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SITTING DAYS—2012

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- PERTH 585AM
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FORTY-THIRD PARLIAMENT
FIRST SESSION—SIXTH PERIOD

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

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

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

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

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<td>Abetz, Hon. Eric</td>
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

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

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

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

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

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

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing

Clerk of the House of Representatives—B Wright

Secretary, Department of Parliamentary Services—C Mills
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<tr>
<td>Prime Minister</td>
<td>The Hon Julia Gillard MP</td>
</tr>
<tr>
<td>Minister Assisting the Prime Minister on Digital Productivity</td>
<td>Senator the Hon Stephen Conroy</td>
</tr>
<tr>
<td>Minister for Social Inclusion</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister Assisting the Prime Minister on Mental Health Reform</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister for the Public Service and Integrity</td>
<td>The Hon Gary Gray AO MP</td>
</tr>
<tr>
<td>Minister Assisting the Prime Minister on the Centenary of ANZAC</td>
<td>The Hon Warren Snowdon MP</td>
</tr>
<tr>
<td>Cabinet Secretary</td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>Senator the Hon Jan McLucas</td>
</tr>
<tr>
<td>Treasurer (Deputy Prime Minister)</td>
<td>The Hon Wayne Swan MP</td>
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<tr>
<td>Minister for Financial Services and Superannuation</td>
<td>The Hon Bill Shorten MP</td>
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<tr>
<td>Assistant Treasurer</td>
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<tr>
<td>Parliamentary Secretary to the Treasurer</td>
<td>The Hon Bernie Ripoll MP</td>
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<tr>
<td>Minister for Tertiary Education, Skills, Science and Research</td>
<td>Senator the Hon Chris Evans</td>
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<tr>
<td>(Leader of the Government in the Senate)</td>
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<tr>
<td>Minister for Industry and Innovation</td>
<td>The Hon Greg Combet AM MP</td>
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<tr>
<td>Minister for Small Business</td>
<td>The Hon Brendan O'Connor MP</td>
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<tr>
<td>Minister Assisting for Industry and Innovation</td>
<td>Senator the Hon Kate Lundy</td>
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<tr>
<td>Parliamentary Secretary for Industry and Innovation</td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td>Parliamentary Secretary for Higher Education and Skills</td>
<td>The Hon Sharon Bird MP</td>
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<tr>
<td>Minister for Broadband, Communications and the Digital Economy</td>
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<tr>
<td>(Deputy Leader of the Government in the Senate)</td>
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<td>Minister for Regional Australia, Regional Development and Local Government</td>
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<td>Minister for the Arts</td>
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<td>The Hon Jason Clare MP</td>
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<tr>
<td>Minister for Defence Science and Personnel</td>
<td>The Hon Warren Snowdon MP</td>
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<td>Attorney-General</td>
<td>The Hon Nicola Roxon MP</td>
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<td>Minister for Emergency Management</td>
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<td>Minister Assisting on Queensland Floods Recovery</td>
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<td>Minister for Families, Community Services and Indigenous Affairs</td>
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<td>Minister for Housing</td>
<td>The Hon Brendan O'Connor MP</td>
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<td>Minister for Homelessness</td>
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<td>Minister for Community Services</td>
<td>The Hon Julie Collins MP</td>
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<tr>
<td>Minister for the Status of Women</td>
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<td>Parliamentary Secretary for Disabilities and Carers</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Senator the Hon Bob Carr</td>
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<tr>
<td>Minister for Trade and Competitiveness</td>
<td>The Hon Dr Craig Emerson MP</td>
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<td>Parliamentary Secretary for Trade</td>
<td>The Hon Justine Elliot MP</td>
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<td>Parliamentary Secretary for Pacific Island Affairs</td>
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<td>The Hon Richard Marles MP</td>
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<tr>
<td>Minister for Sustainability, Environment, Water, Population and</td>
<td>The Hon Tony Burke MP</td>
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<td>Communities (Vice-President of the Executive Council)</td>
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<tr>
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<td>Minister for Finance and Deregulation</td>
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<tr>
<td>Special Minister of State</td>
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<td>Minister Assisting for Deregulation</td>
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<td>Minister for School Education, Early Childhood and Youth</td>
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Thursday, 28 June 2012

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

BUSINESS

Rearrangement

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:31): I seek leave to move a motion to vary the routine of business for today and to provide for the exemption of two bills from the cut-off.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (09:31): I seek leave to make a very brief statement.

Leave granted.

Senator ABETZ: by leave—I thank the Senate. I can indicate that the coalition is in agreement with this motion that the Manager of Government Business seeks to move, with one caveat. I know it is a bit of a pipedream, but, in the event that the Migration Legislation Amendment (The Bali Process) Bill 2012 is dealt with prior to question time, we would be seeking the government’s cooperation to reintroduce question time into today’s agenda.

Leave granted.

Senator ABETZ: by leave—I thank the Senate. I can indicate that the coalition is in agreement with this motion that the Manager of Government Business seeks to move, with one caveat. I know it is a bit of a pipedream, but, in the event that the Migration Legislation Amendment (The Bali Process) Bill 2012 is dealt with prior to question time, we would be seeking the government’s cooperation to reintroduce question time into today’s agenda.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:31): Senator Abetz will appreciate in the few minutes we have had we have amended the motion to accommodate his concerns at this stage. The motion that I will move will not rule out that possibility. Perhaps if I read it, it will make that clear.

Senator Abetz: Has this been circulated?

Senator JACINTA COLLINS: No.

The PRESIDENT: As I understand it, it has not been circulated. I am just aware of this myself.

Senator JACINTA COLLINS: by leave—I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Migration Legislation Amendment (The Bali Process) Bill 2012 and the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012, and that government business have precedence until 2 pm today.

Question agreed to.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:32): I table a statement of reasons justifying the need for the Migration Legislation Amendment (The Bali Process) Bill 2012 to be considered during these sittings, and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE IN THE 2012 WINTER SITTINGS
MIGRATION LEGISLATION AMENDMENT (THE BALI PROCESS) BILL 2012

Purpose of the Bill

The Bill amends the Migration Act 1958 and the Immigration (Guardianship of Children) Act 1946 to enable the Minister to designate a country to be an offshore assessment country on the conditions that he thinks it is in the national interest to do so and that the country is a party to the Bali Process.

In designating a country, the Minister must have regard to whether the country has given Australia any assurances in relation to the non-refoulement of anyone taken to the country and whether the country will make, or permit to be...
made, an assessment of the persons’ refugee status. The Minister may have regard to any other matters he considers to relate to the national interest.

The Bill requires the Minister to write to the Office of the United Nations High Commissioner to Refugees (UNHCR) and the International Organization for Migration (IOM) within 14 days of designating a country to seek statements of their views in relation to the arrangements that are in place, or are to be put in place, in the designated country for the treatment of persons taken to that country.

The Bill specifies that transfers to a designated offshore assessment country can only proceed where a written agreement exists between Australia and the country.

The Bill requires the Minister to lay before each House of Parliament several documents pertaining to the designation, including summaries of the Minister’s consultations with the UNHCR and IOM. The Bill makes it clear that the purpose of laying these documents before the Parliament is solely to inform the Parliament and has no bearing on the validity of the designation of the offshore assessment country.

The Bill also sets out the powers for detaining and taking offshore entry persons to an offshore assessment country, as well as the process for determining to which offshore assessment country a person must be taken.

The Bill also requires the Minister to annually lay before each House of Parliament a report that provides information relating to activities undertaking under the Bali Process and as part of the Regional Cooperation Framework.

Reasons for Urgency
On 31 August 2011, the High Court found that the sole source of power under the Migration Act 1958 to take asylum seekers from Australia to another country for determination of their refugee status (section 198A) cannot be validly exercised to take asylum seekers to any country that is not legally bound to meet protection obligations equivalent to Australia’s.

The proposed amendments will clarify the existing framework in the Migration Act 1958 for taking asylum seekers to another country for assessment of their refugee claims.

The amendments will also clarify that provisions of the Immigration (Guardianship of Children) Act 1946 do not affect the operation of the Migration Act 1958. This is particularly in relation to the making and implementation of any decision to remove a non-citizen child from Australia.

Amendments are required to ensure the Government has sufficient power to take asylum seekers to another country for assessment of their refugee claims in accordance with the government’s policies.

Renewed urgency has arisen as a result of the recent tragedies at sea and the passage of the Bill through the House of Representatives late yesterday.

As proposed new paragraph 198AA(a) notes, the Bill reflects the view of Parliament that people smuggling, and its undesirable consequences including the resulting loss of life at sea, are major regional problems that need to be addressed.

Senator IAN MACDONALD (Queensland) (09:33): I would like to seek a clarification. Is the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 now not subject to the cut-off? Is that what we have just voted on? That is not what is on the sheet in front of us.

The PRESIDENT: I will ask the Manager of Government Business to answer that question.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:33): Senator, I understand that you have had other matters circulated. What I read on the record was what I indicated had not been circulated but had evolved from the discussions of the parties to ensure, if possible, as Senator Abetz indicated, we would go back to question time. Also, as I understand it, both
bills have been agreed in terms of the management of the routine of business to be debated today.

Senator Ian Macdonald: Mr President, I raise a point of order. The Senate was halfway through debating whether or not the cut-off should apply. I cannot speak for the coalition but certainly from my own point of view I voted for the last motion that the Manager of Government Business moved on the basis that, insofar as the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 was concerned, the cut-off did not apply—well, it was still subject to debate in the Senate. I think we have been misled in what we were actually agreeing to.

The PRESIDENT: If I can just say this: leave had been granted to move the motion and the motion was quite clear, I thought, but I was not privy to any of what has transpired. It was in order. There is no point of order. The matter has been dealt with as far as I understand.

BILLS

Migration Legislation Amendment (The Bali Process) Bill 2012

First Reading

Bill received from the House of Representatives.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (09:35): 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 CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (09:36): I move:

That this bill be now read a second time.

In bringing the bill before the chamber today, can I indicate firstly that this bill, the Migration Legislation Amendment (The Bali Process) Bill 2012, was moved by Mr Oakeshott in the House of Representatives yesterday and gained the support of that chamber and has been forwarded to the Senate for consideration for the purpose of facilitating the debate I, as Leader of the Government in the Senate, have formally moved.

