has indicated our support for a just transition in the coal industry. Obviously these are matters of some complexity and we would, in ordinary circumstances, ensure that the spokespeople on behalf of the Labor Party had the opportunity to consider this before the Labor Party voted.

I did want to put that on the record to indicate why we are not in a position as yet to support the amendment. It may well be that we will get voting instructions accordingly. I would ask that senators consider in those circumstances whether it is entirely necessary for such a motion to be voted on this side of Christmas and whether it could simply be deferred until the next sitting day.

Senator Jacinta Collins (Victoria) (16:27): Mr President—

The PRESIDENT: Is this on the same matter? Normally we allow one senator per party to speak on these matters. Again, if you get leave, you can speak

Senator Jacinta Collins: I seek leave to speak very briefly.

The PRESIDENT: Leave is granted for one minute.

Senator Williams: On a point of clarification, Mr President: do we stop discussion of motions at 4:30?

The PRESIDENT: No, we do not. I will clarify to the chamber that we go through until we complete formal business. Senator Collins, you have one minute in which to make your remarks.

Senator Jacinta Collins: Thank you, Mr President, and I thank you for your cooperation in this matter. One additional point I would like to highlight, which I myself experienced and it led to some confusion in relation to a motion to refer a matter to the privileges committee, is that I think we may need to review the chamber circulation procedures. It seems as if, when senators understand their motions have been circulated, that they are not necessarily reaching the appropriate people.
The PRESIDENT: Thank you, Senator Collins. I will take that as a reference probably to the Procedure Committee, and we might look at that at the next Procedure Committee meeting. The new Clerk will look at it as the new secretary of the Procedure Committee—we are loading up his plate already. The question is that the amendment moved by Senator Waters to Senator Williams's notice of motion No. 154 be agreed to.

Question negatived.

The PRESIDENT: The question is that notice of motion No. 154 moved by Senator Williams be agreed to.

The Senate Divided, [16:30]

(The President—Senator Parry)

Ayes .................29
Noes .................30
Majority.............1

AYES
Back, CJ
Burston, B
Canavan, MJ
Culleton, RN
Fawcett, DJ
Fifield, MP
Hume, J
Macdonald, ID
McKenzie, B
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Williams, JR

Birmingham, SJ
Bushby, DC
Cash, MC
Duniam, J
Fierravanti-Wells, C
Hanson, P
Hanson, DE
McGrath, J
Nash, F
Paterson, J
Roberts, M
Ryan, SM
Seselja, Z
Smith, D (teller)

NOES
Bilyk, CL (teller)
Chisholm, A
Dastyari, S
Dodson, P
Gallacher, AM
Hinch, D
Kitching, K
Lines, S
McAllister, J
McKim, NJ
O’Neill, DM
Rhiannon, L
Siewert, R
Waters, LJ
Whish-Wilson, PS

Cameron, DN
Collins, JMA
Di Natale, R
Farrell, D
Hanson-Young, SC
Ketter, CR
Lambie, J
Marshall, GM
McCarthy, M
Moore, CM
Polley, H
Rice, J
Sterle, G
Watt, M
Wong, P

Question negatived.
Culleton, Senator Rodney

Senator CULLETON (Western Australia) (16:33): by leave—I amend general business notice of motion No. 163 standing in my name and in the name of Senator Lambie and move the motion as amended:

That—

(a) the Senate notes that:

(i) on 25 November 2016, solicitors on behalf of the Commonwealth Attorney-General filed a Statement of Agreed Facts in the High Court sitting as the Court of Disputed Returns in the matter of Re Rodney Culleton,

(ii) paragraph 1 of the Statement of Agreed Facts includes the following statement: the Magistrate in convicting Senator Culleton as an absent offender was precluded by section 25 of the Crimes (Sentencing Procedure) Act 1999 (NSW) from making an order for a sentence of imprisonment, and

(iii) the facts set out above and agreed by solicitors acting on behalf of the Commonwealth Attorney-General were not before the Senate on Monday 7 November 2016 when it considered the motion moved by Senator Brandis to refer the matter to the High Court under section 378 of the Commonwealth Electoral Act 1908;

(b) the Senate calls on the Attorney-General (Senator Brandis) to attend the chamber and clarify this matter; and

I also seek leave to table documents relating to this motion.

Leave granted.

The PRESIDENT: The question is that the motion moved by Senator Culleton, No. 163, be agreed to.

The Senate divided. [16:36]

(The President—Senator Parry)

Ayes .................... 35
Noes .................... 28
Majority ............... 7

AYES

Bilyk, CL (teller) Cameron, DN
Chisholm, A Collins, JMA
Culleton, RN Dastyari, S
Di Natale, R Dodson, P
Farrell, D Gallagher, AM
Gallagher, KR Griff, S
Hanson-Young, SC Hinch, D
Kakoschke-Moore, S Ketter, CR
Kitching, K Lambie, J
Lines, S McAllister, J
McCarthy, M McKim, NJ
Moore, CM O’Neill, DM
Polley, H Pratt, LC
Rhiannon, L Rice, J
Siewert, R Sterle, G
Waters, LJ Watt, M
Whish-Wilson, PS Wong, P
Xenophon, N

CHAMBER
NOES

Back, CJ
Burston, B
Canavan, MJ
Duniam, J
Ferravanti-Wells, C
Hanson, P
Leyonhjelm, DE
McGrath, J
Nash, F
Paterson, J
Roberts, M
Ryan, SM
Seselja, Z
Smith, D (teller)

Birmingham, SJ
Bushby, DC
Cash, MC
Fawcett, DJ
Fifield, MP
Hume, J
Macdonald, ID
McKenzie, B
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Williams, JR

Question agreed to.

Freedom of Speech

Asylum Seekers

Senator McKIM (Tasmania) (16:39): I move:
That the Senate—
(a) supports the right to peaceful protest in Australia;
(b) congratulates and thanks the protestors who, on 30 November 2016, expressed their views in the gallery of the House of Representatives, otherwise known as the People's House; and
(c) calls on the Government to close the immigration camps on Manus Island and Nauru.


The PRESIDENT: Leave is granted for one minute.

Senator HINCH: The reason I oppose this motion about these demonstrators is that I go back as far as the Builders Labourers Federation, when Norm Gallagher and crowd came into my radio studio and threatened me. They stopped at the door—right at the door of the studio—because they realised that, under some World War II law, if they walked into my studio then they would break the law and be in real trouble. They stayed outside; I went out and talked to them. The same thing should apply here in the people's parliament. They should not be allowed to get in there. If they do get in there, there should be laws—they are probably in existence now—where than can be treated harshly, punished for it.

That is not what this parliament is meant to be about. If you were at the White House or in the capital of the United States of America and you tried to do this, you would be arrested, you would be charged and you would be in jail for 10 years. I support peaceful protests; I support them being out there. I have been down there with the protesters against organ transplants—the Falun Gong—and that is fine. But in this case here, they are in our parliament and they are wrong. (Time expired)

Senator ROBERTS (Queensland) (16:40): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.
Senator ROBERTS: We oppose Senator McKim's motion because the protesters he dares to congratulate from WACA are violent, control orientated, left-wing extremists. They flirt with being outlaws. Their words and actions of are violet. They costed taxpayers large sums of money with the interruption to parliament and damage to property. This group is so violent that they have caused the cancellation of a peaceful gathering of the Jewish community this coming weekend. Security agencies informed us that the same group who interrupted parliament yesterday—WACA—were planning on being violent and extreme in their behaviour towards a Jewish community gathering in Melbourne.

I have serious questions about whether Senator McKim assisted the protesters to destroy property and disrupt parliament, as members of my staff witnessed him cavorting with these same protesters yesterday morning. This mob, cuddled by Senator McKim, pose a risk to the dignity and safety of the Jewish community who were going to attend an event this Sunday. That the Greens would saddle up with these extremists is an indication of how much contempt the Greens have for our democracy.

Senator McKIM (Tasmania) (16:41): I seek the leave of the chamber to make a short statement.

Honourable senators interjecting—

The PRESIDENT: Leave is granted for one minute.

Senator McKIM: Firstly, in response to Senator Hinch, I understand that the protesters were in fact in the public gallery and not on the floor of the House, which is a place where every Australian citizen should be encouraged to go to watch the House of Representatives and, for that matter, the Senate in action. The second point to make is that these were peaceful and nonviolent protests. One of the problems with politics these days is that the people who are elected to parliaments to represent citizens are too divorced and too inside the bubble in this place. What happened yesterday was that the bubble was burst, and the Greens think that is a good thing.

Finally, in response to the umpteenth conspiracy theory that Mr Roberts has put before this Senate chamber, the protesters received no assistance from me. I did not cavort or anything else with them on the morning of the protest. I had no association with them whatsoever before the protest. I did go down afterwards to congratulate them with Senator Di Natale, which I am really proud of.

The PRESIDENT: I will just apologise to those senators who actually denied formality for Senator McKim. Because of the noise in the chamber, I did not understand that you were seeking my attention. I thought you actually interjecting.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (16:42): I seek leave to make a statement for 10 seconds.

Leave not granted.
Question negatived.

West Papua

Senator DI NATALE (Victoria—Leader of the Australian Greens) (16:43): I ask that general business notice of motion 158, standing in my name for today, relating to West Papua, be taken as a formal motion.
Senator McGrath: My understanding is that we are going to deny formality, but Senator Di Natale wants to seek leave to then speak for a minute.

The PRESIDENT: Formality is denied.

Senator DI NATALE: Rather than suspending standing orders, I seek leave to make a one minute statement.

The PRESIDENT: Leave is granted for one minute.

Senator DI NATALE: It is disappointing that once again the government is denying the Greens the opportunity to put forward a motion on foreign policy. We think this is an appropriate form in which to do it. Today is the day of the national flag of West Papua. It is a day that is celebrated in West Papua, where there is a community whose human rights are being oppressed, where we are seeing political prisoners imprisoned at an alarming rate and where reports from Amnesty International indicate that the situation is getting worse rather than better. What the Greens are urging for here is to open up West Papua to human rights monitors, to deal with the issue of political prisoners and for Australia to show some leadership on the international stage. We urge that issues like this are allowed to be put forward through motions so that we do not have to endure more suspensions of standing orders.

Children in Care

Senator HINCH (Victoria) (16:46): I move:

That the Senate notes that—

(a) seventeen children in the care of the Department of Health and Human Services in Victoria died between July and September this year;

(b) six children who were Department of Health and Human Services clients in Victoria were killed by 'non-accidental trauma' last year; and

(c) outsourcing the care and welfare of our most vulnerable children should be reviewed.

In my first speech back in September, I talked about a dream project which I fervently believe would improve the quality of life for thousands of Australian children. It would improve their quality of life, their health, their education and their physical safety and help protect them from sexual predators both at home and in government institutions. It was part of a campaign pledge by the Justice Party to push for a Senate inquiry, if not a royal commission, into the Family Court and all child welfare agencies. In this house, I will also work towards building the Australian child protection agency, the ACPA, which would eventually absorb all state and territory child welfare agencies.

I said at the time:

I know we are a commonwealth of states, but it is madness, it is Noddyland, when a father can break a little boy's arm in Sydney and change states and kill that child in Adelaide, because medical records in New South Wales were not available in South Australia. That is mad.

I zero in on state and territory child welfare agencies because children are being put into foster care who should not be, children are being taken out of foster care who should not be and children are being returned to abusive parents who should not be. When you hear about veteran foster carers who will no longer take children over the age of three into their homes because 'by then they are not saveable', you know the system stinks.
The institutions we have set up to supposedly protect, shelter, feed and clothe state wards are nests of scandal and abuse. Girls, barely into their teens, are ignoring curfews, roaming the streets, being bribed with alcohol and drugs and getting pregnant—and they are 12 and 13 years old. This is nothing new, but I believe it is getting worse. I say it is nothing new because, more than 20 years ago on 3AW in Melbourne, I was exposing cases of young girls at Berry Street, petrol sniffing and trading sexual favours for cigarettes and booze.

Most of the cases I will detail tonight concern Victoria, but my office has heaps of emails and information from New South Wales and Queensland. Sadly, I believe that South Australia is probably the worst state in this country for abused and neglected children—especially when their attackers have been like foxes in the chicken coop, employees of the very agency that was supposed to protect them. And I am not forgetting the welter of child abuse cases in the Indigenous community in Queensland, the Northern Territory and WA.

Some of the horrors and failures of our current system were detailed in that Four Corners expose last month, highlighting yet again the failures at state and federal level. In Victoria, we have personally discovered that the Minister for Families and Children has been tested and found wanting. If frantic parents have been given the same mushroom treatment and brush-offs that my staff have by the responsible minister, Jenny Mikakos, and her staff, then I can understand their frustration and their fear for the safety of their children. I have names, ages and addresses of all the kids I am going to talk about, but I will not use them in order to protect those children. I will fudge some of the details to hide that identification.

Earlier this month, The Herald Sun had some statistics that make a mockery of the term 'the lucky country'. They would be more understandable, though no more acceptable, in the most remote recesses of a Third World country. The Herald Sun reported that 17 children in the care of DHHS—the Department of Health and Human Services—died between July and September this year. Seventeen children died in three months! A total of 45 children 'known to the department', as they say, died in the year to June 30. One-in-six children found to be abused or neglected last year had previously been identified as 'at risk' by child protection in the same year. Their previous cases had been closed before the new abuse was found—nothing to see here, just move along. Six children, who were DHHS clients, were killed by 'non-accidental trauma' last year. This is an appalling state of affairs.

I will give you some detailed examples. How about the boy who has lived safely with his grandmother since he was three months old? He has medical problems and learning difficulties because he was malnourished and neglected after birth. His mother was, and still is, an ice addict, and she is facing criminal charges for burglary. Her partner is also an ice addict. He also has guns and hunting knives in the house—a great family environment for a little boy. The grandmother got temporary custody of the child but has now been ordered to return him to his drug-addict mother. That grandmother and child are now in hiding.

If not given back to the mother, I guess that boy could be placed in government authorised residential care—what the kids call a 'resi'. These are run by private management companies, and I will get to that issue later. These units are supposed to keep vulnerable children safe. They are placed into privately-funded homes. Typically, each house accommodates four-to-five children, with only one staff member to oversee their needs. One former carer told us that absconding, drug and alcohol problems, theft and damage are a daily occurrence. It has been reported that some young female occupants are targeted by men on dating websites.
Subsequently, those men turn up at the homes, take the teenagers away and, in some cases, do not return for days. Within less than a year, two girls have become pregnant.

I mentioned the *Four Corners* report, the result of a three-month investigation. Look at some of their cases. Renee is 17 years old and has been a ward of the state since she was a five-month-old baby. In that time she has lived in several homes and remained in one foster home until she was 12. This care arrangement broke down and she went into a resi house. Renee said that in this place police would be called once or twice a week. There were assaults among the children, sexual assaults, property damage and intimidation. While in resi care, Renée reported frequent screaming, which attracted frequent visits from the cops. She had anger outbursts too in that environment. She said the kids got little to no encouragement to go to school. There was no sex education, which resulted in numerous teenage pregnancies.

Renee turns 18 in February. She says she looks forward to moving into ‘a home, instead of living in a house’. But what will really happen? What I worry about with Renee, who at 18 will leave residential care, is: where does she go? What does she do? She has no money, no education, no licence, not even a birth certificate. She wants a home, she wants love and she wants a future. Where will she find that?

Natalie Ottini was a youth care worker who Renee trusted. She worked for a group called Life Without Barriers. She is also from a broken home and has been on workers comp for 18 months due to what she experienced in a Life Without Barriers home. When first employed by that organisation, she thought it would be the best job in the world. She pictured herself counselling, educating, nurturing and inspiring these children. Instead, when entering a Life Without Barriers home, Natalie said, 'I thought I was living in a bubble.' She could not believe that kids could live like this in Australia. Natalie said that children with high needs are flung between 12 and 13 places and then ultimately end up in a resi house. They are told, 'You are here because no-one wants you.' She said men would turn up at the resi homes and girls would disappear, sometimes for days.

Then there is Amy. Amy has been a ward of the state since she was four years old. She was moved around many homes before being placed in two resi houses. She said there were no rules and there was no curfew, and the majority of kids were not looked after. She claimed they were provided with very little clothing. She also got pregnant. Karah Anderson, a former Life Without Barriers youth worker, reported being in ambulances and in hospitals and attending to kids who had attempted suicide. It was Karah who got a call in the middle of the night from the hospital that Amy had been admitted to when expecting to give birth. Karah sat with her for three days until her baby was born. Horribly, soon after the birth, the baby died. Karah says she will never work in a resi care facility again.

I may sound like I am drawing a long bow here, but this is sounding to me a lot like the refugees on Manus and in Nauru. There has been protracted debate over the morality and safety of the government contracting private companies like Transfield and Serco to run those security systems. There is talk of doing the same with our prisons. But should the care, protection and welfare of vulnerable Australian children be privatised, for God's sake, given to companies like Safe Pathways, Life Without Barriers and Premier Youthworks? These are multi-million dollar operations, and there is evidence that very little of that money is being used to buy food and clothes for these wretched kids.
Janine Holbrow, a former manager at Safe Pathways, claims that children in their housing are not given access to counselling programs and that the taxpayers' money paid to Safe Pathways rarely filters down to the children. Janine resigned in July 2016 and reported that the government was paying the company $100,000 per child per year, and that the organisation, as a whole, turned over $70 million in one year.

At one of the resi homes in Tasmania, they were only given a food budget of $100 per week, and clothes for the children were hardly ever purchased. One child only had one set of underwear. It was also reported by one former worker that the government used these organisations to offload children they could not place anywhere else, and simply said: 'Give us a price and we'll double it.'

*Four Corners* reported that Safe Pathways claimed on its website that it required more than $9,000 per week per child to pay for rent, food, utilities et cetera. It also says that it is a 'safe environment for children to recover from past trauma'. Former workers tell me that staff were never trained. A former army medic and aged-care worker, Chris Dawkins, said he was never trained in youth work, as he had been promised. He said he was never briefed about the young boy he was to care for. The kid was five years old, and a care plan was meant to be in place.

No care plan ever eventuated. Chris said this boy was evicted from his accommodation, and at one point he personally had to pay for the child's accommodation out of his own pocket. He stated that no counselling, clothing or clinicians were ever provided. Chris resigned, stating, 'What an effing joke.' He saw that same child recently, and, thankfully, he is now in good care. The boy simply said to him: 'Guess what, bro? I've got food.'

These are the most vulnerable kids in Australia we are talking about. Another group charged with housing these children is Premier Youthworks. A youth worker there for five years said that in 2015 the government gave them $550 to $1,700 per day per child, and that in that year they were given a total of $20 million in funding. He reported that the housing was covered in graffiti and human excrement, and that there were holes in the walls and there was damage everywhere. The money never filtered down to care for the children. It was also reported that the government had paid up to $1 million per year per child for those who were deemed to be children with no hope and who no-one else would care for. Those children received little care, no or little education, limited food and not much clothing.

Last year, former Victorian children's commissioner Bernie Geary released a scathing report in relation to resi homes. He concluded that these homes were being used to house the most traumatised and violated children, and that resi was the most unsuitable housing and care for them. He reported that a 14-year-old resi client had been stranded at a railway station and called the home for help, for someone to pick him up. They refused his call and he was subsequently raped.

The Australian public was outraged when the major banks and telecommunications companies outsourced many of their services offshore to India and the Philippines. This outrage led to many companies, including the big four banks, bringing these services back to Australia. Therefore, how can the government and the people of Australia not be doubly outraged that our children have been outsourced to businesses which clearly have scant interest in the care of them, and that are only interested in what money they can make from this misery? If state governments think outsourcing the care and welfare of our most vulnerable children is somehow acceptable, if they think that taking them from families to
provide a better life which leaves them uneducated, unloved and uncared for is somehow okay, I believe it is time the federal government stepped in.

Mothers, fathers, grandparents, aunts and uncles desperately want to be assessed as carers, but they are increasingly being ignored. In the months since I was elected, and with people knowing that I want an inquiry into child welfare agency abuses, my staff have been dealing with family members in relation to their massive concerns in dealing with DHHS. They have met with constituents desperately seeking our assistance, as the DHHS child protection division had either refused to investigate their situation of abuse against their children from another family member or a partner et cetera, or had refused to allow a child to stay with a trusting relative. Instead, they had placed them into foster care or back with the alleged abuser.

These people have also contacted the Minister for Families and Children, Jenny Mikakos, other MPs and senators—all without reply, or they have been dissatisfied with the outcome, as many cases are dropped before they are completed. Out of all the investigations my staff have conducted, only one has received a positive response and outcome from the minister's office and DHHS. That was the case of a baby who was allowed to stay with his grandmother—for now, anyway. We are consistently being stonewalled by the minister's office. Each time my staff send an email to the minister we receive the same standard response, or nonresponse, under the guise of 'child protection laws'.

We have been lied to. Worried parents have been lied to. I will give you an example but delete the father's name, involving a little boy and claims that he has now been physically and sexually abused by his mother's new partner. The case was referred to police and statements were taken, but the department has now closed the file. I received a letter from the minister saying that the father had been contacted 'on numerous occasions to discuss his concerns', yet the father told us this week that he has not heard from them once. Is it any wonder that I want a federal child protection agency and that I want it pronto? I fervently believe that this current system shames us all.

Senator DASTYARI (New South Wales) (17:02): I want to touch on some of the points that Senator Hinch has made in this motion. I think it is a very important and telling time for us to be debating this, as we lead into the Christmas and holiday period at the end of the year. Some of us are fortunate to have the opportunity to spend this time with the people we love and the people that we care about—members of the Senate aside—and it is an opportunity for us to reflect on what Senator Hinch has been talking about.

I note that this issue is something Senator Hinch has been very passionate about for many, many years; he has been speaking on this for many years, both in his previous incarnation in his media career and more recently in the Australian Senate. It a system of laws that, in some way, I believe was well intentioned—to protect people from being exploited, to protect people from being taken advantage of—but the system itself has so fundamentally failed so many people that they are the ones who are being left behind. You have a system where good foster parents, who want to do the right thing, who want to support children, who want to do their bit to help society, feel like the system has let them down. You have children, who, in many cases, are helpless, who end up falling into a system that takes advantage of them, that does not properly care for them. It puts them on this kind of rotation of going back to parents, who, frankly, in many circumstances, should perhaps not be having them—and this cycle
continues. Then you end up having a criminal justice system that ends up taking up a lot of the slack later in time.

Senator Hinch has given a few examples, and what worries me is that some of the examples he referred to were people who had reached their teens or adolescence. Again, I am not so expert in this area as Senator Hinch is, but all the data demonstrates that, unfortunately, by the time you get to that stage, in many cases, it is too late. I hope the people in the individual cases Senator Hinch referred to will be able to properly deal with the issues they are going to be facing as a result of this.

As Senator Hinch touched on, there are some things that need to be above politics, and there are some things that need to be above party politics. The reality has been that, firstly, the problems and the heartache that this creates affects a group of people who are often unseen and forgotten; and, secondly, because it does not happen in the immediate short term, it has been ignored in this place for far too long. The parliament has ignored these matters for far too long. In relation to the issues that Senator Hinch touched on, the real problems are seen in five, 10, 15, 20 years, whereas, unfortunately—and, again, this is not about party politics—decisions are made too often in this place on a two-, three- or four-year cycle. We make short-term decisions about where to spend money or allocate resources rather than making long-term decisions in the interests of a child over the lifetime of a child.

Senator Hinch, what you are saying about the failure of care provided to these children, which is really the abuse of children, and a system that has abused children, is something that is worthy of exploration and worthy of this Senate's time in the new year. I know that Senator Hinch is looking at using some of the committee processes and inquiries and the power that we have as a Senate to do this. But I would hate to see the Senate, because of the overlap that naturally exists between state and federal jurisdictions over so many different areas, turn around and say: 'It is not our problem. It is not our concern. It is not our issue. It is someone else's problem. This is a state matter, even though there's some federal overlap.' I think that that would be doing the wrong thing by the children who have been exploited and have been taken advantage of. If you cannot have a system where these kids can feel like they can trust, if you do not have a system that is actually giving them the guidance and direction that they need, then really there is not going to be any hope for them.

We are all very privileged people who sit in this chamber. We all have different backgrounds, but, by virtue of being here, we have privilege and we have voices that a lot of these children do not have and will never have. I am fortunate enough to have a five-year-old and a three-year-old daughter. When we get to this Christmas period, we can look at the opportunity and luck that they will have in their lives. Compare that to some of the stories that Senator Hinch was referring to and you cannot help but feel: how can you have in a country that is as wealthy and as successful as ours such a disconnect between what our children are fortunate enough to have and what another group of children are unable to have?

What Senator Hinch is saying is: there are sensible, practical measures that we can take as a government to actually address some of these issues. I think sometimes we get very frustrated in this place when we look at the inequities and inequalities. Some of these things are so big that the frustration and natural tendency for us in this chamber is to turn around and go: 'Well, we can't do anything about that. It's far too big. It's far too hard.' I think what Senator Hinch is saying is: let's go back to the root cause of what is creating these problems.
And where do you start? You start with what is in the interests of the child and then start creating a system around that.

Again, I do not believe that what is happening within the system at the moment is that there are people with the evil intention to do the wrong thing by children. I think what has happened is that, firstly, it has been ignored; secondly, it has probably been underfunded—again, I would like to see some data but I suspect it has been underfunded; and, thirdly, it has lost its way. So good, well-meaning people in most cases are giving up on the system.

Senator Hinch, I have friends who are in a situation to which you referred to earlier where, at a New South Wales level, their frustration with the system is so great that they have actually given up looking after children. These are the kinds of people who I believe we would want in the system. These are people who, unfortunately, are unable to have children of their own and they decided that they wanted to help, provide and be foster parents. But they felt so frustrated by the system that they got out. Unfortunately, you have this reverse emphasis: the people you want to get out of the system are the ones who end up staying; and the people we want in the system are the ones who end up getting out, because it all becomes too hard and too difficult.

I think we need to—and I think Senator Hinch would agree with this—do a lot more than move a motion, but it is important that we have this debate and look at how we can practically reform the system and fix some of these matters. I look forward to inquiries or whatever processes Senator Hinch chooses to push this in the new year.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (17:10): I also welcome opportunity to speak on the motion moved by Senator Hinch today. It is a matter that I know something about, having been the minister responsible for a child protection system for five years or so in the ACT. I think—and I have said this a number of times—it is the hardest portfolio I have ever had to work in as a minister. I had a range of portfolios in my time in the portfolio of government service delivery.

Perhaps my comments today will be from that perspective and, whilst I acknowledge that child protection systems right around the country have failed children and young people at a time when they are most in need, there is also an incredible amount of good work that is done in this area. Often these systems have relied on non-government partners to deliver that care and support.

In my time in the portfolio—and that would have spanned from 2004 until 2009 or thereabouts—the funding that went into child protection systems not just in the ACT but right around the country, I would say, more than doubled. The staff provided to child protection certainly more than doubled. The resources going into the non-government system considerably increased. That aligned with changes to the law that introduced mandatory reporting in most systems—legislation which I wholeheartedly support. However, with mandatory reporting came a massive increase in the number of reports—I think in my time it went from something like 2,500 to 12,000 reports a year; it just increased exponentially. Every report had to be investigated, and of course they were triaged from the most serious to those that we did not believe needed immediate care—for example, a report about a baby under the age of 12 months would have to be investigated immediately. There were different
parameters around those decisions. But these are really difficult areas—not only processing the reports; visiting the families, assessing the children and making sure that you have a range of options available.

Senator Dastyari mentioned we are heading into Christmas. At Christmas—any time when there is a holiday period, school holidays, public holidays, any time of the year like that—we would see a massive increase in reports to child protection. We would have to run increased staffing over those times so, when most people are at home with their families, a lot of the staff in child protection units across the country are working. They have to, because that is when the reports come in.

Holiday times are often a very difficult time to get emergency placements for kids, because there might not be the options with foster care. A lot of the accommodation options close down. This goes to how difficult it is to make sure you have a system that can respond to not only the demand but also the severity and intensity of the care that is required for children and young people coming into care.

Children who have extra support needs through the trauma that they may have experienced in their background—through disability, through anything; there is no end to the complexities in this area—are often the most difficult to place, because they cannot be put in your standard foster care arrangement or, if they do, it might fail quickly. Then what are the options?

The non-government sector provides a huge amount of back-up for these kids. That is where you will often see the very specialised units, whether they are intensive support units or youth houses, that have high levels of staff for kids for whom there is no other placement for whatever reason. Sometimes they break down. I have certainly read the files of kids who have gone through multiple placements and, for whatever reason and through no fault of their own, those placements have failed. The system itself in that sense has failed them, but it is also incredibly difficult to dream up services and have them operational and successful for many of the children because of the backgrounds they come from.

Running over the top of that you have all the family dynamics. When you remove children and young people against the will of their parents and their families, there is a whole range of very difficult issues. There may be court involvement and other considerations. For example, every child protection system has high numbers of children who come from Aboriginal or Torres Strait Islander backgrounds and there is a whole range of sensitivities and processes. Child protection systems make efforts—certainly in the ACT—to ensure that there are kin arrangements for those kids to be placed in and, if there are not, that there are other culturally appropriate supports for the kids coming into care.

When the system fails, what do you do? The system has failed. In my time as a minister, I saw numerous reviews in almost every state and territory in the country because of some failure of the child protection system. There were often a number of reasons. Some of it was around resources. Some of it was around inadequate systems in place to ensure that the kids that needed urgent assessment were given urgent assessment. There were failures of process. There could be an inability to find appropriate placements or kids leave care of their own will and abscond.

The other issue is that states and territories have struggled at times to resolve the difference between laws as they operate across state jurisdictions. For many of these kids, if they are
moving from Queensland and coming through New South Wales and maybe stopping in the ACT or going on to Victoria, there can be a failure of legal orders in place in Queensland and not applying in other jurisdictions. There was a fair bit of work being done on that. Also, there are the most severe cases of failure where, say, a child dies. I am certainly aware of cases like that, including in the ACT. How do you respond to those? What sorts of review mechanisms do you put in place to make sure that you are assessing immediately whether there was any failure that led to the child dying and whether reform is needed. The child protection system, like a health system, which relies so much on human decision-making and at times subjective assessment and analysis of a situation, is not perfect because it relies so strongly on human decision-making.

I used to do walk-arounds in that area of the department because it was an incredibly stressful place to work, particularly around Christmas and holiday times when families are stressed and under pressure. We would see family breakdown, domestic violence and other problems occurring in the family unit and a significant number of children would come into care. I saw firsthand the work that went on in those workplaces. I am not sure it is a job that I could do, I have to say: seeing those reports coming in; making snap decisions about whether resources need to be deployed immediately; whether it is something that could wait a few hours or whether it is something that needs to be dealt with tomorrow or, indeed, in a week's time. When those decisions might not be right, how does that affect the workforce? They particularly feel it when there are high-profile cases and there are questions, quite rightly. I am not making any point here that people should not be raising questions and making sure that the publicly funded child protection system is robust, strong, open and transparent, and open to review, but I am saying that this is an area in particular where the finger that blames is very quick to be pulled out. People make decisions about who went wrong—in my experience, usually the government—and how that affects the workforce.

We had so many reports coming in and a complete inability to recruit staff in this area because of the nature of the work—because there is a high burnout rate and people often cannot do it for a long periods of time. They need to be highly skilled and often have a social work degree or a psychology degree. We simply could not attract staff to the positions. At one point we had 25 per cent of positions unfilled against a backdrop of a massive increase in the number of reports and a commensurate increase in the number of kids coming into care, to the point that we had to go overseas. We sent people over to Ireland to recruit about 50 social workers from Ireland to come and staff our child protection system, and that was because of a national shortage. To some degree now, there is a drain on the international workforce to get people in place to do these jobs. I have to say that, from my experience, the people who have worked in these positions are, for the large part, extraordinary. We should remember that at times the work they do is extremely difficult. As I said, I would place it up there with probably the most difficult jobs for a public servant. It would be right up there amongst the top. They quite often have the finger pointed at them very quickly. It is rare—when those decisions go right, decisions are taken and kids' lives are saved or they are put on a more supportive path—that the work is acknowledged. That is because for the large part, unless these cases are under public review through a coronial process or some sort of bureaucratic review that is then released, this information is often not available because of privacy considerations.
I do not think child protection systems, regardless of how well-resourced they are and regardless of having the right staff in place, will ever be perfect, because of the nature of the work being done in these systems. I too would have concern about the privatisation of child protection, definitely, but I think the balance has to be found between government and the non-government sector working together through some sort of contractual arrangement. Private partnerships and private arrangements funded by the public sector have been in place for some time because the public sector simply cannot deliver the services that are required for many of these children.

I know that many of the partnerships we had here in the ACT were with community service providers. They were often a church based organisation or a youth based organisation that was a not-for-profit organisation. There were times when we would have to go beyond those organisations. That was often for the most difficult kids. There are examples where you have to design a service around a child or family because their needs are so difficult that they will not fit into a traditional service. There are certainly examples where separate houses have been set up for kids or sibling groups, perhaps without their parents, where staff are put in place to support those kids. That is funded almost directly through one organisation that has the ability to deliver that service. In those situations, again, the service arrangements quite often break down—usually on a Friday afternoon!—and you have to work out what you are going to do to keep the care wrapped around those kids.