I thank the Senate for its cooperation in allowing this bill to be debated today. I thank Senator Abetz, Senator Milne and all other senators for their cooperation in doing that. I think the Senate recognises that there is an expectation in the Australian public that we will deal with this matter today, that we will deal with it seriously and that we will resolve it one way or another during today's sitting. There is also a very strong public expectation that this parliament will find a way to do something about addressing the very serious occurrences to our north. There is great public concern and great concern in this parliament about the loss of life, as we have seen at least two incidents in the last few days where people have lost their lives while trying to come to Australia to seek asylum. People are shocked by the images of those horrible deaths. They are concerned that this practice continues and they want something done about it.

I think everyone in this parliament wants to see a stop to the practice of people moving unlawfully and seeking asylum in Australia by getting into rickety boats where they put their lives at risk. Everyone wants to see that stopped. The debate today is about how we best do that. I do not question anyone's
motives in addressing this issue. Everyone wants to see that stopped. We know there is a people-smuggling business model that convinces people to take on that journey and that they pay little attention to the risks that are involved. The really sobering aspect of the last few days is that, despite the large amount of publicity around the deaths of 90 or so people the other day, people are continuing to get on boats. People are not heeding the message of those drownings and are continuing to undertake that journey. The drownings are not sending back a message that people ought not undertake that journey. I suspect that is a reflection of those people’s desperation, their desire to seek a better life and that they are willing to continue to take those risks. But it does highlight the depth of that desperation and the reality that even such severe incidents as the one we saw at Christmas Island last year and the drownings in recent days will not stop that flow of people prepared to undertake that journey. That is what this parliament has to deal with.

I know this debate has always been emotional. As a former immigration minister I am only too well aware of the challenges and the problems that these issues confront us with. I know that many senators, as with many members of the House of Representatives, hold very strong personal views about these issues and have agonised over what the appropriate solution is. Everyone wants to respond in a humane and appropriate way; but, equally, people know that we have to provide a deterrence to this trade. The challenge for us is to provide a deterrence that is in keeping with Australia’s principles of compassion and fairness while doing something to prevent loss of life and to undercut the business model that allows those tragedies to continue. We have to focus with clarity on that problem.

Many of the speeches in the House of Representatives yesterday were very fine, very personal and very emotional. But, to be honest, many of them lacked clarity. They lacked clear thinking about what the parliament has been asked to do, and I do not want to see the Senate repeat those contributions today. Not to disparage anyone’s contribution, but we have one opportunity in this place, today, to try to do something to help prevent those deaths continuing. We have one opportunity. We have one bill, we have one debate where this Senate and this parliament more generally have to try to make a difference to what is occurring. All those other issues that surround this debate have to be put aside while we seek that clarity. If we allow ourselves to be swayed by political considerations, by the emotional considerations, by the baggage that we all bring to this debate, we will not do what the Australian people expect us to do. The Australian people expect us to take measures, to pass laws which will assist in ending the continuing loss of life. That is their expectation of us, and it is not an unreasonable expectation.

I urge those seeking to contribute to the debate today and to shaping our legislative response to focus with clarity on that challenge, to open their minds to compromise, to look at what is possible and ask what we can do as a parliament, as a Senate, to influence this terrible event, to influence the decisions of those seeking to put their lives at risk with the obvious consequences that we have seen in recent days.

Yesterday the House of Representatives did find a way through the views and the conflicting attitudes of many members of the House of Representatives to bring this bill to us. This is our one chance to get this right, to find a way through, and I think we ought to
seize it. I think the Australian people expect us to seize it. So I would urge all senators to take that opportunity. It is not about the baggage you bring to it. It is not about the emotional history you have with the issue, it is not about your personal experiences, it is not about your political or philosophical views; it is about what we can do in this parliament today that might make a difference. I say to you: this bill can make a difference. This can help prevent more people getting on boats, putting their lives at risk and many of them drowning. That is why I argue for it.

There is much about this bill that challenges some of my philosophical positions, my history—my baggage, if you like. I was the one who closed Nauru. I was the one who ended temporary protection visas on behalf of this government. I find a lot of this debate very difficult. But one thing I know is that this parliament has the capacity to come together and to respond to this issue. I was here in this parliament when Kim Beazley provided the leadership inside the Labor Party to respond to John Howard's legislation. It was a very difficult time for the Labor Party, a very difficult time for me and the other members of the caucus, but we accepted that the government had the right to respond, to take a policy position that allowed them to deal with that issue, and we supported that.

We are in the position now where the government has put forward a response centred on the arrangements with Malaysia to return some people seeking asylum to Malaysia. I know it is controversial but it has been adopted by this government and supported by me personally because I actually think it will make a difference. I actually believe this will make a serious dent in the people-smuggling model and will undercut the business of the people smugglers. That is why I support it. I have had reservations about this and we worked it through in cabinet, we worked it through inside the government. I think it will work.

In order to get the parliament to support a measure such as that we have offered compromise. We have taken a step back in relation to Nauru and supported a bill that includes the reopening of Nauru. That is a big step for this government and something that has caused many of our members quite a deal of angst. But we have done it in an attempt to try and find a way through this impasse, to try and find a way through the impasse not for political posturing purposes, not for the capacity to say that we have passed a bill, but for the capacity to make a difference to boats leaving and people dying. That is what this bill is about. That is why it is important that the parliament supports this bill today and that we get a result that allows us to impact on what is occurring with people leaving Indonesia and Malaysia and Sri Lanka and putting their lives at risk.

The bill seeks to allow the government to do that and to find a way through. I congratulate Mr Oakeshott on his initiative and his commitment to try to break the deadlock that we have seen in this parliament. That is the sort of leadership we should all take very seriously. It is in all respects a compromise. It is not a perfect match to anyone's particular philosophical approach, not a perfect match to any of the parties' particular policy positions, but it does enable the government to take measures which we think will make a difference. Quite frankly, the differences between the parties on this issue are much less real than many argue. We all agree that there is a need to break the people-smuggling model. We need to stop people embarking on these dangerous journeys and we need to provide deterrence. You have to provide a deterrence to people departing. You cannot just deal with this issue at the country of end point, you have to
deal with this issue at the country of source and the country of transit. The Bali process which was commenced under the previous government had that very much at its heart—the need to get all countries in the region together to deal with the issue of people smuggling, recognising that unilateral action by any one country would not provide a proper or adequate response, that we needed to deal with the issues at source, at transit and at end point and that we needed to work together to stop the flow of people through the region, stop people putting their lives at risk and find a way of allowing people's proper claims for asylum to be assessed and processed and, if found to be refugees, to find resettlement.

Australia has a very proud history of refugee resettlement. Per capita we are one of the largest, if not the largest, resettler of refugees in the world. That has continued under successive governments of both persuasions. So when people focus on the differences in the debate, they forget that the underpinning of our whole system is one that is bipartisan, which is that Australia ought to play its role in providing settlement for those people found to be refugees in the world and that we have to make that commitment as part of our commitment to peace and order and providing opportunity to people in the world. We have done that consistently. We have a very proud record.

One of the things that has come in this debate is that by changing the size of our permanent program we will somehow remove the incentive for people to seek to travel unlawfully seeking asylum. That is a nonsense. I know it is a genuinely held view, I have heard the Greens and others inside my party argue this case, but it is a nonsense. By all means argue for an increase in the size of our humanitarian program. I am a big supporter of that and I will vote for that. I have argued for it in cabinet and we increased it while I was minister. But to think that that will somehow stop people-smuggling in the region is a nonsense. It has to be part of the response. I heard Senator Milne on radio this morning talking about resettling people out of Malaysia and Indonesia. She is right: that has to be part of the response. It has been part of this government's response, seeking to resettle people out of those transit countries. That is part of the commitment we have to make if we are to seek their cooperation in helping manage these problems. We have engaged with Malaysia, Indonesia and others about it. In fact, that is what is at the heart of the Malaysian proposal, that we help them manage their flow of migrants inside their country in return for them helping us build a deterrent. That is what it is about.

I know that people want to focus on other things such as the convention and I can happily engage in that debate but time does not allow. The reality in the world is that very few countries have signed the convention. If we restrict ourselves to dealing only with those countries that have signed the convention, we will not make real progress on these matters. The key of the convention is the non-refoulement obligation. That is very much enshrined in the proposals in relation to Malaysia, it is a core part of the agreement. That is why the UNHCR and the IOM are prepared to be part of the arrangements. They accept that the central plank of the UN convention is protected in that agreement.

Those arguments are all important—they are all part of the broader debate—but today is the time for focus; today is the time for clarity. It is not a time for emotion; it is not a time for baggage; it is not a time for philosophy; it is not a time for political positioning; it is a time to say: what can this parliament do today that helps make a difference? We know that this bill will help
make a difference. It is not a magic solution. It will not end the problems of people smuggling around the world. It will not end the fact that there are millions of people in the world seeking asylum, millions of people who will never find a settlement place, who will never be safe. It does not solve all those problems. But what it does do is make a serious contribution to undercutting people smuggling in our region. It makes a serious contribution to providing some deterrence to that business, some deterrence to those seeking to engage people smugglers, but at the same time it takes forward a positive framework for engaging in the region, in the longer term, broader solutions to the problems of people smuggling, asylum seeking and people movement more generally.

This is an international problem. It is not going to go away overnight. One of the great things about Australia is that we have a country where people want to come. One of the big issues of this century for us is going to be migration, lawful and unlawful, because we are one of the few places in the world that is safe, prosperous and provides opportunity. There will always be people seeking to come to Australia. In a sense, we would not want it to be any other way. If they stop wanting to come here, then things have gone bad for us. So we will always have a problem with people seeking to come to Australia. The challenge is to provide humane, compassionate and practical solutions to managing those challenges. We want more migrants, but we want them to come in an orderly way. We want to play our part in humanitarian settlement, but we want to do that in an orderly way.

We have to find a way of managing these issues better than they are being managed at the moment. That requires us to find something that undercuts the business model of the people smugglers in Malaysia and Indonesia. The government argues that the Malaysian arrangements will do that. The opposition argues that re-opening Nauru will do that. I do not believe that, because what happened with Nauru was not based on where people were sent; it was based on a message that the Howard government was able to send, which was: 'You will never be resettled in Australia.' That was the basis on which Nauru worked. Unless we are prepared to say to people who have been sent to Nauru, 'You will never be resettled in Australia,' it will not work again; it will not make a contribution.

But this government has been prepared to compromise, to try to get a bill through this parliament that allows us to make a difference in this terrible unfolding tragedy. We have compromised. We have accepted the opposition's contribution to try to get this bill through. So I urge all senators to focus on the task at hand, to meet the public's expectations that we do something serious that makes a difference, that we take up the challenge that they have provided to us and that we do not walk out of here today having failed that challenge. I urge senators to support the bill and to give the government the opportunity to help prevent the terrible tragedies that we have seen in recent weeks. I table a revised explanatory memorandum to the bill.

Senator ABETZ. (Tasmania—Leader of the Opposition in the Senate) (09:56): The tragic loss of life at sea occasioned by the behaviour of corrupt, unprincipled people smugglers has been broadcast into our living rooms in what can only be described as very confronting TV footage. It is clear that these tragedies have led to this flurry of legislative activity which has seen the coalition cooperate with the government to bring the Migration Legislation Amendment (The Bali Process) Bill 2012 on for immediate debate.
But first some history: when the coalition was confronted with an influx of illegal arrivals, we took decisive action, action that worked. Why did we take that action? Because, as a coalition, we fully support refugee intake into Australia. The figure of 13,700, as the Leader of the Government in the Senate indicated, is, by world standards, per capita a very generous figure. What is more, it is not only in the raw numbers of the intake where Australia has been generous; it has also been exceptionally generous in the services provided to assist those people to resettle.

The issue that confronted the Howard government was: to whom should we as a nation give priority? Should we give priority to those that deliberately bypass safe haven after safe haven after safe haven to get a resettlement opportunity that they want, having destroyed their papers on the way and having engaged criminals to assist them, or should we give priority to those who have languished in refugee camps for year after year, for well over a decade? You can talk especially to our black African refugee brothers and sisters who have had that experience. They have waited sometimes for 15 years or more for resettlement. The question therefore is: to whom should we give priority? Should we give priority to those who do not have the financial wherewithal, those who went to the immediate first safe haven available, or should we give priority to those who have the financial capacity to buy their way into Australia, courtesy of the assistance of criminals?

We have said we support refugee intake, but make no mistake; when illegal arrivals enter into Australia, they displace the orderly resettlement of refugees around the world. We believe that there is a better way, and it should be via the UNHCR and through the United Nations processes, to ensure that we assist those who are genuinely in need. Indeed, Australia's dealing with some of these asylum seekers has not been as it might be, as witnessed by a recent TV program indicating that somebody residing in this very city who was engaged in that activity had convinced authorities that he was a genuine refugee when in fact he had been living in Kuala Lumpur before.

Just to set it on the record: we do support a refugee intake, but we support an orderly one and one that does not give priority to those with the financial capacity to engage smugglers to assist their cause. We as a coalition were confronted with a huge influx of illegal arrivals which unsettled the refugee program. We took decisive action, action that worked, as a result of which, in the last five years of the Howard government, we reduced the boats coming to Australia to fewer than three per annum. We stopped the criminals. We stopped the people smugglers. They no longer had a commodity to sell.

Mr Rudd, as history records, came into government in 2007. Slowly but surely the numbers increased. So, whereas in the last five years of the Howard government there were less than three arrivals per annum on average—there were some two years, in fact, with zero arrivals, a great result—after the election of the Rudd government we saw the number of boats increase from five to seven to 61 to 135 and ever escalating. Mr Rudd undertook a wilful dismantling of the coalition's policy. It was deliberate and it was wilful. Whilst we warned of the consequences, we were dismissed because 'the Howard solution had not worked; it was for a whole host of other reasons that the boats stopped'. We now know that that was, regrettably, an empty promise. In fact, the dismantling of the Howard policy has led to this influx.
So great was the influx that, when Ms Gillard became Prime Minister, she said that one of the issues that the government had lost its way on and something that she needed to fix was the influx of boat people. We know what happened there. First of all, it was the East Timor solution, which did not work. Then we had the so-called Malaysian solution, where we were going to take 4,000 refugees from Malaysia in exchange for 800 illegal arrivals. Since the announcement of that so-called Malaysian solution, 8,000—10 times the original number—have already arrived in Australia. We now know that the Malaysian solution, so called, is in fact no solution.

As a result, we have now moved to the Oakeshott solution, which—if I might say so, with respect—is not a solution, because we know that, if that policy were implemented, given that the government have already said that they would not return to Malaysia women and children, the criminal people smugglers would simply change their model and ensure that women and children are sent out on the boats. We know that that would be the case, and as a result it would not work.

There has been a lot of talk in recent times that compromise is the answer. Regrettably, history is littered with example after example after example of compromise not working. Indeed, compromise often means the lowest common denominator, which then ultimately leaves a much, much larger problem to resolve. Simply, compromise per se is never and never has been a substitute for good, sound public policy.

Senator Evans has said we should put aside all our philosophical baggage et cetera. The coalition came to this debate, back when it was in government, not on the basis of necessarily some high and mighty philosophy—like, with respect, Mr Rudd seems to have had—but with a focus on a practical solution, a solution that worked, a solution that stopped the boats, a solution that allowed the orderly intake of refugees into this country, some who had waited for well over a decade for placement, for whom the indignity of a refugee camp was not an indignity but in fact a safe haven. To those, we in the coalition say that we would seek to give priority.

What is the solution? We know that we need a three-pronged solution. We do need to have within our armoury the turning back of boats if it is safe. What we have regrettably had now is a huge condemnation of that one proposal. I simply indicate—and we have not demanded this, might I add, in this debate and in this bill—that one Ms Gillard, at a joint press conference on 3 December 2002, as the coalition government was grappling with a huge influx of illegal entrants, said: 'We think turning boats around that are seaworthy that can make the return journey and are in international waters fits in with that.' That referred to destroying the people-smuggling model. We adopt the words of Ms Gillard as being vitally important in the policy mix. Having said that, with the amendments that I have circulated on behalf of the coalition we do not insist on that being part of the mix. But we know, from Ms Gillard's own mouth in 2002, that it was part of the solution and that it did work. Somewhere, a decade later, we are to believe that it no longer works. We in the coalition believe that it does work.

The second point in our armoury is temporary protection visas, which are vitally important and part of the armoury that worked so effectively. In this bill, and in the amendments moved in the other place, we are willing to forego the issue of temporary protection visas, although we believe they are vital ingredients of any workable
solution. We have foregone those in our spirit of wanting something that works.

And of course the third point in our armoury is that of offshore processing, something which was so roundly condemned by those opposite and which we said was important. When they stopped the offshore processing the boats started coming, and the greater the number of boats that come the greater the number of tragedies there are. Do I blame those on the other side for the tragedies? Absolutely not. As I said at the outset, the only people to blame are the criminal people smugglers. But I think we have a duty to ensure that we put those people smugglers out of business once and for all, as we did previously.

So we do have a three-pronged approach. What is more, we have put to the government that we would agree to a sunset clause in relation to these matters. We have agreed that processing of claims should be done within 12 months. We have agreed with establishing a multiparty committee to work out how to successfully resettle an increased refugee intake, which, in the spirit of compromise, we have now said should be increased to 20,000 a year within a three-year period. We have put matters on the table: basically everything the government wants but one thing—that is, not having people put into places where the UN convention for refugees does not apply. That was such a strong point of the Australian Labor Party. That is in fact why they condemned our Pacific solution, especially Nauru. The huge difference between Nauru and Malaysia is this: Nauru now is a signatory. That aside, we accept that under us Nauru was not a signatory. But the big difference, which is so often regrettably—I will simply say regrettably; I trust it is not deliberately—overlooked, is that we actually ran the show on Nauru; therefore, the detention centre was run according to Australian standards. And, can I say, if I had a choice between Australian standards or UN standards I would always go for Australian standards. But we now have a belt and brace situation with Nauru. Not only would it be run according to Australian standards; they are now signatories to the refugee convention. Malaysia, regrettably, is not. If we were to return 800 people to Malaysia we would not be looking after them as we did in Nauru. They would be looked after under Malaysian standards.

I do not want to talk about that much more, other than to say that something which was such a core principle of the Australian Labor Party that they sought to attack us over it has now, all of a sudden, become acceptable. We believe that Australia does have a humanitarian responsibility, which is why, if we are not to process people onshore but offshore, we should deal with them in a humane manner. That was guaranteed on Manus Island and Nauru because we ran the show. Placing these people in Malaysia would not provide them with the protection of being looked after by Australians, nor would they have the protection of the convention to which I referred earlier.

In the past—and, might I add, especially under us—very inflammatory language was used by those opposite. I do not want to engage in or repeat that language against those opposite today. But I want to remind them of the extreme language that they used and the suggestion that we were somehow responsible for the deaths of people at sea—and that was back in 2002, as the Howard government was coming to a solution. Indeed, one quote that I will refer to is the one by Ms Gillard where she said that every boat arrival is another policy failure. We agreed that every boat is a policy failure and we put policies in place to ensure the boats stopped. Now, under Ms Gillard's watch, the boats have been arriving not two or three per
year but two or three per week. That is the policy failure of the Labor-Greens alliance: being unable to deal with the very real humanitarian problem that we face.

Can I repeat on behalf of the coalition: we support a refugee intake. Indeed, if there is one man in this parliament who has visited more refugee centres around the world than, chances are, all of us put together it is the father of the house, Mr Phil Ruddock. He has had a compassion and a commitment to looking after refugees on the world scene, but he also knows that compassion is not the only ingredient. You also need practical solutions, and that is what he delivered in such an effective way and which Labor has now, regrettably, so deliberately dismantled.

As a result, we now have this influx of people, or as Ms Gillard said, policy failure after policy failure. It is not the responsibility of an opposition to come up with a solution, albeit that we have. It is a solution that has worked in the past—true, tried and tested—and there is no reason to believe that it would not work again in the future. Having said that, in the spirit of seeking to ensure that we put these criminals who are responsible for the deaths at sea—make no mistake: it is not even the Greens or the Labor Party who are responsible or us on this side. No Australian parliamentarian is responsible. It is the criminals who are responsible but we have the responsibility to put them out of business.

That is why we have a true, tried and tested policy solution. The government clearly cannot bring itself to adopt that solution in whole. We have therefore said that subject to some amendments—vital amendments, core amendments—we would not be able to support this legislation without those amendments. So, in short, this bill may be a compromise but it is never a solution. It is not good public policy to just go for something because it is a compromise. We support refugee resettlement to Australia but we believe in it being conducted in an orderly fashion.

Senator HANSON-YOUNG (South Australia) (10:16): I rise today to speak in opposition to the Migration Legislation Amendment (The Bali Process) Bill 2012. This bill is, unfortunately, not the solution to saving people's lives. This bill does nothing to protect the many very vulnerable people who are desperate for safety and protection for their families. Whilst I understand the motivations behind many of the reasons why people in the other place, and probably here as well, want to pass this legislation into law, the reality is that what this bill does is remove the only avenue for protection that people at extreme risk in our region face.