I accept that these systems are not perfect. I accept that these systems have failed children at times and children have suffered injury or death because the right decisions were not made. But I would also put in a little plug for the departments themselves in saying that there needs to be some balance here. These people go to work every day and often get the most horrific cases referred to them for assessment. Some of the staff will not last very long. Others will require ongoing counselling and support. Some will not return to work after some of the things that they have witnessed. But all of them—every single person I have met who has worked in child protection—always have the best interests of the child front and centre. That is what they are trained to do. That is the work they do. Whether the systems allow them to deliver that and whether their judgement has been right a hundred per cent of the time are separate matters. I would just like to put some balance in and say that this is an extremely difficult area.

There is no perfect solution, believe me; otherwise there would not have been the number of reviews that have been conducted. And every review that is conducted in one state is read and copied and assessed by every other state, because we are all looking for what the secret is, what the answer is, to make sure that we keep our most vulnerable children safe from their family, from their peers or from other influences, and there is not a single, perfect solution.

This is an area where I think the Commonwealth and the states and territories could work more closely together. It is largely seen by the Commonwealth as a matter for the states. It is very easy, when you are in a level of government that does not have responsibility, to say you are not going near any other state because you do not want to pick up anything more than you are already responsible for—particularly in areas where the growth in funding requirements is on par with the growth that we have seen in health departments. It is a rapidly increasing area of expenditure, it is a very difficult area to deliver services in, but it is an area where greater cooperation could occur between the different levels of government, and certainly where the
Commonwealth, in the interests of children nationally, could take more interest and support the work being done by the states and territories.

I acknowledge Senator Hinch's interest in this area. It is great that there is a champion here for children and vulnerable children—another one in this chamber; I know that there are many senators who feel strongly about this area. But I would also put on the record my plug for the work that is being done by the states and territories to keep our children safe.

Senator PRATT (Western Australia) (17:28): I too would like to acknowledge the interest of Senator Hinch in putting this important issue on the Notice Paper for discussion under general business today.

Here in Australia we do have a child protection system that is dominated by the states. Clearly it is the statutory role that the states and territories have; nevertheless there is a growing appetite to have a national conversation about the wellbeing of our children and whether the states are adequately working together to protect the interests of children in our nation.

Federal Labor introduced the National Framework for Protecting Australia's Children 2009-2020, and that paper is very relevant to the motion that is before us today. The paper, put forward by the Hon. Jenny Macklin as the minister at the time, sought to put some clarity around the responsibility for vulnerable children in our nation. Everyone in this place would agree that all children have the right to be safe, the right to receive loving care and support and the right to receive the services they need to enable them to succeed in life. While, as a nation we hope that parents are able to exercise their primary responsibility for raising their children and for protecting their wellbeing and ensuring their rights are upheld, it is also incumbent on us as governments, as parliamentarians and as a wider community to do that.

It is certainly of note to me, for example, that the human rights of children, whilst they have come a long way in recent years, are still, in my view, underrecognised and underappreciated. We need to do more in this nation to recognise the intrinsic human rights of children. Too often in our society, culturally, children are seen and not heard or treated as the property of their parents. But, while we are dealing with vulnerable beings who are unable to look after or care for themselves, we need to make sure that all of our nation's children have their rights upheld—and there is more that we should do.

In that context it is significant to look at the Royal Commission into Institutional Responses to Child Sexual Abuse. If you look at the culture and history of what the royal commission is looking into, in terms of organisations that have perpetuated abuse against children within their institutions, it often stems from that lack of recognition of the rights of those children and the needs of those children relative to the privilege of those institutions. I think that is an important starting point: looking at the kinds of issues that Senator Hinch is putting before the chamber today—that is, we must do more to recognise the intrinsic right of children to wellbeing and to be protected from abuse and neglect.

Senator Hinch's motion recognises some tragic circumstances arising in the state of Victoria, but this is also a significant national problem. There are some 50,000 or more reports of child abuse and neglect substantiated every year by child protection services across the country. There are many more things that we need to do, as Senator Hinch, I think, would like to indicate with this motion at a national level to protect the best interests and welfare of
children—and I would really like to discuss with him in the future about more of the kinds of things that we should be reflecting in this chamber.

Senator Hinch, for example, highlights the issue of the outsourcing of the care and welfare of our most vulnerable children and that it needs to be reviewed. In my experience, the welfare and care, in terms of outsourcing, of our most vulnerable children in our nation is frequently reviewed by state child protection departments, often as they have launched from crisis to crisis after different tragic incidents have arisen from state to state.

I question what Senator Hinch is really getting at when he asks for a review, so we really need to have some further engagement with him about what he is trying to achieve with this motion—for example, when you talk about the outsourcing of the care and welfare of our most vulnerable children, are we talking about foster caring arrangements? Is that outsourcing? Are we talking about the fact that we are severing that relationship between a parent and a child because of that abuse and neglect and because of the intervention of a child protection system, or is Senator Hinch referring to residential care or privatised residential care? All of these settings for looking after the most vulnerable children need to be considered when looking at this issue. So, while I support Senator Hinch's motion, I do not think it adds much clarity in terms of what we actually need to do. It highlights the urgency of the issue and is a call to action, but it is not yet providing us with much guidance as to what Senator Hinch actually thinks we need to do.

However, I am pleased to see that people are actively thinking about these issues. I certainly am and many of Australia's organisations interested and dedicated to the welfare of children are very actively involved in considering these issues—for example, as I highlighted, the National Framework for Protecting Australia's Children sets out some of what the picture looks like in relation to who is responsible for what.

Traditionally, the Commonwealth's responsibility, when it comes to protecting vulnerable children in our nation, has been through supporting the states to fund education. It is very much there in our family payments system and our social security system, which is there to provide financial security, albeit inadequate financial security, for families to protect the wellbeing and interests of children. That is the most significant thing that the Commonwealth can do and does do to protect the interests of all Australia's children.

We also fund, through the Department of Social Services, a great many early intervention services that are there to support vulnerable families, with the hope of supporting them to raise their children in a way that supports their wellbeing, so that they do not come into contact with our child protection system. We have many successful programs in that regard. It is important that we have those programs that are preventing the pointy end of intervention for vulnerable children. We know, for example, Indigenous children are six-times more likely to be the subject of a substantiated case of child neglect or abuse than other children in our nation. That is why many of these services are targeted appropriately at Indigenous communities to support those families and the wellbeing of their children.

What I would say here is that we need to see the issue of protecting children as more than merely a response to abuse and neglect in our children but as moving to promote the safety and wellbeing of children overall, because if we can embed the promotion of safety and wellbeing of children overall then we prevent far more children from coming into contact with the pointy end of the child protection system.
While the states are responsible for the pointy end of the child protection system—and indeed they are also offering services to many families—we have the Commonwealth providing that social safety net for Australia's children through the payment system but also through many of the amazing services that are funded. This week there has been the Family and Relationship Services Australia conference here in Canberra, and I note that Senator Brandis had a statement read out at that conference noting the importance of those services to supporting the wellbeing of families in breakdown to prevent them from coming in contact with our court systems. Again, these are the kinds of issues that Senator Hinch has previously brought before the chamber, noting the significant contribution of family breakdown and the Family Court system to conflict in families and creating vulnerable situations for children.

In that context, if you look to a national approach on these issues—if the Commonwealth were to say, 'Okay, we want to review the outsourcing and care of vulnerable children in our nation'—you have to say, 'What are the states doing, and what is the Commonwealth's responsibility towards those children?' Traditionally, as I have explained, they have been quite separate things, but more and more, as the states are discovering, they have very different systems. They are unable to share data with each other. They implement different best practice. Because they are not able to share data, they are not really even able to share best practice. What that means is that we really need to have a national conversation about this issue, and it requires involvement from the Commonwealth to see progress made, because in my view the states can no longer tackle this problem alone without some further leadership from the Commonwealth.

I am pleased to say there is some progress, but I have to say it has been much too little, too late. We have had, for example, community services ministers meeting without the Commonwealth, trying to make progress on these issues. But, for the first time in a while, Minister Porter has met with child protection ministers and, on 11 November, they put together a communiqué which highlighted a number of key issues, including a National Statement of Principles for Child Safe Organisations. If you connect the idea of a National Statement of Principles for Child Safe Organisations to the sentiments of Senator Hinch's motion, where he is calling for a review of the outsourcing and care of our most vulnerable children, in fact what we are talking about here is the need to do better on that very setting that Senator Hinch is describing.

There are a range of principles, if you like, embedded in the way organisations dealing with children need to work in order to make them child safe. These are things that are highlighted by the royal commission, and they are now increasingly being highlighted by more and more organisations that are interested in child safety and wellbeing. So the National Statement of Principles for Child Safe Organisations is designed to be used as a benchmark for cross-sectoral jurisdictional child safety and policymaking. It is designed to be seen as a framework for funding and investment decisions based on those child-safe principles. It is designed to look at legislation and compliance regimes, and it is designed also to draw from the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. It is also designed to support the findings on working with children checks and actions on creating and maintaining safe environments for children.

As you can see, and as Senator Gallagher highlighted, these are indeed very complex arrangements when it comes to dealing with the safety and security of vulnerable children.
Senator Hinch's motion is commendable in highlighting the importance and urgency of this issue and that we must do more, but what I want to say to the chamber today is that, yes, we must do more but we need to step through these things in a strategic and considered way but with high priority. It is not a simple thing of just reviewing the outsourcing of the care and welfare of our most vulnerable children. There is a huge amount of thinking that is already going into this issue. The thinking on this issue is coming very much through the royal commission currently, and there are hundreds and hundreds of pages of findings from the royal commission—and these are just its interim reports. We as a nation—as a Commonwealth and as the states—will need to respond to what the royal commission is telling us about the situation of Australia's most vulnerable children. The royal commission has looked at the historical circumstances of children in institutional care but very much with a view to teaching us what we need to do in the future. So we will have—in this place, in government and in the states—a very significant job to do to ensure children are protected.

I am pleased to say that we are now starting to see progress—albeit too slow—on issues such as interjurisdictional information sharing, consideration of Aboriginal and Torres Strait Islander placement principles when it comes to foster care, and indeed renewal of the next action plan under the National Framework for Protecting Australia's Children, which Jenny Macklin put in place.

There is also significant interest from the Commonwealth and from state ministers in permanency planning reforms. When you look at the need to review the outsourcing in the care and welfare of our most vulnerable children, the permanency of those placements and the way are planned for those children are of key significance in whether those placements succeed. As Senator Gallagher highlighted, there is a great deal of instability for many of the children who are in our foster care system. They can go from placement to placement and be in many different foster families and many different institutional settings. There are things that the system is doing to contribute to that and that are causing difficulties for these children in addition to the difficulties that they already confront. Planning for permanency is a significant area that ministers across the country are looking at. Indeed, they will need the Commonwealth's support to step through some of those issues.

There are significant national reforms that will interplay with this. I note these are on Minister Porter's agenda—for example, the investment approach to welfare. It will be interesting to see whether an investment approach to welfare will see more resources directed to vulnerable families who need it and prevent more interaction with our child protection system because the wellbeing of families is improved or whether the minister's approach will be to audit expenditure and do quite the opposite by ripping resources away from families who need it. I am somewhat cynical, I have to say, about stepping through our investment approach to welfare if it uses an actuarial approach to taking money away within the system. However, a proper investment approach to welfare could be applied quite successfully within our social welfare system to support the neediest families and prevent them from engaging with the state's child protection systems. In closing, our nation's children absolutely deserve the best in life. They deserve their fundamental human rights to be protected, and we in this place have a lot more work to do on that.

Senator LINES (Western Australia—Deputy President and Chair of Committees) (17:47): I too rise to speak to this motion. I certainly endorse the comments made by Senator

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Senator LINES (Western Australia—Deputy President and Chair of Committees) (17:47): I too rise to speak to this motion. I certainly endorse the comments made by Senator
Gallagher and Senator Pratt. Since being elected to the Senate, I have had the privilege—as you have too, Acting Deputy President Sterle—of meeting with many Aboriginal and Torres Strait Islander communities and organisations across this country. I commend Senator Hinch for raising the issue of children in out-of-home care, but, like Senator Gallagher and Senator Pratt, I have some reservations about the focus of the motion.

In speaking to this motion, I particularly want to focus on what is happening to children in Aboriginal and Torres Strait Islander communities because they comprise more than 50 per cent of the children in out-of-home care. As you would be aware, Acting Deputy President Sterle, in our home state of Western Australia, the rate of out-of-home care amongst Aboriginal children is out of control. Sadly, it is an area where Western Australia leads the pack. The stats in Western Australia are 16 per cent higher. As Acting Deputy President Sterle and Senator Dodson would know, in the Kimberley region every child currently in out-of-home care is an Aboriginal child. That tells us that there is a crisis. As Senator Gallagher said, this is not an easy issue to deal with and it is not one size fits all. Through my association with SNAIICC and other organisations, I have become aware that many Aboriginal and Torres Strait Islander communities and organisations really are solution focused. They really are starting to come together, and in many ways they are leading us. Whilst I accept there is never going to be a one-size-fits-all model, I do think that we urgently need to sit down with Aboriginal and Torres Strait Islander communities and hear what they have to say.

On 9 November in this place, Family Matters—an umbrella group of 150 Aboriginal and Torres Strait Islander organisations that have come together to look at and try to address this issue of out-of-home care—launched their inaugural report called The Family Matters report: measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal. It has some shocking statistics in it. Rather than dwell on those statistics, they want to move from a deficit model, which governments seem to apply to fixing problems, to look at how we make our communities stronger and how we make families stronger. The report makes some alarming predictions. The report says that, if we do not do anything different, in the next two decades we will triple the number of Aboriginal and Torres Strait Islander kids in care. Across Australia, there are already 15,000 Aboriginal and Torres Strait Islander children who are missing from their homes. They are missing out on their mum, their dad, their grannies, their brothers, their sisters, their aunts, their uncles and, even more importantly, their culture. It is almost as if we are creating another stolen generation because these kids are missing out.

The report also makes the point that we invest a lot of money into out-of-home care—as we should—because for some children one of the solutions is certainly to get them away from harm in the first instance, but we do not spend enough money on making our communities stronger and on supporting parents, grandparents, aunties, uncles or whoever has responsibility for those children. That is also where we need to focus our resources. If we make families stronger, then we make outcomes for children much better. I do not think any of us in this place would disagree with the fundamental principle that children are best cared for in their own families. So what is at that we as a community, and governments both federal and state, need to do to make sure families are strong and children are able to stay within their own families and, particularly for Aboriginal and Torres Strait Islander kids, within their own culture?
One of the other groups I have had a bit to do with is prisoner groups. In Western Australia, I have met with a number of organisations. Barry Winmar is running training for Aboriginal prisoners—in particular, Noongar prisoners from the Perth region—at Fairbridge. He tells me over and over again about the number of young Noongar men who come to him for training who have no idea of their culture. We know now that there is a very strong link between kids in out-of-home care and future prison sentences—they commit crimes and end up incarcerated. It seems to me that if we put the support back to families, and start to strengthen families, significant numbers of those kids will not end up in care. One of the very first things that Barry does is get the elders in and start to talk about culture—because these young men know nothing about where they have come from, their connection to country and so on.

The Family Matters report, which was launched here on 11 November, says we need a COAG response. I appreciate Senator Gallagher's remarks. She said the Commonwealth government does not want to be part of this, because it is probably one of the most difficult issues that state governments deal with. But we do need a nationally coordinated response because we owe it to kids, to future generations, to get this right—and it starts with getting it right in families, in people's homes.

In Western Australia we have a mix of services. I am not aware that we have any private for-profit carers in Western Australia. Certainly, the non-government sector in WA is taking a lot of children from the state system. Just recently, Stephan Lund, from Wanslea Family Services, which has been around for a very long time, attributed the increase in children in care to having more mandatory reporting regimes and a better recognition of family violence, domestic violence—and, of course, we have drug and alcohol problems. Mr Lund spoke about Aboriginal and Torres Strait Islander children. He said they find it particularly tough because they lose contact with not only family but culture. Of Wanslea's 108 foster families, only two are Aboriginal and Torres Strait Islander families. There are a whole range of reasons why Aboriginal and Torres Strait Islander families may not be able to put themselves forward as foster families. They are often struggling with poverty themselves. They are often dealing in an informal manner with other children in the family. In Western Australia in particular—but not isolated to Western Australia—there is the issue of the trauma and dislocation of Aboriginal people not that many generations back. So it is difficult to encourage Aboriginal and Torres Strait Islander families to come forward and be foster families.

Many times—and I have spoken to women in these circumstances—the grandparents take the children. But they do so in an informal manner because they do not want to butt up against the welfare system. In Western Australia we have a very high rate of custody orders being given out until children are 18. Putting on my cynical hat, I think that is a way for the Western Australian government to get them off the books and out of home care so that they can say they are reducing the numbers. But that is not a good outcome. And now we are seeing the family law centres intervening on more and more occasions to try and prevent those care orders for young children to the age of 18—because that is completely ripping them away from family members, their culture and so on.

Two advocates in Western Australia told me just a couple of weeks ago about two Aboriginal children who were placed in long-term care until the age of 18 and then taken to the US—so, complete dislocation from family and friends. In defence of caseworkers we
know in Western Australia—and I am sure this is not isolated to Western Australia—they have far too many children to deal with and far too many families that they are responsible for. They too are overloaded. If you have a look at what is written, Western Australia has good protocols and good actions to be taken for children—in particular, Aboriginal and Torres Strait Islander children being kept in touch with their culture.

But all of that falls by the wayside when the caseworker is overworked or, as Senator Gallagher reminded us, has very difficult issues to deal with—and we have seen some of those tragedies hit the headlines in Western Australia. As Senator Pratt pointed out, it always leads to another review. So with the greatest of respect, Senator Hinch, I do not think we need another review; I think we need action. If you did not attend the launch of the report on 11 November, I would urge you to have a look at Family Matters. Ultimately, it is about all of us wanting children to be kept with family and to be kept safe. Family is the best place for children. I sat as a member of the community services inquiry a couple of years ago and heard firsthand from three young women who had been in foster care all their lives. That is a memory that has stayed with me—hearing the horror stories they told of what had happened to them.

Debate interrupted.

**BUSINESS**

**Rearrangement**

*Senator BRANDIS* (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (18:00): I seek leave to move a motion to vary the order agreed to earlier relating to the hours of meeting and the routine of business for today.

Leave not granted.

*Senator BRANDIS*: Pursuant to contingent notice standing in the name of the Leader of Government in the Senate, I move:

That so much of standing orders be suspended as would prevent me moving a motion to provide for the consideration of a matter, namely a motion to provide that a motion relating to the hours of meeting and the routine of business for today may be moved immediately and determined without amendment.

The purpose of this motion, of course, is to enable the important business with which we have to deal before we rise for the Christmas break to be dealt with. We thought yesterday when leaders and whips met in my conference room that we had agreement in relation to these matters. We thought that, through a series of mutual accommodations, we had arranged a sensible program so that the outstanding legislation that is time sensitive or otherwise urgent could be dealt with today. Unfortunately, that agreement has been vacated, as we have seen in the chamber, in the last hour or so, so it is necessary to move this motion.

The bills that remain to be dealt with and are time sensitive are: the VET Student Loans Bill 2016; the Civil Nuclear Transfers to India Bill 2016; the Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 2016; the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 (No. 2), the so-called backpacker tax legislation; and the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill (No. 2) 2016.
The last two weeks have been busy. There is no doubt about that. They have been a great two weeks for the government and a great two weeks for the Senate in terms of the legislative achievements which this government, in the teeth of bitter opposition from the Australian Labor Party, has been able to achieve. Nevertheless, you would have thought that on the very, very last evening of the Senate year, before we exchange Christmas greetings to one another, that there would be at least enough sense of cooperation from the Labor Party to facilitate the discussion of these bills. Nevertheless, that has not been in evidence, as the denial of leave for me to move this motion itself shows.

The Australian public expect us, when we come to Canberra, when we come to parliament as legislators, to conduct the public business in an appropriate manner. When we met in my conference room yesterday afternoon, all of the participants in that meeting, from all points of view in the chamber—opposition, Greens, crossbench and government—remarked that, by comparative standards, the number of bills to be dealt with on the last sitting day was relatively few. It was a very short list. There were only seven packages of bills. We have dealt with some of them and there is absolutely no reason why the Australian Labor Party should now want to filibuster and delay the conduct of the debate in relation to the remaining bills; most of them are non-controversial, at least as between the government and the opposition. But Labor—apparently with its nose out of joint because of the accommodation that has been reached in relation to the backpacker tax—has decided to behave—

**Senator Wong:** Duniam doing deals with the Greens. We're going to use that in Tasmania.

**Senator BRANDIS:** As we can see from Senator Wong, by her conduct at the table as I speak, Labor have decided to behave not like grown-ups but like spoiled children. It is a great shame. Members of the public—I think there are only about half a dozen in the gallery; we are not being broadcast at the moment—look at this chamber and see us unable to deal on the last day of the sitting year with legislation which is largely uncontroversial but is time-sensitive legislation which the Labor Party actually barely 24 hours ago agreed to deal with in a much more efficient manner. They must hang their heads in shame.

I can understand why the Labor Party is finishing this year on a sour note and grumpy. Nevertheless, the government does need these bills, as the opposition has acknowledged. It is pathetic, frankly, Senator Wong, that you are delaying the chamber that you are delaying debate on these bills through the long and pointless filibuster we saw in the last hour or more. What I call upon you to do, Senator Wong, is to get of the way, let the Senate do its business and then you can depart for your Christmas holidays and hopefully you will come back in a better mood in February.

**Senator WONG** (South Australia—Leader of the Opposition in the Senate) (18:05): There I was sharing a joke with Senator Duniam about his new-found friendship with Senator McKim, and get the bile as we always get from Senator Brandis. But we know this is probably his last sitting day, so I can understand he is feeling a little sensitive.

I want to make few points on this. The first point is it was said, somewhat offensively, that there was a pointless debate previously. The general business motion that Senator Hinch moved was in relation to children in protection and the care of children in protection or under protection orders. It is a very serious issue. I do thank Senator Hinch for bringing that matter to the Senate, because I think his advocacy on these issues is well known. So I do not think it
is reasonable to say it was a pointless debate. I think that was a somewhat tasteless remark, frankly, from the Leader of the Government in the Senate.

I would like to make this point, too, about cooperation. This is the fourth hours motion in four days—the fourth hours motion in four days. And that is after we have offered them an MPI time, we have given up private senators business, we have given them opposition time to debate their legislation and—

Senator Brandis interjecting—

Senator WONG: we were very judicious in our remarks in relation to, I think, the two bills that passed before question time in order to facilitate the program. So the high and mighty attitude with which Senator Brandis made his most recent remarks, frankly, is not on point, although we have come to understand that is the only way in which this gentleman knows how to deal with other individuals in this chamber. High and mighty is how he wishes to deal with people, which is possibly why people do not like dealing with him and try to deal with others around him—but that is a different matter.

This is the fourth hours motion in four days. We have continuing chaos in the handling of the program by the government. It is not for us to manage the government's program; it is for the government to manage the program. The fact is that the reason there is chaos in this program is that they have been in chaos on the backpackers tax. Let's call this for what it is. The reason they are in chaos on the legislative front is that they could not work out what their policy was on the backpackers tax. It was 32.5 per cent, and then it was 19, and no-one was ever going to move from that. Then it was 15, and no-one was ever going to move from that. Now it is 15, with a bunch of goodies for the Greens. Oh, Senator Duniam, I am so glad you are here, because we think we should put out a picture of you with Senator McKim, maybe with a love heart around it! You are joined at the hip when it comes to the backpackers tax!

But understand that the reason there is chaos on the legislative program, the reason the government needs to move this motion, is that they are in chaos—

Senator Brandis: Because you dishonoured an agreement made in my office at 4.30 pm—

Senator WONG: Mr President, please! I understand a bit of interjection, but he has not shut up, actually.

The PRESIDENT: Order, on my right.

Senator WONG: Could you draw breath, at least! At least I draw breath; I do—or smile, or make a joke with Senator Duniam. But he is just relentless, really. Will

The PRESIDENT: A point of order, Senator Brandis?

Senator Brandis: Senator Wong should address you. She should not address me. But I was merely interjecting that Senator Wong is in breach of an agreement made on her behalf in my office at 4.30 pm yesterday.

The PRESIDENT: That is a debating point now, Attorney-General. I remind all senators not to interject. And senators should address their remarks to the chair—not through the chair but to the chair.
Senator WONG: What has happened is the government now have to deal with Senator Di Natale, and so they want to change things. That is what has happened. Now, that is business; they are entitled to do that. But we are entitled to say no. That is how it works. So, if you are going to do a deal with the Greens, don't expect us to go, 'Oh, we're so happy that you two, who hate each other, are now going to be—'

Senator Cormann: We don't hate each other.

Senator WONG: well, okay—dislike each other. Senator Cormann, I will take that interjection. He says he does not take them. That is true, because he is very professional in his dealings. But I can tell you a few on your side really do—really do. This is an interesting case of political bedfellows. It is not the first time we have seen it, and, I suspect, maybe not the last. But the point is about Senator Brandis coming in here and again getting very high and mighty and full of indignation. He should tell everybody the reason that the backpackers tax has been a complete, chaotic shemozzle for those on the other side, a complete shambles. And now they have done a deal which will cost the budget more. Brilliant! Brilliant! So, 'We are going to a deal because the angry, shouty Treasurer does not want to deal with the Labor Party, does not want to give Bowen a win'—Chris Bowen a win; Mr Bowen, sorry, Mr President—'so we are going to do a deal with the Greens that costs the budget more. That is the price of Scott Morrison's pride.

Senator Brandis: That's Mr Morrison to you.

Senator WONG: Sorry, Mr Morrison's pride. Thank you for the correction, Senator Brandis! We oppose this. We oppose this suspension. (Time expired)

Senator DI NATALE (Victoria—Leader of the Australian Greens) (18:11): I rise to support the motion to suspend standing orders simply because it is absolutely critical that the Senate resolve this crisis today. We have to sort this out. We are about to leave parliament and what we face is farmers who are now watching their fruit withering on the vine or seeing mangoes rotting on the ground. Some of them are facing extreme financial hardship. They are faced with the prospect of us leaving this place for the break, with a massive imposition on backpackers, who provide a really valuable contribution to regional communities. At this stage, without us resolving this issue, it is quite possible that we would have backpackers who would be charged 32 per cent tax saying, 'We are not coming to this country.' That is the risk that we face. Farmers have already lost tens of thousands of dollars.

It is true—I agree with Senator Wong; Senator Wong is absolutely right—this has been a mess. The whole thing has been a debacle, right from the moment the proposal was flagged by the government, right from that moment when they made an announcement without any consultation with stakeholders, farmers or some of the peak representative groups, completely blindsiding them, and then during the election refusing to commit to a particular rate and deferring it until the final few weeks of parliament. So it is absolutely critical that we ensure this is fixed, and that is why we will support this motion for suspension.

What we have managed to achieve through this outcome is that backpackers will be taxed, effectively, a 30 per cent tax rate based on super claw-back. let's be clear about what that means. Yesterday we had agreed that we would have a 13 per cent tax rate. Today, the Greens are saying that we will have a 15 per cent rate but there will be a tax claw-back which brings the revenue basically to where we were at 13 per cent under the arrangement yesterday—
which was supported by a majority of the Senate. So we have actually achieved that, but not only that. As critical is that is, we know it is important because we know that the money that these backpackers earn really is put back into regional communities. We know that every dollar that is earned is a dollar that can be spent in a regional economy, helping to boost the livelihoods of many people who live outside capital cities.

Now, at the same time as we have seen this wonderful win for farmers, a wonderful win for people living on the land, we have seen a huge pledge, a $100 million pledge, to Landcare. So there is an additional $100 million for Landcare. Landcare is a wonderful organisation. This is a non-partisan initiative. It is grassroots. It is bottom-up. It is the community coming together in regional areas and looking at how they can enhance the environmental values of the land on which they live, some private land, some public land. In short, it is revegetation programs—for example, along creek beds that have been denuded. So we see lots of trees going in, stabilisation of erosion and a whole range of other biodiversity benefits. Sometimes it is weed management. All of those things bring farmers and conservationists together. It is one of those good-news stories, something we should be really proud of. I have to say, as somebody who has been involved with a local Landcare group, that it is a wonderful win for those regional communities to know that there will be additional revenue for them to do the great work that they continue to do. We are very pleased that we secured not just a good win for farmers but a really great win for the environment as well.

I understand that the ALP have some concern about it. In fact I saw the Deputy Leader of the Opposition, Tanya Plibersek, put a tweet out saying that it would have cost the budget less to support Australian Labor's 10.5 per cent backpacker tax than to do a $100 million deal with the Greens. What she is effectively saying is that we managed to achieve more than the Labor Party was able to achieve. We are proud of that. We are very proud of that. We are proud that we are able to get an additional commitment—the $100 million that goes to Landcare—under an arrangement that is good for farmers and good for the community. It is unequivocally good news, and I would like to see the Labor Party support it, because it resolves a conflict that was going on endlessly. It needed a circuit-breaker, it needed some common sense and it needed leadership, and the Greens today have shown that.

I want to pay tribute to the work of both Senator Whish-Wilson and Senator Rice, our agriculture spokesperson and our Treasury spokesperson, for helping us to negotiate this outcome. We are very proud to be standing here today with what we think is a wonderful outcome.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (18:16): I must confess to feeling a little heartened over this fortnight because the Senate has been working in a way that I think the Australian public would expect, and that is in a chamber where the government of the day does not have a majority in its own right. It works with all groupings in this chamber, and what that will mean is that on some occasions we will be successful with the support of the Australian Labor Party with some propositions, as we were with the omnibus savings bill. We acknowledge that, and also their support with the national security legislation.

I should also acknowledge the support and assistance of the Labor Party in the provision of their general business time last week for facilitating the passage of legislation and also the Labor Party's private senator's bill time this morning. I should also acknowledge that the
crossbench were supportive of extra hours in the course of this week, and that as a result we had the passage of the Australian Building and Construction Commission legislation. I want to acknowledge the crossbench support for that bill and also for the registered organisations commissioner legislation.

We will also, on occasion, work with the Australian Greens. This, tonight, is an example of that. I want to acknowledge the assistance and approach of the Australian Greens in relation to matters we are dealing with this evening.

My point is that Senator Brandis's motion to seek suspension of standing orders in order to move a motion for extended hours to deal with the legislation that is before us is, I hope—depending on the votes—another example of the government working with different groupings in this place. Sometimes all groupings in this place will be as one on certain propositions. But such is the nature of this Senate, as a house of review, that there will be, understandably, many occasions where we take different views. As I said, I am heartened by the last fortnight because this is the Senate working the way that the Australian public intend. The government of the day does not always get its way, and you would not expect that in a chamber where we do not have the numbers in our own right and in a chamber that is one of review.

This will be one of my last opportunities, if not the last opportunity, to speak in this Senate before the end of the year. I would like to acknowledge the cooperation and assistance of all groupings in this chamber that have, on different issues, come together with the government to make sure that we can transact the people's business. I obviously appreciate and recognise that the opposition are not supportive of the particular endeavour that we are seeking to prosecute tonight. But it is my hope that we will have a majority of colleagues support the suspension of standing orders and, if that is successful, support Senator Brandis moving a motion that we do deal tonight with the relatively small number of bills that are before us: the VET Student Loans Bill 2016, on which I do not think there is much controversy; the Civil Nuclear Transfers to India Bill 2016, on which I do not think there is much controversy; and the Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016, on which I do not think there is much controversy.

That really leaves the issue of the moment, which is the backpacker matter. In concluding all those items this evening, there is probably not the need to sit very late. But the substantive motion Senator Brandis will seek to move gives the chamber the opportunity to sit until these items are resolved. Thank you, Mr President, and I encourage colleagues to support the suspension.

Senator DASTYARI (New South Wales) (18:20): Here we are again—get to the end of the sitting year and you have a dirty deal being done by the Greens to sell out, once again, at the last minute. Stop doing deals with the Liberals! It ends badly. It always ends badly! Last time you did this you lost a senator. You had one more senator. Last time you threw Senator Simms under the bus. Occasionally in this place you actually have to stick to something, stay firm and stay principled.

I have history as a former general secretary of the New South Wales Labor Party. I know a thing or two about doing deals. Do not do every deal they come to you with; actually negotiate for something better. You did it last time and you have done it again. At the end of last year you went soft on corporate tax. In May this year you went soft on Senate voting
reform, and now you are selling out on backpacker tax. Time and time again, this is a Greens party that goes weak whenever things gets tough.

We heard from Senator Di Natale. I will let you in on a little bit of a secret: I am a bit of a fan of Senator Di Natale. I actually quite like him. But every time I want to like Senator Di Natale, every time I want to support him, he always disappoints me. He always end up doing it. I feel like a burnt lover who has been left at the altar. We come up with agreements, we work together, we develop policies and we wrongly work under the assumption time and time again that the Greens are actually going to stand for something, stick to their principles and stick to their agreements. But they are a political party that sell out at the first opportunity. They are a political party that go weak and dumps on their own causes. Why? We heard what Senator Di Natale said himself. He said, 'If we didn't do this, the government would decide.' No. They would have negotiated. That is the point. You stay firm to get the best deal. But the Greens party do not do that any more. They do not stand for anything anymore. The Greens party sell out and go weak at the first opportunity they have.