What this bill does goes in complete contradiction to the refugee convention that Australia so proudly signed up to and helped draft in 1951. We have had an extremely important role in our region of giving people protection when they need it. We have had an extremely proud history of showing leadership in our region. When numbers of people escaping Indochina and Vietnam needed our assistance, Australia stood tall and said to our regional neighbours, 'Let's get together and work out how we can deal with the needs of our fellow human beings.'

We do need a better way. The current situation where people have to risk their lives on a boat to seek protection should not be the only option they have. People like Hussein, who was five when the Taliban raided his village: his parents, his sister and his brother were all killed on that day in 2000. He had only one remaining adult relative, an uncle. After years of trying to hide from the Taliban, they fled to Pakistan. They could not stay there for very long, he said. He was still there with his uncle. His only other sister
who had survived the raid married a fellow in order to flee the border of Pakistan and Afghanistan and move to Iran. That was her gateway to safety. When his sister got to Iran she sold everything she had. He said: ‘My sister sold all of her jewellery, everything she had, to save enough money for me to get to Australia. She knew that I had to get out. I could not stay safely with my uncle.’ Hussein goes on to say that it was a long trip. He had to go through China, to Thailand and then to Malaysia. None of those countries would accept him as a refugee. In Malaysia he had to hide because he was there illegally. He tried signing up with the UNHCR but they told him that it would be a very, very long wait. He would not be given safety.

He boarded a boat and came to Australia. He was one of the 500 people we detained for up to three months last year while we debated the Malaysian solution. He was terrified. He was a 15-year-old, on his own, without his family; his parents had been killed. He was an orphan, locked up for three months on Christmas Island with the threat that he would be sent back to Malaysia. Hussein, thankfully, is now living with a family here, in Australia—in Brisbane. He is going to school, he is studying English, and he is going to make one fine Australian.

These are the lives of the people we are playing with. This bill does nothing to protect Hussein or anyone in his position. This bill puts him in further danger. This bill says that, if you come to Australia seeking protection, our government will basically send you wherever it wants. We know that this government says that it will use this bill to send people back to Malaysia, where we know the awful treatment that asylum seekers face in that country. We do need a better way. We have to work with our regional neighbours to lift levels of protection. Hussein should not have had to continue to run. He should have been able to find safety at the first port of call. That is what we need to be working towards.

We need a regional solution. It does not happen overnight; I understand that. What this bill will do is undermine all efforts to implement something that is based on the principles of the law. The refugee convention was drafted because of the awful experience that the world suffered during World War II. We learnt that when people arrive on our doorstep we have an obligation to help them. Australia has a remarkable opportunity to lift the levels of safety and protection and so do more for people like Hussein when they reach Thailand, when they reach Malaysia and if they reach Indonesia.

I have heard some people talk about the fact that simply to lift our refugee intake is not enough; it will not stop boats from coming—and that is probably right. But it will go a long way to giving children like Hussein a safer option. It will go a long way to showing good faith in our region if we want Malaysia or Indonesia to do more to protect and offer safety to those people who arrive in their country. We have to be realistic: the number of people whom Malaysia manages is far greater than the number of people who finally reach Australia. We have to be working better with our neighbours on protection standards. And we also have to be working better with particularly Indonesia when it comes to stopping people in the first place from having to board the boats departing from their ports. It is clear that the cooperation between Australia and Indonesia is far poorer than the standard it needs to be if we are to save people’s lives.

We need to be talking to Indonesia. Australia has to take a much stronger role in talking and working cooperatively with one of our closest neighbours. Indonesia has consistently and increasingly said for the last
12 months that it does not have the resources to deal with this issue. I call on the government today to have urgent talks with Indonesia. It is something that can be done today. This bill will not pass this parliament and it should not, because it entrenches danger; it does not promote safety. But we can be having urgent talks with Indonesia.

What does Indonesia need from us to make people safer in its ports? We need to give funding directly to the UNHCR in Indonesia and in Malaysia to help them assess people's claims faster. There are only two officers who work for the UNHCR based in Jakarta to manage all of the claims for asylum seekers. We need to give urgent funding to the UNHCR to assess people's claims, and with the commitment that we will help to negotiate resettlement. Not everyone will come to Australia but we have to show good will in taking far more people than we already do. We can pull in our other regional neighbours and our other resettlement countries.

We talk about this issue in this place as if we are isolated from the rest of the world— and we simply are not. This is not just Australia's problem, and we are not going to fix it by taking away from our law the basic principles that we believe people should be treated by. This bill deletes an entire section of our law which says that we agree with the principles of the refugee convention that we helped draft so many years ago. This bill says that, by deleting our commitments in our own law to the refugee convention, we no longer care that people should be treated in a way that gives them protection and safety as a general principle of law. How on earth are we meant to get other countries in our region to stand by the principles of treating each other and the most vulnerable, the most at risk, with humanity, if we say that we do not even want that to exist in our own laws anymore?

I have listed a number of things we could be doing immediately, such as providing funding to the UNHCR, which can be done today. We spend as little as $10 million on funding these programs and services in other countries, particularly in Indonesia, for these assessments. We can be doing far more than that. We are about to spend almost $3 billion on our detention network in Australia. Some of that money should be urgently directed to the efforts of the UNHCR in Indonesia and Malaysia.

We need urgent talks with Indonesia about intelligence and resourcing. The Indonesian government, and various minister, have continued to say that they need our help. Let us help them so that together we can actually save lives without undermining protection efforts. Australia should be bolstering protecting and not undermining it. We should be providing safer options, not creating more dangerous ones. Unfortunately, that is what this bill does.

The Greens will be moving a second reading amendment that deals with these immediate issues; increasing targeted resettlement from Indonesian and Malaysia to increase our humanitarian intake up to 20,000; increasing funding directly to the UNHCR to get through these assessments and allow the UNHCR to provide some safety net for the very vulnerable people, who are frightened and desperate, waiting in Malaysia and Indonesian; and, we need to be undertaking the most high-level diplomatic conversations with Indonesian to deal with the issues of intelligence and resourcing, so that boats are not leaving port in the first place. If they do leave port we need to make sure we respond in a timely and urgent manner to any emergency, regardless of who is on the boat or the reasons why they have departed the port.
There are no simple solutions to what is a humanitarian issue, but there are things we can be doing, and doing better. This week I have had a number of conversations with agencies and individuals who are working in Malaysia, Indonesia and Thailand about what this legislation would mean for their work in the long run—urgently, and in the longer term. They are very concerned that, if Australia continues to reduce its protection and reduce its ability to work with solutions that are underpinned by international law and the basic principles of treating people with dignity and humanity, they will never get to the point with our neighbouring countries, and in their nations, of being able to offer the protection that we know people need.

This all might sound very big and complex. That is because it is. We are dealing with human beings who have fled for the fear of their lives. As an asylum seeker, fleeing by its very nature is disorderly. It has never been an orderly process. In countries like Australia, we are so lucky. We are not confronted day in and day out with worries about the safety of our children, our mother, our father or our brother or sister. We can speak freely about issues without being targeted by the regime of the day. You can get an education and study things and disagree with the government, because that is the democracy we live in. People who are fleeing circumstances where they do not have the same lucky country that we live in do not take that decision lightly. It is a disorderly process. But a country like Australia, as lucky as we are, can try to offer a safer pathway. It may not always be an orderly one, but it can be a safer one, and we also can light the way for our neighbouring countries.

Senator THISTLETHWAITE (New South Wales) (10:36): I speak in support of the Migration Legislation Amendment (The Bali Process) Bill 2012. I have been a surf lifesaver for 27 years. I have devoted much of my life to volunteering to help keep safe the lives of others on our beaches and our waterways. The images of vulnerable people without the training, capacity and competence to handle themselves in the ocean, particularly young children, in distress in the water, flailing about, desperate to be saved in the wake of a boat sinking—with some ultimately drowning—simply breaks my heart. It breaks my heart because, like in so many of the rescues that occur in the ocean and on our beaches, the situation is avoidable. Situations like this will be avoided if this Senate today passes this legislation and provides us with an opportunity to stop vulnerable people who are seeking asylum being exploited by unscrupulous people smugglers selling the promise of a safe passage to Australia on our high seas for a very high price—a very high price indeed.

The reality is that these people are getting on unsafe and overcrowded boats. They are being cast onto the open seas in hopelessly unsafe circumstances, a recipe for disaster. And unfortunately disaster is what we often see. We all saw the harrowing images of desperate people being cast on the rocks at Christmas Island last year. Only last week this nation again had to confront images of people, including women and children, desperate to be saved as their boat sank on the open seas. And yesterday yet again we as a people and as a parliament were confronted with the reality of people smuggling in this region, a reality that will not go away unless this parliament takes action today.

Politics is the art of the possible. Today we have the possibility of removing the product that people smugglers are selling to vulnerable people and of removing the incentive to get on unsafe boats. We can make that a reality. Vulnerable people will no longer get on unseaworthy and
overcrowded boats and risk drowning at sea. We can make a workable multiparty compromise solution to this a reality today by supporting this legislation. This piece of legislation can provide an effective deterrent to people smuggling and is the only piece of legislation that can do so. On the eve of this parliament going into a winter recess for six weeks, I cannot see how any of us can in good conscience can do anything other than support the legislation before the Senate today.

This bill has passed the House of Representatives. It received the support of the majority of the members of the House of Representatives last evening. The bill is a compromise. It represents parliament at its best, its members working together to solve what is a difficult public policy issue in the interests of this nation and, importantly, in the interests of the lives of those vulnerable people who are getting on boats. This bill ensures that offshore processing in countries that are part of the Bali process on people smuggling will become a reality. The Bali process is a regional forum involving 43 member nations. It is a process of negotiation involving our regional partners, including Indonesia, Malaysia and Thailand. This government have always said—and many of those opposite have always said—that if we are going to strike a reasonable and workable solution to this issue it must be done in cooperation with our regional partners. Here we have a bill that delivers that.

This process has the input and will continue to have the input of the United Nations High Commissioner for Refugees. The bill is consistent with the advice of the Department of Immigration and Citizenship and representatives of the Australian Navy. It has been negotiated in the spirit of compromise. In that spirit, the government agreed to an amendment moved by the member for Denison to allow this policy to be looked at again in 12 months time through the provision of a sunset clause so that we can assess the effectiveness of the bill we are debating today in providing a workable and ongoing solution to the problem of people smuggling in this region.

Unfortunately, those opposite have said that they will not support this legislation. I could say that they are being obstructionist and negative. But the reality is that it is just terribly sad. Without this compromise, without this bill passing, we will go away from this place for the winter recess and people smugglers will continue to ply their trade on the open seas. Vulnerable people—including children—will continue to get on boats, risking their lives. Australians needs to ask themselves why the opposition is not compromising on this issue. Why is the opposition not allowing the executive government of this country to implement a policy that it believes will provide a workable solution to the problem of people smuggling?

Is it any wonder Australians are losing faith in our democracy? At a time when we should be putting some of the petty bickering that goes on in this place aside and rising above the politics—at a time when we should be working together—we are not. And that is simply sad, terribly sad.

When the *Tampa* arrived on our shores, about a decade ago, the nation was confronted with a political crisis. Our political leaders were forced to confront the issue, in similar circumstances to what has occurred in this parliament over recent days. And the government of the day, the executive of our nation at the time, the Howard government, negotiated and came up with a policy to deal with the crisis. But the difference between the circumstances that prevailed a decade ago and the
circumstances of today is that the Howard government implemented that policy response with the full cooperation of the opposition and the Leader of the Opposition and the Labor Party at the time, Kim Beazley. Despite the fact that, what the Leader of the Opposition was agreeing to was inconsistent with Labor Party policy, despite the fact that there were many MPs in the Labor Party caucus who were opposed to what the Howard government was putting forward, and despite the fact that many of the rank-and-file members of the Labor Party were opposed to what was being put forward, the Leader of the Opposition at the time put the interests of the nation above politics. He put the lives of vulnerable people above politics to reach a bipartisan compromise solution to the issue. That was the way the Labor Party conducted itself in opposition on this very important public policy issue, dealing with a crisis in immigration—in stark contrast, unfortunately, to the conduct of those opposite in the present crisis. I think it is sad to see that those opposite cannot show the same spirit of bipartisanship and the same leadership that was shown by the then Leader of the Opposition, Kim Beazley.

We have a current crisis—there is no doubt about that. And the Gillard government, the executive of this nation, has developed a policy that will provide an effective deterrent to the product that people-smugglers are selling. It will provide a deterrent to the incentive to people to get on boats and make that unsafe journey. And that is the only way to save lives. It is unfortunate, but it is the reality—it is the Realpolitik of the situation.

Unfortunately, the Greens are also saying that they are opposed to this bill. Senator Hanson-Young has given a very passionate outline of the reasons the Greens are opposed. And I can understand their wish to maintain their purity on this issue and their policy of increasing the humanitarian intake and onshore processing. But the fact is—and this was recognised by Senator Hanson-Young—no matter how much we increase the humanitarian intake, no matter how much onshore processing occurs, it will not stop vulnerable people getting on boats and risking their lives on the high seas. It will not stop the product that the people smugglers are selling, and that was admitted by Senator Hanson-Young. Unfortunately, purity that leads to the continued risking of lives of vulnerable people on our high seas will quickly become impurity if further tragedies occur.

No matter how much you increase the humanitarian intake, and process people onshore, it will not stop the product that the people smugglers are selling; it will not stop those unsafe journeys. One child drowning is one child too many. We must provide an effective deterrent, and the executive government of this country believes that this policy will do that, that this compromise plan will do that. That is consistent with the advice that the government has received from the immigration department. It is consistent with the advice that was given by the former secretary of the immigration department to an estimates hearing, Andrew Metcalfe—a person who has been described by former immigration minister Amanda Vanstone as a ‘first-class public servant’.

I do not doubt the opposition's passion on this issue. But what I do dispute is their belief that the executive government of this country should not have the support of the opposition to implement a policy that the government believes will work. That is the way the Labor Party conducted itself in opposition on this issue, and the coalition should show the same courtesy.
With respect to the opposition's adherence to Nauru, we are opposed because we believe Nauru will not provide an effective deterrent. We are opposed because the advice of the experts in this field is that circumstances have changed—90 per cent of those people who went to Nauru who were found to be genuine refugees were processed and ended up in Australia. That is not an effective deterrent to the people smugglers. Do we think that they don't know this? Do we believe that the people smugglers don't know these statistics, don't know that if someone can make passage to Australia and end up on Nauru the likelihood is that they will be granted asylum and end up living in Australia? Of course they know. That is why the opposition's policy will not provide an effective deterrent. Their policy of turning boats around on the open seas is just downright foolish and dangerous. It places the lives of Australian Defence Force personnel at risk, because circumstances have shown that asylum seekers—in particular, people smugglers—will simply seek to disable the boats if they are confronted with the prospect of the Navy attempting to turn them around. The Indonesian government knows this. That is why they do not support the process of turning boats around on our high seas. In respect of temporary protection visas, again, the overwhelming majority of people under this scheme ended up as permanent residents in Australia. That is not a defective deterrent. The people smugglers know this, and they will ply their trade accordingly.

We have an opportunity before us today to provide a workable solution. For the past 12 months there has been a stalemate in this parliament on this issue, and finally we have had a negotiation in the face of a crisis—a workable compromise reached by the House of Representatives. It is incumbent upon this Senate and us as representatives of our various states to give that serious consideration, to look at all the facts and to provide a solution to this issue. Tony Abbott is a surf lifesaver. He has made much mileage of that—we have all seen the images of him in speedos and the red and yellow cap. I think it is about time Tony Abbott and the opposition showed some of that spirit of surf lifesaving, of putting ahead the protection of people and their lives in the sea, of developing and working towards a workable compromise, of stopping the vulnerable being cast on unsafe boats onto the sea.

Today we all received a letter from the Australian Multicultural Council. It is a plea to us, as members of parliament, to work together on this issue and to attempt to come to a workable compromise. The letter says, 'Now is the time to reach out across party lines and find a comprehensive bipartisan solution.' I could not agree more. We have the opportunity before us today to agree to a workable bipartisan solution. This parliament is at its best, and the faith of the Australian people is maximised, when we work together in the face of crisis, when we negotiate and compromise on workable solutions. We have the opportunity to do that today, and in the spirit of compromise—in the spirit of negotiating a workable solution—I urge all senators to agree to this bill.
promise by supporting the coalition’s amendment to this legislation, which will ensure that she does indeed honour that commitment. The coalition have a consistent and principled position on protecting our borders. Yesterday we offered a principled amendment to get a workable bill that could today be passed in the Senate. Instead, the Prime Minister and Labor chose a stalemate, not a solution. Labor’s bill is not good legislation. It is doomed to fail, because it compromises the standards of good faith and decent people and it will not stop the boats.

Yesterday in the House of Representatives the Prime Minister, in making a statement about the most recent boat sinkings, tried to politicise the situation and take the focus away from the Labor government’s failings. The Prime Minister sought to emotionally blackmail members into bringing on for debate and supporting a bill that she was fully aware would never pass the Senate. This debate should have been about highlighting the fact that the Labor Party has dismantled and abolished Liberal policy that had succeeded in stopping the boats. When Labor abolished Liberal anti-people-smuggling policy, Labor established a policy that was in fact a highly profitable business model that was readily embraced and accepted by the people smugglers. The tragedy we are now witnessing is a product of the highly profitable business model that the Labor Party established and which has been adopted by the people smugglers.

The coalition understand that people smuggling is a business, and we understand that to destroy that business you need to remove the incentives, the infrastructure and the opportunities that exist to make this business function. The coalition, with its strong border protection policies, proved when in government that people smugglers can be stopped. The coalition have been telling the Labor government for years now that its border protection policies have failed and that it is Labor policy that is creating the opportunity for people smugglers to make huge profits by putting desperate people on boats and sending them out to sea. Labor’s failed people-smuggling policy is playing into the hands of the criminal people smugglers. The government have adopted the bill and introduced it into the Senate. Labor’s adoption of this bill is a desperate move to artificially contrive a scheme of arrangement to pretend that it is doing something when the facts show that it has lost control of our borders. It is up to the government today to convince the Senate of the merits of this bill and so far it has failed to do so. To succeed in having this bill pass the Senate, the government has to mount a cogent case and demonstrate that it contains acceptable provisions in the bill to persuade the other parties to vote for it. If the bill is not acceptable to a majority of senators in the form in which it is introduced, the government—if it wants to end this issue today, it if wants a solution to its border protection failures—has to be prepared to accept amendments from the coalition in order to achieve a majority vote. If the government accepts amendments from the coalition, this bill will pass the Senate today. If the government refuses to accept the coalition’s amendments, this bill will fail. It is no good blaming the coalition if the government cannot convince a majority of senators of the merits of this bill and the government refuses to accept amendments that would achieve a majority vote. The government will be hoisted on its own petard if it fails to compromise. The government cannot come in here and blame the coalition for its own disastrous actions if it fails to listen. The fate of this bill today rests with the government and it is the government that will, by its own decision not to accept amendments, seal the fate of this bill. It is no
good government members standing in this place today and blaming others for their own failings.

In relation to the coalition's concerns about sending asylum seekers to Malaysia, the government is yet to mount a cogent case and demonstrate that it has obtained the necessary commitment from Malaysia to ensure the protection of asylum seekers. Malaysia is not a signatory to the UNHCR treaty. And I again remind senators that 44 days before the 2010 election Ms Gillard said to the people of Australia, 'I would rule out anywhere that is not a signatory to the Refugee Convention' for countries to be used for offshore processing. I also remind senators of what occurred at the Victorian state ALP conference when the Malaysia deal was first discussed. Delegates voted unanimously to urge the Labor caucus to reject the Malaysia solution. They called on their own Labor Party to act consistently with the principles established by the High Court ruling. Michele O'Neil, the National Secretary of the Textile Clothing and Footwear Union of Australia, said this about the government's Malaysia solution: This is a shameful moment for us as a party’. That is in addition to the emotional pleas of Labor statesman Senator John Faulkner and Left faction convener Senator Doug Cameron and Left faction member Senator Gavin Marshall, all of whom have spoken out in caucus against the Malaysia people swap solution. On 2 December 2011 Melissa Parke, the member for Fremantle, said:

Through the Malaysia agreement we are proposing to discriminate against asylum seekers in a way that fundamentally breaches their human rights.