I do not blame the coalition. They are just trying to get the deal they want. That is their business. It is not surprising. But for a party that purports to be from the centre left to keep selling out to the conservative side of politics whenever things get hard is disheartening. It hurts. Time and time again the Greens make commitments. They do press conference after press conference. I am disappointed. We are getting to the end of the year. We are at the Christmas period. Rather than leaving this place with some Christmas joy and some Christmas cheer, we have a disappointing Greens sell-out. This is exactly what they did at the end of the last session last year. This is what they did that led to the double-D election. They jump up and down about the four One Nation senators, but they would not be here if the Greens had not done one of their dirty deals with the Liberal Party around May this year. In fact, we would probably still have another Greens senator.

Senator Brandis: You need a haircut.

The PRESIDENT: Order!

Senator DASTYARI: Mr President, I am going to take the interjection. When Senator Brandis starts going on about my hair, I feel that this is no longer a chamber that is worthy to have the debate that it is about to have. Senator Brandis, this hair envy of yours is very unbecoming of someone of your stature.

On a very serious note, I want to say that this is a bad deal. This is a dirty deal. It is a deal that was done at the last minute. It was done by a Greens party that is too weak to stand up, stay strong and fight for anything anymore. Once again, they have folded to the Liberal Party.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (18:25): Senator Dastyari is a very hard act to follow. When Senator Brandis starts going on about my hair, I feel that this is no longer a chamber that is worthy to have the debate that it is about to have. Senator Brandis, this hair envy of yours is very unbecoming of someone of your stature.

On a very serious note, I want to say that this is a bad deal. This is a dirty deal. It is a deal that was done at the last minute. It was done by a Greens party that is too weak to stand up, stay strong and fight for anything anymore. Once again, they have folded to the Liberal Party.

The Manager of Government Business in the Senate, who I have to say, in the spirit of Christmas, I have enjoyed working with in my short term as Manager of Opposition Business
in the Senate, used the words 'working with different groupings in this place'. Well, that sums up this week. Basically the government have been prepared cut a deal wherever, regardless of who it is with and what they want. We saw things like the ABC board meetings somehow rolled into anti-worker, anti-union legislation for the ABCC. That was odd. We then had the water debacle where promises were made. There was no resolution to that. We have had working groups promised. We have had COAG agenda items promised. As someone who sat on COAG for a number of years, I hold grave fears for that being a suitable vehicle for any resolution of that matter. We have had committee references agreed to in an effort to seal deals. Now the government that lectures us about repairing the budget have managed to cut a deal this afternoon that hits the budget in the order of $100 million.

The Greens of course say that that is a win because they have squeezed another $100 million out of a government that supposedly does not want to spend any more money. But this government that lecture us about budget repair and the need to be fiscally responsible on the afternoon of the last sitting day have said, 'You can have whatever you want, Greens.' Maybe they could have got $200 million. We do not know. The government might have been prepared to do that. They have given away COAG agenda items, for goodness sake. I am not sure what value is placed on that and working groups and committee references. So it is $100 million instead of the government swallowing their pride and accepting that the majority will of this chamber has twice resolved 10½ per cent.

We are going to be dealing with a bill in a few minutes that none of us have even seen. I am just printing a copy off now. I will probably have to read the explanatory memorandum as we are debating the bill. There have been two versions of the backpacker bill. We are going to have another new version of the superannuation bill. We have already had two goes at the bill on the passenger movement charge. This is all in an attempt to stubbornly not accept the will of this Senate and the position of the parties within it of 10½ per cent.

So here we are at 6.30. Some would suggest that people have their eyes on the departures out of Canberra Airport and that that is the reason behind this deal being cut. We could have sat tomorrow. We could have taken our time. But, instead, the Greens, perhaps with their bags packed, are ready to go, ready to cheer about $100 million of extra savings—which will have to be found from somewhere. That will be paid for from somewhere, and you will no doubt cut a deal on that as well.

So we are in this position where we are now being forced, again, to debate and pass legislation that has not gone through any scrutiny at all. This is, supposedly, the chamber of review. I agree with Senator Dastyari, and say to the Greens: 'You don't need to solve the governments problems for them. Just because they're incapable of solving their problems, you don't have to place yourself in the position where you solve them for them.' There was a solution for the government—it was to accept the will of this chamber and to negotiate in good faith. They have not done so. We will not be supporting the suspension of standing orders, and we look forward to some long and considered debates on all of the legislation outlined in this motion.

The PRESIDENT: The question is that the motion moved by Senator Brandis to suspend standing orders be agreed to.

The Senate divided. [18:35]
(The President—Senator Parry)

Ayes ...................... 39
Noes ...................... 20
Majority ............... 19

AYES

Back, CJ ...................... Birmingham, SJ
Brandis, GH ................. Burston, B
Bushby, DC .................. Cash, MC
Cormann, M ................ Culleton, RN
Di Natale, R ............... Fawcett, DJ
Fierravanti-Wells, C .... Fifield, MP
Griff, S ..................... Hanson, P
Hanson-Young, SC ......... Hinch, D
Hume, J ..................... Kakoschke-Moore, S
Leyonhjelm, DE .......... Macdonald, ID
McGrath, J ................ McKenzie, B
McKim, J ................... Nash, F
Parry, S ...................... Paterson, J
Rhiannon, L ............... Rice, J
Roberts, M ................ Ryan, SM
Scullion, NG ............... Seselja, Z
Siewert, R ................. Sinodinos, A
Smith, D (teller) ......... Waters, LJ
Whish-Wilson, PS ........ Williams, JR
Xenophon, N ..............

NOES

Bilyk, CL .................... Cameron, DN
Collins, JMA ............... Dastyari, S
Dodson, P ................... Farrell, D
Gallacher, AM ............. Gallagher, KR
Ketter, CR ................ Kitching, K
Lines, S ..................... McAllister, J
McCarthy, M .............. Moore, CM
O’Neill, DM ............... Polley, H
Pratt, LC .................... Urquhart, AE (teller)
Watt, M ..................... Wong, P

Question agreed to.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (18:37): I move:

That a motion to vary the hours of meeting and routine of business for today may be moved immediately and determined without amendment or debate.

I move:

That the question be now put.

The PRESIDENT: The question is that the question be now put.

The Senate divided. [18:39]
(The President—Senator Parry)

Ayes ...................... 39
Noes ...................... 20
Majority .................. 19

AYES

Back, CJ           Birmingham, SJ
Brandis, GH        Burston, B
Bushby, DC         Cash, MC
Cormann, M         Cullton, RN
Di Natale, R       Fawcett, DJ
Fierravanti-Wells, C Fifield, MP
Griff, S           Hanson, P
Hanson-Young, SC   Hinch, D
Hume, J            Kakoschke-Moore, S
Leyonhjelm, DE     Macdonald, ID
McGrath, J         McKenzie, B
McKim, NJ          Nash, F
Parry, S           Paterson, J
Rhiannon, L        Rice, J
Roberts, M         Ryan, SM
Scullion, NG       Seselja, Z
Siewert, R         Sinodinos, A
Smith, D (teller)  Waters, LJ
Whish-Wilson, PS   Williams, JR
Xenophon, N

NOES

Bilyk, CL           Cameron, DN
Collins, JMA        Dastyari, S
Dodson, P           Farrell, D
Gallacher, AM       Gallagher, KR
Ketter, CR          Kitching, K
Lines, S            McAllister, J
McCarthy, M         Moore, CM
O’Neill, DM         Polley, H
Pratt, LC           Urquhart, AE (teller)
Watt, M             Wong, P

Question agreed to.

The PRESIDENT (18:41): The question now is that the motion moved by Senator Brandis to give precedence to a motion to vary the routine of business be agreed to.

The Senate divided. [18 43]

(The President—Senator Parry)

Ayes ...................... 40
Noes ...................... 20
Majority .................. 20

CHAMBER
Question agreed to.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (18:45): I move:

That—

(a) government business shall be called on immediately and the following bills be considered till determined:

VET Student Loans Bill 2016
Civil Nuclear Transfers to India Bill 2016
Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016
Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 (No. 2)
Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill (No. 2) 2016; and

(b) the question for the adjournment of the Senate shall not be proposed until a motion for the adjournment is moved by a minister.
The PRESIDENT: The question is that the motion to vary the routine of business moved by Senator Brandis be agreed to.

The Senate divided. [18:47]

(The President—Senator Parry)

Ayes ...................... 40
Noes ...................... 20
Majority ................. 20

AYES

Back, CJ
Brandis, GH
Bushby, DC
Cormann, M
Di Natale, R
Fierravanti-Wells, C
Griff, S
Hanson-Young, SC
Hume, J
Lambie, J
Macdonald, ID
McKenzie, B
Nash, F
Paterson, J
Rice, J
Ryan, SM
Seselja, Z
Sinodinos, A
Waters, LJ
Williams, JR

Birmingham, SJ
Burston, B
Cash, MC
Culleton, RN
Fawcett, DJ
Fifield, MP
Hanson, P
Hinch, D
Kakoschke-Moore, S
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Rhiannon, L
Roberts, M
Scullion, NG
Siewert, R
Smith, D (teller)
Whish-Wilson, PS
Xenophon, N

NOES

Bilyk, CL
Collins, JMA
Dodson, P
Gallacher, AM
Ketter, CR
Lines, S
McCarthy, M
O’Neill, DM
Pratt, LC
Watt, M

Cameron, DN
Dastyari, S
Farrell, D
Gallagher, KR
Kitching, K
McAllister, J
Moore, CM
Polley, H
Urquhart, AE (teller)
Wong, P

Question agreed to.
BILLS
Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 (No. 2)

Consideration of House of Representatives Message
Message received from the House of Representatives informing the Senate that the House has not made the amendments requested by the Senate.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (18:50): I move:
That the message be considered in Committee of the Whole immediately.

A division having been called and the bells being rung—

The PRESIDENT: Ring the bells for one minute.

Senator Wong interjecting—

The PRESIDENT: I can do that; I will ring the bells for four minutes. I am just indicating to the Senate that standing order 101(3) provides for the bells to be rung for one minute when divisions are successive and there is no intervening debate. There was no intervening debate, but I am happy to call it for four minutes.

The Senate divided. [18:54]

(The President—Senator Parry)

Ayes ......................40
Noes ......................20
Majority...............20

AYES

Back, CJ
Brandis, GH
Bushby, DC
Cormann, M
Di Natale, R
Fierravanti-Wells, C
Griff, S
Hanson-Young, SC
Hume, J
Lambie, J
Macdonald, ID
McKenzie, B
Nash, F
Paterson, J
Rice, J
Ryan, SM
Seselja, Z
Sinodinos, A
Waters, LJ
Williams, JR

Birmingham, SJ
Burston, B
Cash, MC
Culleton, RN
Fawcett, DJ
Fifield, MP
Hanson, P
Hinch, D
Kakoschke-Moore, S
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Rhiannon, L
Roberts, M
Scullion, NG
Siewert, R
Whish-Wilson, PS
Xenophon, N

NOES

Bilyk, CL
Cameron, DN
Question agreed to.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (18:57): I move:

That the committee does not press its request for amendments not made by the House of Representatives.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (18:57): I rise to speak on the message. I want to make a few comments—yes, those opposite should probably leave. To be fair, you could stay if you would like, because we could talk for a while about the nature of the deal and listen to the sort of agreement that you have engaged in. But I think the first and most important thing to know is this: the government that says they are all about budget repair, making sure the AAA credit rating is safe and making sure that they are fiscally conservative, yet they have just blown $100 million on Scott Morrison's pride. What a joke! One thing I will say is that clearly they are not taking Tony Abbott's advice. Remember, we saw Tony Abbott on Sky News saying that the state of the budget should be the primary focus. Well, clearly on this matter, Mr Turnbull has decided, 'No, I'm not going to take your advice.'

Let's understand the cost of what is involved here. One of these is that the cost of going from 15 per cent to 13 per cent was about $55 million. That was, of course, the proposition that Senator Lambie, Senator Hinch and Senator Culleton put forward—that we should go to 13 per cent. That would cost about the same as what the component of the coalition-Greens deal that deals with superannuation costs. I would like to just this point out to Senator Culleton, Senator Hinch and Senator Lambie: your deal cost less than what the government has done, but they clearly were only prepared to deal with the Greens. I do not know how that makes you feel or what sort of political message that gives you, but it is very clear.

But, of course, that was not the whole deal with the Greens. In addition to the 15 per cent, plus the superannuation guarantee changes, the government has chucked in $100 million for Landcare. The difference between what they could have had if they had been prepared to swallow their pride and come to an agreement with the crossbench and the Labor Party was $100 million. You have to ask yourself: why? Why would the federal Treasurer, in circumstances where we already have debt increasing and a deficit of the size that we have, put $100 million on the table just because he did not want to swallow his pride? It is just extraordinary, isn't it!

Senator Lambie: It's not his pride; it's his ego!
Senator WONG: I'll take the interjection from Senator Lambie. She says it is his ego—maybe it is. I find it bizarre. It is bizarre, but the whole handling of this backpacker tax has been bizarre. We had 32.5, 19 and 15, and now we have 15, but with a whole bunch of stuff on the side. The reason there has to be a whole bunch of stuff on the side is that the Treasurer could not, because of his pride, actually accept a change in the rate—which is a very odd position, because he had already accepted a change in the rate. Do you remember? We went from 32.5 to 19, and they were never going to move. That was the end of the line. Then they went from 19 to 15, and that was the end of the line, so he could not move from the headline rate. He had to find some other political fix to deal with this shemozzle. He did it by giving the Greens what they wanted on superannuation and giving them $100 million for Landcare.

It would be kind of funny if it were not so serious, because let us remember the context in which we are operating. Last week, Deloitte Access Economics' Budget Monitor predicted yet another deterioration of the budget which could jeopardise Australia's AAA credit rating. The deficit under Deloitte's predictions could blow out by $24 billion over the forward estimates, which would make a return to surplus in 2021 even more difficult. I note that the Treasurer has in fact become a lot more loose and fudgy in his language when it comes to that surplus date. Under this government, Mr Turnbull, Mr Morrison and the Minister for Finance, Senator Cormann, have delivered a budget deficit for 2015-16, which is eight times bigger than what they inherited, as assessed independently by the secretaries of Treasury and Finance, Senator Williams, have delivered a budget deficit for 2015-16, which is eight times bigger than what they inherited, as assessed independently by the secretaries of Treasury and Finance in the 2013 Pre-election Economic and Fiscal Outlook. The 2013 PEFO—which was not prepared by me, as the former finance minister, or by Mr Bowen, but prepared by the secretaries of Treasury and Finance—had a budget deficit for 2015-16 that was far smaller than what is occurring under this government. Their budget deficit for 2015-16 is eight times bigger.

Senator Williams: Why did you blow our savings?

Senator WONG: I will take the interjection from the National Party. I hope Senator Williams is feeling very good about cuddling up to the Greens. One of the more interesting tweets I have seen in the last few hours was from Barnaby Joyce, praising the Greens. Senator Rice, I hope you are happy about that—Barnaby Joyce!

Senator Williams: You are very upset!

Senator WONG: Oh, I am not. No, not at all. You can have this, Senator Williams. You can have the political bedfellows of the Greens, and the Greens can have Senator Joyce praising them. I am sure their constituency would love the fact that Senator Barnaby Joyce, who stands for almost everything—

Senator Williams: He's not a senator; he used to be a senator!

Senator WONG: I am sorry. I apologise—you are right. It is because I knew him as a senator, so he keeps coming into my head. Mr Joyce, how could I forget! He used to stand there and yell a lot—at me, generally.

Senator Williams: He didn't yell!

Senator WONG: He did! At least he was more interesting than Senator Macdonald, who just chants my name. Senator Joyce—as he then was—was far more entertaining. But I was amused to see Mr Joyce's tweet praising the Greens, because I thought, 'Of all the people who voted for Senator Di Natale, Senator Hanson-Young, Senator Rice and Senator Siewert, I wonder how they'll feel about Mr Barnaby Joyce, who led the charge against action on
climate change, against a price on carbon and, along with then Senator Minchin and his militia, against an emissions trading system.' Mr Joyce, who rails against renewable energy, who tells everyone how wonderful coal is, who does not believe that anything is happening to the Great Barrier Reef and whose position on a range of other social issues I would hazard a guess would not be shared by a single Greens voter. But, of course, politics does make for some strange bedfellows, and we have Senator Rice—who is in the chamber—and Mr Joyce on the same page. Well, it is up to the Greens to explain that to their constituency. I will have a bit more to say about that in my next contribution, but, first, I want come back to the budget position.

As I have said, for all their chest-beating and talk about budget deficits, the 2015-16 budget deficit is eight times bigger than that inherited by this government. Let us remember that. Net debt is increasing, gross debt is increasing, and we are seeing rising deficits compared with the trajectory that the secretaries of Treasury and Finance—not political operators, but the secretaries of Treasury and Finance—assessed in the 2013 PEFO. We have seen a tripling of the 2016-17 deficit and debt. Remember the debt? Remember how there was all this talk about intergenerational theft and all of these things? Well, net debt for this year has blown out, I think, by more than $100 billion.

Senator O'Neill: Such great money managers!

Senator WONG: And they tell us they are the great money managers! Add the deal with the Greens today to that. When you have a $100 billion blow-out in your net debt—it is true that $100 million is only a small proportion of that, but what it does show is an attitude. It shows, if I may say, a pig-headedness, a stubbornness. It shows that the Treasurer is more interested in trying to gain a political advantage than coming to a sensible agreement. The reality was that even the National Farmers Federation were happy to accept 13 per cent. Although it is disappointing that the once-proud NFF, who were prepared to stand up on a whole range of issues, have turned into such patsies of the government that, on Sky TV, they would back in 13 per cent, and then it is a case of, 'Oh, I got a call,' probably from Mr Joyce's office, and all of a sudden, 'We'd better put out a press release saying we really support 15.' I mean, it is really quite pathetic. I hope the NFF understand that everybody in this place noticed what they did. You do not get respect in national politics by simply being the patsy of a political party, and I think that was demonstrated today.

So back again to the AAA credit rating. We have a Treasurer who is so pig-headed he wants to do a deal that costs more. I am going to say that again: the Treasurer wants to do a deal that costs him more. As yet we have not heard from the government why it is so critical that they increase funding to Landcare and that they decrease the superannuation guarantee clawback. I think the reality is that this has been such a shambolic mess they just had to get a deal, and it is clear that the stubbornness of the Treasurer meant they had to get a deal where the headline rate did not change. Behind all of this, there is a serious proposition: if we lose our AAA credit rating, it is not just a theoretical problem; it is a problem that affects the lives of families who have mortgages across the country. It also has an impact on confidence. It would have been more fiscally responsible and far simpler to respect the decision the Senate made yesterday.

This Prime Minister promised to fix the budget and he promised to create jobs and growth, but what is he delivering? He is delivering growing deficits, more debt, record low wages and
record underemployment. Labor has been prepared to play a constructive role in repairing the budget in a fair way. We have proposed sensible revenue measures. But we have not been party to striking dodgy deals that strike a higher tax and cost the budget money. That is how much Mr Morrison did not want to give a win to Senator Culleton, Senator Lambie, Senator Hinch and the Labor Party. He is prepared to go with the Greens for a package that actually cost more. It is really quite an extraordinary political achievement, is it not? This is in the context of a budget where net debt is increasing, the deficit has increased and the AAA credit rating is under threat.

So, Senators, next time you get a lecture from Scott Morrison about the AAA credit rating and next time Senator Cormann, who is a very good negotiator, comes to you and says, 'We have to have more savings; you have to support us on this,' I think it is useful to remember that they were prepared to throw a lot of money at this. When the budget measures are coming through this chamber and they give us all another lecture about why poor people, Australians who are struggling, need to tighten their belts a bit more, maybe we should remember the attitude the government have had, which is that they are very happy to throw money at a political problem when it suits them. But, whilst giving us lectures about the AAA credit rating, whilst giving us lectures about—what was that Joe Hockey phrase? Ending the age of entitlement—

Senator Cameron: Lifters and leaners.

Senator WONG: Yes, lifters and leaners—I will take the interjection. They were very happy to give us lectures about lifters and leaners. That is the way the government talk. What I am going to point out to Senator Williams and Senator Cormann and all of those on that side as they start to talk about the budget deficit is that they were prepared to do a deal that cost them more just so that Scott Morrison did not have to swallow his pride. So do not come in here and give us all a lecture about fiscal rectitude, about the importance of savings. We all know that ultimately the politics comes first for this government. We have seen that this week, with the revelations around the $300 million of taxpayers' money they were prepared to give away to Western Australia to solve a political problem, and we have seen it again today, where they would rather do a deal with the Greens than come to a sensible compromise with the majority of the Senate.

I will have more to say later in this debate about the consequences for the Greens, and also for some senators opposite, of engaging in this. I would make the point that Senator Duniam and Senator Abetz and all of those who regularly rail against the Greens as being all sorts of things—they say all sorts of very nasty things about the Greens; I will not even repeat them—appear to be far happier to come to an agreement with them than with Senator Culleton or Senator Hinch or Senator Lambie or the Labor Party. It does say something about the government, does it not, that they would rather do that?

This is a government that was desperate for a deal. It has completely stuffed up the implementation of the backpacker tax arrangements. It was 32.5 per cent in the budget. We said at the time that would have a labour supply effect. We were told it would be fine, then they realised it would not be, and they engaged in a desperate scramble to come back from that rate as their base erupted. We have seen a range of different rates proposed and then moved away from, and now we have the cherry on the top of the cake—a deal which costs the budget more than what the Senate would have given them.
Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (19:12): I am not surprised that the Labor Party are so disappointed. They were playing political games—trying to prevent a good outcome in the national interest by resolving this issue in the interests of farming communities across Australia. What the government was able to do, together with One Nation and the Greens and the Nick Xenophon Team, is put in place a fair and sustainable arrangement.

Senator Wong suggests that this is a deal that is worse for the budget. That is actually wrong. I am not surprised that Labor made such a mess of the budget, if they do not understand that we are locking in a structural improvement to the budget bottom line. We are making a one-off $100 million contribution to Landcare, which is of course a very good program, which we support and which regional communities across Australia support. Of course, if we had further reduced the tax rate, that would have been a cost to the budget, ongoing. Every single year—year in, year out and over the medium term—it would have continued to accumulate. We have been able to lock in a rate at 15 per cent.

There is a consensus in this chamber now for a 15 per cent income tax rate for nonresidents, foreign workers, holiday-maker workers, and that is of course the rate that will now apply, ongoing. We also have to remember that last week the Senate passed legislation to increase the passenger movement charge by $5 to $60, and that legislation only comes into effect once we have legislated the income tax arrangements for working holiday-makers. In effect, what the Senate is doing tonight is locking in a budget improvement of about $560 million, which is a structural improvement which will build over time.

Senator Wong talks about the AAA credit rating. The credit agencies will look at the structural impact of the decisions that we are making. The ratings agencies, unlike the Labor Party, understand the difference between a one-off $100 million contribution to the National Landcare Program—in effect, a capital contribution, a grants contribution and an ongoing improvement—and an ongoing liability. If we had gone down the path the Labor Party wanted us to go down and cut taxes for foreign workers by more—10.5 per cent is what they said yesterday—we would have had to increase taxes for Australians to pay for it or cut spending for Australians to pay for it. We have been able to achieve an arrangement that will lock in an ongoing budget improvement. We are very pleased that the Greens have engaged with us constructively to find a resolution because, quite frankly, we needed to find a resolution before we left this place this week. I commend the outcome that has been achieved by constructive people right across the chamber. I commend it to the chamber. I think it is in the national interest now for us to get on with it.

Senator POLLEY (Tasmania) (19:16): Coming from Tasmania, I find it extraordinary to see the Liberals sell out Tasmanian farmers and producers yet again. We do not have the National Party in Tasmania, thank goodness; we do not have those hypocrites in our state. We do have senators who come into this place regularly and berate the Greens for their policies and their views on issues. Then, quick as a wink, they do a dirty deal with them. It is almost as if the Liberals' annual Christmas present is that the Greens will side with them. It is extraordinary.

Senator Duniam is new to this place, but is pretty wise. He has been around the political process; he is a political hack from that side. He came along to the Senate committee hearing in Launceston, and what did he say? He said: 'Everything's going to be all right. We need to
do this. It has to be 32.5 per cent.’ He sat in the same room as I did and heard the same
evidence from people who are directly affected. He heard Mr Reid—who grows some of the
best cherries in Tasmania I might add and is not a supporter of this side of the chamber—say
that 10.5 per cent was the best deal. If that was the lowest we could get then that is what we
should have. But what have we seen?

This morning, it was extraordinary that the Prime Minister of this country, who said he was
going to be different to Tony Abbott when he was leader, used the most disgusting language
when he was trying to defend the position that this government have got themselves into. It
was Barnaby Joyce from the other place who created this mess 18 months ago. What have
they tried to do? They have tried to blame everyone else. It was disgusting that the Prime
Minister of this country was talking about rich, white European kids coming to this country as
backpackers. I was embarrassed to be watching his interview on television. This is a man who
himself is rich. There is nothing wrong with that. Congratulations—you know how to make
money. Why accuse the European kids who come out here and do the jobs that a lot of people
in this chamber would not want to do of being rich? If they were that damned rich, they would
not be working picking cherries and apples or working in tourism businesses around this
country. That is the desperation of this government.

We heard the Attorney-General talking about his colleagues from Queensland as being
mediocre. As disappointed as I am, I have to say that the Prime Minister today demonstrated
that he is more mediocre and less of a leader than I could ever have imagined. I think it is
extraordinary. My colleagues from Tasmania sat there and heard the same evidence as I did.
Keith Rice is the CEO of Poppy Growers Tasmania and a well-respected man in the primary
industry and agriculture industry sectors in Tasmania. He said that we needed to have a lower
rate of backpacker tax; that was his evidence. Today he is saying the same thing. Mr Reid, a
cherry grower from the southern part of Tasmania said, ‘If it ain’t broke then why try and fix
something?’ It was not broken.

We understand that we have to be responsible in terms of the finances of this country.
Today the Greens have done this dirty deal because they feel irrelevant and because they are a
bit envious of the crossbench getting all of the attention from the media with their deals with
this government. They have to come out and make big heroes of themselves—at least that is
what they think they are doing. Senator Whish-Wilson, who was also at that Senate hearing in
Launceston and heard the same words, said at that hearing that there should be zero tax on
backpackers. That is what he said. Now he has gone from zero to 15 per cent. What a sellout!
He comes into this chamber and lectures people here all the time about how great the Greens
are and how they are people of principle. They have succumbed to the dollars. They should be
ashamed of the position that they have taken.

Senator Dastyari: Shame!

Senator POLLEY: You are quite right, Senator Dastyari. It is shameful but not
unexpected, because we know that they feel neglected and they want to be relevant again.
That is why the Leader of the Greens, while he is still leader—I am running my book as to
how long he will last—will do anything to make himself the centre of attention. That is what
has happened here. But it has come at a cost, particularly in Tasmania. Senator Lambie knows
this because she has been consulting and talking to the growers, the producers and those
people who are directly affected by this decision, and they have told her that so many local jobs depend on being able to attract backpackers to our state.

This 15 per cent tax does not make us internationally competitive. You think that by spending $100 million you can just whitewash over the decision you have made. It has all been about saving face for Mr Morrison and Mr Joyce. It was so evidently clear when the Prime Minister was being interviewed this morning that, as he has done with so many issues since he rolled Mr Abbott, he would do whatever it takes to win. So if that meant an additional $100 million being paid out to the favourite toy of the Greens, he was going to do it. But the implications of this are far wider than that. We know that Mr Turnbull had a plan to be Prime Minister; unfortunately, he has no plan for how to act as a Prime Minister. And there was never a starker example of that than in his interview this morning. I really expected so much more.

Madam Chair, I know that you would have had the same conversations throughout your community as I have had. People are saying: 'Who is this Prime Minister? He promised so much but has delivered nothing.' We have a government that cannot even govern: they vote against themselves in the House of Representatives. We have had two weeks of late-night sittings. But we do not mind. After all, that is what we are here to do—have debates, scrutinise legislation. But what we have seen is a ping-pong game between 32.5 per cent and 19 per cent—and we are not going to move from there! Senator Cormann, who is in the chamber now, said: 'We will not move from 19 per cent. We're firm on this. We're going to be responsible.' Well, we know that his word, like the Prime Minister's word, means nothing when it comes to protecting the egos of Mr Morrison and Mr Joyce.

Frankly, there is nothing wrong with a politician saying, 'We got this wrong.' And, let's face it, that is what they did on that side; they got it wrong. Mr Joyce has made a complete mess of this. It was not like all of a sudden a bit of knowledge rained down in the last two weeks and they realised: 'Oh my goodness, we've mucked this up as well!' They have known this for 18 months. They knew during the federal election campaign that they had got it wrong. So what did they do? They gave the community the indication: 'We'll just put that policy in the bottom drawer; it's not going to happen.' And too many in the sector actually took that con. So here we are now, with another piece of legislation coming back to us, and we have not even had the opportunity to look at that legislation.

But my real concern is about what this is doing to our reputation in an international sense. Those on the other side do not understand how social media works and what a laughing stock they have made of themselves in government. They have not been able to say: 'Okay everyone, we've made a terrible mistake. Let's clean up the mess we've made. Let's put it to the Senate and accept the Senate's decision'—which was made by more than just us in the opposition—that 10.5 per cent is a good figure that will keep us internationally competitive.' Our closest neighbours, the New Zealanders, have a lower cost of living. With the weasel words being used by those on the other side trying to justify this, when they were misleading people through the media and in the chamber about the value of the backpacker tax in New Zealand, they never took into consideration the cost of living in New Zealand, which is a lot lower than it is here.

It is really disappointing but it is not surprising. A lot of the producers in Tasmania, a lot of the people who gave evidence at that Senate inquiry into the backpacker tax—and Senator
Lambie and my colleagues from Tasmania would concur—are not supporters of the Labor Party. And I can assure you that they will not forget how the Liberal senators in this place—Bushby, Abetz, Duniam and Parry—have sold them out. They do not care about the Tasmanians whose own jobs rely on those backpackers who come into this country coming to my home state of Tasmania.

You think that this quick will deal that you have so nicely packaged together with the Greens is going to pan out well for you because of your embarrassment about how you have stuffed everything up from day one. Since you were elected, week after week, you have stuffed up everything that you have touched. We were giving valedictory speeches for the Attorney-General this afternoon. We know his days are numbered. There is going to be a reshuffle. So they want to get out of here very quickly tonight so that Mr Turnbull can do his reshuffle. And we will see a new ministry coming in. It is going to be so exciting! Who is going to get a job this time? Well, I wonder if Alexander Downer is wondering about this. When I was taking note this afternoon, I had a call from London. It was a call for George—and it was Alexander! I do not know if it was Alexander Downer, but it was from London. And he feels like he might be pushed under the bus, just like Senator Brandis did to Joe Hockey. The people on that side will sell out anyone. They will throw their own colleagues under the bus just to be able to save face.

This is a very sure sign of a Prime Minister who is desperate. It does not matter which way he looks, he knows there is always someone gunning for his back. That is what he is afraid of. We all know that when you are Prime Minister under attack from within your own caucus the last place you want to be is in parliament. I have been around politics for a little while, and I can assure you when a government is in trouble, they want to run. They want to get out of here tonight. Well, they have created this mess. We have a right, as senators, to have a look at this legislation and to be able to debate it. That is what we will be doing.

If you look at the sitting pattern for next year, what do you see? Not too many weeks of sitting, because, once again, Mr Turnbull had a plan to become Prime Minister, but he has never been able to develop a plan or an economic strategy for this country in order to be remembered as a good Prime Minister. What he has done is create some very, very mediocre ministers. We have seen that on display time and time again. What I will say now is what I have said before: travel safe, George, because I think London is calling you.

Senator RICE (Victoria) (19:30): This political grandstanding from Labor tonight is sour grapes because we have been able to deliver an outcome that they are jealous of and that they were not able to. They have sour grapes because we are the ones that brokered the outcome that is a win for farmers, a win for sustainable agriculture, a win for backpackers and a win for the environment.

We have managed to get an outcome that has delivered the same level of tax as what Labor agreed to this morning. This morning there was agreement all round that we would compromise and that we would get a 13 per cent tax rate. We have delivered the equivalent of that, because we tackled the other issue that was not being discussed, and that was the extraordinarily high rate of superannuation that was being clawed back from backpackers. The government was taxing backpackers' superannuation at 95 per cent. We have delivered an outcome that drops that rate from 95 per cent to 65 per cent. For backpackers, the combination of a 15 per cent tax plus reducing the level of superannuation tax is exactly the
same rate as they would have had with what the Labor Party were going to agree on this morning. It has been total sour grapes from them tonight. We have already had division after division, and I can just see the expectation that we will be here until the early hours of the morning because you just cannot accept that we have been able to deliver an outcome where you have failed.

We have heard lines of argument as to why this is not an appropriate deal. We heard an extraordinary line of argument that it is financially irresponsible to contribute $100 million towards Landcare. I consider that $100 million towards Landcare to be a really great Green win. It is terrific outcome. It is the beginning of more money being spent on Landcare, which we know has terrific outcomes for our environment and has terrific outcomes for our farmers as well. Those farmers want to be able to take measures that help their farms to be sustainable. They want to be able to leave the land in better shape than they have found it. So this extra money being spent on Landcare is a really great investment. And, talking about financial responsibility, there are plenty of other revenue measures that the Greens have supported and have been arguing for long and hard, which Labor are not coming anywhere near, such as the dealing with the $8 billion being spent every year on fossil fuel subsidies. If you want somewhere to get revenue from, that is one that both Labor and the government have not been willing to touch. If we are talking about revenue, let us bring in revenue by cutting those fossil fuel subsidies. Let us bring in revenue by getting rid of negative gearing completely. Let us bring in revenue by abolishing the capital gains tax discounts. That will bring in tens of billions of dollars. Here we are talking about $100 million, which is such a small but valuable amount of money. It is a great win. I am very pleased to be able to deliver those outcomes, because that what the Greens are about. We are delivering outcomes for the environment, for people and for a fair sustainable future for us all. We have been able to do that this afternoon, and I am very proud of it.