What we are now faced with in the Senate is that—despite the overwhelming opposition from so many on the Labor side, on this side, from the Greens and from people of Australia—the Labor Party has come to this place today committed to a policy that will send to Malaysia people who have come to Australia seeking our protection. Statistics published by the Malaysian Ministry of Justice show that in the five years between 2005 and 2010 some 29,759 unlawful entrants to Malaysia were subjected to the punishment of caning—an average of 16 canings per day, every day—and this is a common penalty, provided for by the Malaysian government for asylum seekers entering that country. The Labor Party is committed to a policy that will allow them to send children who have engaged our protection obligations to a country where they will have no protections, they will not be able to attend proper schools and can be caned under Malaysian law. The Labor Party is committed to a policy whereby it will send people who have engaged our protection obligations to a country where they will share one UNHCR-funded medical clinic with 94,000 other refugees in Malaysia.

The Labor Party remains committed to the Malaysian solution, despite the fact that the federal parliament was so abhorred by this policy that the House of Representatives passed a motion condemning the Malaysian asylum swap deal. It is incumbent on the Prime Minister of Australia to explain to Australians why she would pursue this arrangement in Malaysia when there is a proven, more humane and more cost-effective solution that can be immediately introduced. It is incumbent on the Prime Minister to explain why she would send unauthorised arrivals to Malaysia, which has not signed the UN convention against torture, when Nauru has. It is incumbent on the Prime Minister of Australia to explain to the Australian people why will she send asylum seekers to a country that cannot guarantee standards and accessibility of medical care. It is incumbent on the Prime Minister of Australia to explain to the Senate
today why she will send children to Malaysia who will have absolutely no protections at all.

The Left of the Labor Party should be ashamed of themselves. Going forward, they will never again be able to stand up in this place and tell the Australian people that they believe in upholding the human rights of asylum seekers. The parliament must do what it can to ensure our borders are secure and to end the evil work of the people smugglers. Too many people have made this dangerous journey and too many have lost their lives in attempting to do so. The time has come to yet again end this terrible trade—just as the coalition did when we were elected to govern under former Prime Minister Howard.

As the matters are debated in the Senate today, I want to restate to the Australian people the coalition's position, which we are committed to, which will again make our borders strong. We support offshore processing. We support temporary protection visas. We support turning back the boats when it is safe to do so. We do not support the Malaysia people swap deal, because it will not work and it fails the test of a good and decent people. That is our principled position that we will uphold in the debate before the Senate today. These policies of the coalition have worked in the past and they will work again if and when they are reintroduced.

In good faith, the coalition offered a principled compromise yesterday, consistent with our values, to ensure the passage of the legislation through the Senate today. This included increasing Australia's refugee and humanitarian intake from the current level to 20,000 a year within three years. We believe it makes sense to offer people who are prepared to try to come to Australia the right way rather than the wrong way more opportunity to do so. We offered that people who are processed at any centre would have the processing of their claims done within 12 months and that a multiparty committee would be established to work out how to successfully settle the 20,000 immigrants.

The time for talking is over. The government does not have the option of continuing to do nothing and blaming the opposition. This is not a policy; it is a convenient excuse. If we must wait until an election to end this madness, then at least take action now to mitigate the increased risk of loss of life and continued compromise of our refugee and humanitarian program as the boats keep coming.

As the coalition has made clear time and time again, we will never support bad policy. We will never engage in supporting something which we think will have bad outcomes for the Australian nation, and this policy will have bad outcomes for the Australian nation. It compromises our standards and it will not stop the boats. What, in fact, it will mean is that the people smugglers will load up the boats with women and children, because the government has already indicated that women and children may not be sent back.

If the Prime Minister wants to send a tough message to people smugglers, there is one thing and one thing alone she can do. She can accept the coalition's proposed amendments to this legislation. That will see that Labor honours its election commitment to the Australian people that it will not send people to a country that is not a signatory to the UNHCR treaty. It will see that the Labor Party allays the concerns of not only the people of Australia but the people who are members of the Labor Left. It will ensure that Labor upholds its obligations under the UNHCR treaty. But, most importantly, it will
ensure that a solution to this matter is reached today.

Senator WRIGHT (South Australia) (11:11): I rise to speak on the Migration Legislation Amendment (The Bali Process) Bill 2012. I indicate that I will not be supporting this bill, and I would like to go on the record as to why.

There is a great deal of angst and sadness in the Australian community, and obviously in this parliament as well, about the most recent events where there has been loss of life in the sea due to people having come on boats seeking asylum in Australia, and of course there is increasing pressure for something to be done. I think it is a matter of great pride that Australians are increasingly so concerned. It is a sign of what essentially good-hearted people we are that this is something that the public is requiring politicians to be taking action and a stand on.

It is really important to remember that this is one of many incidents that have occurred over a long period of time. In a sense, the suffering that we see on our TV screens when boats sink is the tip of the iceberg of a massive number of people who seek asylum, leaving situations of high conflict, persecution, violence and risk of arbitrary death. They are so desperate that they choose to leave their homelands, their families and friends to face a risky, uncertain future somewhere far away. So, while it is clearly absolutely abhorrent to see what has happened recently, we must not forget that this suffering is the precursor to those choices that people ultimately make to get on a boat and to try to seek asylum in Australia. That is why it is important that, in determining where we can go in dealing with this, we have to be really clear about the entire situation. We must not risk having just a knee-jerk reaction to deal with something that we cannot get away from at the moment because it is on our television screens. This situation is there all the time and, as a humane country, we need to recognise why we initially signed the refugee convention, what the basis of that convention requires and how we can fulfil our obligations to be humane and to offer sanctuary to those people who are far less fortunate than ourselves.

Australians desperately, genuinely want a solution, and this bill purports to offer a solution. That is why there is such pressure from many aspects of Australian society to grasp it with both hands, because it looks like it is going to solve the problem that we are facing right now. It is my view that this bill is a solution for politicians so that it looks like we are doing something decisive; like we are hearing the concerns and we are moving to act on them. I firmly believe this is not a real solution for refugees at all. Essentially this bill will not do the very thing that it purports to do, the very thing that it is supposedly designed to do, and that is to save lives and reduce suffering. It is so attractive to think that it would, because we want an answer, we want a solution—but it is my firm view that it will not do that; it will not reduce suffering and it will not save lives. If desperate people, facing potential arbitrary death or violence or rape or constant persecution to the extent that they cannot live in safety, make the choice to flee conflict and seek safety and some kind of better future, then they are making a choice between dying or living without hope and gambling on the future. They are clearly prepared to take that gamble.

Unless we have a solution that offers people hope that they can achieve asylum, offers them a chance of being processed and not languishing in refugee camps for decades—in some cases without any hope of life, any reason for living, any ability to form lasting relationships and not knowing
whether they will be able to continue with those relationships and often without the ability to work or to do things meaningfully in their lives, and they do not know when the end of that will be—then they will continue to risk their lives for the chance of a better future.

It is interesting to consider what we would do in that situation ourselves. If we can have empathy with what it must be like to be in that situation, it does not take a lot of imagination to realise that many of us would make exactly the same choices. In 2010 the Red Cross conducted a survey of Australians to find out what they would do, to see whether they could understand why asylum seekers make the choices they make. The statistics were very enlightening—86 per cent of those surveyed said they would flee to a safe country if they lived in a conflict zone. If we are subject to conflict we will flee. That is what people do all over the world. If we have families, if we have children, we seek to protect them whatever it takes. That is what Australians said, and that is what asylum seekers do. Ninety-four per cent of those surveyed said they would use all their money to get to a safe country. It is suggested that these are mercenary people and that they are prepared to buy their way out of trouble, but that is something that human beings will do. If it is a choice between living in unimaginably intolerable conditions, living with the risk of death at any moment and living with the risk of seeing your family suffer, as opposed to being able to take a risk and make a new life, human beings are willing to take that risk and that is what these asylum seekers are doing.

On Saturday I joined with many other people in Adelaide to walk together in the Welcome to Australia march. As I was walking along, I spoke to a man next to me and asked him about his background. His name was Saad, and he had been a refugee from Iraq. Saad would have been in his forties. I asked him about his story and he said to me, ‘It is a long story but I will cut it short. I fled Iraq as a refugee and I ended up in the Philippines. I was assessed in the Philippines as a refugee and I spent 20 years in the Philippines waiting to be resettled. I was a young man when I fled Iraq. I ultimately formed a relationship and married a Filipino woman and I had four children. But I was not allowed to work in the Philippines. I was there for 20 years, and I had to work to support my family so I worked illegally. Then I was apprehended at one point and I went to jail’. I said I had heard that sometimes people who were in those sorts of situations in those countries, who were picked up for illegal work, were treated badly in jail. He did not say very much, but he acknowledged that, yes, he had been in jail and he was beaten; they were dehumanised and they were treated very badly.

Saad waited 20 years to be resettled and then he made a choice that any of us would make if we had the opportunity—he decided to take the chance of coming to Australia for another life because of the intolerable way he was living at the time. Saad was able to fly to Australia. He did not have to take the risky boat trip. When he arrived he was placed in Villawood Detention Centre for some time. Ultimately he was allowed to stay and he moved to Adelaide. Six months ago his wife and his four children joined him. Saad is an artist and he is also an architectural engineer. He is now in the process of upgrading his qualifications so that they can be recognised in Australia.

Saad is very grateful for having been accepted in Australia, and he is absolutely delighted to have his children with him again, having been separated from them for three years. His daughter is studying art at
university and his youngest son is 13. Saad will be a great Australian citizen. He has the initiative, the courage and the resourcefulness that surely we prize in people contributing to this society. Saad made choices because of the situation he was in. There is this idea that people who wait in the queue will ultimately be processed—but there is no queue. That is the point he made to me—there is no queue. How long should one wait patiently? We can see why people make the choices they make.

I will not be supporting this bill, because it is absolutely flawed. It will basically sidestep the concerns about human rights protections raised in the High Court decision that found the Malaysia solution to be invalid. This bill will allow the government to send people anywhere. People could be sent to Afghanistan, Iraq or Syria—they all signed up to the Bali process. We know the intention of the government is to send people to Malaysia and we are very aware of what people face when they go to Malaysia. The risks they face there are probably far worse than what I heard about from Saad.

I turn now to this idea that Nauru was some kind of nirvana—that those were the good old days and things were fine there. I very clearly remember what was happening at the time. People were sent away to that island in the Pacific, to Nauru, where it was almost impossible for them to get legal advice and assistance, and where lawyers were deliberately prevented from seeing people. It was a convenient way to get this problem off our televisions screens—out of sight, out of mind.

Australia has fundamental obligations to take responsibility for the people who come here and to process them on our continent. The idea of outsourcing asylum seekers to other nations ignores the fact that we are one of the wealthiest nations in this region and that we have obligations under the refugee convention which we should be meeting—so that we are indeed protecting people's lives and well-being.

This is not about purity; this is about what, in the big picture, is needed to save people's lives. We need to seek a comprehensive solution which accepts that desperate people will always seek asylum and that it is logical for desperate people to do so. We see that in the very choices they make. They get on a boat knowing they are risking their lives, but they choose to do so anyway because the status quo—staying where they are—is unimaginable for them. We need to accept that they will choose to take those risks and we therefore need to make the alternative to those risks far better. We need to provide people with hope.

If we are really serious about saving lives, if we are really serious about wanting to protect people from the risk of drowning, why is it that we do not currently have a clear code, a clear requirement, for our maritime forces to intervene at the earliest possible opportunity to save those people's lives? The report of the Senate Select Committee on a Certain Maritime Incident, which inquired into the circumstances surrounding the sinking of the SIEVX in October 2001, said:

The Committee … finds it disturbing that no review of the SIEV X episode was conducted by any agency in the aftermath of the tragedy. No such review occurred until after the Committee’s inquiry had started and public controversy developed over the Australian response to SIEV X.

While there were reasonable grounds to explain the Australian response to SIEV X, the Committee finds it extraordinary that a major human disaster could occur in the vicinity of a theatre of intensive Australian operations, and remain undetected until three days after the event, without any concern being raised within intelligence and decision making circles. The
Committee considers that it is particularly unusual that neither of the interdepartmental oversight bodies, the Illegal Immigration Information Oversight Committee and Operational Coordination Committee, took action to check whether the event revealed systemic problems in the intelligence and operational relationship.

If we are really serious about saving lives, why are we not looking at these other ways to intervene and protect lives as well? Recommendation 13A of the committee report into the SIEVX incident was:

The Committee recommends that operational orders and mission tasking statements for all ADF operations, including those involving whole of government approaches, explicitly incorporate relevant international and domestic obligations.

That is something I would like to see.

I think it is absolutely important that, in dealing with this, we do not deal with it simplistically. Our approach should not just be aimed at getting it off our TV screens and placating public opinion—making them think we are doing something decisive when we are not really dealing with the problem at all. We must offer the people who are risking their lives the hope that there is an alternative. That is when they will stop risking their lives.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (11:27): As the Senate debates this bill, there are 43 million displaced people around the world, including more than 10 million refugees. There are nearly two million Afghan refugees in Pakistan and one million more in Iraq. There are 1.5 million refugees who have fled Iraq, although I suspect that figure is higher—I remember estimates of four million refugees being forced out of Iraq, or displaced within Iraq, by the disastrous American invasion of March 2003. Some 140,000 people have fled Sri Lanka. To date, as we watch the civil war in Syria, 80,000 refugees have fled that conflict. They have gone to Jordan, Iraq and Lebanon, all ill-equipped to check this refugee flow. They have gone to Turkey as well.

I am proud of Australia's record on refugees. As Premier of New South Wales, I was honoured to meet people who had come to these shores as refugees. I remember taking students from year 10 history classes, from four Western Sydney high schools, through the Australian War Memorial. I vividly remember looking at the model of Gallipoli with four students of Afghan background—two of the girls wore hijabs. They had been in Australia for just a year and a half, having come here via Christmas Island and Port Hedland. As we stood looking at the model of Gallipoli, I asked, 'Do you know what happened here?' and—I will never forget it—one of the girls said, 'Yes, they landed on April 25.' We discussed the war and the evacuation from Gallipoli. They had been in Australia less than a year and a half, they had come as refugees, they were studying Australian history in year 10 at Holroyd High School and they knew about Gallipoli.

I remember going to an International Women's Day reception at Government House. A young girl came up to me and said, 'Mr Carr, we have bird lice in the roof of our school; what can you do about it?' I said, 'The least I can do, given that you have come up to me, is visit your school.' She turned out to be from an Afghan refugee family. I met her brother and sister at the school. They were doing very well. They were studying maths for the HSC. I was struck again by the value for Australia in these refugees.

I remember visiting a school in Cabramatta, a year 3 or year 4 class with a gifted teacher who was leading the children through arguments on drugs. She said to the
boys and girls, 'What do you do if a friend tells you to smoke this?' They all put their hands up and said, 'We say we don't want to smoke it.' 'What do you do if a boy or a girl says they won't be your friend unless you smoke this?' The hands all shot up and they said, 'We will say that we don't care and we won't smoke what they're giving us.' The gifted teacher conducting that lesson had arrived as a boat person and is now teaching young Vietnamese. A friend of mine working in the computer industry can recall fleeing Da Nang harbour in the middle of the night with his family. He was young and remembers that his sister had to be dressed as a boy because they were scared of pirates commandeering their vessel and taking off any teenage girls.

I have long held the view that Australia made a bad decision in the 1930s not to issue visas left, right and centre to the Jews of central and eastern Europe who wanted to flee, especially after Kristallnacht in October 1938. The energy that larger numbers of Jewish refugees would have brought to these shores and to our nation would have been extraordinary. Nonetheless, I am proud that Australia is so generous. After the United States and Canada, Australia has the largest humanitarian intake with around 14,000 this year and almost 70,000 in the last five years. We spend $405 million to support humanitarian emergency and refugee programs globally. We are acknowledged as a generous nation.

The truth is, you cannot have safer borders and you cannot have humane treatment of what we call in bureaucratic language 'irregular maritime arrivals' without having an effective disincentive to those who ply the evil people-smuggling trade. The arrangement made between the government and Malaysia is such a disincentive. I draw the attention of the house to a very thoughtful article which appeared in the

Sydney Morning Herald on 26 June 2012 by Clive Kessler, an emeritus professor and internationally recognised expert on the Malaysian culture, society, history and politics. He said:

A set of arrangements has been negotiated by Australia with the Malaysian government. These arrangements are not perfect, neither is Malaysia. But they are workable. So why resist implementing them?

Having spent a scholarly life, over half a century, studying Malaysian society, culture and politics, I know those shortcomings far better than most. Even so, there is a good case to be made for the 'Malaysian solution'. It provides the most workable, humane, long-term sustainable approach now on offer. It is a policy that stands somewhere between saying no to everybody and yes to everybody who shows up here.

The Malaysian plan would effectively recognise the international nature of a problem—of a cynical exercise in which Australia stands at the end of the line of a game of pass the 'hot potato'—and would regionalise the practicalities of its handling and management.

At the core of the amendments before us today is a simple but powerful proposition: we can break the business model of the people smugglers and we have a duty to do so. Offshore processing is an essential element to stopping the people-smuggling trade and this amendment is essential to achieve that objective. This problem is not static. If rejected by the Senate, the solution will be returned to by a future Australian government. The behaviour of people smugglers is constantly adapting. The problems that send people onto the high seas will continue to appear in the regions to our north. After the High Court decision—one of the most questionable and curious High Court decisions in memory—arrivals tripled—
Senator Brandis: Mr Deputy President, I rise on a point of order. I submit to you that the minister has gone over the line. It is not appropriate for any member of this chamber and certainly not for a senior member of the government to reflect upon a decision of the High Court.

The DEPUTY PRESIDENT: Senator Brandis, I am advised there is no prohibition in the standing orders for reflection upon decisions.

Senator BOB CARR: After the High Court's decision, arrivals tripled from 314 in October to 895 in November. The inescapable fact that the coalition and the Greens continue to ignore is that the Malaysian solution is the only proposal we have which has any hope of cracking the people smugglers' business model. All the available information from asylum seeker communities in source countries and those who arrive in Australia confirms conclusively that the absence of a clear deterrent is seen as an open door to Australia.

The bill before the Senate is premised on Australia's interests to work in partnership with countries in the region under the Bali process. As co-chair of the Bali process, along with my Indonesian counterpart, Foreign Minister Marty Natalegawa, I am committed to pursuing a regional solution to a regional problem. The Bali process is a regional mechanism for responding to a regional problem. Two years ago, under the leadership of Indonesia and Australia, the 43 Bali process members agreed to a regional cooperation framework. Among other things, the framework commits members to eliminate irregular movement facilitated by people smugglers. The Malaysian arrangement is the first entered into pursuant to that framework. Critics of the Malaysian arrangement have been vocal, although silent on one critical question: would it work? I said it would. The government says it would. The experts say it would. I have heard no cogent argument to the contrary. It would work because it is a powerful disincentive. Without the Malaysian arrangement, all we have is an improvised Indonesian arrangement that the Indonesians do not want; that the coalition says it would aggravate, by somehow sending boats back to crowded Indonesian ports; and that is inhumane because it encourages people to put their lives in the hands of people smugglers, paying them $10,000 for transport on the high seas. Without the Malaysian arrangement, we are left with an altogether unsatisfactory, improvised, cobbled-together Indonesian arrangement, which the Indonesians do not want and which puts people's lives at risk but which is an incentive for people in coffee shops and on street corners in Indonesian ports and elsewhere to strike deals that have people paying money to take the risk of attempting to come here. If they knew that they were going to get no further than Malaysia, where their claims would be assessed and their applications processed, and they would come no further if they could not make their case, they would not give money to the people smugglers. That is the case for the Malaysian arrangement.

By transferring irregular maritime arrivals to Malaysia, we take away from people smugglers their only selling point—that they and they alone can provide a new life in Australia for their customers. Why pay those tens of thousands of dollars to a people smuggler and endure dangerous sea voyages just to end up, in the middle of your journey, in Malaysia? No sensible people would do it; the demand would dry up. Before it was struck down by the High Court, it was acting as a disincentive—

Senator Brandis: No, it wasn't.
Senator BOB CARR: Once removed, the numbers went up. I quoted the figures earlier. The Malaysian arrangement is a strong message to people smugglers that they cannot guarantee a future in Australia for those who are smuggled.

We saw that when we announced the Malaysian arrangement last year: the number of arrivals dropped because people smugglers waited to see if the arrangement would be implemented. It was not; and, when the government's legislative amendments were blocked, the people smugglers returned to their business with renewed vigour. And why wouldn't they? That is a clear demonstration of how effective the arrangement would be if the government has the opportunity to implement it. The arrangement would ensure one thing—that none of those transferred would be eligible for resettlement in Australia. When transferred to Malaysia, they would be processed by UNHCR and be subject to UNHCR's normal resettlement program, with no special treatment and with no guarantees about the eventual country of resettlement. That contrasts sharply with the Nauru experience, where processing for resettlement is by Australian Immigration. Where? Primarily in Australia. With Malaysia, none of those transferred would be eligible for special treatment on resettlement. With Nauru, just about all of those processed there end up in Australia. How's that as an effective policy!