Finally, let me go to the accusation of the strange bedfellows. It is laughable. The number of times that Labor vote with the government—they did it twice just today, on incredibly serious issues. Today, we had them voting with the government on locking up people who might commit a crime. Today, also, Labor voted on changing the definition of war crimes. Those are two things just today and there have been many other occasions of Labor voting with the government, such as on cruel treatment of refugees. Debate after debate, decision after decision, we see the government and Labor on the same side. We do not hear Labor talking about that very often at all, yet they have the gall to criticise us when we get a good outcome for people and a good outcome for the environment—when we can broker an outcome that is a real win for farmers and a win for sustainable agriculture. The political grandstanding is just incredible!

I am very pleased to be able to be here today and that the Greens have supported this outcome. It means that the uncertainty has gone. This whole backpacker tax debacle has been complete shemozzle and a complete circus. It has been 18 months of uncertainty, of treating our farmers with disrespect and of scaring backpackers away from coming here. They are such a critical part of our workforce. It was untenable that this was going to go on over summer. We needed to give certainty to farmers; we needed to make sure that we reached a fair deal for backpackers. That is what we have delivered on today. It took the Greens to be
the circuit breakers, come in, say 'Come on,' bang some heads together and say, 'Let's get an outcome'. We have been able to deliver on this, and I am very pleased to have been part of it.

**Senator Roberts** (Queensland) (19:36): As a servant of the people of Queensland and Australia I am very happy with this outcome. In fact, I am very relieved. I am even happier that the solution adopted, the 15 per cent tax rate, is Senator Pauline Hanson's solution. It is actually the farmers' solution, because last June we listened to farmers' with these very concerns. They were strawberry farmers on the Sunshine Coast, and they really impressed me because they said, 'We have an enormous problem with the backpackers, and what we need to do is find a solution quickly.' It has not been quick. But those farmers impressed me because of their understanding of the situation and their understanding of the tax, and what really impressed me was their desire to form a solution rather than just whinge. These people understood what was needed not only from their perspective and the region's perspective but also from the backpackers' perspective. They understood the backpackers' view. They are very dedicated.

What that shows is that listening pays off. Pauline Hanson, James Ashby and I actually listened, and, now that we are in the Senate, it is paying off. Instead of being driven by ideology, we are driven by serving our country and by serving the farmers.

Two nights ago I congratulated the crossbench after the ABCC bill was passed, but then I learned something quite horrifying, and that was that a key clause that was changed in the amendments would bring in a two-year transition period. That two-year transition period flies in the face of an actual agreement, an enterprise agreement, between Lendlease and the CFMEU. That was clause 7.3 in an EA which the two parties had agreed to and, I understand, had just recently been finalised. That clause said that both parties, Lendlease and the CFMEU, recognise that the ABCC bill may be passed, and that, if it was passed, the two parties would get together and quickly renegotiate the EA. So there was no need for the transition clause. What it showed was that we as a Senate were bulldozed, we were scammed, by the CFMEU and Lendlease into giving them a two-year period of grace.

I also realised that the Murray-Darling Basin Plan is flawed, as we have known for some time, and is counterproductive for many farmers. Fortunately, we had two members—two farmers, actually—from the Murray-Darling Basin, in southern New South Wales, who showed us the damage that was being done. I need to congratulate the government on not capitulating to the demands for adjustments to the Murray-Darling Basin but, rather, deferring a decision to the future. That shows the power, again, of listening to the farmers involved, and we will be looking at that Murray-Darling Basin Plan quite seriously in the new year.

As a matter of integrity I need to apologise to the coalition for blaming them for this backpackers tax mess.

**Senator McKim:** I wouldn't go that far.

**Senator Roberts:** I certainly do, Senator McKim—through you, Mr Temporary Chair Whish-Wilson—because when I make a mistake I acknowledge it and if necessary I apologise for it. That was a mistake. I realised that the reason for this mess is the former Treasurer, Wayne Swan, a Labor Treasurer who, with the Labor Party, caused so much recurrent spending. I congratulate the current government on standing up and taking note of various
tribunal decisions and trying to resolve this in a timely way. So I apologise to the government for my misunderstanding.

I want to also acknowledge and express my appreciation for Senator Cormann—through you, Mr Temporary Chair. He kept his word throughout this whole discussion, and that is extremely important in the crossbench's view, after they were let down in their commitment to Senator Leyonhjelm. Fortunately, Senator Cormann has maintained his position in recent days, after the 15 per cent was agreed to by the government—and that is welcome for governance of this country, because we cannot have a government that bends to every whim. Decisions must be based on data. The government came to realise that 15 per cent, as understood by the farmers that talked to us, and as Senator Hanson proposed, was what was right. They unfortunately could not get some crossbench senators over the line yesterday. However, the 15 per cent is essential in treating not only the backpackers with respect and encouraging them to come back to our country; it is also treating the farmers with respect and maintaining regional Queensland. It is also welcome for governance in this country. It is also welcome for the budget and for debt, and for the farmers and for regional Queensland and for Australia. I hope that the crossbench have realised their mistake in not settling on the 15 per cent initially.

Negotiating is very important in politics, but what I am seeing is that horsetrading can often be damaging, especially when it involves the abuse of facts. We all have to do what is best for Australia and not play to our egos. So I say to the Senate: let's support this amendment that the government has proposed. Let's make Australia great again for everyone. Let's start with our farmers, who work hard over long hours and wear the economic risk to their own security and their family's security. Our farmers are our primary industry. We need to rebuild our regional economies into one nation. Let's make Australia great again for all Australians.

Senator DASTYARI (New South Wales) (19:43): I will not take up too much of the Senate's time. I want to begin by thanking Senator Roberts. I thought he put his case quite eloquently. It is good to know that this was a decision that was made by the One Nation party! And thank you for clarifying that the Greens, after a lot of struggle, came to adopt a One Nation position at the end of this! I think that is a very important point.

Senator Williams: That's long enough!

Senator Lambie: Get into it, Sam.

Senator DASTYARI: No, no. I have to say, after the election, when we first came back to this place, I thought we were all going to be talking about marriage equality—that marriage equality was going to be a big issue that we were going to deal with, hopefully in this parliament, hopefully in the first six months—and there was all this talk of a rainbow coalition. Well, we have seen the new rainbow coalition emerge: the Greens, One Nation, Nationals and Liberal coalition!

As Senator Roberts was saying, this is the future. We are seeing a crystal ball into the new year and, Senator McKim, it is fantastic that despite your differences with Senator Roberts and despite the fact that you spent the day on Twitter attacking each other about protesters, you are able to fold and give in to their policy positions when you see the merits of the arguments that are being made. Senator Roberts is right, you folded because you saw the
empirical evidence. You saw the empirical evidence of Senator Roberts's argument, and in the end the Greens party ended up adopting a One Nation position.

Where are the other Greens? They are not even here. We have not even heard from Senator Whish-Wilson in this debate. Who knows where he is at the moment.

The TEMPORARY CHAIR (Senator Whish-Wilson): Senator McKim, a point of order.

Senator McKim: Just quickly, it is incumbent on me to point out that in fact Senator Whish-Wilson is in the chair at the moment and fulfilling a duty to the Senate.

The TEMPORARY CHAIR: Thank you, Senator McKim, that is a debating point.

Senator DASTYARI: You are going to be getting up and defending Senator Roberts! But I have to say, Senator Roberts, I did see you a bit earlier and I noticed that there was a web video that you did with a Jean-Claude Van Damme. I hope the minister will not be offended by this, but we call him the 'real' Muscles from Brussels, as opposed to the other one. I thought it was appropriate because it is having a bit of backbone, having a bit of spine and being able to stand up and fight for your position. I think it is fitting, Senator McKim, that we had Van Damme in the building here today, actually trying to instil a sense of, 'You've got to stand up for something; you have to believe in something,' because what we have seen from the Greens is that they fold. They give in. You gave in! You gave in under the first bit of pressure that came, and you gave in to adopt One Nation's policy position.

This whole thing has been fairly sticky from the start, and not sticky in the sense of the protesters that you are all mates with, but sticky in the sense that the policy on this has been shady from go to whoa. The second the government turns around and puts any kind of pressure on the Greens, you fold. You have to learn that you have to stand up for some principles sometimes in this place, Senator McKim. I am disappointed. I have said this before, pragmatism is important in politics but so is policy and so is standing up for what you believe and so is standing up for—

Senator McKim: Oh please!

The TEMPORARY CHAIR: Order!

Senator DASTYARI: Through you chair, it is the Greens Party that are adopting the One Nation agenda. We saw it a few months ago when Senator Hanson made her first speech. They got up and in some kind of theatrical flourish walked out. I did not realise they were walking out so they could go and adopt her policy book. They must have heard the speech and got so inspired that they ran out to see how many of these policies they could adopt for themselves.

When Senator Roberts is playing the tune, it is Senator McKim who is following. I have to say Senator McKim—

Senator Lambie: The Pied Piper!

Senator DASTYARI: The Pied Piper! Senator Roberts is the Pied Piper!

I know there has been a lot of talk recently from the Leader of the Government in the Senate about the obsession that Mr Dreyfus, from the other place, may have. I do not think there is any truth in that, but what I notice from your social media feed, Senator McKim, is the obsession that you seem to have with Senator Roberts. I am all for that, you know; I am
very open-minded about these matters. But what I am surprised about is that it has extended
towards policy adoption and the policy development process. We always knew the Greens
were a bit light on policy but I did not realise they were so desperate for votes that they were
going to try to steal the One Nation policy agenda. And with that I will conclude to give the
Senate enough time to actually debate.

Senator HINCH (Victoria) (19:48): This may surprise Senator Cormann, but I am thrilled
by this deal. I will vote for this deal. I am glad that it is being done. It is great for the fruit
pickers. It is great for the horticulturalists. It is great for everybody that we have got to a
figure. I wish that I had had the prescience and the perspicacity of the chair and had thought
of attacking the superannuation deal myself, because if we had got to that we might have got
there a lot faster. When you look at the reduction from 95 to 65 with the superannuation, we
have got the 13 per cent that I wanted. We started yesterday with one person pushing for 13.
Shortly after that, I got Senator Culleton on board and that was two. Then we got Senator
Lambie and that was three, then we got the Labor Party and that was 29, then we got the
Greens and that was our 38, and suddenly we thought, 'We're all going to go home for
Christmas; it's going to be great.'

I want to put a bit of perspective into how all this came about, because I voted for the 19—
I did—with the government, and was happy to do so. But at the Prime Minister's party on
Sunday at the Lodge, I happened to meet the Treasurer, Mr Morrison, en passant, as he
walked past. I said to him, 'Look, not the place to do this, but I should actually mention maybe
that on the backpacker tax you may have to go from 20 down to 15.' He said to me in a brief
conversation, 'No way, we can't afford it.' Now he is affording it, and he is giving away $100
million as well, but never mind. He said, 'We can't afford it.' So the next day I gave a press
conference in which I said, 'I think the government should come down from 20 to 15. I could
go with that.' I was then made aware that the One Nation Party was pushing for 15, and then I
heard another press conference where the Treasurer had said we are going for 15.

Yesterday morning, which seems like a week ago, I walked in here—I will grant the
Treasurer that he assumed that having backed 19 I would happily back the government again
on 15—and supported their stand. I actually voted with them on the superannuation as well. I
walked into the chamber and I was assured from the Treasurer's office that, 'Yes, we'll vote
for 15 if you've got the numbers,' and we were told they had the numbers. I think they had
miscounted the bus because one of those passengers had moved from One Nation to an
Independent. I looked at that and I saw that the government was going to lose the 15-per-cent
motion. I thought, 'Even if I vote with them they are going to lose, because Senator
Leyonhjelm is on the other side.' And I thought to myself, 'We are going to lose at 15.'

So I thought, 'I want to get this through. We have to get it done by Christmas.' I knew that
10½ would get through so voted with them and happily so. Then, I negotiated with the
government up to 13 and they drew the line. As I said, a clever move by the Greens, and I
support it, that they could get the actual tax down to the 13 that we had aimed for.

I am not going to take up much more of our time on this—I hope we can get out of here
early. We have got there. We have done a deal. I am happy with it. I am thrilled that all the
opposing parties got to 13 per cent and then the Greens, to their credit, found a way to get a
non-movable 15 per cent down to 13 per cent. I agree with their passion about the land. The
fact that they got $100 million for Landcare is very good. But I will go to bed tonight
thinking, 'The government could have got us all at 13 per cent. $100 million is a lot of money to’—as Senator Wong would say—'just assuage somebody's pride.'

**Senator McKIM** (Tasmania) (19:52): I thank Senator Hinch for that contribution because it was a much more rational contribution and far more closely connected to reality than the contribution we just heard from Senator Dastyari, who has now fled the chamber rather than stay and face the music and be held to account for the absolute drivel that came out of his mouth during his contribution.

I was listening carefully to Senator Dastyari. Do you know who I did not hear Senator Dastyari refer to? I did not hear him refer to the farmers of Australia once in his contribution. Not once in this debate tonight have Labor addressed a single microsecond of thought to the farmers of Australia who were facing having the fruit rotting off their trees—dropping from the limbs of the cherry trees down at Middleton in Tasmania, the apple trees down at Castle Forbes Bay and, deep in the Huon Valley, the pear trees of Dover. Not once have the Labor Party addressed their minds to those farmers who were facing massive business losses because they simply could not find the labour to get the crops off the trees.

Do you know who else I did not hear Senator Sam 'Dashing' Dastyari refer to? It was the tourism sector in Australia and specifically the tourism sector in Tasmania, which has issued a very glowing statement late this afternoon about the Greens' maturity and the fact that the Greens were ready to be the adults in the room. I do acknowledge for the record that Senator Dastyari is now returning to the chamber. I am glad he has returned to hear this.

**Senator Dastyari:** I wouldn't miss it!

**Senator McKIM:** I know you wouldn't miss it for the world, Senator Dastyari!

**The TEMPORARY CHAIR (Senator Whish-Wilson):** Senator McKim, address your comments through the chair, please.

**Senator McKIM:** I know Senator Dastyari would not miss my contribution for the world. I will turn to Senator Roberts's contribution later. I was just suggesting that of course what we did not hear from Senator Dastyari was empathy for the farmers of Australia who were facing the fruit falling from the limbs of their trees, including the cherry growers of Middleton and down in the Doncaster region of Tasmania. I know, Senator Dastyari, where you are from there probably are not many apple and pear growers. But there are an awful lot of apple and pear growers down in Tasmania. I am proud to represent them.

I want to acknowledge the contribution to this debate and the leadership shown by Senator Peter Whish-Wilson, my friend and colleague from Tasmania, who was instrumental in delivering for the farmers of Tasmania and the tourism sector in Tasmania. I want to place on the record the view of the tourism industry in Tasmania. They have made it clear today that one operator in Tasmania that services backpackers has said that to date their bookings are down this summer compared to last as much as 40 per cent. I am not going to absolve the government of responsibility here as Senator Roberts attempted to do. This is a former Senator Colbeck special that we are dealing with here. You can lay the entirety of the blame for opening up this whole can of worms right at the feet of Richard Colbeck, a former Tasmanian senator and former minister for tourism. He cracked the lid off this entire can of worms. He has to accept his role in this saga.
The government's role has been appalling and pathetic. Their brinksmanship on this issue led us to this place where on the last evening of the last day of the last sitting week of the year it took the Australian Greens to be the adults in the room and make sure that we did not end up with a situation where we adjourned this parliament for the year and over the summer had the risk that we would have an effective tax rate of about 32 per cent, which would have smashed the agricultural sector and the tourism sector in this country, including significantly the tourism sector in Tasmania that I have the honour to represent in this place.

But we did not hear about any of that from Senator Dastyari, because this is all about the politics for the Labor Party, as it was when the Greens ensured that we toughened up tax avoidance measures for multinational companies a year ago. All we heard from Labor was the politics, whereas the Greens stood up and made sure that corporate tax dodgers pay their fair share of tax in this country so that we can adequately fund health, education and essential public services.

Senator Dastyari: You adopted One Nation's policy.

Senator McKIM: The thing with Senator Dastyari is that the louder he gets the more he is hurting and the more truth he knows he is hearing. So I am glad that he is still trumpeting on, even though I do not remember pulling the chain. But I am glad that he is trumpeting on because it just shows that the truth hurts in this place.

I want to go to the quite astounding contribution we have just heard from Senator Roberts, who has also fled the chamber before he has had the opportunity to have the truth told to him. It will not surprise the Australian people to know that once again they have been the recipients of a giant conspiracy theory from Senator Roberts. The arrangement that the Greens have come to through Senator Whish-Wilson and our leader, Senator Di Natale, with Senator Cormann on behalf of the government on which the vote will occur in this place is a far, far better deal than the 15 per cent that it behoves me to point out that both One Nation and the Labor Party were prepared to support.

Interestingly, the Labor Party went on the record this morning saying that they were prepared to support 13 per cent income tax, including 95 per cent on the superannuation payments that are put aside for backpackers when they leave the country. Effectively, Labor said they were prepared to back in an effective 13 per cent rate. That is exactly what we have delivered, with the added bonus of $100 million for environmental programs for Australia's farmers. To Senator Dastyari—through you, Chair—what the Greens have done this afternoon and this evening is to reduce the tax paid on superannuation from 95 per cent to 65 per cent. Combined with the 15 per cent headline income tax rate, that means backpackers are ultimately taxed on all their earnings, including super, which is the same as Labor's offer. It raises the same revenue as the position that Labor put to the Australian people this morning, and means that backpackers get the same outcome.

To everyone listening to this debate, I urge you to put aside the political rhetoric and the spin that you will hear from the Labor Party throughout this evening, because it is absolute drivel. What the Greens have done is, effectively, take Labor's position from this morning and improved it by delivering another $100 million in environmental programs for Australia's farmers. That is why Senator Dastyari, Senator Wong and all the other Labor senators do not have a leg to stand on. That is why their contributors are hopping around in circles, because they only have one leg to stand on for their contributions. I say to the farmers of this country
that the Greens have stood up for you today. We have stood up to make sure that farmers are not faced with a 32 per cent effective tax rate over the summer on backpackers, and we have stood up for the tourism sector.

Senator Wong interjecting—

Senator McKIM: Senator Wong is here, so I am going to read to her from a media release from the tourism industry in Tasmania, which congratulated Senators Whish-Wilson and McKim for stepping up when it mattered and striking an agreement that ends the uncertainty in the market. It points out that the Australian Greens, along with the government, have done the right thing—this is from the tourism industry in Tasmania—in resolving the backpacker tax debacle.

Senator Wong interjecting—

Senator McKIM: Do you know who owns the debacle? Do not worry, Senator Wong—through you, Chair—it is not entirely the Labor Party that owns this debacle, because the Liberal Party and the government have to wear their fair share of the blame too, particularly former Senator Colbeck, who opened up this whole can of worms.

Senator Wong interjecting—

Senator McKIM: There is another five minutes to go, Senator Wong, so settle down. What you are hearing today from the Labor Party is the politics. What you are hearing from the Greens is our desire to reflect what the real world is trying to tell this parliament. That is why we have been congratulated by representatives of the agriculture sector in this country and, in fact, by representatives of the agriculture sector in Tasmania. It is why we have been congratulated by the representatives of the tourism sector in Tasmania. It is really important to point out, when Labor tries to link the Greens to the One Nation party, that we have delivered a far, far better deal for the country than the One Nation 15 per cent rate, because we have delivered an effective 13 per cent tax rate for backpackers, plus an extra $100 million in environment programs for Australia's farmers.

It is worth pointing out—and I say this to my Tasmanian Labor colleagues in this parliament, whether it be Senator Bilyk, Senator Polley, the other Tasmanian Labor senators or the Tasmanian members in the House of Representatives—that, unfortunately, what you were prepared to do was let the fruit rot on the trees and let the grapes wither on the vines, all to make a political point. The Greens decided that we had to be the adult in the room here. We had to be the circuit-breaker that brought an agreement to this place and allowed for a resolution to the shambles that the backpacker tax debate had become. We have done so on behalf of the farmers of Australia and on behalf of the tourism sector of this country.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (20:04): Can the minister confirm what the additional costs are of the agreement reached with the Greens and outlined in the letter signed by Senator Di Natale to Senator Di Natale—that is a little bit odd—and co-signed by Scott Morrison, the Treasurer? Can you confirm what the cost of that agreement is over the forward estimates?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:05): I indicated that in my contribution earlier. Over the forward estimates the net effect of this package is a $560 million improvement to the budget bottom line. Not only is it a $560 million improvement in the budget bottom line that is
legislated; also, as a matter of public record, we have made a one-off contribution of $100 million to the National Landcare Program, which is a one-off contribution as opposed to a recurrent improvement which has been locked in. The net effect of this package is a $460 million improvement. You have to remember that this also locks in the $260 million effect from the increase in the passenger movement charge, which only comes into effect once this legislation passes.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (20:06): I am not sure that answered my question. I understand about the longer term, but what is the additional cost of this deal over the forward estimates, and what is the year-on-year profile over that time?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:06): To be very direct, the reduction from 95 per cent to 65 per cent in the tax on superannuation as it applies to working holiday-makers is a cost of $55 million over the forward estimates. The profile of that on a year-by-year basis—which is in the explanatory memorandum—is minus $15 million in 2017-18, minus $20 million in 2018-19 and minus $20 million in 2019-20. In relation to the $100 million Landcare contribution, it is $100 million over the forward estimates—notionally, $25 million per year, but that is yet to be finally settled.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (20:07): I would like to ask a couple of questions in relation to the agreement reached with Senator Leyonhjelm. This relates to the Australian Business Register that was required under the bill we debated earlier. It appears from statements by Senator Leyonhjelm and the government that further amendments may be required to what have already passed the parliament in relation to the requirements on that Business Register—reporting requirements et cetera. They are not details that have been provided that we can find from either Senator Leyonhjelm or the government, and we are just trying to understand whether further amendments will be required at some stage to enact the agreement reached with Senator Leyonhjelm.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:08): The agreement with Senator Leyonhjelm is not part of this legislation that is before the parliament, but we have made that commitment in good faith and we will deliver on it.

Senator LAMBIE (Tasmania) (20:08): I genuinely welcome the news that the Greens have negotiated a deal that delivers an effective backpacker tax rate of 13 per cent, and I only pray it works because our Tasmanian farmers should never have been put through the bureaucratic and political hell for the last 18 months that they have been put through. The government's inaction, arrogance and incompetence have caused terrible harm to many Tasmanian, and Australian, farming families. Our farmers deserve a fair share of the extra $100 million announced in the National, Liberal and Greens deal for Landcare, and I am calling for the details of this deal and the total amount to be allocated to Tasmania to be released to our farmers as soon as possible.

I hope that a backpacker deal which has a headline rate of 15 per cent but incorporates superannuation concessions—I sincerely thank Senator Whish-Wilson; you cannot take it away from him because he did a great job with this—that lower the rate to an effective 13 per
cent is recognised internationally as competitive. With New Zealand's backpacker rate set at a headline rate of 10.5 per cent and with New Zealand poaching a lot of Australia-bound backpackers, I still have concerns for the long-term viability and the competitiveness of this deal. I will go into the short-term damage that has been done shortly.

I hope that once this matter is dealt with today in parliament a lasting and viable solution is put in place. It would be an absolute disaster if we had to revisit the backpacker crisis in another 12 months, although I have a feeling that after this season we will be visiting it a lot quicker. I will continue to listen closely to Tasmanian farmers and vote according to their best interests. Unfortunately this crisis has shown that mainland dominated farming organisations like the National Farmers Federation—shame on them, they are an absolute disgrace and cannot be trusted to represent Tasmanian farmers in Canberra or any other farmer in this nation—have become the lap-dogs of the National-Liberal parties rather than being watchdogs for rural and regional Australia.

I have a couple of questions for you, and I want to talk about the deal that you have done with the NXT over the dole payments—

Through the chair please, Senator Lambie.

Senator LAMBIE: Through the chair, to the minister: I would like to know how much it is going to cost and is it true that this deal is only offered on South Australian dole recipients and nowhere else?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:11): No, that is not true.

Senator LAMBIE (Tasmania) (20:11): Through the chair: Minister, what is not true—are you going to offer this to every Australian on the dole?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:11): The suggestion that this is only going to be offered to people in South Australia is not true.

Senator LAMBIE (Tasmania) (20:11): Can you please tell me, Minister, how many people are currently on the dole that you believe are going to access this arrangement?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:12): As previously indicated, the package has been costed in relation to this aspect of it on the basis of an expectation that 3,000 unemployed Australians will access it per year.

Senator LAMBIE (Tasmania) (20:12): Through the chair: Minister, this is good—how many people are out there on the dole at the moment, and you only expect 3,000 people to take up this offer?. What modelling have you used to come up with that figure?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:12): The numbers are self-explanatory; they are in front of the Senate. Obviously people are entitled to agree or disagree, but there is not much more that I can add to that.

 Senator LAMBIE (Tasmania) (20:12): I think, on average, those on the dole payment between 17 and 25 total around 165,000. Can you tell me if 100,000 or 80,000 of those Australian kids out there take up these jobs what it will cost?
Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:13): It would be fantastic if all these people on the unemployment benefit wanted to take up work—that would be great—but at this stage it is not our expectation that it would have such a significant uptake as Senator Lambie is suggesting.

Senator WHISH-WILSON (Tasmania) (20:13): Earlier today in the Senate we seemed to have support from the opposition, from the Greens and from most of the crossbench to put up a backpacker tax rate of 13 per cent. That relied on the government sending the legislation to the Senate and us doing what we did the other day. The Greens supported a 10½ per cent backpacker tax rate. Our preferred position was to see backpackers taxed as residents. That clearly was not going to happen, so we compromised and supported 10½ per cent. I have to talk black and blue about the elephant in the room, which has been the superannuation clawback in this bill. It was an additional nine per cent tax on top of the rate.

We have in front of us tonight—I want to make this very clear for anyone around the country who happens to be bored on a weeknight and is listening in to the Senate, and good on them for doing that that if they are—is effectively the same tax rate for backpackers as 13 per cent. This has been structured to achieve a 13 per cent tax rate in their back pocket. To make this clear again: this is what most of us agreed on this morning that would have been enough to have passed the Senate and gone back to the House. The outcome that has been negotiated here is essentially, for all intents and purposes, a 13 per cent backpacker tax rate.

I want to acknowledge Senator Lambie here tonight. She has worked her heart out for Tasmanian agricultural producers, as have the Greens, from day one, to make sure that we get the best deal possible for farmers. Is it a perfect deal? No, it is not. Let's be honest: no, it is not. And any agricultural producer out there will acknowledge that this is not a perfect deal. They wanted to see backpackers taxed as residents for tax purposes. But all we have said to them is that we will do the very best we can to get the best possible deal. This outcome that we have tonight is the best possible deal. This is what most of us agreed on. And we have to be honest—put all the politics and all the BS aside here tonight—that this is what we have here in front of us, and it will give certainty to Tasmania's farmers, to Australian farmers, and to backpackers; we desperately need their labour in this country and always have. I am okay with entertaining schemes that get Australian workers into these jobs. That is great, but it is not going to solve a short-term crisis. But I commend any attempts to do that.

And I want to acknowledge One Nation and other crossbenchers in here as well—Senator Leyonhjelm, Senator Hinch—for actually coming to a practical solution and conclusion to this debate. The only people in this Senate who are not accepting that this is a good solution—it is not a perfect solution, but it is a good solution to this problem that is accepted by the agricultural community right across the board, and accepted by the tourism industry, who want this outcome—are the Labor Party.

So, if you are watching and wondering why Labor is keeping us here until the early hours of the morning, I will give you a very brief history lesson, and then I will conclude. Whenever the Greens do deals that deliver good outcomes for Australians, Labor decides that they need to take some skin off us. It is as simple as that; it is pure politics. My daughter, who is here tonight—Bronte—happened to be here last year during the multinational tax debate, and she remembers the same kind of thing happening: we did a good deal and we were here all night.
getting skin torn off us by the Labor Party because we dared negotiate with the government to get an outcome that was a good outcome for Australians and for stakeholders. Incidentally, when my daughter Bronte was here last time there were also the climate change protests in the marble hall, and yesterday she happened to be here for the protests across the way at the other place. It might just be a coincidence!

Nevertheless, I will finish up now and say that this has been a long saga. We have been very critical of the government's mishandling of this. This has been a Mexican stand-off, a really dangerous game of chicken, that was going to put a lot of agricultural producers at risk. But we feel we have struck a compromise now that is accepted by agricultural producers, that is accepted by the tourism industry, that delivers certainty and—I am very glad to say—that delivers $100 million back into Landcare for the environment, which is really important to my party and Greens voters and Greens supporters. This is why we are in parliament: to get outcomes. Let's get on with this. Let's pass this into law, get it into legislation, put this sorry saga to rest and hope the hell it never happens again.

Senator HANSON (Queensland) (20:18): I do support this, and I thank the Greens for coming to this agreement with the government. What I am annoyed about is the horse trading that has gone with it along the way. I believe One Nation is probably the only party in this house that has not done a deal on this. We looked at it on merit and we supported it from the beginning. We did negotiate from 19 per cent down to 15 per cent, and we supported it on its merits. Now, this has been supported by the Greens, and I appreciate that it has been, because the most important people here are the farmers. It is all about the farming sector, the backpackers but also the hospitality industry, which needs to be addressed here.

I have had people ring up my party office saying, 'Thank goodness there is some common sense and that a decision has been come to after so long.' The fact is, this could have been sorted out yesterday if Senator Culleton had agreed to 15 per cent or Senator Hinch had agreed to 15 per cent or even Senator Lambie had agreed to 15 per cent. It could have been sorted out yesterday, but it was not. The fact is that this is about the farming sector, who are in dire straits. So, I am pleased about this. In this chamber policies must be dealt with on merit, not through horse trading, and that is why I do not agree with a lot of things that happen here.

We are the leaders of this nation. I am not happy with the Labor Party's stance on this, because they of all people should be supporting the farming sector, which is the backbone of this nation, the ones who are suffering because of this. I wish this decision had been come to a lot earlier than it has, but that was not the case. Anyway, once again, I will reiterate that the Greens have come to a decision and that common sense prevails in this house. I support this wholeheartedly and I am glad it has finally found closure.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:21): I move:

That the question now be put.

The committee divided. [20:25]

(The Chair—Senator Lines)

Ayes ...................... 39
Noes ...................... 23
Majority ............... 16
The question agreed to.

The CHAIR: The question now is that the committee does not press its request for amendments not made by the House of Representatives.

Question agreed to.

Bill agreed to.

Resolution reported; report adopted.

Third Reading

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:29): I move:

That this bill be now read a third time.

And I move:
That the question now be put.

The PRESIDENT: The question is that the question now be put.

[The Senate divided. [20:30]

(The President—Senator Parry)]

The Senate divided. [20:30]

(The President—Senator Parry)

Ayes .................... 39
Noes .................... 23
Majority .............. 16

AYES

Back, CJ
Brandis, GH
Bushby, DC (teller)
Cash, MC
Culleton, RN
Duniam, J
Fierravanti-Wells, C
Hanson, P
Hinch, D
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Reynolds, L
Rice, J
Ruston, A
Scullion, NG
Siewert, R
Waters, LJ
Williams, JR

Birmingham, SJ
Burston, B
Canavan, MJ
Cormann, M
Di Natale, R
Fawcett, DJ
Fifield, MP
Hanson-Young, SC
Hume, J
Macdonald, ID
McKenzie, ID
Nash, F
Paterson, J
Rhiannon, SC
Roberts, M
Ryan, SM
Seselja, Z
Smith, D
Whish-Wilson, PS

NOES

Bilyk, CL (teller)
Collins, JMA
Dodson, P
Gallacher, AM
Griff, S
Ketter, CR
Lambie, J
McAllister, J
Moore, CM
Polley, H
Watt, M
Xenophon, N

Cameron, DN
Dastyari, S
Farrell, D
Gallagher, KR
Kakoschke-Moore, S
Kitching, K
Lines, S
McCarthy, M
O'Neil, DM
Pratt, LC
Wong, P

Question agreed to.

The PRESIDENT (20:32): The question now is that the bill be now read a third time.

The Senate divided. [20:33]

(The President—Senator Parry)
Ayes .....................43
Noes .....................19
Majority..................24

AYES
Back, CJ
Brandis, GH
Bushby, DC (teller)
Cash, MC
Culleton, RN
Duniam, J
Fierravanti-Wells, C
Griff, S
Hanson-Young, SC
Hume, J
Lambie, J
Macdonald, ID
McKenzie, B
Nash, F
Paterson, J
Rhiannon, L
Roberts, M
Ryan, SM
Seselja, Z
Smith, D
Whish-Wilson, PS
Xenophon, N

Birmingham, SJ
Burston, B
Canavan, MJ
Cormann, M
Di Natale, R
Fawcett, DJ
Fifield, MP
Hanson, P
Hinch, D
Kakoschke-Moore, S
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Reynolds, L
Rice, J
Ruston, A
Scullion, NG
Stewart, R
Waters, LJ
Williams, JR

NOES
Bilyk, CL (teller)
Collins, JMA
Dodson, P
Gallacher, AM
Ketter, CR
Lines, S
McCarthy, M
O'Neill, DM
Pratt, LC
Wong, P

Cameron, DN
Dastyari, S
Farrell, D
Gallagher, KR
Kitching, K
McAllister, J
Moore, CM
Polley, H
Watt, M

Question agreed to.
Bill read a third time.

Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill (No. 2) 2016

First Reading

Bill received from the House of Representatives.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:36): 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 CORMANN** (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:36): I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

This Bill amends the Superannuation *(Departing Australia Superannuation Payments Tax) Act 2007* to lower from 95 per cent to 65 per cent the rate of tax on superannuation payments applying to working holiday makers after they leave Australia.

As part of the Government's working holiday maker reform package, Parliament previously agreed to amend the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* to increase to 95 per cent the rate of tax on superannuation payments to working holiday makers after they leave Australia. That increase helped to ensure that the Government's working holiday maker reform package was fully offset.

As a result of the negotiations with Senate crossbench around the passage of legislation to implement a 15 per cent tax rate on working holiday makers' income, the Government has agreed to lower the rate of tax on working holiday makers' Departing Australia Superannuation Payment from 95 per cent to 65 per cent.

The new rate of tax introduced by this Bill will apply from 1 July 2017. The decision to lower the rate of tax on Departing Australia Superannuation Payments to working holiday makers from 95 to 65 per cent is estimated to have a cost to revenue of $55 million over the forward estimates.

This change will lower the overall level of taxation that applies to working holiday makers. It is part of the Government's package to lower to 15 per cent the rate of tax applying to working holiday makers' income. This is a good outcome for working holiday makers and the employers that rely on them as a valued source of seasonal labour.

Full details of the measure are contained in the explanatory memorandum.

I move:

That the question be now put.

**The PRESIDENT** (20:38): The question is that the question be now put.

The Senate divided. [20:38]

(The President—Senator Parry)

Ayes ......................37
Noes ......................22
Majority.................15

**AYES**

Back, CJ
Brandis, GH
Bushby, DC (teller)
Cormann, M
Di Natale, R

**Birmingham, SJ**
Burston, B
Canavan, MJ
Culleton, RN
Duniam, J
Thursday, 1 December 2016

AYES

Fawcett, DJ
Fifield, MP
Hanson-Young, SC
Hume, J
Macdonald, ID
McKenzie, B
Nash, F
Paterson, J
Rhiannon, L
Roberts, M
Ryan, SM
Seselja, Z
Smith, D
Whish-Wilson, PS

Fierravanti-Wells, C
Hanson, P
Hinch, D
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Reynolds, L
Rice, J
Ruston, A
Siewert, R
Waters, LJ

NOES

Bilyk, CL (teller)
Collins, JMA
Dodson, P
Gallacher, AM
Griff, S
Ketter, CR
Lambie, J
McAllister, J
Moore, CM
Polley, H
Wong, P

Cameron, DN
Dastyari, S
Farrell, D
Gallagher, KR
Kakoschke-Moore, S
Kitching, K
Lines, S
McCarthy, M
O'Neil, DM
Watt, M
Xenophon, N

Question agreed to.

The PRESIDENT (20:40): The question now is that this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (20:41): I move:

That this bill be now read a third time.

I move:

That the question be now put.

The PRESIDENT: The question is that the question be now put.

The Senate divided. [20:42]

(The President—Senator Parry)

Ayes ..................37
Noes ...................22
Majority ...............15

CHAMBER
The question is that the bill be read a third time.

The Senate divided. [20:45]

(The President—Senator Parry)

Ayes .................. 41
Noes .................. 18
Majority ............. 23

AYES

Back, CJ
Brandis, GH
Bushby, DC (teller)
Cormann, M
Di Natale, R
Fawcett, DJ
Fifield, MP
Hanson-Young, SC
Hume, J
Macdonald, ID
McKenzie, B
Nash, F
Paterson, J
Rhiannon, L
Roberts, M
Ryan, SM
Seselja, Z
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Hinch, D
Leyonhjelm, DE
McGrath, J
McKim, NJ
Parry, S
Reynolds, L
Rice, J
Ruston, A
Scullion, NG
Siewert, R
Waters, LJ

NOES

Bilyk, CL (teller)
Collins, JMA
Dodson, P
Gallacher, AM
Griff, S
Ketter, CR
Lambie, J
McAllister, J
Moore, CM
Polley, H
Wong, P

Cameron, DN
Dastyari, S
Farrell, D
Gallagher, KR
Kakoschke-Moore, S
Kitching, K
Lines, S
McCarty, M
O' Neill, DM
Watt, M
Xenophon, N

Question agreed to.
Question agreed to.
Bill read a third time.

**VET Student Loans Bill 2016**

**Consideration of House of Representatives Message**

Message received from the House of Representatives informing the Senate that the House has not made the amendments requested by the Senate.

Ordered that the message be considered in Committee of the Whole immediately.

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (20:47): I move:

That the committee does not press its requests for amendments not made by the House of Representatives.

Senator CAMERON (New South Wales) (20:48): I ask that the question be divided in respect of requests (1), (2) and (4) and I foreshadow that I have an alternative request to move in relation to request (3).

The CHAIR: The question is that the committee does not press the Senate's requests for amendments (1), (2) and (4) which have not been made by the House.

Senator CAMERON: Labor takes the view that this is an extremely important issue. We want to continue to press this matter before the chamber. We are determined that individual
students should not be suffering under this bill. On that basis, we would continue to press parts (1), (2) and (4) of the message.

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (20:50): As I explained to the Senate yesterday when we considered this matter, what Labor’s amendments effectively do is continue the VET FEE-HELP scheme for TAFEs and other public providers and for a longer period of time. Whilst it is a fact that the worst rorting of this scheme which blew out from costing hundreds of millions of dollars to costing several billion dollars annually was unquestionably in the private sector, the public sector and the TAFEs do not exist with a completely clean bill of health. The government has sought in that case to try to treat a sensible middle ground. We have in constructing the new VET Student Loans program guaranteed public providers automatic into that new program so that they do not have to go through the same rigorous application process that private providers will go through and they do not face the risk that private providers have of being rejected from participation in the new program.

But, once they are in the new VET Student Loans program, our view is that all providers should meet the same standards, should have the same quality checks. That is because, as I read to the Senate last night—and I will not take up the time of repeating it—there are a number of instances of enormous fee growth in the TAFE sector, of poor completion rates and of some of the types of poor outcomes that we have seen in the private sector as well. To make sure we have high-quality outcomes across the new VET program, we want to make sure that everybody is playing by the same rules once they have been admitted to participate in that program.

Following consultations and discussions with crossbenchers, I am, however, mindful of the fact that there are some issues in terms of providers in the public or not-for-profit sectors whose courses they are offering are not on the eligible course list that the government has published to date. With that in mind, I have given commitments that the government will consider on a case-by-case basis those not-for-profit or public providers who can demonstrate that they have a course that is not currently on the eligible list but which they have been providing or delivering to students over the last year or years and for which they have demonstrable strong or good employment outcomes from that course, so we can actually ensure that, if there are worthy cases that could have been affected by this, they are given the chance to continue to offer those courses or qualifications under the new program.

They will still have to meet the fee cap that we are putting in place and work within those fee cap regimes, but it will allow some additional flexibility for the treatment of public or not-for-profit providers in relation to their access to continue to offer courses that are not on the currently published eligible courses list.

Senator CAMERON (New South Wales) (20:53): I just find it absolutely gobsmacking that Senator Birmingham can stand up here and criticise TAFE on the basis of being involved in rorts when we know it was not TAFE that was involved in the rorts. But I will tell you who was involved in the rorts: the Liberal Party in South Australia. The Liberal Party in South Australia did a deal with Senator Bob Day when he was here as a reliable vote. Senator Bob Day comes along to the Liberal Party and says, ‘Give me $1.4 million for my pet project in South Australia,’ and what does he end up with? He ends up with $2 million. So do not come...
here and argue about rorts and TAFE when you yourself, Minister, are part of a $2 million slush fund, basically, to Bob Day for his pet project.

You talk about quality. Young people who go through the so-called student builders program in South Australia will not receive a trade certificate at the end of it. That is another example of what the government would do to try to maintain votes. We have seen what they would do tonight in deals with the Greens and deals with people that they would never do deals with in the past. But they will do a deal with the Greens because they are a weak rabble of a government. They are weak government with a weak Prime Minister and absolutely no strategy to move ahead.

No-one should pay any attention to the lectures we are getting tonight from Senator Birmingham, because Senator Birmingham's position, in my view, is to destroy TAFE, to hand the training system over to the private sector, the big end of town, and to make sure that it is all on a for-profit basis. The great TAFE system that we have in this country will be diminished forever. Senator Birmingham has no credibility when he talks about problems with TAFE, because the strategy is to destroy the apprenticeship system as we know it, to destroy the capacity for working people in this country to get a trade certificate when they finish their apprenticeship, to make sure that the cronies of the Liberal Party are running what would be a pretty poor technical system in this country. That is all on the basis of handing money over to the people that support this government. I think it is outrageous that you would come in here and cast any aspersions on the TAFE system when we see the behaviour that you and the Liberal Party are involved in, with the rort that is going on with former senator Bob Day in South Australia.

Senator HANSON-YOUNG (South Australia) (20:56): I would like to add my comments to this discussion on the VET Student Loans Bill 2016 and indicate that the Australian Greens will be insisting on the amendments that the Senate has previously asked to be included in this bill, precisely for a number of the reasons that Senator Cameron has outlined. TAFE, the bedrock of our vocational education and training sector, is not being given the benefit of the doubt and the ability to allow for a smooth transition under this new scheme and to guarantee assistance to students to finish their courses and to continue to have stability in their education and training.

Extreme rorting happened under this system. We have outlined a number of incidents over the past days as we have been debating this bill. Many of them have been reported publicly in the media and spoken about at the various Senate inquiry sessions we have had. The rorting has been in the extreme. There has been fraud; I believe there has been theft of the public purse; and there has been exploitation of very vulnerable people, particularly those from some of the most disadvantaged backgrounds and communities. The people doing this rorting have been big bozos who really want to simply line their own pockets—for-profit providers who have done nothing to lift the level and quality of education in this country. They never intended to provide proper services and education and training opportunities to students, particularly to young people in Australia. They were never interested in trying to get these young people the qualifications they needed to get them into work. It was all about making a quick buck on the taxpayer under a system that has become so systematically flawed. I have said it before and I will repeat it here tonight: what has happened in this VET scheme has
been the clearest example of the failure of the privatisation obsession in our education sector. It just does not work.

Public money designed to help particularly young people get the qualifications they need to get into the jobs that we need them to be in should not be up for grabs from people who just want to make money out of this. Why on earth should public funds be able to be exploited by for-profit providers, particularly when we have such a robust and experienced sector such as TAFE which is able to carry the load, is able to match the needs of students and people needing to skill up and ensure that they get the training they need to get into the workforce. I must say, the one thing that I do differ with Senator Cameron on is that this attack on TAFE, with cuts to TAFE funding and the exploitation of the system because of the privatisation agenda of previous governments as well as this government, has meant that TAFE has been copping it in the guts for many years, and it is time that we stood up for them; it is time that we put a bit back.

This is a simple amendment. It makes sense. It is simply saying that they are not the ones. TAFE is not the group of providers that have done the wrong thing. They have never been in this for making money. They have never been in this to exploit the vulnerabilities of particularly young people and other disadvantaged students in our community. They have been the ones who have had to pick up the pieces. Here we are asking them to pick up the pieces. As we all agree, this system needs to be cleaned up. TAFEs will be the ones who have to cop the brunt of that, and we are saying we should be giving them the support to do that properly, with a bit more stability and security as the transition goes forward.

It is not TAFEs' fault that, under the previous Labor government and continued under the coalition government, private operators were able to exploit and rob the public funds and rip off students and the taxpayer. The scumbags who run these providers, who want to make a quick buck off the generosity of the taxpayer, need to be brought to account. Instead of doing that and simply sticking it to them, we see the government not really wanting to take responsibility for the mistakes of the past and, instead, try to share the blame. It is not TAFEs' fault and it is not the students' fault; it is the greedy for-profit providers, underpinned fundamentally by the obsession of the privatisation agenda of successive governments, and it has to end. It has been proven to be a failure. Let's clean it up, let's get this amendment done and start moving towards underpinning and supporting a VET sector that we need now to be robust and quality more than ever. I just clarify that the Greens will be insisting that this amendment goes forward.

Senator Griff (South Australia) (21:03): I would like to address what the minister has proposed. Whilst the Nick Xenophon Team had indicated we were supportive of Labor's measure to exempt TAFEs, subject of course to appropriate accountability and transparency, the unintended consequences that were not apparent to us yesterday are of significant concern. VET loans are supposed to be only available for higher-level qualifications. Our advice is that Labor's TAFE amendment would throw the doors wide open and would make uncapped loans available for any course, including certificate courses and even students doing VET in Schools. Even if the amendment is revised to avoid these unintended consequences, we remain very concerned that it does not make any provision for not-for-profit providers who are particularly well placed to deliver courses that are aligned within their industry sector. Indeed, the bulk of correspondence that our team has received in recent days has come from
such providers, many of them industry associations who play a very important industry training role.

We consider the minister's current proposal to be workable, particularly as it now provides additional certainty to industry associations and other not-for-profit entities that operate RTOs and provide training, especially those courses from TAFEs and not-for-profit RTOs that are not on the exemption list—importantly, as long as they demonstrate an appropriate employment outcome. Whilst we anticipate most courses with a jobs outcome will be captured by the two-state and STEM provisions, this provides additional protection, particularly as the reforms take effect, to ensure that no courses required by industry inadvertently fall through the net. We think the government's proposal will bring about a good outcome, as it not only restricts providers who have been rorting the system, but does what employers and, most importantly, students who are their potential employees ideally desire. It ensures courses on offer are tied to business needs and employment outcomes. There cannot be many, if any, genuine students who are eager to spend the time and money on a VET qualification that does not secure them a job at the end of it. By tying courses to employment outcomes, it may also help to ensure that students are taught the most up-to-date and relevant skills. It means that the skills that are in demand will be taught at the level required.

The VET FEE-HELP scheme has been a welcome equaliser, helping more students into vocational education and training so that they can hopefully secure a better future for themselves. But if we are serious about reigning in the unsustainable blowout in the VET FEE-HELP costs, which in 2015 stood at $2.9 billion, we need to decide what outcomes we require from vocational education and training, and hone in on this. Again, ensuring a link to an employment outcome is a crucial part of this. I am thankful to the minister for the undertaking he has provided us in relation to not-for-profit organisations both in writing and in this place. I expect that we will continue our discussions regarding the criteria for the employment test. Given that this proposal does not require legislative change, I seek assurance from the minister that he will also continue discussions with me in respect of the employment test applying to those private providers that have not rorted the system. Many of them stand to lose significantly even though they did not rort the system. If employment outcomes are what the minister is concerned about, there is absolutely no reason why for-profit providers who are able to satisfy these requirements on a case-by-case basis should be treated any differently.

I now seek leave to table the letter provided to me by the minister.

Leave granted.

Senator CAMERON (New South Wales) (21:07): I am a bit bewildered, because the Xenophon political party yesterday agreed to these three requests that they are now saying they are opposed to on the basis of some discussions they have had—again, some secret deal and some understanding between the Xenophon political party and the coalition government. Senator Griff, what Labor is doing tonight is fixing the unintended consequence that you talk about. If the unintended consequence is fixed and the issue you have raised is not an issue anymore, I would certainly be appealing to you and your party to continue some continuity from one night to the other in the Senate. Because we have fixed it we think you should continue the position you had last night and support the TAFE system. This is about supporting the TAFE system. It is not about an undertaking to private providers; this is about
the bedrock of the Australian vocational training system—the VET system and the TAFE system—around the country. Senator Griff, you supported it last night and you raised it as a problem. I am indicating to you that that problem has been fixed. If that problem has been fixed, why would you change your principles and values in relation to this from one night to another? I just do not understand it.

Senator Griff, I have not had a chance to read the letter you have, but I am convinced that the South Australian public would want all politicians—coalition, Labor, Liberal, Green and Xenophon Team—supporting the TAFE system. I do not think it is a good thing for the Xenophon Team to be leaving here tonight not supporting the TAFE system, which is the bedrock of vocational educational training in this country. I would appeal to the Xenophon Team to do this—same as you did last night. Understand that the unintended consequences will be fixed through the amended request that I will be putting forward after this has been dealt with, and I would appeal that, for the benefit of the South Australian TAFE system, you support the requests.

Senator XENOPHON (South Australia) (21:10): I want to respond to Senator Cameron. We have looked at this; we have been made aware of unintended consequences. Of course we support the TAFE system. One of the problems that the TAFE system has faced, and I do not want to open up a political debate on this or to needlessly say this—

Senator Cameron: You will.

Senator XENOPHON: 'I will', he says. You did not know what I was going to say, Senator Cameron. What I was going to say is that what was done a few years ago by the Gillard government, and they did many good things, meant that this open slather way the loans were allowed then opened up the system to rorting. That is something that has been acknowledged, something that this government should have acted on many years earlier. That made a very big difference, a systemic difference, to the various vocational training organisations and in particular to the TAFE sector, which was also hit by a double whammy of budget cuts at the Commonwealth and state levels. And there were some state governments, whether it is a question of Commonwealth grants being reduced, that debased the TAFE system as a result of that open slather deregulation, which allowed the spivs and the rorters into the system.

I believe that TAFE colleges will be strongly supported because of the quality of courses they provide, because of the integrity of the people who run the TAFE courses and because of their inherently good reputations. This undertaking by the minister, that my colleague Senator Griff has negotiated, is a good undertaking. It is something that will allow TAFEs to continue to add on new courses, but it must be tied to evidence of employment outcomes, employer support for each course and provide a track record of student progression and completion for each course. Those words are very important: 'provide a track record of student progression and completion through each course'. I would have thought that TAFE colleges around the country have that reputation, more so than just about any other providers, but we should not also penalise those not-for-profit and for-profit providers that have done the right thing. We should not penalise those ethical providers in the not-for-profit and for-profit sectors in relation to this. I would have thought the inherently good reputation of TAFE colleges—their track record of student progression and completion through each course—along with this undertaking by the minister would, in essence, do much of what Senator Cameron is
suggesting. But the unintended consequences of the amendment, even in the amended form, will simply leave the gates wide open and lead to unintended consequences.

Senator CAMERON (New South Wales) (21:13): This is typical of Senator Xenophon and his team. They are not long here as a team, but I am getting a bit sick and tired of this approach by the Xenophon Team. They say, ‘We support workers’, and then they sell workers out, but they have got an excuse as to why they are selling workers out. They come here tonight and they say, ‘We support TAFE’. They will not support these referrals that do support TAFE, but they have got an excuse as to why the Xenophon Team should support TAFE. And they change their mind over 24 hours because of some letter they have got from the minister. I have not seen the letter yet, but I hope it is a better letter and a better deal than you got in the other deals that you did—selling working people out in this country. I hope it is a bit better than that. I cannot understand this position where the Nick Xenophon Team are always straddling the barbed wire fence and saying, ‘This leg says we are supporting TAFE,’ and, on the other side of the fence, you are not prepared to support the practical issues that do support TAFE.

Senator Xenophon, I just do not get this. I really do not understand why you will not support South Australian workers, why you will not support whistleblowers in any area other than the building and construction sector, why you capitulate continually to the coalition and why you let them take your play lunch off you in every negotiation you enter into. You can get all your papers out and get all that out, but it is clear that you should ask Santa Claus for one thing: a backbone. Get a backbone and stand up to this mob. Do not keep capitulating. Santa Claus might bring you a backbone, and hopefully when we come back next year you will be in a position to exercise the power that you hold; exercise the power in the interest of working people in this country; exercise the power in the interests of the TAFE system—because you are not demonstrating that now. You do all these convoluted deals that, when they are picked through, actually deliver very little.

I take the view that you should be a little bit consistent between last night and tonight and stand up for South Australia. Do not just make it another stunt at the doors. You have the opportunity to do the business in here, and you can start tonight by supporting these referrals, because that is in the interests of TAFEs all over South Australia. It is an absolute nonsense to say that this will be a problem for the private sector. It has nothing to do with the private sector. It is about ensuring that the TAFE system, the bedrock system in this country, is actually not disadvantaged. If you want to leave here with a bad deal for working people in the building and construction industry, not much for anyone but whistleblowers in the union sector and nothing in the rest of the sector, if you want to walk away from TAFE tonight, I do not think you are finishing this in a very credible position.

The TEMPORARY CHAIR: Senator Xenophon?

Senator Cameron: He can’t help himself!

Senator XENOPHON (South Australia) (21:18): No, Senator Cameron cannot help himself, Madam Chair. That contribution was appallingly inaccurate—in fact, just appalling—but I will address some of those issues. Firstly, if we want to revisit the ABCC in the context of this bill, I will try and do so as quickly as possible. In relation to whistleblowers, the biggest changes to whistleblower laws that we have ever seen were passed in the registered organisations bill. Those amendments were part of a massive change
to whistleblower protection. Senator Cameron may be dismissive of Professor AJ Brown, but he is the acknowledged expert on whistleblower protection laws in this country. These are massive changes to give whistleblowers in this country, for the first time, a system of compensation, increasing levels of disclosure, and in relation—

Senator Cameron interjecting—

Senator XENOPHON: Senator Cameron, a little bit of courtesy and a little bit of grace would not be out of order from you. Yesterday the issue of extending, at the very least, these whistleblower protection laws to the corporate and public sectors was referred to the Parliamentary Joint Committee on Corporations and Financial Services. These are significant changes. The committee is having an inquiry—and I hope Senator Cameron can participate in that process—so that for those who work for banks, for insurance companies and for mining companies, the whistleblowers in those organisations can come forward and be protected in a way that they have never been protected before.

In terms of the ABCC, you are well aware of a number of amendments that I and my colleagues moved that, for the first time, provide for real safeguards in terms of judicial review and provide administrative review that has real teeth and real protections but also ensure that the Australian Building Construction Commissioner can be held to account in relation to that. Those matters have been dealt with; they do not relate to this bill. But when you become aware of unintended consequences, when you become aware that—

Senator Cameron interjecting—

Senator XENOPHON: I gave you the courtesy of listening to you to silence. Senator Cameron cannot help himself. These changes ensure that those decent providers in the not-for-profit sector and, indeed, the full private sector are not unnecessarily disadvantaged.

We have said what we have said about the TAFE system and its very good reputation. But the fact is that the damage to TAFE was done a number of years ago by a former government, the Gillard government—which I acknowledge did many good things, but this was not one of them. The open slather of the TAFE system allowed for the rorting and the blowouts and allowed the TAFE system to be diminished. The proposal by the minister, which Senator Griff negotiated, does ensure that the TAFE system will continue to prosper. It will have the inherent advantage of having a provider track record of student progression and completion of each course that many other colleges cannot have, and we believe that this strikes the right balance.

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (21:22): I just want to touch on a couple of things quickly. Senator Cameron and, indeed, Senator Hanson-Young like to pitch this as a discussion about supporting TAFE. I think, firstly, everybody in this debate wants to support TAFE; but, more importantly, we ought to want to support TAFE students. It is the government's view that TAFE students should have the same support and confidence that their trainer wants to help them complete their course. Unfortunately, under VET FEE-HELP we have seen some TAFEs, as I detailed to the Senate yesterday, have completion rates drop to around eight per cent, which is completely unacceptable. We condemn that in the private sector, and it is not good enough in the public sector either.
As I told the Senate yesterday, we have equally seen some TAFEs engage in huge price growth that has seen course fees treble, quadruple, or go up even higher in the space of three years. Now I think those students deserve to know that they are going to have the same incentives in the TAFE system to keep fees down as there will be in the private system. That is all our proposed changes seek to do. They seek to treat everybody equally; but, importantly, they give students—whether they are in the TAFE sector, the not-for-profit sector, or the private sector—the same safeguards and create the same incentives for good behaviour across the VET sector, so that, whether it is a TAFE, a not-for-profit or a private sector provider, we see constraints on fees, relevancy of the course that is studied and, indeed, the right commitment to help students complete their units of study and, ultimately, their qualification. That is why we think that it is essential that the amendments requested by the Labor Party are defeated: so that we can have those same standards applying everywhere.

Senator Griff, in his contribution, highlighted the fact that we have given this undertaking that, where courses are not on the eligible course list, we will consider case-by-case applications from public providers and not-for-profit providers for them to have an exemption to be able to continue to offer those courses where they have good employment outcomes.

I want to emphasise that more than 95 per cent of current students in the VET FEE-HELP system are enrolled in courses that are on the eligible course list already. So we are talking about a very small proportion of the overall student load at present being impacted by those changes. We recognise that captured in that there may be some who have high employment outcomes, and therefore we are willing to consider that.

Senator Griff specifically asked me for a commitment to continue discussions with him about the application of the employment test and about providers other than those who are in the public sector or the not-for-profit sector. I am very happy to give the commitment that we will continue those discussions and that we want to be very fair and even-handed in this. Our objective is to make sure that, unlike the failed VET FEE-HELP scheme that the Labor Party cracked wide open, which saw billions of dollars rorted, we put in place and build from the ground up a VET student loans program that has only quality providers operating within it, delivering only courses that are relevant to the employment outcomes for students and only charging fees that are efficiently priced to the cost of delivery, to keep the costs down for those students. That is the way we have designed it and we will work very carefully through each stage of the implementation, including the commitments given to Senator Griff and the NXT.

The CHAIR: The question is that the committee does not press the Senate's request for amendments (1), (2) and (4), which have not been made by the House.

The committee divided. [21:31]

(The Chair—Senator Lines)

Ayes .................31
Noes ...............26
Majority..........5

AYES

Back, CJ
Burston, B
Canavan, MJ

Birmingham, SJ
Bushby, DC
Culleton, RN

CHAMBER
Question agreed to.

The CHAIR (21:32): The question now is that the committee does not press the request for amendment (3), which has not been made by the House.

Senator CAMERON (New South Wales) (21:33): I move the following amendment:

At the end of the motion add "but agrees to request amendment (3):

13 Approved courses
(1) To be an approved course, the course must meet the requirements of this Division or be a course covered by subsection (2).
(2) A course is covered by this subsection if:
(a) the course was provided on 1 January 2017 by one of the following bodies (taken to be approved course providers under the VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016):
   (i) a body established to provide vocational education or training under one of the following:
      (A) the Technical and Further Education Commission Act 1990 (NSW);
      (B) the Education and Training Reform Act 2006 (Vic.);
(C) the TAFE Queensland Act 2013 (Qld);  
(D) the Vocational Education and Training Act 1996 (WA);  
(E) the TAFE SA Act 2012 (SA);  
(F) the Training and Workforce Development Act 2013 (Tas.);  
(G) the Canberra Institute of Technology Act 1987 (ACT);  
(ii) a training organisation owned by the Commonwealth, a State or a Territory;  
(iii) a Table A provider within the meaning of the Higher Education Support Act 2003; and  
(b) the course is provided before 1 January 2019; and  
(c) the course meets the requirements in subsection 14(1)  

This request has been made to correct the unintended consequences of item (3) of the request sheet 7962 that passed the Senate last night. The unintended consequence of item (3) of the request, passed last night, is that it would have made TAFE an approved provider for lower qualifications than those covered by this bill, including qualifications at certificate III level and below. This was never intended.  

Labor's intention has always been to exempt TAFE institutions from the courses and student loan caps determinations for courses leading to the qualifications prescribed by subclause 14(1) of the bill. This request ensures that TAFE is exempt until January 2019 from the course eligibility list and loans cap set by the bill, but only for those qualifications outlined in subclause 14(1) of the bill, which are diplomas, advanced diplomas, graduate diplomas and graduate certificates. This has always been the intent of the request.  

Senator Birmingham went through the allegations against TAFE. I just say again I find it absolutely bizarre that Senator Birmingham is in a government that was asked for $1.4 million by a senator that it relied on to pass bills in this Senate. It was asked for $1.4 million for that senator's pet project, and what did it do? It ended up providing $2 million for that senator's pet project, an absolute rort of a program that will not deliver trade certificates for young people going through that program in South Australia, at a cost of $90,000 a student. It is absolutely unheard of. If that is the way of training apprentices of the future in this country, we will never be able to afford it. It will just be absolutely bizarre.  

So these are issues that are important to Labor. TAFE is so important, the bedrock of certainty and accountability in the vocational training sector, not the rorted systems that Senator Birmingham is setting up now while he complains about rorts in the current system. The growth in the rorts in the current system was all under the coalition, and they refused to do anything about it. They watched it for year after year after year, and they now come here and say they are going to do something about it.  

I am of the view that we should support this referral, the item (3) referral. It is the proper thing to do for TAFEs around the country.  

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (21:36): While noting that the Labor Party have corrected some of the errors in the request that they made, in the end this, of course, is still a fundamental part of the same requests that were made. For all the same reasons in the arguments I made about the previous requests, the government believes that they should not be pressed and that we should provide equal protections for all students across the vocational student loans program.
The CHAIR: The question is that Senator Cameron’s request (3) on sheet 8031, which replaces the requested amendment (3) which was not made by the House, be agreed to.

The committee divided. [21:42]

(The Chair—Senator Lines)

Ayes ...................... 27
Noes ...................... 30
Majority ............... 3

AYES

Cameron, DN
Dastyari, S
Dodson, P
Gallacher, AM
Hanson-Young, SC
Kitching, K
McAllister, J
McKim, NJ
O’Neill, DM
Pratt, LC
Rice, J
Urquhart, AE (teller)
Watt, M
Wong, P

Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lines, S
McCarthy, M
Moore, CM
Polley, H
Rhiannon, L
Siewert, R
Waters, LJ
Whish-Wilson, PS

NOES

Back, CJ
Brandis, GH
Canavan, MJ
Duniam, J
Fierravanti-Wells, C
Griff, S
Hume, J
Lambie, J
Macdonald, ID
McKenzie, B
Parry, S
Reynolds, L
Ruston, A
Sculliion, NG
Smith, D

Birmingham, SJ
Bushby, DC
Culleton, RN
Fawcett, DJ (teller)
Fifield, MP
Hinch, D
Kakoschke-Moore, S
Leyonhjelm, DE
McGrath, J
Nash, F
Paterson, J
Roberts, M
Ryan, SM
Seselja, Z
Xenophon, N

Question negatived.

The CHAIR (21:44): The question now is that the motion not to press the request for amendment (3) be agreed to.

Question agreed to.

Resolution reported; report adopted.
Third Reading

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (21:45): I move:

That this bill be now read a third time.

I wish to thank senators for their cooperation. I note and expect that this bill will have support across the entire chamber, and so I thank all parties for their support and cooperation with a number of amendments that we have dealt with to bring the failed VET FEE-HELP scheme to an end to stop billions of dollars of waste and rorting and to replace it with a more measured and considered VET Student Loans program.

I also, in what I suspect will be my last contribution in the Senate tonight, place on record my thanks in her absence to Rosemary Laing, the Clerk, and of course extend seasons greetings, Christmas wishes and a happy new year to all in the Senate and all the staff of the Senate.

Question agreed to.

Bill read a third time.

Civil Nuclear Transfers to India Bill 2016

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (21:46): I rise to speak on the Civil Nuclear Transfers to India Bill 2016 on behalf of the opposition and indicate at the outset the opposition will be supporting this bill. Our support for it is predicated on a framework of international agreements, safeguards and protections which ensure that Australia and India's civil nuclear cooperation is exclusively for peaceful purposes. Recognising that these safeguards and protections exist and noting that our bilateral cooperation with India is beneficial to both nations, Labor will support the bill.

Labor recognises the government's urgency in the passage of this bill, acknowledging that Australian business is ready to begin supply to India with initial contracts close to final, and India is prepared to begin importing from Australia following a decade of cooperation through the Nuclear Suppliers Group demonstrating sufficient credentials. This bill will provide Australian businesses and Indian importers with necessary certainty.

The government has expressed an urgent need for passage of the legislation and, whilst Labor has supported this, I note that this situation could have been avoided with better planning. The government could have managed the passage of this bill in a more timely manner. I note that advice in report 151 of the Joint Standing Committee on Treaties, tabled in September 2015, recommended that the government 'outline the legal advice it has received concerning whether the proposed agreement between the government of Australia and the government of India on cooperation in the peaceful uses of nuclear energy breaches Australia 'obligations under the South Pacific Nuclear Weapons Free Zone Treaty'. Unfortunately, over a year later the government has failed to provide this legal advice. Labor respects Australia's international treaty obligations and considers that the matters raised by the committee...
deserved careful consideration. The government ought to have acted in response to this recommendation and provided advice in a timely manner.

The Senate Foreign Affairs, Defence and Trade Legislation Committee has considered the bill. Such an inquiry was sensible and appropriate. I thank the members of the Foreign Affairs, Defence and Trade Legislation Committee for their work on this legislation, particularly given the compressed time frame. I note that the committee report recommended that this bill be passed. The committee also expressed satisfaction with the level of certainty provided by this bill in giving effect to the Australia-India agreement and the committee is satisfied that since 2008 India has met its commitments to non-proliferation. The certainty provided by India's demonstrated commitment to non-proliferation as well as by the safeguards in place is key to Labor's support for this bill.

I want to briefly make reference to some of the safeguards, because I think they are important to articulate in the context of this bill. India has worked for more than 10 years with the Nuclear Suppliers Group to demonstrate its credentials in nuclear nonproliferation and nuclear responsibility. Australia recognises India's hard work in this area and its strong record of nonproliferation. Australia's agreement to supply uranium to India has been negotiated with due caution and is supported by international negotiations with India, appropriate international agreements and a strong system of safeguards. India has diligently pursued its credentials as a responsible nuclear nation, and its work within the global non-proliferation and safeguards system has contributed to its shift towards greater international leadership. This has included placing a moratorium on nuclear weapons testing, separating its civil and military nuclear facilities and accepting International Atomic Energy Agency safeguards and inspections.

The safeguards in place which apply to India's current nuclear program and to Australia's supply of uranium to India are set out in the Nuclear Suppliers Group framework, the International Atomic Energy Agency framework and the Australia-India agreement on civil nuclear cooperation. The Nuclear Suppliers Group, of which Australia is a member, is made up of 48 nuclear supplier nations that seek to contribute to the nonproliferation of nuclear weapons. The framework includes safeguards and conditions, with International Atomic Energy Agency safeguards being a condition of supply. In 2008 the group declared that nuclear trade with India was permissible due to sufficient commitment and action taken by India in support of nuclear nonproliferation.

Nuclear material exported from Australia will remain exclusively in India's civil nuclear sector, to which the International Atomic Energy Agency applies strong safeguards and independent inspections. The IAEA safeguards are comparable to the safeguards that underpin Australia's other nuclear cooperation agreements. India has agreed that in relation to uranium imports under the IAEA conditions:

… no such item is used for the manufacture of any nuclear weapon or to further any other military purpose and that such items are used exclusively for peaceful purposes and not for the manufacture of any nuclear explosive device.

Under the Australia-India agreement on civil nuclear cooperation, India and Australia agree that:

… use of nuclear energy for peaceful purposes should be consistent with the objectives of nonproliferation of nuclear weapons and with the respective international obligations of states.

________________________________________

CHAMBER
India has established nuclear cooperation with many countries, including the US, Canada, France, Japan and South Korea, as a result of the Nuclear Suppliers Group's decision to permit nuclear trade with India in 2008.

Former Prime Minister Singh agreed in a joint statement with former US President George W Bush over a decade ago that:

India would reciprocally agree that it would be ready to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States.

India's commitment to the IAEA process of separating India's civilian and military nuclear facilities and programs was an initial step in this process initiated by Prime Minister Singh. India also voluntarily placed its civilian nuclear facilities under IAEA safeguards as part of this process.

Labor wishes to acknowledge that the commitment to nonproliferation and nuclear normalisation was made by India over a decade ago, and in that time India has conscientiously undertaken the lengthy and complex processes involved in meeting international standards for nuclear cooperation. India's progress on nonproliferation and disarmament is an advancement for Australia-India bilateral nuclear cooperation and also towards global progress on nuclear responsibility. India's commitment and progress in this area advances global nuclear responsibility based on shared rules and values through engaging with a major global power.

This bill before the chamber is a continuation of a position taken and pursued by Labor in government. It is also consistent with the position articulated in our national platform which supports the export of uranium only under the most stringent conditions and safeguards. And in 2011 the platform commenced allowing specifically for supply to India. This change was made on the basis of our bilateral relations with India, which are strategically of great importance to Australia, and on the basis of key steps taken by India towards nuclear nonproliferation.

Labor in government began the process addressed in the bill. In 2008 Australia, as a member of the Nuclear Suppliers Group, supported a decision to enable nuclear trade with India. In 2009 Australia, as a member of the Board of Governors of the International Atomic Energy Agency, approved the nuclear safeguards agreement negotiated by India and the agency—and, in 2012, a key feature of former Prime Minister Gillard's visit to India was the bilateral agreement to commence negotiations on a nuclear agreement. Australia and India have since taken steps to implement the commitment made by then Prime Minister Gillard and then Prime Minister Singh. This bill is another step in the continuation of that process, ensuring that nuclear cooperation between Australia and India can continue.

The benefits of the passage of the bill include export revenue, job creation, growth in export markets, supporting India in meeting its energy needs, reducing carbon emissions and the geostrategic benefits of increased cooperation with India. For Australia, it is an arrangement that will create increased exports and jobs over the long term. By the early 2020s, India could require up to 2,000 tonnes of uranium oxide each year in order to fuel its reactors, and Australian uranium suppliers, with large known uranium reserves, are well placed to take advantage of this significant market. This obviously translates into significant growth potential for Australia over the long term. For India, the priority for normalising
international links to its civil nuclear sector is about economic growth, energy capacity and, of course, poverty reduction—all agendas and ambitions supported by Australia.

On energy in particular, providing access to electricity to its population is an immense ongoing challenge for the government of India, with over 300 million citizens still without access to electricity. India's primary energy consumption more than doubled between 1990 and 2011, and India is already the world's third largest energy consumer and third largest emitter of carbon dioxide. India has ambitious renewable energy targets in spite of these pressures, with the Modi government setting a target of 175 gigawatts of renewable energy capacity by 2022. The government also aims to supply 25 per cent of electricity from nuclear power by 2050. Although coal and other fossil fuels will also continue to play a significant role in the energy mix, India's nuclear power program will make a major contribution to its pledged reduction in greenhouse gas emissions.

There is also an obvious strategic benefit to Australia in increasing its cooperation with India. The previous Labor government elevated Australia-India relations to a strategic partnership level. We enjoy warm bilateral relations, including a broad trade and investment relationship, as well as rich people-to-people links. Bilateral relations are growing and changing rapidly, and Australia's defence and security ties with India have grown substantially over the past seven years. These ties include the cooperation on nuclear nonproliferation and disarmament addressed in this bill. Australia and India share a commitment to peace, prosperity and stability in our region. We both value and uphold the international rules-based order.

Australia has an interest in not just strengthening our bilateral relationship with India, but also supporting India's growing leadership role in our region and globally. India's increasing strategic and economic position makes it a significant force in the region and a significant partner to Australia. Australia's support for India's greater regional and global role takes into consideration that we are like-minded nations with shared values such as democracy, the rule of law and civil liberties. For the reasons I have outlined, Labor will be supporting the legislation.

Senator HANSON-YOUNG (South Australia) (21:58): I rise to speak on the Civil Nuclear Transfers to India Bill 2016. The Greens have had a very clear position in relation to the desire of both the Labor and Liberal parties, in government and in opposition, to want to continue to press ahead with exporting uranium and having nuclear transfers to India. We are horrified that, despite all of the evidence that has been put forward by many experts throughout the debate in relation to this, all of that advice has been ignored. Here we are standing tonight, at 10 pm on the last sitting day of the year, voting on a bill that will pass this parliament because of the bipartisan nature of the support for this. It will pass this parliament despite the fact that experts and, in addition to experts, the parliament's own joint committee on treaties, have said that it should not happen—that there are not the safeguards in place and that this is going down a dangerous road.

In fact, it was only a little over a year ago that the Joint Standing Committee on Treaties handed down its report on Australia's nuclear cooperation agreement with India and cautioned very strongly against selling uranium to India until, or unless, a range of serious deficiencies in the agreement were addressed. As I stand here tonight, we still have not seen any response to those deficiencies. There has not been any significant move to address these at all. It is with
deep regret that we stand here tonight to say that the government has ignored the expert advice of parliament's own committee and other senior Australian diplomats, who have said that this is too dangerous and simply should not be going ahead. Instead, we have this government. They have produced the Civil Nuclear Transfers to India Bill 2016, steamrolling ahead with wanting to continue to sell uranium to India, which implements the nuclear cooperation agreement with all of its dangerous flaws attached. In a double whammy, it also seeks to remove any domestic legal avenues to challenge these uranium exports under international law.

This is an appalling situation. The same parliamentary committee that handed down its report and said that this should not go ahead is now meeting, discussing and taking evidence from experts in relation to uranium exports to Ukraine, yet in this bill we have attempts to undermine and remove these very important legal avenues, which would be at least some protection in ensuring that Australia is in step with international law. It beggars belief that we stand here tonight ticking off on uranium exports to India without those safeguards while at the same time the government is pursuing an agenda to export uranium to Ukraine, a country which is still in conflict with Russia. We cannot guarantee the safety of the uranium that will be sent there, just as we cannot guarantee that the protections needed in relation to India will be followed as well. Rather than addressing the serious security and safety issues that come with sending Australian uranium to India, this government, backed by the ALP—bipartisan in the very nature of this obsession with exporting uranium—has sought to provide legal certainty to a marginal industry that, frankly, has done nothing but disappoint. It is littered with disappointment and with ignorance in relation to the dangers and safety issues. And we now see this government prepared to create domestic legal protection for the uranium industry that flies in the face of international law and global security.

This is an industry that overblows its importance to Australia. We know that it accounts for just 0.01 per cent of Australian jobs and 0.19 per cent of Australian's export revenue. It is a very small part of our export industry and a very small part of our workforce, yet the industry wields such incredible power over both the Labor Party and the Liberal-National coalition in this place. It beggars belief that an industry that is so marginal and delivers such little in return to the Australian community can wield such power here in the corridors of parliament.

The Australian uranium sector was last reviewed in the Fox report in 2001 and was described as an industry 'characterised by a pattern of underperformance and noncompliance'. This is not an industry that should be held up as a champion for Australian jobs or, indeed, for sticking by the very important safety regulations that we need in place when dealing with anything as dangerous as the export and transfer of uranium. It was, in fact, through these reports that we know the industry has been plagued by leaks, spills, accidents and failed attempts to rehabilitate former mine sites. Over and over again we see this industry being given a free kick and a hand up by governments when there are plenty of other industries out there who have to run their own operations on the smell of an oily rag and beg for every government incentive. Just take that renewable energy sector in Australia, for example. We have a Prime Minister who kicks the renewable energy sector whenever he can, of course cheered on by the Deputy Prime Minister, Barnaby Joyce, and yet here we have a failed industry, a non-compliant industry in many regards, simply getting a free ride.
It is important to remember that it was Australian uranium in each of the reactors in Fukushima during the 2011 disaster—Australian uranium that is still polluting the Pacific Ocean near Japan. It is not that we should lose sight of where this goes once it leaves Australian shores. Another quick fact for important reference in this debate, to categorise again what a failing industry the uranium industry is in Australia, is that the uranium price is currently at a 12-year low—in relation to US dollars, $18.50 a pound. It is at a 12-year low.

Why on earth we think this is going to be the golden ticket to export success is beyond me. Uranium spruikers are nothing short of desperate to think that expanding into new markets will turn things around. It simply will not.

In the 2012 Auditor-General report on India, they reviewed the nuclear sector and found that in India there were a number of serious issues that should have been taken into account before the agreement with Australia was even signed. More than 60 per cent of inspectors of operating or existing nuclear reactors are up to five months late or it did not occur at all. So they are not very good at keeping on top of things in relation to their inspections. India's atomic energy regulatory board has been found to be ineffective, with myriad bureaucracy, and negligent in monitoring safety—not the type of endorsement you would want if we were about to start shipping uranium to India from Australia.

There have been a number of reports of workers' exposure to radiation through leaks and contaminated water, and the treatment of their workers as a result of this has been abominable. Other reports recite incidents of uranium being stolen and unaccounted for. If that does not send alarm bells ringing, what will? I will say that again: reports recite incidents of uranium being stolen and undercounted for. This is the type of arrangement. The Australian government and the Labor Party are signing up to ship uranium off to a country where it is known that uranium has simply gone missing. It beggars belief that we are standing here tonight with the view that we know that this legislation will go through and both the Labor Party and the coalition think it is okay.

We know that the government is continuing to support a marginal industry ahead of global security. Removing the ability for any domestic legal action to challenge uranium exports under international law is a leg-up for the industry and the kick in the teeth for justice, international law and global security. Just last month, the Australian government stood up and defended the relevance and importance of the Nuclear Non-proliferation Treaty, the NPT, as the reason it would not support the global ban on nuclear weapons at the UN General Assembly. The weapons ban was voted on and supported by an overwhelming majority of nations, but Australia, sadly, clung to the NPT as an alternative to a global ban. It is simply not the same and simply not good enough. Now the same government is proposing to openly violate the NPT by legislating to restrict domestic legal avenues to uphold it. What is the point of saying that you are going to stand by international law in one forum—that should be the guiding principle—to only come back home and amend domestic legislation that says that if you do not agree to it, if you do not abide by it, there are no consequences here at home. It is hypocritical at best and dangerous at worst.

Last year's report of the Joint Standing Committee on Treaties, which I referenced earlier, clearly stated that there was uncertainty over whether uranium sales to India would be consistent with our obligations under both the NPT and the South Pacific Nuclear Free Zone Treaty. A year on, the government has failed to demonstrate legal certainty on these matters.
and has refused to release its legal advice. If the government and the Labor Party want people to believe that they have taken seriously the concerns that have been raised throughout this process, if they want the public to be assured that all of the checks and balances have been taken into account, why on earth would they refuse to release the very legal advice that says that the regulations that address these safety concerns will be sufficient?

We should be very, very worried about what the government is trying to do here. We know that the only possible reason for the proposed legislation is that the government is worried that there are legitimate avenues for challenge and that there is concern that Australia's export of uranium to India is in breach of international law, otherwise they would not be amending the law in this manner tonight.

I think we do need to talk about the real risks of Australian uranium ending up in nuclear weapons. It is real and it is dangerous. This government, supported by the ALP, wants to send our uranium to a country that has not signed the NPT or the Comprehensive Nuclear-Test-Ban Treaty. Instead, it wants to send our uranium to a country that continues to modernise its nuclear arsenal, that continues to test intercontinental ballistic weapons. It is proposing to send uranium to what is now to one of the global nuclear hotspots.

Why on earth we are pushing ahead with this is beyond me. We know that we cannot guarantee that it will not be used in nuclear weapons, despite the consistent bag of promises that the government may give. The Indian government and its officials have clearly demonstrated that they want to acquire foreign uranium so they can build up India's nuclear arsenal. That is clear. When you have report after report of safety measures not being up to scratch in terms of the reactors in India, when you know that uranium has simply gone missing and when you know that a government is trying to stockpile the ability to create nuclear weapons if needed, this should set alarm bells ringing. Instead, we have both the Labor Party and the Liberal Party simply ticking off on this.

The joint committee report referenced a number of key points. It clearly stated that Australian uranium should not be sold to India unless or until India had resolved issues around the separation of civilian and military nuclear facilities—I think that is absolutely important—and this has been verified by the IAEA, and India has established an independent nuclear regulatory authority. An independent body of this sort must be implemented properly and with the teeth to ensure that its policies and arrangements are able to be reviewed to make sure that it is independent and that it has the teeth to deal with the situation. We also know that the parliament's own report stated that the frequency, quality and comprehensiveness of on-site inspections should be verified by the IAEA as best practice. There should be none of this situation of simply having sites uninspected or late for inspection or, indeed, having inspections not being carried out in an independent manner.

We know that none of things referenced in these key points have occurred. That is partly why we are alarmed that we have both parties—Labor and the coalition—ignoring the evidence and simply steamrolling ahead, saying 'Yes, let's keep moving with the desire to export uranium to India.' It just shows you how much power the uranium industry wields over both the Labor Party and, indeed, the coalition.

I must say, as a senator for South Australia, I am extremely concerned at this lack of evidence based policy and this lack of genuine concern that the government and the Labor Party have shown in relation to expert advice, at a time when we know that, in South
Australia, we have the state Labor Party pushing ahead, ignoring the will of the South Australian people and suggesting that not only should we be expanding uranium exports overseas but we should then be willing to take the waste back here in Australia. It beggars belief that the South Australian Labor Party wants to turn our great state into the world's nuclear waste dump. There are much better things for our state to be investing in. There are much brighter things for our future than turning South Australia into the world's waste dump.

The argument continues that, if we export uranium, we should be prepared to take its waste. I say: hang on a minute. We do not need to continue to expand our exports of uranium and, no, we do not need to turn South Australia into a nuclear waste dump.

The majority of South Australians for a long time have been very clear that they do not support a global, international, high-level or medium-level waste dump in South Australia. The South Australian government, of course, just spent millions of dollars running a consultation process—a citizens jury, no less—to ascertain whether South Australians had changed their minds. That jury of those citizens gave up days and weeks of their time to participate in the process, with goodwill, in line with the demands and at the request of the Premier, Jay Weatherill himself, who said, 'We'll sit down and listen to the evidence, we'll hear all sides and we'll make up our mind.' They did that extremely well, and then we had the citizens jury's decision—and it was not what the South Australian Labor Party wanted. I am very proud of my home state. The citizens jury said, 'No, we don't want to turn our state into a waste dump. We do think it's too risky. The economics don't stack up and we're not going to have it.' Rather than listening to that, we see now Jay Weatherill saying he did not like the answer, 'So let's go to a referendum.'

We should be sending a message here tonight. I want to be very clear about this: the Greens do not support expanding the exports of uranium to countries like India or, heavens above, Ukraine and we do not stand at all for turning South Australia into the world's waste dump.

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (22:18): I thank honourable senators for their contribution to the debate. In 2009, Australia elevated its relationship with India to a strategic partnership and, since then, our relationship has seen fundamental change. India has become a much more important partner for Australia in security and economic terms and the people-to-people links have never been stronger. Steps taken by both the Australian and Indian governments to negotiate and implement a bilateral nuclear cooperation agreement form a centrepiece of the partnership. As Prime Minister Narendra Modi said when addressing the Australian parliament in 2014: 'Australia and India have shared values as democracies with a mutual commitment to the rule of law, freedom and openness.'

For almost 50 years, the Treaty on the Non-Proliferation of Nuclear Weapons, or the NPT, has been central to international efforts to limit the spread of nuclear weapons, and Australia continues to promote universal adherence to the NPT. But, like many other countries, Australia recognises India's strong nonproliferation record even while it remains outside the NPT. Successive Australian governments have, therefore, supported a framework agreed by the Nuclear Suppliers Group in 2008 to allow nuclear trade with India and to draw it more fully into the nonproliferation mainstream.
Prime Minister John Howard first signalled in 2006 that Australia was prepared to consider uranium sales to India, subject to appropriate safeguards. A civilian nuclear cooperation agreement with India was concluded in 2014 and reviewed by this parliament in 2015 to enable the supply of Australian uranium for use in India's civil nuclear facilities. Together with the nuclear cooperation agreement and associated administrative arrangements, the Civil Nuclear Transfers to India Bill completes a decade-long and bipartisan effort to develop arrangements for the supply of uranium by Australia to India.

This bill reflects Australia's decision to supply uranium to India on the basis of the Nuclear Suppliers Group decision and the safeguards that India and the International Atomic Energy Agency have put in place. It also reflects the conditions of the Australia-India agreement on civil nuclear cooperation. The bill clarifies a specific possible uncertainty about how Australia's commitments under the NPT and the South Pacific Nuclear Free Zone Treaty should be given effect to. It will give Australian exporters confidence that they can fulfil new uranium supply arrangements with India with long-term legal certainty. The International Atomic Energy Agency applies robust safeguards to the civil part of India's fuel cycle, which is where Australian uranium and any nuclear material derived from it will exclusively remain. Assurances that Australian uranium will not be diverted from peaceful use are underpinned by strict inspection and accounting procedures.

With 1.25 billion people, India is the second most populous country on the planet, only just behind China's 1.35 billion people. As the fastest-growing major economy in the world, with GDP growth rates consistently above seven per cent, India has a substantial and growing need for energy to sustain its development. A key part of India's plan is to expand nuclear power from six gigawatts at present to 63 gigawatts by 2032, an increase comparable to Australia's entire power generation capacity. By 2050, India aims to provide a quarter of its power needs from nuclear energy. Australian uranium will help to power this growth. At the same time, India's emphasis on nuclear energy should make a valuable contribution to its pledged reduction in the intensity of its carbon emissions.

Timely engagement in the Indian uranium market will maximise opportunities for Australian companies. Australian companies are already negotiating the first contracts for what promises to be a significant trade. There has been, as I noted before, strong and bipartisan support for Australia's development of nuclear cooperation with India. The supply of Australian uranium will help to power India's remarkable growth in the coming decades and to forge an even stronger relationship for Australia with the world's largest democracy. To enable that beneficial development to happen, it is necessary to have the architecture provided by this bill. I commend it to the Senate.

The DEPUTY PRESIDENT: The question is that the bill be now read a second time.

The Senate divided. [22:27]

(The Acting Deputy President—Senator Back)

Ayes ..................40
Noes ..................8
Majority...............32

AYES

Back, CJ Birmingham, SJ

CHAMBER
AYES

Brandis, GH
Bushby, DC
Culleton, RN
Duniam, J
Fawcett, DJ
Fifield, MP
Griff, S
Hinch, D
Kakoschke-Moore, S
Kitching, K
Macdonald, ID
McCarthy, M
McKenzie, B
Nash, F
Paterson, J
Reynolds, L
Ruston, A
Smith, D (teller)
Wong, P

Burston, B
Canavan, MJ
Dodson, P
Farrell, D
Ferravanti-Wells, C
Gallacher, AM
Hanson, P
Hume, J
Ketter, CR
Lambie, J
McAllister, J
McGrath, J
Moore, CM
O’Neill, DM
Pratt, LC
Roberts, M
Seselja, Z
Watt, M
Xenophon, N

NOES

Di Natale, R
McKim, NJ
Rice, J
Waters, LJ

Hanson-Young, SC
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Question agreed to.
Bill read a second time.

Third Reading

The DEPUTY PRESIDENT (22:29): As no amendments to the bill have been circulated, I shall call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (22:30): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016

Consideration resumed of the motion:

That this bill be now read a second time.

Senator FARRELL (South Australia—Deputy Leader of the Opposition in the Senate) (22:30): I rise this evening to speak on the Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016 with a particular personal interest in working with our veteran
community supporting both them and their families. As some of this chamber will recall, I had the honour of serving as the shadow minister for veterans' affairs in 2014 and I regard it as one of the most rewarding duties that I have undertaken in this place. To be able to represent and legislate to protect those who have served our country in the most devoted way possible is an honour that we should all reflect upon in this place. After a long week of late sittings and many tired and weary faces, it is important to consider those for whom this bill will seek to help and what they have gone through in the course of their work.

I rise to support this legislation in the hope that we can extend much-needed support to the very many who most need it. We need to acknowledge in this process the unique nature of the service that many of our veterans have experienced and I commend Labor's shadow minister, Amanda Rishworth, for the huge effort that she has made to ensure that our party is supporting our veteran communities wherever possible. Of course, she does an absolutely terrific job in the regard. The Australian Labor Party will always encourage and support measures designed to ensure that existing programs take account of the mental health requirements of veterans. Veterans' mental health continues to be an issue of significant concern in our community. I note the efforts of Senator Lambie in promoting awareness of this issue. This is and will remain an area in which Labor is committed to identifying where more support can be provided.

This bill seeks to make three particular adjustments. Firstly, the amendments to schedule 1 provide for payments for the interim compensation to incapacitated current or former ADF members while the actual amount of compensation is being determined. Currently, applicants are paid at the national minimum wage amount while their claims are being processed which can be less than they were earning at the time of their injury. Secondly, for some mental health conditions, early intervention can result in better outcomes for the clients. Currently, ADF members are required to have had either three years continuous full-time service or operational services, lodge an application under the Veterans' Entitlements Act and have a diagnosis. Under these changes, it is estimated that around 67,000 additional current and former permanent members of the ADF will become eligible to receive non-liability health care. This includes victims of abuse in the ADF who may have previously been excluded from the NLHC coverage due to period in which they serve or the length of their service.

Thirdly, schedule 3 aligns the incapacity payment cut-off age to the increases in the age pension eligibility. As we know, the wounds suffered by veterans are many times not visible to the naked eye. They can range from a number of conditions affecting the lives of our service men and women when they return home and can affect family and friends who seek to help them. As outlined, this bill will seek to extend non-liability health care to cover those with mental and psychological conditions, often previously excluded due to their length of service. The process has also been streamlined to ensure applicants can more easily access these benefits without jumping through bureaucratic hoops. This is too often ignored in our considerations as we discuss what to provide to those who need it and sometimes forget to make it easy for them to access it. Especially in the case of conditions that affect social interaction and anxiety, we must consider and support any efforts to promote the accessibility of service.

This remains a priority area for the Australian Labor Party. We will continue to work cooperatively with the government over this term of parliament to explore where more can be
done to support those who have served and fought for our country. It is our duty to assist our veterans, who put their lives on hold at a significant risk to serve our country.

Senator WHISH-WILSON (Tasmania) (22:35): I rise to speak on the Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 2016. The bill will give effect to three veterans affairs 2016 budget measures that will extend eligibility for non-liability health care treatment for certain health conditions to cover all current, former and future ADF members; pay interim incapacity payments at 100 per cent of normal earnings; and align the cut-off for incapacity payments to the increased pension age as defined in the Social Security Act 1991.

The Greens believe that we owe our service personnel a number of things. The first is that we do not needlessly deploy them into harm's way, as we have done numerous times in the past. The second is that we have an obligation to look after them when they come home. We send people away to war, they come back damaged and the government owes it to these people to do everything it can to heal their wounds, both physical and mental. It is not just those who go into combat situations that suffer from mental health illnesses and disorders. It can be from training and it can be from what appears to be relatively mundane and routine. Nevertheless, these issues are all very serious. The Greens want to see vastly improved mental health services for veterans including around monitoring and the concept of moral injury. We have already instigated a lot of work in this area, like the veterans mental health inquiry, which I initiated last year. This inquiry made 17 recommendations, many of which need to be implemented. It will give me plenty to do around Senate estimates time, to make sure that all 17 of those have been progressed. There are a number of other senators in this chamber who feel very passionately about these issues as well, including Senator Lambie and Senator Kakoschke-Moore. I feel between us and across other parties that we should be able to get a better outcome for veterans.

We are pleased that this bill will mean that around 67,000 additional current and former permanent members of the Defence Force will be eligible for non-liability health care for mental health conditions, but more needs to be done. In particular, we would like to see Defence and DVA be required to report annually to the parliament on the state of mental health of current and former ADF members, which is one of the recommendations in the Greens dissenting report. We also want to see an injection of funding into programs addressing homelessness—programs like Homes for Heroes, which is a rehabilitation service that provides ongoing psychosocial support for veterans. One of the Senate inquiries was held in Narrabeen at the veterans homelessness centre and it was certainly harrowing hearing from all the witnesses who have served our country and, of course, suffered since they have returned. Many of them live in cars and suffer from a whole range of drug and alcohol abuses relating to stresses and their mental health conditions. It did surprise me that the federal government does not provide funding to homeless vets. I know the states do, and it is easy to say that it is a state based issue. It was seeing Geoff Evans on Four Corners—I am sure Senator Lambie saw it, too—that led me to have discussions with fellow senators to say that we needed to do something about this. Geoff Evans suffers from PTSD. Nevertheless, he has actually changed the lives of hundreds of Australians—Australians who have served their country—by providing a service for them. It is not just a roof over their heads; it is the holistic service they are craving—which they often get through other groups like Stand Tall 4
PTS, Soldier On and Mates4Mates. Mates4Mates were perched next to us in the Sydney to Hobart. I got to meet a lot of the soldiers who had come back. They beat us into Hobart by 2½ days. They did a much better job than we did. Nevertheless, they need that camaraderie and friendship in that community, which is so often lacking when they are sort of pushed off the cliff on finishing military service.

One of the recommendations we made was to provide at least $4 million in initial funding to help Geoff Evans expand his Homes for Heroes service and pay the bills. At the moment he is relying on RSL LifeCare to provide funding. I know that Senator Lambie agrees with me—and I am not sure about Senator Kakoschke-Moore—when I say that these services are totally underfunded, yet they are absolutely critical. I would certainly like to see us take that seriously. In fact, one of the recommendations of the committee was to roll out the Homes for Heroes model right around the country. A lot of this is word-of-mouth. They do not advertise. They rely on veterans talking to other veterans and in people coming to them and saying that a certain fellow or woman needs help. A lot of them are too proud to ask for help. They do not like to be reported—it is quite interesting. Nevertheless, when they get into these centres it makes a really big difference.

There is so much we can actually do. We also want to see an injection of funding into rehabilitation services, which provide a whole range of different services. We have long been saying this—and Penny Wright before me. I would like to pay my respects to Penny tonight, who is not in the Senate with us now. She has worked for years on veterans issues. She often spoke in this place about what a mess the veterans entitlements system is.

At the end of the day, why is a Greens senator so interested in veterans affairs? It surprises a lot of veterans that Greens actually care about them—and we do. We care about all people. The reason I initiated the inquiry in the first place, and I am very glad I did, is that I believe that this is a hidden cost of going to war that is often not paraded through our lounge rooms or even in this place. We lose Australian defence personnel overseas on deployments, as we do in accidents, but many who come back have mental scars that are almost as serious as their physical injuries. We know this from growing up in Australia with Anzac Day. The mental health issues that World War II and World War I veterans suffer from are really severe. Often they are swept under the carpet because of, I suppose, a toughness in the Australian spirit—they do not want to let their mates down and do not want to be seen to be weak. But if they do not speak out they do not get detected and then we get tragedies like veterans suicides, and there have been way too many of them.

We have to find a better way to capture them. We have to have more preventative checks and balances in place and better methods. So we support the amendments tonight that were raised in committee by Senator Kakoschke-Moore. Later tonight I will talk more about our support of those amendments.

We care for veterans. We want to see them looked after. We want Australians to understand that military adventurism has its costs, and it is not just tragically losing soldiers; there are nearly 70,000 or 80,000 veterans across Afghanistan, East Timor and Iraq—and there will be many more over the next decade—who will need our help. We need to acknowledge that, recognise that and make sure that we pay respects. We sent them over there to potentially put their lives on the line. We do not do that to many other Australians. They do deserve extraordinary responses from government and extraordinary care.
Senator KAKOSCHKE-MOORE (South Australia) (22:45): I rise to speak on the Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016. This bill gives effect to three Veterans’ Affairs 2016-2017 budget measures. The amendments in schedule 1 of the bill provide for payments of interim compensation to incapacitated current or former Defence Force members at 100 per cent of normal earnings while the actual amount of compensation is being determined. This will allow interim incapacity payments to be paid to former Australian Defence Force members immediately upon discharge at a level that matches their regular salary. This measure is important because the current situation is inadequate given that when a member discharges from the ADF there can be a period of time, sometimes taking as long as several months, before incapacity payment amounts can be determined while superannuation entitlements are finalised.

The government has recognised that the current position is untenable because during this time ADF members can experience financial hardship, and any measure that is designed to alleviate the burden on ADF members is worthwhile. Enabling veterans to receive their pre-discharge salary during this period will mean the risk of veterans experiencing financial hardship is minimised, thereby mitigating other associated problems, including stress and anxiety, that result from the current position.

Another measure in this bill aims to improve support for veterans by increasing the incapacity cut-off age to align with increases in age pension eligibility, which will enable veterans to continue to receive incapacity payments up until the day they may become eligible for the age pension. Currently, payment of incapacity entitlements under the Military Rehabilitation and Compensation Act 2004 ceases when an employee reaches 65 years of age or, if the injury occurred on or after the age of 63, after a maximum of 104 weeks of incapacity entitlements have been received.

Given that the scheduled age pension increases will commence incrementally from 1 July 2017, it is appropriate that this legislation should keep pace with the pension age changes so that veterans receiving incapacity payments will not be worse off. This measure will benefit approximately 120 veterans per year, and it is a measure that the Nick Xenophon Team supports.

The second schedule of the bill is of great significance and one that I hope will bring much needed assistance to the valiant members of our Defence Force who suffer with mental illness and substance abuse. The measure contained in the second schedule of the bill expands access to non-liability health care to all current and former permanent members of the ADF for five mental health conditions namely: post-traumatic stress disorder, anxiety, depression, alcohol use disorder and substance abuse disorder. The benefit of non-liability health care is that it does not need to be linked to a condition arising from their service and is completely separate from any claim for compensation.

According to the minister's second reading speech on the bill, in addition to expanding the range of conditions for which non-liability health care may be provided, accessing treatment has also become easier. The minister states that a veteran can call or email DVA and ask for treatment, without the need to lodge a formal application. In addition, there is also no longer a requirement for a person to have had three years' continuous full-time service or operational service to be eligible for non-liability health care—only one day of continuous full-time service is required for a person to access treatment. Importantly, there is also no need for a
formal diagnosis at the time of requesting treatment. This means that around 67,000 current and former permanent members of the ADF will become eligible for non-liability health care for these mental health conditions, through the removal of the three-year service requirement. This would include victims of abuse in the ADF who may not have met the current eligibility requirement. Intervening early and with minimal red tape is not only cost effective, as it prevents the need for more expensive tertiary-based mental health services, but it also reduces suicide risk. I commend all of the changes being implemented by this bill, but particularly this measure.

In his detailed monograph on the issue of mental illness in the ADF, Dr Edward Scarr reported:

While part of a much larger picture of (mental) health and the community, the mental health of current serving Defence personnel and veterans has some unique aspects. Young men, and an increasing number of women, are recruited and taught to see themselves as contributing to something greater, where their own health and ultimately their own lives become a tool of the government of the day. It is rarely explained in this way; it is assumed in the role these men and women take on. Once defence personnel are taught to put the system before themselves, they are exposed to a work environment that doctors know will make some of them unwell.

Dr Scarr continued:

The training and qualities that make good soldiers can be the very things that put these men and women at greater risk of harm, and leave them less able to seek help when it is needed.

It is the very uniqueness of service in the Defence Force that requires innovative, targeted and specific mental health solutions for our Defence Force personnel. No other career requires a selfless and complete sacrifice of an individual for the greater good—the defence of our country, our way of life and the values that we hold so dear. Such personal sacrifice should not come at the expense of the mental health of our Defence Force personnel. We owe it to them to provide help that is tangible, that is offered early and that achieves results so that our Defence personnel can continue to serve and keep their personal and family relationships healthy and intact.

It is also critical to assist active service men and women back into our society so that when they complete their service they can transition to a civilian life that is rewarding and fulfilling whilst retaining their sense of identity and mitigating any sense of alienation. We spend millions on transforming young men and women into warriors and we need to commit resources to transitioning veterans back into society, to continue their meaningful lives in the community.

We know from the hundreds of heartbreaking, distressing and emotional submissions made to the current inquiry into the suicide of veterans, sponsored by Senator Lambie, that early intervention and skilled response is the most effective means of reducing suicide risk. Many submissions have focused on feelings of helplessness, of being neglected and of not being supported by the ADF. This measure is an acknowledgement by the government that the status quo regarding the mental health of our Defence personnel is no longer sustainable.

What has also become apparent from the inquiry is that the rate of suicide of ex-service men and women is underreported. There has been limited information available about ex-service personnel. DVA commissioned the Australian Institute of Health and Welfare to calculate for the first time accurate numbers and rates of suicide deaths among people who
have transitioned from full-time service in the ADF. The preliminary findings into the suicide of serving and ex-serving Australian Defence Force personnel were released yesterday for the period 2001 to 2014. During this period there were 84 suicides occurring in the serving full-time population, 66 occurring in the reserve population and 142 occurring in the veteran population. Of these, 272 were men and 20 were women.

Of great concern is that the suicide rate was 13 per cent higher for veterans when compared with all Australian men. Alarmingly, the suicide rate of veteran men aged 18 to 24 was almost twice that of Australian men of the same age. Further details and analysis of these results will not be received until the final report is due in mid-2017, but it is clear from the preliminary results that current and former members of the Defence Force need assistance now.

If suicide prevention and supporting families affected by suicide is to be one of the highest priorities for the Department of Veterans’ Affairs, it is incumbent upon the department to ensure that current and ex-service personnel who have been adversely impacted by their service receive the appropriate level of care and support they so clearly require. The measures in this bill are a start.

I would like to acknowledge the work of organisations such as the self-funded William Kibby VC Veterans Shed, led by Shed Coordinator Barry Heffernan OAM, for its unique and widespread work among and with ADF abuse victims, providing advocacy and emotional support to veterans who are suffering, many of whom have attempted suicide. It is important for veterans to be able to relay their experiences of abuse, bullying and trauma to people who know the inner workings of the ADF and can relate to their experiences.

Whilst the measures proposed in this bill are welcome, more needs to be done now. I renew my calls for an appropriately commissioned and resourced permanent Defence Abuse Response Taskforce, as well as a royal commission into Defence abuse, which would enable victims to disclose the systemic issues that affected them so deeply. This would give them a voice.

The Australian government announced on 2 September this year that the role of the Defence Force Ombudsman would expand to provide an independent Defence abuse reporting function from today, 1 December 2016. I am cautiously optimistic that the Commonwealth Ombudsman, Mr Colin Neave AM, will ensure the DFO's expanded role will provide a safe and sensitive framework within which people can report abuse. However, the Defence Force Ombudsman's expanded role is limited to a reporting function designed to collect data and provide counselling, which will not go far enough to achieve substantial redress for those that have suffered abuse while serving in the ADF and continue to live with the aftermath of that abuse. Given the litany of evidence tendered to the task force, I still believe that only a permanent investigative body would have the autonomy, authority and standing to unconditionally explore further allegations of sexual and physical abuse committed throughout defence facilities across Australia, as a stand-alone body independent of the Commonwealth Ombudsman.

Some who experienced abuse during their time in the ADF have been able to move forward because of the task force process. However, many others cannot, through no fault of their own, because they did not meet the arbitrary deadlines that had been set by the government. Many have spoken of ongoing impacts, including broken relationships, bouts of serious depression, ruined careers, and alcohol and substance abuse. I am deeply moved by the way
these brave men and women were able to recount the events that occurred to them, and because of these brave men and women I will continue to fight for a permanent Defence Abuse Response Taskforce.

Whilst I have highlighted areas that still need to be addressed, I acknowledge that this bill provides for significant improvements in the lives of current and former ADF members from increasing access to mental health treatment to better financial support for ADF members transitioning away from the Defence Force and ensuring access to incapacity entitlements through to pension age, and this is why the Nick Xenophon Team supports the bill.

I will also continue to fight for the Australian Defence personnel who took part in the British nuclear tests which occurred at the Montebello Islands off the coast of Western Australia and at Maralinga and Emu Fields in South Australia dating back to 1952. Australian military and civilian personnel involved in the nuclear tests included 3,235 people from the Navy, 1,658 from the Army and 3,223 from the Royal Australian Air Force—a total of 8,116 service personnel—and 8,907 civilians including 10 Indigenous people. The Australian servicemen exposed to the nuclear tests were often clad in shorts and T-shirts whilst scientists wore protective suits. These veterans have paid a terrible price, with so many succumbing to radiation-induced illness.

We know that the Australians exposed to nuclear tests were done a great wrong, one that is yet to be fully rectified, which is why I will be requesting to move an amendment during the committee stage of the bill to extend the DVA Gold Card to these nuclear veterans. What has frustrated nuclear veterans is that they have, for a long time, felt that governments have not properly or adequately recognised their adverse health outcomes and provided them with adequate assistance. The Gold Card would provide these veterans with funding for services for all clinically necessary health-care needs and all health conditions, whether they are related to war service or not. Time is critical, as these veterans are ageing. Fewer than 2,000 are still alive today. We are fast running out of time to exercise our duty of care to these brave Australians, which is why I will be requesting to move my amendment on behalf of the Nick Xenophon Team.

Senator LAMBIE (Tasmania) (22:58): I rise to speak to the Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 2016. I have to say that I see my naming and shaming method over the last 12 months is finally starting to hammer home, and I can tell you there is a lot more to come. It is not very often that I do this, but I commend the Liberal government for this legislation. I believe it is important to give credit where credit is due.

The amendments covered in this bill are small changes, but they are good and positive amendments and are as follows. Incapacity payments under MRCA will begin at 100 per cent of normal earnings until the MSBS class A, class B, or class C decision is made. Currently people are kept on interim incapacity payments, which is barely above the national minimum wage of almost $680 per week. Veterans were better off on Centrelink's disability pension, because at least they got a health-care card and various concessions. However, this measure is likely to remove the temporary hardship experienced by some incapacity payees while waiting for their superannuation entitlements to be calculated by the Commonwealth Superannuation Corporation. Secondly, it extends the eligibility for non-liability mental health treatment for certain mental health conditions to cover all current, former and future permanent ADF members, which ensures the Department of Veterans' Affairs pays for
treatment for PTSD, depression, anxiety, alcohol use disorder and substance use disorder, even if the Department of Veterans' Affairs rejects a veteran's abuse claims. Thirdly, it aligns the cut-off age for incapacity payments to the increased pension age. These changes are heading in the right direction and will start the healing process for some veterans damaged by the bureaucratic process of the Department of Veterans' Affairs. That is where my niceties end.

All the positive legislative changes in the world cannot reverse or fix the deep-seated maladministration that has occurred within the Department of Veterans' Affairs for decades. These changes are too little too late for the more than 300 veterans—that we know of—who have committed suicide since 1999. This became all too evident last week as I sat through committee hearings for the inquiry into the alarming rate of veteran suicides. We heard stories of a bureaucracy gone absolutely mad—nuts. What used to be a one-page form for a medical claim is now 16 pages long. I watched as veterans and their loved ones broke down in tears, unable to deal with the pain and injustice any longer. I heard that the main health and welfare issue damaging the young veteran community in Australia was the adversarial, incompetent and bureaucratic processes within the Department of Veterans' Affairs. The Department of Veterans' Affairs administrative processes are slow and ineffective and have created a growing gap between the treatment of veterans and the treatment of the civilian population. There are more public hearings to be held in February, but I have seen and heard enough.

I have been playing in this field for more than 16 years—as a matter of fact, I was part of it. It is now clear to me that a royal commission into the Department of Veterans' Affairs and other related matters is the only way forward. In my office I have the files of almost 400 veterans whom I am assisting in their battles with the Department of Veterans' Affairs, and I can tell you that the dysfunction is embedded so deeply within the government agency that only a royal commission will begin to draw out the corruption, the complacency and the ignorance of this department. Our veterans, who have made an incredible sacrifice for our country, cannot rehabilitate properly or support their families effectively. They are more disadvantaged in terms of their quality of life, disability and morbidity. There is a lack of meaningful funding for relevant programs to support veterans and their families. The Department of Veterans' Affairs is causing more deaths for our Australians than war is. They are devastating families and treating veterans as leeches, when all that veterans want is acknowledgement of their service via medical treatment. Only a royal commission can begin a complete overhaul-of-culture process.

But my fight for fairer treatment and services for veterans is not about getting special or preferential treatment for them—I just want them to receive what anyone else would if they were injured in their workplace. That is what my private member's bill for an automatic gold card does. It automatically grants a gold card to anyone who has been in war or war-like circumstances to ensure that they are immediately receiving the medical attention necessary to rehabilitate and to assimilate back into civilian society. It has been very sad to hear, over the years, that both major parties have put a cost on this gold card at about $26,000, when, over the past 12 months, it has been proven by the budgetary office that they only cost about $6,000. They cost $6,000, and you are denying them a gold card when they have been fighting like hell for their services, year in year out, going through marriage breakups, losing
their children and, for some, taking their own lives. Really, you should be ashamed of yourselves.

We should not be sending our Australian Defence Force members overseas, because successive Australian governments have betrayed our veterans and have not been prepared to properly look after them when they return home injured. The Department of Veterans' Affairs is a brutal, ignorant, arrogant and dysfunctional government department whose behaviour and decision making needs to be scrutinised by a royal commission. Our veterans deserve a chance to put their hands on the bible, tell the truth and tell how public servants, doctors and lawyers working for the Department of Veterans' Affairs have ruined their lives and, in some cases, contributed to suicides. The Australian public will be shocked when they learn of the scale of the deliberate cover-up of mistakes, misconduct and abuse of office by employees, managers and other professionals associated with the Department of Veterans' Affairs.

I take note that you have got new DRCA legislation coming in. We have gone over that legislation. It is absolute crap. I can tell you that there will amendment after amendment coming through, so get ready for it. Or we can make this really easy: we can sit around a table and, instead of having the RSL, ADSO and the normal ones who sit around that table and nod at you, we can bring some real people to the table who will tell you the truth and how to fix it. If you want to save veterans' lives, then bring the real people to the table and let us have our say.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (23:05): May I thank all senators for their contribution to the debate on this bill and acknowledge the continued tradition of bipartisan support for the veteran community demonstrated by the opposition. Can I particularly thank Senator Lambie for her words of congratulation to government. We know that Senator Lambie is somebody who praises government sparingly—so when you do, Senator Lambie, we notice.

As we heard during the debate, the measures of the bill may appear to be small; but for veterans and their families they are very significant and will have a real and tangible benefit on their lives. The amendments in schedule 1 will assist members and their families by ensuring that interim incapacity payments will be payable at 100 per cent of the normal earnings of the member. This will ensure that, at a difficult time in the life of a member and his or her family, they can focus on what is important and not have to worry about possible financial pressures due to a drop in salary while superannuation entitlements are finalised by the Commonwealth Superannuation Corporation.

The other measures relate to compensation for incapacity benefits under the Military Rehabilitation and Compensation Act 2004, which will align the cut-off age for incapacity payments with the increases in the pension age at which the pension may be payable under the Social Security act. As many senators have noted, this is a logical change and it is important for those who will benefit from it.

The final measure—to expand access to non-liability health care for certain mental health conditions for all current and former permanent members of the Defence Force—seems to have resonated most strongly with the veteran community and members and senators during the debate. May I take a moment to briefly reiterate this measure and the benefits that it will bring to our veterans. Firstly, non-liability health care provides treatment for certain
conditions that do not need to be linked to service and is regarded as being separate from any claim for compensation. The government recognises the importance of early intervention in the mental health area and is cognisant that early treatment usually results in better health outcomes for the member concerned. Secondly, the bill will make access to this vital treatment easier by removing the need for a formal diagnosis at the time the request for treatment is made. And there is no need to fill in an application form to receive the treatment; a person can simply call or email the Department of Veterans' Affairs and ask for the treatment.

These 2016 budget measures are further examples of this government's commitment to recognising and meeting the needs of current and former members of the Australian Defence Force and their families. May I again thank honourable senators for their contribution to the debate on a bill which makes several small but very important changes to veterans' legislation and, in doing so, significantly improves the way in which our veterans will receive assistance for mental health. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator KAKOSCHKE-MOORE (South Australia) (23:08): I move amendment (1) on sheet 8002 in my name:

(1) Page 16 (after line 9), at the end of the bill, add:

Schedule 4—Nuclear test participants eligible for Gold Card

Veterans' Entitlements Act 1986

1 After subsection 85(10)

Insert:

(10A) A person is eligible to be provided with treatment under this Part for any injury suffered, or disease contracted, by the person, whether before or after the commencement of this Act, if:

(a) the person is a nuclear test participant (within the meaning of the Australian Participants in British Nuclear Tests (Treatment) Act 2006); and

(b) either:

(i) the Department has notified the person in writing that he or she is or will be eligible for such treatment; or

(ii) the person has, by written document lodged at an office of the Department in Australia in accordance with section 5T, notified the Department that he or she seeks eligibility for such treatment.

Statement pursuant to the order of the Senate of 26 June 2000

This amendment is framed as a request because it will increase expenditure under a standing appropriation. The effect of amendment (1) would be to expand the class of persons—to include a person who is a nuclear test participant (within the meaning of the Australian Participants in British Nuclear Tests (Treatment) Act 2006)—who would be eligible for the Repatriation Health Card - For All Conditions (Gold Card) under the Veterans' Entitlements Act 1986.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000
The Senate has long followed the practice that it should treat as requests amendments which would result in increased expenditure under a standing appropriation. On the basis that amendment (1) would result in increased expenditure under the standing appropriation in section 199 of the Veterans’ Entitlements Act 1986, it is in accordance with the precedents of the Senate that this amendment be moved as a request.

This amendment seeks to extend the DVA Gold Card to Australian veterans who were involved in the British nuclear tests which occurred between 1952 and 1963 at the Montebello Islands off the coast of Western Australia and in my own state of South Australia at Maralinga and Emu Fields. The Gold Card would provide these veterans with funding for services for all clinically necessary healthcare needs and all health conditions, whether they are related to war service or not. The DVA Gold Card is the gold standard in coverage for veterans and should be extended to the Australian veterans who participated in the British nuclear tests decades ago.

Of the 8,116 service personnel who were involved in the British nuclear tests, fewer than 2,000 are still alive today. The remaining nuclear veterans are left frustrated that successive governments have not properly or adequately recognised their adverse health outcomes, with many succumbing to cancers at much higher rates than in the average population. These nuclear tests occurred in our own backyard and represent a dark chapter in Australia's history. Not extending the DVA Gold Card coverage to surviving veterans who were exposed to the nuclear tests, clad without proper protections, represents a failure to recognise the sacrifice these men made and the resulting adverse health outcomes they continue to experience as a result of their sacrifice.

We know that the Australians who were exposed to nuclear tests were done a great wrong, one that is yet to be fully rectified. This amendment seeks to address that wrong by providing nuclear veterans with the much-needed assistance they require.

Senator WHISH-WILSON (Tasmania) (23:11): I want to talk very briefly about the amendments that are being moved by Senator Kakoschke-Moore relating to nuclear test veterans. We never finalised it, but we would like to have jointly moved these amendments, because we think they are excellent.

I just want to say something on behalf of Senator Ludlam, who cannot be here tonight. He has been very vocal in his support for a cohort of Australian military veterans who have remained largely forgotten. These are veterans who were forced, as a condition of their service, to participate in and witness the nuclear weapons bombings of Montebello Islands, Emu Field and Maralinga by our ally the British government. They were exposed to radiation and fallout and suffered a lifetime of health conditions. Senator Ludlam, on behalf of the Greens, has pursued this issue under several different Prime Ministers and governments of different stripes. The sad reality is that because these Australians were bombed by an ally, not an enemy, they were not eligible for Gold Card health support.

This is a tragedy. We have hung these veterans out to dry. The proposed amendment does nothing more than help these surviving veterans and their families, who have been cursed with the long-term intergenerational health and genetic effects of exposure to radiation. We owe these individuals better. The Greens took this policy to the previous two federal elections. We know it will not cost much in the big scheme of things. And these people are dying, so it is urgent. We urge all senators across parties to support this amendment.
Senator LAMBIE (Tasmania) (23:13): I rise to speak on the amendment to the Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 2016. First of all, there is nothing I love better than all the fluffy stuff that goes on here—how much you love the veterans and how much you go to Anzac Day; you speak your stuff and say, 'We look after you.' And here we go: 2,000 of them left. Do you know what the veterans say? They call it 'delay, deny, die'—you wait for them to get old enough instead of looking after them and then let them pay the price for that. So, here we all are, sitting here saying, 'We’re going to look after them; we’re going to do the right thing.' Yet I know that both major parties are still not going to support this—2,000, we are up to; give it another couple of years and it will be down to 1,000, and give it another four or five years and there might be 200 or 300.

And this is never going to get through. For what? The smallest amount of money. Really? Do you sleep of a night-time? I do not want to hear what excuses you have. I do not want to hear that you cannot do it because of this or that—because we have seen the way legislation can be changed in here. Quite frankly, I want somebody to give me a decent answer to the question of why you cannot give these people a Gold Card and look after them. Their families have suffered enough. I do not know whether you have met their families—probably not. Have you seen what has happened with their kids? Have you seen what has happened with their grandchildren? Have you seen the deformities? They are asking to be looked after. We put them out there around this testing with no safety clothes on. They were standing out there in their singlets and their khaki shorts, and we can't look after them.

So all this fluffy nice stuff is not sitting real well right now. It is really nice to end it this way at Christmas time—wish them a Merry Christmas when you get up, Attorney; do it, because I am quite sure they will be sipping their cognacs through a straw, because that is the only way they can do it. If you are half serious, support the motion—give them a Christmas present. Show some respect. Do something right.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (23:15): While understanding the sentiment expressed by those who support the amendment, I advise the Senate that the government be opposing the amendment. The government is currently reviewing the issue that is raised by the amendment. We have requested advice on the provisions that could be made by the government for this cohort of veterans. We expect to receive further advice from DVA early next year about these options. There will of course be significant costs to the proposal embodied in the amendment.

I can advise the Senate that Minister Tehan has spoken to both the Greens and to the Nick Xenophon Team and asked that he be given the opportunity to address the issue in a separate bill, given the importance of the passage of this bill tonight. It is disappointing that I am advised that that offer has not been taken up. Once again I reinforce the importance of this bill and the importance of securing its passage tonight for the people who we are trying to assist. The government believes that the crossbench should support this bill as it will immediately finalise the provision of free mental health services for PTSD, anxiety, depression, alcohol abuse and substance abuse for any person who has served at least one day in the military. It will all also provide an increase in payments for those veterans who are currently placed on a national minimum wage while they await ComSuper to make a determination.
The amendment proposes that British nuclear test participants be given access to the gold card, which provides medical treatment for all medical conditions. However, as I said, that proposal is under consideration but it must be considered with appropriate advice.

Of course I would recommend that honourable senators support the bill without amendment to enable the bill to be legislated without delay, to allow Minister Tehan to continue to seek the advice which he has sought. May I on his behalf renew the offer to crossbench parties for a full briefing of the issue that they raise. It may well be that in the new year the matter can be looked at again—but please do not get in the way of the passage of this bill and the benefits flowing to the veterans who will benefit from the passage of the bill this evening. That is the position of the government in relation to the amendment.

Senator XENOPHON (South Australia) (23:18): Enough is enough. We have been hearing these excuses year after year after year. Back in 2003 the Clarke review was carried out. Recommendation 16 was:

Participation by Australian defence force personnel in the British atomic tests should be declared non-warlike hazardous and the legislation should be amended to ensure that this declaration can have the effect in extending VEA coverage.

That is something that was taken up by the former shadow minister for veterans affairs, Senator Ronaldson. He was very critical of the then Labor government for failing to act in giving appropriate recognition to these veterans of these nuclear tests, but when he got into government Senator Ronaldson did nothing. Year after year these veterans have been waiting, since tests that occurred over 60 years ago. Back in 1993 the British government gave 20 million pounds to the Australian government, which is over $120 million in current terms, for compensation. The 1993 agreement set out:

The Government of the United Kingdom shall on an ex gratia basis pay to the Government of Australia the sum of … (twenty million pounds sterling) in full and final settlement of all claims whatsoever of the kind referred to in paragraph 2 below, the sum to be payable in accordance with the following timetable.

And that was paid. We actually received money from the British government, who acknowledged the damage that was caused.

We also need to acknowledge that other countries with veterans of atomic tests in France and the United States have been subject to separate compensation schemes, where lump sum payments have been given. Even in Russia and even in China they have compensation schemes for their nuclear veterans. I understand what the Attorney has said, but how much longer do we have to wait for action on this? Government after government, of both persuasions, have just sidelined these veterans, and it is time they were compensated. It is time they were acknowledged with a gold card at the very least. That is why this amendment ought to be supported.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (23:20): Senator Xenophon, you asked the question: how much longer will these veterans have to wait? This is not a matter about which I have detailed knowledge of the history, but I accept what you say—that is, these veterans have been waiting a long time. I am advised by those from the department who are in the advisers' box that this matter is currently under review, and a decision will be made in the early part of next year. I have given you an indication of Minister Tehan's attitude to the
matter. There are, as Senator Lambie has pointed out to us, fewer than 2,000 veterans who are potential beneficiaries if the additional measure is to be adopted. But there are tens of thousands of veterans who are beneficiaries of this legislation who will be denied the opportunity of accessing the legislation were the bill—

Senator Xenophon interjecting—

Senator BRANDIS: But, Senator Xenophon, were the bill to be amended tonight it would have to go back to the House of Representatives. The House of Representatives has risen for the year, so you would be delaying the commencement of this bill until next year in any event. By early next year we will have a decision on the matter that you raised. So please, Senator Xenophon—through you, Madam Chair—accept the government's good faith on this. Mr Tehan has given the assurance that you seek.

This bill should commence before the end of this calendar year, and the people who are the beneficiaries of it should get the benefit of it immediately. It should not be delayed until next year. Meanwhile, the amendment that you propose could not commence until next year anyway were you to succeed, because it would have to be passed by the House of Representatives. All you would be doing by amending the bill tonight is delaying the commencement of its provisions for a much wider and much, much larger class of veterans, who would be denied the opportunity to access it in this calendar year for no benefit, because of the assurances that I have outlined that Mr Tehan has given.

Senator FARRELL (South Australia—Deputy Leader of the Opposition in the Senate) (23:23): I indicate that the opposition is not in a position to support the amendment. The shadow minister received a copy of it this morning and did indicate that to the Xenophon group; however, we do look forward to receiving the advice that the government has indicated is on its way.

The CHAIR: The question is that the amendment moved by Senator Kakoschke-Moore be agreed to.

Division required. [23:28]
(The Chair—Senator Lines)

Ayes ......................14
Noes ......................36
Majority ..................22

AYES

Culleton, RN
Griff, S
Hinch, D
Lambie, J
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Di Natale, R
Hanson-Young, SC
Kakoschke-Moore, S
McKim, NJ
Rice, J
Waters, LJ
Xenophon, N

NOES

Back, CJ
Brandis, GH
Bushby, DC

Bilyk, CL (teller)
Burston, B
Dodson, P

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

Third Reading

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (23:31): I move:
That this bill be now read a third time.
Bill read a third time.

Register of Foreign Ownership of Agricultural Land Amendment (Water) Bill 2016

Returned from the House of Representatives
Message received from the House of Representatives agreeing to the amendment made by the Senate to the bill.

COMMITTEES

Joint Select Committee Government Procurement

Appointment

The PRESIDENT (23:32): A message has been received from the House of Representatives transmitting for concurrence resolution relating to the formation of a Joint Select Committee on Government Procurement. Copies of the message have been circulated in the chamber. Details of the documents tabled today are recorded in the Journals.

COMMITTEES

Membership

The PRESIDENT (23:32): I have received letters requesting changes in the membership of various committees.
Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (23:32): by leave—I move:

That senators be discharged from and appointed to committees in accordance with the documents circulated in the chamber.

Question agreed to.

DOCUMENTS

Order for the Production of Documents

Documents were tabled pursuant to the order of the Senate of 9 November 2016 for the production of documents relating to the Future Submarine project.

STATEMENT BY THE PRESIDENT

Blunden, Ms Sue

The PRESIDENT (23:33): Senators, I wish to advise you that the department's third-longest serving employee, Sue Blunden, spent her last sitting day in the parliament today. She has completed almost 32 years of service in the Senate. She joined the department on 14 January 1985. Sue has spent most of her career in the Table Office specialising in legislation and records. She is currently Director of Legislation and Documents and has been a clerk at the table for the past 9½ years. Sue might be regarded as the queen of the running sheet and in her time has churned out hundreds of those grey sheets to assist senators to work their way through bills and committees—and we have certainly seen a lot of those this week. Sue is also renowned for a speedy and accurate production of schedules of amendments as well as for overseeing much of the department's massive project to digitise all tabled papers since 1901. Sue will be going on leave before retiring next year and, on behalf of all senators, I thank Sue for her distinguished service to the Senate and wish her a long and happy retirement.

Honourable senators: Hear, hear!

Clerk of the Senate

The PRESIDENT (23:35): Senators, on the note of retirement, as has been known to all of us for some time now, the Clerk of the Senate, Dr Rosemary Laing, will retire on 8 March next year. Today was her last sitting day, so we will not see her in the chamber again when we return next year. I particularly want to pay tribute to Dr Laing for her distinguished work as Clerk of the Senate.

Dr Laing and I formed a close relationship when I became Deputy President, and certainly when I became President. Her advice to me and my office, but particularly to me, has been outstanding—it has been very timely, it has been frank, it has been forthright. We have not agreed all the time on some of the advice but, at the end of the day, I have completely valued her judgement, her trust, her confidentiality and, above all, the way she has regarded the Senate. One thing that Dr Laing and I particularly agreed on is the independence of the Senate as part of the parliament, especially when matters concerning the executive were often raised and we had to defend the Senate's interests before the executive's interests. We certainly aligned very much on that accord.

I will certainly miss her valued judgement at my daily briefings and meetings—not just when the Senate sits, but also out of session. We often communicate about matters pertaining to this institution, and it is a fine institution. Dr Laing has always upheld the value of the
Senate above and beyond any individual senator's requirements and above the parliament's requirements in many respects. The Senate has always come first, and for that we should be eternally grateful. If nothing else, if a clerk cannot defend the very institution that is so important to us and so important to our democracy, then the Clerk would be failing in his or her duties. In this case, Dr Laing has never failed the Senate, and I sincerely thank her for that.

I know other senators will wish to make some comments, but I certainly wish Dr Laing in her retirement, when she does retire next year—she will take leave after working for part of January—all the very best. I think we would all wish her very good health and a long and happy retirement, and I am sure she may pop in to see us from time to time—one never knows.

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (23:37): The retirement of any clerk of the Senate is a very important moment in the life of this institution and, on behalf of government senators, I want to say a few words in tribute to Dr Rosemary Laing and her contribution to this chamber and, through it, to the nation.

Dr Laing served has served the Senate for 26 years with great distinction since she took up the post of Director of Research in 1990. In 2009 she was appointed as the successor to the longest-serving clerk since Federation, the late Harry Evans. At the time, a newspaper article about Rosemary appeared under the title 'A poetic approach to advising the Senate'. It referred to the fact that, as a student at Oxford, Rosemary wrote her doctoral thesis on 17th century English pastoral poetry—its slightly forbidding title, by the way, was *The disintegration of the pastoral*. Rosemary was quoted as expressing the connection between her doctoral study on 17th century pastoral poetry and her role as clerk of this chamber. She said:

Civil law, common law restoration—big things happened in parliamentary terms in those years, and pastoral poetry is actually a highly political form.

Big things have happened in parliamentary terms in Rosemary's time as clerk, of course, including in this, her final year—the year of prorogation, double dissolution and the passage by the parliament of the trigger bills. I will well remember the long evenings spent in my conference room with Rosemary as she took government senators and ministers step-by-step through the complex process of prorogation leading to the double dissolution election which was much criticised at the time, but which we now know in retrospect, after this week, was a master stroke.

Rosemary went on to explain:

Pastoral poetry is a classical form from ancient Greek and Latin that was rediscovered in the Renaissance. Because you've got these characters running about an imaginary landscape, they're nymphs and shepherds, but they're actually allegorical characters and through those characters you can say all sorts of things that you couldn't say using your own persona.

It is somewhat reminiscent of what happens in this place. As that was a newspaper interview focused on the connection between pastoral poetry and Senate procedure, I wonder who Rosemary saw as the nymphs and the shepherds of the Senate as she sat, sphinx-like, in the seat which Richard Pye now occupies.

Of course, Rosemary made enormous contributions not only to the role as the principal adviser to presiding officers, but also to the scholarship of Senate practice. She was the editor
of the 13th and most recent edition of *Odgers’*, but I think she will be even more famously remembered as the editor of the *Annotated Standing Orders of the Australian Senate*—this extremely handsome volume, which is not merely the annotated but the annotated and illustrated standing orders of the Australian Senate, containing extensive illustrations and some 28 handsome full-colour plates. I suspect that there is no parliamentary chamber in the nation, if not in the entire Commonwealth, which has such a handsomely annotated and illustrated set of standing orders. We owe that to Rosemary.

So Rosemary has been a good shepherd of this chamber, both in upholding its procedures and in upholding its place in the parliament and the wider community, and a great shepherd of successive presidents and so many senators, all of whom she has served and guided without fear or favour. Speaking for myself, I worked closely with Rosemary in two roles in particular: when I was Chair of the Senate Privileges Committee from 2008 to 2010 and over the last 16 months as Leader of the Government in the Senate. So I am deeply grateful for the wise and gracious, but firm, support she has given me in those roles.

The very fact that Rosemary wrote her Oxford doctoral thesis on pastoral poetry, her studies at the University of Sydney and at the Australian National University, her work on *Odgers’* and the *Annotated Standing Orders*, and her other scholarship confirm that Rosemary has been a most learned Clerk of the Senate, bringing to her work the instincts not just of a shepherd but of a scholar. As Clerk, she has been a conscientious, clear-minded, courageous, knowledgeable, impartial and wise counsellor. All senators, individually and collectively, have been the beneficiaries of those great qualities, and we are very grateful. Rosemary, it seems barely imaginable to us that we will never see you in that seat again, but we remember you with enormous fondness and great respect. We wish you the very best upon your retirement.

**Senator WONG** (South Australia—Leader of the Opposition in the Senate) (11:42): by leave—I thank the Senate for the opportunity to place some remarks on the record about the Clerk of the Senate, Dr Rosemary Laing, on behalf of the opposition. At the outset, can I apologise to the Clerk for making this statement by leave, because I know it is a facility of the chamber not well loved by the clerks. One of the challenges, of course, of being a clerk is that, despite some of the best advice that is received, senators are still intent on doing their own thing.

As the President has said, today marks Dr Laing’s final day in the Clerk’s chair. She served as the 13th Clerk of the Senate in the 115 years since Federation, appointed to replace the formidable Harry Evans, the longest serving Clerk since 1901. As the Leader of the Government in the Senate has said, Dr Laing has served the Senate for 26 years with great distinction since taking up the position of Director of Research in 1990.

Can I say this: in her seven years at the post, Dr Laing has never faltered in her advocacy of the role and powers of the Senate in our bicameral parliament, nor in her defence of the independence of this chamber as a house of review. Without the dedication of people such as Dr Laing, our parliament would not properly function and government could not be held to account.

The Parliamentary Service Act sets out a set of requirements for appointment as the clerk. They include extensive knowledge of, and experience in, relevant parliamentary law, procedure and practice. As Clerk of the Senate, Rosemary Laing has exemplified these
qualities. She has worked in the Senate for well over two decades and served in many, many roles, including as Clerk Assistant and Deputy Clerk prior to her appointment.

Clerks occupy a somewhat unusual place in Australia's democracy. They are the silent witnesses to all that passes by in this place, occasionally rising to read the title of a bill or to whisper some advice, but behind the scenes, of course, we all know they are critical. At the table, clerks practice the ultimate poker face, although, after years of experience, I have learnt to read some of Dr Laing's twitchings and eyebrow raisings. But behind the scenes, of course, we all know the clerks provide invaluable advice to senators and our staff, and they serve as the institutional guardians of the chamber.

I place on record my personal appreciation for the professional and impartial advice Dr Laing has provided to me and Labor senators at all times. Particularly since becoming leader in the Senate, I have called upon her assistance many times and she has provided me with advice, often with little notice, on various topics ranging from interpretations of standing orders to matters of privilege and complex constitutional questions. I want to share very briefly with the chamber one request for advice which was possibly somewhat esoteric. Prior to the arrival of Senator Dodson, we requested advice relating to the wearing of hats in the chamber, given that Senator Dodson has a well-known and distinctive attire. What followed from Dr Laing was not simply a mere interpretation of standing orders but a virtual fashion parade of the history of senators' dress. I will quote from it:

Whether early senators chose to wear frock coats or top hats or the new fangled lounge suits and homburgs, there really was only one choice—a dark coloured suit of some description and a hat of some description. It was not until the expansion of fashion choices in the swinging sixties that the attire of senators became an issue.

The Clerk went on to talk about the featuring of hats in pictorial representations in the United Kingdom houses of parliament and the fact that they can also be seen in early photographs of the Senate and the House, both on laps and heads. True to her word, Dr Laing included some of the pictorial representations in her advice. I did wonder, when receiving it, whether this was the first time clerks' advice had been received in picture form. I later discovered that one of the pictures actually hangs on the wall in her office.

As Senator Brandis has said, Dr Laing's expertise in the practices and procedures of the Senate is perhaps recognised through her contribution to two of the Senate's most significant publications, including the 13th edition of *Odgers' Australian Senate practice*, which was edited with Harry Evans—and I hope the 14th edition will also bear her name. I also agree with Senator Brandis—it is surprising but true—that arguably even more important is the significant work she did to edit the *Annotated standing orders of the Australian Senate* published in 2009. It is a significant volume that not only contributes to Senate practice but also to the Senate's history. Harry Evans wrote its foreword and in that he made the point that it will be extremely valuable to current and future generations of senators and staff and will provide an essential underpinning of knowledge. It is work like this which means that Dr Laing's knowledge and influence will remain long after she has departed the Clerk's chair here in this chamber.

A significant measure of her leadership is the quality of the personnel who serve with her in the Department of the Senate. It is a tribute to her foremost concern for the institution that she gave such length of notice of her intention to retire, enabling the process of selection of a
new clerk and a smooth transition to occur. Of course, earlier this week it was announced that Dr Laing would be succeeded by the Deputy Clerk, who is one of her many proteges. One of the reasons why the Senate moves forward with confidence is that we know Richard Pye has benefited from the mentoring of Dr Laing for many years, but I would say this: there is a professional culture that permeates the entire Department of the Senate, and that is a testament to the standard of leadership. The challenge of the role of the Clerk is to maintain exemplary command of the skills required in the chamber and in the operation of the Senate and be the secretary of a parliamentary department. In particular, I note that Rosemary Laing has passionately pursued the need, as has the President, for the Senate's budget to be set independently without the imposition of the demands of the Senate. Whilst as finance minister I had not always been of one mind with Dr Laing on this, I do have a deep respect for the principled view she takes on this topic. She always put the Senate first.

In conclusion, I thank Rosemary Laing on behalf of opposition senators for her leadership of the department, her counsel, her advice and even her occasional admonition. She may not miss us much. She certainly may not miss us as much as much as we will miss her. I hope that in the months and years ahead she can spend more time reading pastoral English literature than the journals of the Senate. On behalf of all opposition senators, I wish her a happy retirement blessed in the knowledge that she has served our nation as a public servant of the highest distinction.

Senator DI NATALE (Victoria—Leader of the Australian Greens) (23:49): On behalf of the Greens, I would also like to record our gratitude for the incredible work of Dr Rosemary Laing. I will not profess to be an expert in English pastoral poetry or, indeed, to have read the tomes that she has edited and published—at least, not word for word. One thing we do know is that Rosemary Laing had some very big shoes to fill after the late, great Harry Evans stepped aside, and she has done that job admirably. For many of us, she is the only Clerk that we have known. For myself, after being elected in 2010, the advice she has provided has been invaluable—right from those early days of stumbling along to the more recent days of stumbling along here, wading our way through complex Senate procedure. She has done an incredible job.

I have really admired the fact that she has never shrunk from that fierce independence that the Senate has and has really tried to ensure that we protect the powers that this chamber has to hold the government of the day to account. Sometimes they are powers that are underutilised in this place because obviously today's opposition does not want when they are the government of tomorrow to have those powers used against them. But Rosemary has always been a very fierce advocate for the independence of the Senate.

We in the Greens have sought the Clerk's advice time and time again. We have always received clear, consistent advice of the highest quality. Her sense of humour, wry as it is, is also something we have appreciated. So, on behalf of the Greens, we would like to wish Dr Laing all the best in her retirement. She has made a huge contribution to this nation. She has provided wonderful public service. We would like to thank her. We also welcome the Deputy Clerk, Richard Pye, who having been under the tutelage of Rosemary I am sure will also fill those very big, well-worn shoes admirably.

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (23:52): I rise to associate the National Party with the very kind
words that have been provided by the other leaders this evening and to honour the service of Dr Rosemary Laing. Dr Laing has been Clerk of the Senate for some seven years but has served in this place in various roles for over 25 years. On nights like tonight I think we would all recognise that some would say that one term in this place might seem like a very long time! But Rosemary's efforts over 25 years have to be commended by all here. The hundreds of senators that she has served, the many staff that she has worked with and the Australian people know they have had an absolutely outstanding professional adviser to the Senate. We should all thank her and acknowledge what she has done. While some of the speeches in this place deserve acclaim, it was just tremendous to observe the applause that was given to Rosemary earlier.

On behalf of the Nationals I would like to particularly thank her for her expertise and assistance over a number of years. I came here as a fisherman who somehow found himself in this place. But it was tremendous to know that somebody with her smarts, with degrees from the University of Sydney, Oxford and the Australian National University, was someone we could all rely on and respect.

Many of those here would have had those quite exciting moments, particularly for new senators, when you are in a committee and the minister will not answer the question or someone is not doing something right. I can still remember when someone said, 'We will have to get the Clerk in to break everything up.' In that moment you understand that, while the President runs this place, there is a real authority in the position of the Clerk of the Senate. Rosemary was absolutely calm and unequivocal. Her advice was almost instant and the issue was resolved. I was quite surprised—although I should not have been surprised—that everybody just accepted it. We can have a bit of a growl at the President, but it just seemed that the authority of the Clerk of the Senate and the way that she provided that authority was obviously a reflection of her professionalism.

Reflecting on that 25 years during Rosemary's time here, the Senate would have changed remarkably. You just need to look around at the senators who sit here now. Some who have been here a while would say, with some sympathy, the number of committees since I have been here—I am not sure about the actual number—is huge compared to when I first arrived in this place and of course that has changed the workload of the Senate staff forever.

Rosemary, I am sure, you would have seen some extraordinary things in this place. I know that you found yourself in some pretty significant issues in this place. The Native Title Act was probably one of the more memorable occasions. As you said so eloquently on the passing of the bill, it was one of those very special historic moments that you look back on always—it was after midnight, the galleries in the Senate were full and, when the President announced the result of division, the place broke into applause, cheers and laughter; it was wonderful.

I am sure you have met many great men and women in your time here. I hope the friendships that you have made within this place and across the divide last well after you leave this place. I understand that a very long time ago you made a school trip to Canberra when you were in year 5. You were lucky enough to meet a pretty notable politician, one Mr Gough Whitlam. He actually took you in to have morning tea. Having had the career that you have in this place, I am sure that you could not really imagine that you would end up at the heart of this place. You can be very proud of all that you have achieved.
We all wish you well in the future. I hope it involves a few glasses of wine, some time relaxing—certainly no more late-night sittings. Once again, on behalf of the National Party that you have served so well in this place, I thank you and we pass on our goodwill for your future.

Senator XENOPHON (South Australia) (23:56): On behalf of my colleagues, Senators Griffin and Kakoshke-Moore, I wish to associate myself with the remarks and the very worthy praise of Rosemary Laing. She is an expert on 17th-century pastoral poetry and the greatest pastoral poem of the 17th-century was of course John Milton's Paradise Lost—12 volumes, 10,000 lines of verse. I dipped into it tonight. I thought it was very appropriate that John Milton said:
What hath night to do with sleep?
This horror will grow mild, this darkness light.
He also gave this description, which sometimes I think may describe this place:
A dungeon horrible, on all sides round,
As one great furnace flamed; yet from those flames.
No light; but rather darkness visible.
Served only to discover sights of woe.
That is how some of us may feel but this place has been a place of light through the great advocacy, the fearless advocacy for the independence of the Senate of Rosemary Laing. We are incredibly grateful for her service to the people of Australia in what she is done. I understand the 14th edition of Odgers is coming soon. A friend of mine, a very weird friend, would like it as a Christmas present so I hope it comes out before Christmas.

Rosemary has left the Senate in very good hands with Richard Pye. I want to finish off with these words from John Milton's Paradise Lost, which I hope Rosemary will appreciate.

Then wilt thou not be loath
To leave this Paradise, but shalt possess
A Paradise within thee, happier far.

Senator HINCH (Victoria) (23:58): As one of the members of the class of '45, I would like to say that I came to this place with, I realise now, increasing ignorance and some trepidation. On being asked to go to 'Senate school', I thought, 'I have not been to school for more than 55 years.' But we did go to 'Senate school' and all the people who were there with me would know that that was made possible and made palatable and made unbelievably interesting by Rosemary Laing. I sat there, did not fall asleep once—unlike the Governor-General—I listened to every word she had to say—she was so eloquent; she was so erudite. We went through the history of the Westminster system, through the Australia parliamentary history, and I sat there mesmerised never dreaming that after more than 50 years after being in school that I would find the Magna Carta so fascinating. Rosemary, for that, you were a dream.

Senator HANSON (Queensland) (23:59): On behalf of my team, I must reiterate the words you said, Senator Hinch. Yes, as new kids on the block here, in the few months of going to 'Senate school', Dr Rosemary Laing has been so very helpful, and I am very appreciative of that. I was surprised to learn that she was leaving. I was walking past her
office today and I said, 'I'm so sorry to hear you are leaving.' She said, 'I'm not!' So that answered everything. I think she is really ready for retirement. I look forward to working with Richard Pye in the years to come. In working with Dr Laing, she was very helpful and respectful, and she loved this place. I understand that it was her life while she was here. In the brief time I have known her, she gave it her all. For that, we are all very appreciative, from what I have heard tonight.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (00:00): As Manager of Government Business in the Senate, can I offer a simple thank you to Rosemary Laing. Having, for the best part of seven years, been the manager of coalition business in opposition and in government, I have found that Rosemary has always been an incredibly reassuring presence at the table. She has always been impartial. She has been an adviser. She has been a guardian of the Senate and its traditions. One of the things I have particularly loved about Rosemary is her subtle remonstration by way of a raised eyebrow. She was able to convey much through that. I often felt as though I had, in the best possible way, been chastised for some naughtiness. That goes to the strong sense that Rosemary had of the importance of decorum in the chamber and the important role that senators have to play. In her own unique way, she was well capable of reminding us of that in an entirely appropriate way.

There is something truly medieval about this place, and Rosemary was a good guide and a good adviser through the sometimes archaic ways—

Senator Brandis: Elizabethan.

Senator FIFIELD: Elizabethan, I think Senator Brandis said. We should pause for a moment to reflect on the sheer relentless pressure that there is at times on the Clerk of the Senate. There are very weighty issues before this chamber. Advice is sought and rendered in an extremely high-pressure environment, when at times the eyes of the nation are upon this chamber. Rosemary never faltered and never failed to meet the needs of colleagues in this place and the needs of this chamber. I simply say, as manager, thank you.

The PRESIDENT (00:03): I thank senators for their contribution to that lovely tribute to Dr Laing. Dr Laing is in her office. She did not want to be in the chamber this evening, ostensibly because she is preparing messages from the House of Representatives—truly diligent to the very end. But I am sure she is watching the television, and I think we should have one more breach of the standing orders and give her a round of applause.

Honourable senators having applauded—

The PRESIDENT: Thank you, Senators. I am sure I will get the raised eyebrow when I leave the chamber later!

ADJOURNMENT

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (00:04): I move:

That the Senate, at its rising, adjourn until Tuesday, 7 February 2017 at 12.30 pm or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President, and that the time of meeting so determined shall be notified to each senator.

Question agreed to.
BUSINESS

Leave of Absence

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (00:04): I move:

That leave of absence be granted to every member of the Senate from the end of the sitting today to the day on which the Senate next meets.

Question agreed to.

STATEMENTS

Valedictories

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (00:05): The time has come, as the last item of business of the parliamentary year, to reflect on the year just gone and to exchange seasonal greetings.

Might I begin, Mr President, on behalf of government senators, by thanking you for the quiet authority and fairness with which you have presided over this chamber throughout the course of 2016. This is the year in which we saw the 44th Parliament expire and the 45th Parliament come into being, and upon the assembly of the 45th Parliament you were re-elected for a second term as the President of the Senate. I said at the time that I believed that you had become a great president, and in the months since you have, I believe, fulfilled the expectation that I then expressed. So, Mr President, may I thank you for all you have done as the figurehead of authority in this chamber, in maintaining its traditions and in presiding over its deliberations with such fairness.

Can I also express the best wishes of the government to your deputy, Senator Lines. We had a new Deputy President elected with the assembly of the 45th Parliament and I want to mention also, from the early part of the year the former Deputy President, Senator Gavin Marshall, who is much missed. To both Senator Marshall and Senator Lines we extend our best wishes, as we do to honourable senators of all parties.

But might I particularly mention the new senators who joined us at the election on 2 July and, most particularly, might I mention the new crossbench senators who came into the parliament. This is the largest crossbench the Senate has ever seen. Some were re-elected, but most were new: Senator Hanson, Senator Roberts, Senator Burston, Senator Culleton, Senator Hinch, Senator Kakoschke-Moore and Senator Griff. Regardless of party political advantage, I must say that I regard the crossbench as having a role in refreshing the Senate—providing a variety of views across the whole of the political spectrum, and bringing into the Senate people and personalities who would not ordinarily make their way through the established processes of the party system. It was widely predicted by sage commentators at the time of the 2016 election that the new crossbench would be more difficult to deal with than the old one. But, as Senator Fifield has said many times, and I share his view, 'Compared to the 44th Parliament, the crossbench of the 45th Parliament is a dream to deal with.' I want to thank you all and, of course, wish all of you, your families and staff a very happy Christmas—as I do, as I said before, to all senators.
It has been a very, very busy year. It has been a year of course punctuated by an historic event—Australia's seventh-only double dissolution election. As we finish the last sitting fortnight of the year, I must say from the point of view of the government that after the legislation that has been passed in this chamber in the last fortnight, it is beginning to look a lot like Christmas! In the recent months we have seen what perhaps we did not see as much as we should have done in the 44th Parliament: we have seen this Senate work. We have seen the Senate at its best, as a deliberative chamber in which different points of view come together, understandings are reached, compromises are achieved and deals are struck. But from the outcome of that melting pot of points of view and interests and opinions, we shape the legislation which guides the nation. In particular, as I said, the crossbench has been integral to that.

So to all honourable senators, thank you for your contributions. Thank you very much indeed for your contributions, because we, from our own different perspectives, have contested our values, our ideas, our policies and our beliefs intensely; but we have achieved through the synthesis of those views good outcomes for our country.

We have already spoken about Rosemary Laing, so I will not repeat what I said a moment ago in my valedictory remarks about her other than to wish her and her family a very happy Christmas this year. Once again I congratulate Richard Pye on his appointment as only the 14th Clerk of the Senate. Once again, Richard, congratulations to you. We look forward to working with you for many long years to come. The government also extends its best wishes and thanks to those many staff in the Clerk's office, to Black Rod, to all of those who look after us: the attendants, Comcar, the staff in all the various roles and functions of the parliament, Dom and his staff at Aussies who feed and water us and provide us with coffee to get us through the day and all of the many different people who come together to work in this building in such a variety of roles to enable our democracy to function.

Might I extend my thanks and best wishes for the festive season to my own team. To my deputy, Matthias Cormann; the government leadership team; the Leader of the Nationals in the Senate, Senator Nigel Scullion; Senator Fiona Nash; Senator Mitch Fifield, the Manager of Government Business in the Senate, who does such a superb job in running the government's program; David Bushby, the chief whip; and the other government whips, Senator Fawcett, Senator Smith and Senator Williams.

Of course, none of us could do the jobs we do without our staff to advise us, to make sure that we move the right motions, that we are in the right place at the right time where we need to be, to counsel us, to chastise us and sometimes, ever so occasionally, to give us a word of encouragement. In the government leadership team I want to particularly acknowledge the absolutely central role of Sarah Bridger, who works for Senator Mitch Fifield in running the government's program. Sarah, I do not know where we would be without you. Brandan Blomeley, from the Chief Government Whip's office, is absolutely integral. I mention Sue Cattermole, the Senate PLO. From the Prime Minister's office are Ben Bartlett and David Bold, who is responsible for liaison with the Senate crossbench.

To my own staff and in particular my brilliant Senate advisory team, Liam Brennan and Tom Fardoulis, who sit in the advisors box question time after question time, no doubt undergoing a range of different emotions but usually, as the hour ticks through to three o'clock, hopefully, quiet relief.
So thank you very much indeed to all of those characters in the rich pageant of humanity who come to this place as senators, as officials, as staff and in all the other functions. It has been an arduous year and sometimes it has been a brutal year, but now we can pause, we can reflect upon the good work we have done for the Australian people, we can have a rest, we can reflect on the year to come and, on this occasion, we can all join in a spirit of goodwill and wish one another merry Christmas.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (00:13): I thank the Senate for the opportunity to place some brief remarks on the record as we come to the end of this parliamentary year. I do agree again—that's twice!—with Senator Brandis that it has been a busy year. Prorogation of parliament, double dissolution, longest election in forever and the coming together of a new parliament. We farewelled some colleagues and welcomed some new ones. Even though my colleagues and I would have preferred to return from the election to the opposite side of the chamber, I say every day I am proud to lead my Labor colleagues in this place.

I want to thank a few people. First of all, to you, Mr President. It is a challenging but essential role. The opposition thanks you for your service to the Senate and to the parliament and acknowledges on behalf of all of us your efforts to take a consultative approach for your leadership. We thank you for it. I said last year it was my Christmas hope that you would uphold a point of order on direct relevance at some stage. Those hopes have been dashed, but I have got a reminder to ministers of the question, so I figure that's an advance! It has been a great pleasure to work with you, and we thank you for your service.

I also want to thank Deputy President Sue Lines for her role in the chair and fulfilling other responsibilities as Deputy President, and note her role as Chair of Committees. Can I also acknowledge the service of her predecessor, Senator Marshall, and thank him for his service.

I extend my thanks to my new deputy, Senator Farrell—the South Australians are taking over! I also pay tribute to Senator Conroy, who almost literally disappeared into the night earlier this year. The surprise was not faked! Senator Conroy had been part of Labor's leadership team since 2001. He is a formidable Labor warrior, and we wish him all the very best.

I have been pleased to welcome Senator Katy Gallagher to the role of Manager of Opposition Business. She undertakes her role with a mostly calm efficiency and a secretly wicked sense of humour. Thank you, Katy, for your work and for all of your support. I particularly thank her and her office, particularly Clare Nairn, for their work in the new parliament and I acknowledge her predecessor, Senator Moore, who worked in the role in the last parliament. Can I also thank Senator Chisholm for his work as deputy manager.

To our whips, Senators Urquhart, Bilyk and McAllister: I think it is hard for people who do not have a direct engagement with the work of the Senate to understand the critical role whips play. We are very fortunate on this side to be served by Senators Urquhart, Bilyk and McAllister and their staff. The whips team, senators and staff alike, deserve a long and bell-free break. I also acknowledge my friend Anne McEwen, who regrettably did not return to the Senate after the election.

To all of my colleagues, the Labor Senate team: thank you for your contribution this year. The Labor Senate team has been key to the advancement of Labor's agenda and Labor's fortune. You all deserve a good break and I hope you get one. In the spirit of the season, I
extend my best wishes to coalition, Greens and independent senators. We do not agree on everything, but sometimes we manage to find common ground.

Can I express our thanks also to the Senate staff: to the Clerk; the Deputy Clerk; Clerk Assistant Brien Hallett; Chris Reid and Maureen Weeks; the Usher of the Black Rod, Rachel Callinan; and all the staff of the Department of the Senate. We are extraordinarily well served by you. I did also want to make mention, as the President did, of the Director of Legislation and Documents, Sue Blunden, who is soon to retire. Can I also recognise the Senior Clerk of Committees, Jackie Morris, and all of the secretaries of committees and staff who accommodate the very many references we send their way with grace and forbearance.

Thanks to all the staff of the Department of Parliamentary Services from the library, the Parliamentary Budget Office, Hansard, security, maintenance and ancillary staff who work to ensure the effective running of this place. Can I make particular mention of the Parliament House cleaners, who are still battling for fair wages and conditions. These are hardworking men and women who come into this building in the early hours of the morning and toil away, while many of us are still sleeping, to keep our offices and our facilities clean and tidy—although I do note that of late we have probably seen a lot more of one another than normal. They are friendly and cheerful and they are as important to the efficient functioning of the institution as anyone else, and they deserve a fair go. A shout-out to all the Comcar drivers here and across the country: thank you for everything you do.

I want to thank the staff of Labor senators. In all the things we do in these roles, we rely on our staff. I thank them all for their service. Opposition is hard work and the hours are long, and sometimes the reward is not as great as we would like. I do believe passionately that you are only as good in these jobs as your staff, so I thank them all for their contribution. I hope people will indulge me in reference to one staff member who has left us, Mat Jose, who served three federal Labor leaders and two Senate leaders, and who made an extraordinary personal contribution to the cause of Labor in his very polite and understated way—a man of great loyalty and great integrity.

To all those Labor members and supporters throughout Australia, some of whom might still be listening: as we always say, continue to maintain your rage and enthusiasm and your passion for the cause of Labor. To all senators: my Christmas greetings and good wishes for the festive season. I hope the time ahead is filled with laughter and kindness and family and friends, and that we all remember again that those we love are that which is most meaningful in our lives.

Senator DI NATALE (Victoria—Leader of the Australian Greens) (00:19): I will try to be as brief as I can. It has been a long year. It has been a very, very, very long year. And let us not forget that very long, long, double dissolution election. We pledge that we will never have an eight-week election campaign if we have the opportunity to call an election—should we ever find ourselves in that position! That is reason enough to vote Greens, let me tell you. That is reason enough. It has been a long year. It has been a sad year. We lost David Bowie this year. We lost Prince. We lost Leonard Cohen. We had those momentous election results overseas. On the upside, black skivvies are making a comeback.

An honourable senator interjecting—
Senator DI NATALE: And brown shoes too, that is right—brown shoes and black skivvies.

Let me begin with a huge thankyou to my team of Greens MPs. I just want to say that this has been a tough year—when I put the training wheels on as the leader of a political party. Their support has been valued. Their advice is always sought and well received. I want to thank them all very deeply for being such wonderful people to work with and for helping achieve great things in the name of a better world. So thank you to all of you for your great support.

I want to thank also all of our Greens staffers for working very hard—staff in my office and all of the respective staff serving our wonderful MPs. Thank you for all the work that you do.

Let me also thank both the Leader of the Government and the Leader of the Opposition in the Senate and, in particular, you, Mr President. I have always found you to execute your duties diligently. You have done a wonderful job since I have been in this place. You have always been fair. Your advice, I think, has always been respected. So I would like to acknowledge that.

Let me also send both a thankyou and an apology to many of the staff in this place. They are the innocent victims caught up in the collateral damage that occurs when we come in here and pass an hours motion. It is like a little bomb that goes off in the place. We think it is going to be hard for us to get home, and it has an impact on all of us and our lives, but we do not appreciate what goes on out there, from the Hansard staff to the Senate attendants, the staff in the Clerk's office, the drafters and the COMCAR staff, all of whom are affected when we have those extended sitting hours like those we have had in recent weeks. I know it has been tough on all of you. We do long hours, but so do you, and we want to acknowledge all of the work that you do—and of course all the work that you do throughout the year. In addition to that, we would also like to acknowledge the cleaners and the gardeners, who keep this place looking wonderful.

I will just finish up, for the sake of brevity, by saying it has been a tough year. What people do not get to see is the cooperation that goes on behind the scenes. It is a shame they do not see more of that and less of the argy-bargy that often goes on in this place. I think that, if they did, they would have a better appreciation of the fact that much of the work that gets done here is done in a multipartisan way. We often pass legislation that has the support of everybody in this place, and I think we should acknowledge each other for working cooperatively and perhaps look for more opportunities to work cooperatively. So, in the true spirit of a nonreligious, nondenominational greeting, let me wish you 'Happy Festivus', everybody.

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (00:23): On behalf of the Nationals, I would like to wish all senators and all their staff in this place a very merry Christmas and a safe and enjoyable break over the New Year. This has been a very different year. There were plenty of people here before the election who are not here now, and there are some new faces. To those new faces: it has been great working with you all. I very much enjoy all of the company. I know many Australians would watch this place and say, 'They seem so growly with each other,' but, if the
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truth be known, we are in this place, and this is a place of concession. This is a place of agreements, and you actually have to get to know each other pretty well.

I am very pleased that all of the six Nationals are back here again. I would like to thank my Nationals team: Senator Nash, who is delivering amazing results to regional Australia; Mattie Canavan, who is, on his own, driving the development in the north; Senator Williams, who keeps us all in line and does a great job as our whip; and the most incredible Senators McKenzie and O'Sullivan, who represent their states like no other senators in this place.

I would like to also acknowledge the work of the leadership across the chamber. Senator Brandis, you are a tremendous leader, mate. We always appreciate and respect the knowledge and the leadership that you bring to the coalition. Senator Cormann, Senator Fifield and our whips, led by Senator Bushby, the coalition in the Senate is a strong partnership, and good partnerships, like all partnerships, are based on respect, and I genuinely appreciate our working relationship.

Mr President, you are, indeed, the head of this place, and we only work the way we work because you control this place, and you are doing an excellent job. Thank you.

Senator Wong, I acknowledge your leadership of those opposite and wish you and all your colleagues a well-earned break. I want to thank all the other parliamentarians for their spirit of engagement, especially those new crossbenchers who are always willing to have a discussion. We might not agree on anything. It would be a pretty boring place, frankly, if we did.

We have such an important job in this place, and often, when we leave, we sit down right away from the place, as did our shared mate, Galarrwuy Yunupingu, who sat under a tree, telling us about something. It might seem like a world away from this place, but that is really what this is about. What we actually do here and the decisions that we make here are so critical to all those people.

To the staff right across the Senate who make all this possible: we appreciate your knowledge, your advice and your professionalism. I acknowledge all the staff in the building, the Comcar drivers, the security guards and the cleaners. Regarding the security guards and the cleaners, we have a big impact on the environment around Canberra. I shoot the rabbits, I cryovac them and I put them in my freezer in the office. They eat them and distribute them. It is vertical integration, and I particularly appreciate that. We thank you all and wish you a very Merry Christmas.

To all our staff I say: thanks very much for putting up with our demands and being part of our family. We stand here in this place, but we stand here because of the work that you do.

I wish you all a Merry Christmas and a very safe holiday. I hope you enjoy a cold beer, a bit of good fishing—that is good advice—and, most importantly, a restful time with your family and friends. I am looking forward to seeing you all back here in a couple of months time to resume our important work.

Senator XENOPHON (South Australia) (00:26): I seek leave to make a short statement.

The PRESIDENT: You are the only one who has been correct about it, Senator Xenophon. The Clerk would be very impressed.

Senator XENOPHON: I will try to do this in a minute or less. I just want to associate myself with all the remarks—particularly all the good remarks—made by my colleagues
previously. And thank you, Senator Di Natale for reminding us of Prince, David Bowie and Leonard Cohen.

I want to pay tribute to my colleagues, senators Stirling Griff and Skye Kakoschke-Moore. It is just terrific not to be alone in this place and to have like-minded colleagues and to work together. It has been fantastic. I also want to pay tribute to you, Mr President, and to Mr Deputy President, for your leadership in this place.

Whatever the differences I may have with my colleagues in this place, I think we are all here for the same thing: we want to do good for the people of Australia. It has been a hell of a year, and on behalf of my colleagues I wish all of you the very best of the festive season. I hope that all of us enjoy and savour time with our loved ones and that we come back refreshed and revived on 7 February in order to do battle—but always for the benefit of the people of Australia.

Senator HANSON (Queensland) (00:28): Just quickly, I can tell you, Senator Di Natale, that you do not have the training wheels; I have the training wheels. With four new senators in this place and all of us having new staff and never having worked in this place before, I have the training wheels—all right? So, hopefully, next year they will be gone.

I just want to wish everyone a very Merry Christmas from me and my team. Thank you for your friendship and understanding. Especially to you, Mr President: I think you do a wonderful job in the chamber. Yes, you may not agree with everything that I say, but neither do I with you and your policies. But that is what this place is all about. Anyway, for now, what I would like to say is: have a Merry Christmas, everyone. Spend time with family and close friends and come back safe.

I would like to give a special note to Larissa on the coming birth of her child. I hope everything goes very well for you. I do not know if we will see you back in the chamber before the birth.

Senator Waters interjecting—

Senator HANSON: That is good. We can share that experience with you. All the best. Can we go home now? We are all bloody tired.

Senator HINCH (Victoria) (00:29): I will take less than 47 minutes! It is still surreal to be standing here in this chamber only one year since registering the name of the Justice Party, which was amended to Derryn Hinch’s Justice Party—but that is another story. I want to take the opportunity tonight, on this the last day of my first term of politics, to be serious for a minute and talk about volunteers, the people involved with you. I know it is all festive stuff; I will be as quick as I can.

There have been things happening in the news and the courts recently in Victoria, with volunteer firefighters and the CFA. But tonight I want to talk to you about a brand of volunteers, those hundreds of thousands of volunteers who helped get us all here in this chamber—the political volunteers, the ones who licked the envelopes, made the phone calls, held the chook raffles, attended the prepolling booths and were out there across the country on 2 July for that marathon election, with how-to-vote cards. Thanks to them, I am standing here as an elected senator. I got here through the work of volunteers, as did all of you senators. Pauline and Nick, representing the minor parties, know how rocky that road is, with the major parties doing their damnedest at times to set up roadblocks. We do not have millions of
dollars in donations from the corporates or the unions. Fundraising is hard. We do not, thank the Lord, have super PACs like they have in the United States. We rely heavily on the $10, $20, $50 and sometimes—not often—$100 donations from concerned citizens who share our zeal and our concerns. So thanks to all those donors, to all the people who sign up.

I am going to keep going very quickly. I was asked during this campaign who was financing my campaign, and I said, 'Derryn Hinch's superannuation'—unlike Clive Palmer, who used other people's superannuation. I was backed by some dear friends and some volunteers I had never met. But we did have a desire to do something for a better Australia. If you will indulge me for a minute, I would just like tonight to acknowledge some people, the people who said, 'I'm mad as hell and I'm not going to take it anymore.' In one minute, here we go: Annette Philpott and Natasha Chadwick, who started the party; Glenn Druery; Nick Pullen; Ruth Stanfield; Kristian Nelson; Anthony Powell; Jacki Weaver; Dermot O'Brien; Des Hinch; Gerry Ryan; Kelly Casey; Peter Radford; Drew Bellamaine; Simone Philpott; Jess Tregear; Susan Scalise; Ellie Sullivan; Stuart Grimley; Mandy Grimley; Peter Sullivan; Nikki Nicholls; Manuela Pless-Bennett; Tania Maxwell; Jason Soultan; Gary Bourman; and newcomers John Clements and Sarah Mennie, who did so much for me this week, my advisers on the ABCC and the backpacker tax.

To my fellow senators, I thank you all. To the President, I thank you for your support and your help, and I hope you get a decent box for that wig that you showed me the other day. To you and my colleagues, have a safe—

Honourable senators interjecting—

Senator HINCH: It wasn't for him! It was from the first President ever of the Australian Senate. Have a safe and meaningful yuletide and a very happy New Year. Thank your mother for the rabbits!

The PRESIDENT: I do not know whether to thank or not, Senator Hinch, but thank you! Could I just add very briefly my best wishes to all of you and, in particular, your families. Enjoy the time away from this place. May the only bells you hear be yuletide bells. I think that would be the appropriate saying. There is one formality we have to do now. I have to call on the minister to propose the adjournment—and I am sure no-one will mind!

ADJOURNMENT

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (00:33): I move:

That the Senate do now adjourn.

Sleep well and safe travels.

Senate adjourned at 00:33 (Friday)

DOCUMENTS

Tabling

The following documents were tabled by the Clerk pursuant to statute:

[Legislative instruments are identified by a Federal Register of Legislation (FRL) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

 Acts Interpretation Act 1901—Subsection 34C(6)—Statement relating to extension of time for presentation of a periodic report—Torres Strait Protected Zone Joint Authority—Report for 2015-16.


Excise Act 1901—Excise (Mass of CNG) Determination 2016 (No. 2) [F2016L01522]—Replacement explanatory statement.

Fuel Tax Act 2006—Minister's Road User Charge Determination 2016 (No. 1) [F2016L00556]—Replacement explanatory statement.


National Health Act 1953—National Health (Listed drugs on F1 or F2) Amendment Determination 2016 (No. 11)—PB 104 of 2016 [F2016L01833].


Public Governance, Performance and Accountability Act 2013—CSIRO has formed a wholly owned subsidiary company—CSIRO Financial Services Pty Ltd—28 November 2016.