I hear critics say that towing vessels back to Indonesia would work. Do they not understand that such a policy would drive people smugglers to sabotage their vessels at the time of interception to avoid being towed back? Threats to tow back endanger not only those on the vessel but also the brave Australian officials whose job it is to protect our borders. What a policy that is, to tow the boats back! It would produce a crisis in our relations with our most important near neighbour, Indonesia. It would reduce Australian-Indonesian relations to an ongoing squabble about returning boats to crowded Indonesian ports, to a single transactional issue. In a post-2014 Indonesia—that is, a post-President Yudhoyono Indonesia—it is likely to have even more of an inflammatory effect then it is likely to have now. But that is the opposition policy. The opposition policy is to tow the boats back. It is primitive. It is unworkable. It is inhumane. It is no alternative.

I hear people say that, under the arrangement, Malaysia cannot provide those transferred with appropriate protection. They should read the text of the arrangement and its associated operational guidelines, which are freely available in the public domain. They should read the article by Professor Kessler, an academic expert on Malaysia, that I quoted from earlier. He said: These arrangements are not perfect … But they are workable. So why resist implementing them? He also says in that article, by the way:

Abbott's reasons and strategy are clear. On immigration, as on all other matters, he wants, by a chosen strategy of finely targeted obstructionism to all government initiatives … to make the country ungovernable. That is half of his strategy. The other half is then to spend the rest of his time jeering that the government is demonstrably hopeless, that it simply cannot govern. Whose doing is that? Abbott is on a sure winner.

The commitments in the text of the arrangement are not hidden away from scrutiny; they are there for all to see and to hold the Australian and Malaysian governments to account. The arrangement makes clear that those transferred will be treated with dignity and respect, in accordance with human rights standards. They will be accommodated in the
community, be allowed an opportunity to work and be provided with minimum standards of care if they cannot. Those are serious commitments entered into by a government serious about stopping this trade, and they are supported by the UNHCR. That answers the arguments of anyone who wants to question the humanity of the Malaysian arrangement: they are supported by the UNHCR, whose integrity and commitment to refugee health and wellbeing cannot be doubted or challenged. They are serious commitments. With regard to the Malaysian arrangement, UNHCR’s regional representative, Rick Towle, has acknowledged:

... it has the potential to ... make a significant practical contribution to what we're trying to achieve in the region.

I hear critics say that processing people offshore in Nauru is better and proven policy. But creating a new Christmas Island in a foreign country is not enough—not when the people smugglers know that anyone sent to Nauru for processing will almost certainly end up in Australia, exactly where people smugglers promised to deliver their valuable customers. What sort of disincentive is that? The amendments before the Senate today provide the only effective disincentive available to Australia. It is essential that a clear message of deterrence is sent to people smugglers, and this amendment would do it.

The Australian people want humane treatment of people fleeing their homelands on the high seas. They want humane treatment, but at the same time they want an effective border policy. They want an effective border policy; but they do not want to see any loss of life. In a world of less than entirely satisfactory answers and solutions, this is the best option. No option will work without it containing, at its core, a powerful disincentive to the businesses that are driving this flow of sad and threatened humanity.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (11:45): Let us not forget as we approach this debate that, in the last several days, many lives have been lost in the waters to the north-west of Australia, and that is a human tragedy. So the decision this parliament makes about the most effective border protection policy is as important a decision as this parliament can possibly be making because human lives literally depend upon us getting the answer right.

For all the moral posturing that we have heard in this debate, including the moral posturing we heard just momentarily from Senator Bob Carr, we have one task in the end, and that is to arrive at the policy, to choose the policy, that is most likely to be effective to stop the people smugglers. I can understand the frustration of the public when they see lives being lost at sea and they see us here in Parliament House debating this measure and being unable to come to an agreement. I understand that frustration; I share it. That frustration is evident in the newspapers this morning: ‘Lives, not politics’; ‘Paralysis in parliament’; ‘Our politicians fail again’. But if we are to be true to ourselves, if we are to approach this issue both intelligently and conscientiously, we have to contend for the policy that we believe will be most effective to stop these horrible events.

There is a call for bipartisanship and, on the ultimate issue, there is bipartisanship because everyone in this parliament wants people smuggling stopped. So, on the ultimate issue, we are not in disagreement. We are in agreement. Even the Greens are in agreement with the government and the opposition. We all want the people smuggling stopped. So the question is not
whether but how. It is a question of means, not a question of ends. It seems to me that, in deciding what policy is most effective to stop the people smuggling, it is quite the wrong approach to say there should be a compromise if the compromise is between a policy that has demonstrably failed and a policy that has demonstrably succeeded. That is the choice. It grieves me to say this but I do fear that, on the part of the Prime Minister and her government, there is an element of stubborn pride in refusing to acknowledge that the Howard government’s policies worked. That is empirically demonstrable.

In the six years between the implementation of the tough policies that the Howard government announced at the end of 2001 and their abandonment by this government in the name of a phony appeal to compassion in August 2008, the number of unlawful arrivals fell from several thousand a year prior to the Howard government’s new policies to 301 people in six years. The number of vessels fell to 16 across those six years. Since those policies were abandoned, almost 20,000 people have come in fewer than four years and, although it is difficult to calculate, more than 550 or so people have drowned. From the time the Howard government began to implement its Pacific Solution, announced at the end of 2001 but implemented from the beginning of 2002 with the opening of the Nauru detention centre, not one person drowned at sea—not one. Since those policies have been abandoned more than 500 souls have drowned. I do not say the government acted in bad faith in abandoning those policies—it did not want this to happen—but it acted foolishly. I remember Senator Evans, then the minister for immigration, standing up in this chamber and saying, ‘We are going to get rid of your inhumane policies with softer policies.’ Those were not his very words but that was the effect of what he said. I remember the opposition warning that, if the tough policies were replaced with softer policies, that would be a magnet for the people smugglers—and that, tragically, is what has happened. As a direct consequence of that terrible policy error, more than 500 men, women and children have perished at sea in the last 3½ years.

I said it before: our obligation as legislators is to get the policy right. There has been much talk of the Malaysia solution. The Malaysia solution has never operated. The belief, evident in the contribution that Senator Bob Carr just gave, that the Malaysia solution would work is based on a hope. To use the word that Mr Andrew Metcalfe, the Secretary of the Department of Immigration and Citizenship used to me last year when he briefed the opposition, it is based on a ‘conjecture’. It is the best estimate of the officials, I acknowledge that, but it is a conjecture, because the Malaysia solution has never been in operation. We do not know whether it will work or not. But this we do know: Malaysia is not a signatory to the refugee convention and in order to operationalise the Malaysia solution the government would be required to repeal from the Migration Act section 198A, inserted by the Howard government, which stipulates minimum human rights protections. It stipulates that a country to which asylum seekers are sent for processing must meet relevant human rights standards in providing protection for refugees. That is the effect of the amendment that Senator Abetz foreshadowed in his contribution on the second reading speech earlier. We will not countenance a migration and refugee policy which entirely strips all human rights protections and standards from Australian law. That is what the High Court demanded in August last year. And we will not countenance it.
Senator Carr, in asserting that the Malaysia solution would work—a hope, a piece of conjecture—said in the contribution we have just heard from him that, in the period between the announcement of the Malaysia solution on 7 May last year and the decision of the High Court on 31 August last year, the number of refugees dropped sharply. He took that as empirical evidence that the Malaysia solution would have worked. Unfortunately, what Senator Bob Carr just told the Senate was wrong. In the four months between the announcement of the Malaysia solution by Ms Gillard on 7 May 2011 and the High Court's decision in the Malaysia solution case on 31 August 2011 there were 1,092 asylum seekers who came to Australia in that four-month period when the Malaysia solution was the policy of the Australian government, before it was struck down by the High Court. In the previous four months, the equivalent period antecedent to the Prime Minister's announcement of the Malaysia solution, there were 1,172 asylum seekers who came to Australia. There was no material difference in the numbers at all—none. So if we take up Senator Bob Carr's invitation to compare the rate of passage of asylum seekers after the announcement of the Malaysia solution with the rate for an equivalent period before the Malaysia solution, there was no significant difference at all.

I said at the start of my remarks that what this is about is choosing the right policy. The right policy is a policy that is effective. It seems to me that if you are a rational decision maker and it is acknowledged, as the government by implication does acknowledge, that your policy has failed and you are looking for a new policy, a policy that will work, what you would rationally do is return to a policy that did demonstrably work. And the Howard government's policy did demonstrably work. That is not merely an assertion by me; it is an incontrovertible fact: 301 asylum seekers in six years, and no drownings, versus more than 19,000 asylum seekers since the policy change, and more than 550 drownings. Why wouldn't you, unless you were constrained from doing so by stubborn pride, go back to policies that worked?

We have heard the argument: 'Well, the Pacific solution was a product of its time. It may have worked then, but it will not work now.' We do not know for certain, just as we do not know for certain whether the Malaysia solution would work, either—although, when applying to the Malaysia solution the test that Senator Bob Carr invited, it is shown not to work. But, nevertheless, the fact is that we are in a position of choice under uncertainty. When you are a decision maker making a choice under conditions of uncertainty, it seems to me that a rational decision maker would say, 'Well, in seeking to replace the policies that have demonstrably failed, let our first port of call be to see if the policies that demonstrably succeeded will succeed again.' That is the point.

The government concedes its policies have failed. Empirically, they have demonstrably failed. We know the Howard government policies succeeded. We accept that there is an argument that maybe those policies would not work so well again. Maybe they would not. But would you not try? Wouldn't your stating point, as a rational decision maker, be to say, 'Let us see if the policies that demonstrably succeeded in the last decade will still succeed in this decade'? Why would you not do that, unless your decision making capacity was intruded upon and corrupted by stubborn pride, by the inability to concede that John Howard was right. And would not that be a preferable course than to adopt a so-called solution—
the so-called Malaysia solution—about the success of which there is absolutely no certainty and that, if we were to apply the test Senator Bob Carr just told us we should apply, is likely to fail, and, unlike the Nauru solution, strips all human rights protections from refugees—every last one?

That is the coalition's approach. That is my approach. We cannot promise that a return to the successful policies of the last decade would be a success again, any more than Senator Bob Carr or any other member of the government can promise that the Malaysia solution would be a success. But we know these two things: firstly, the Nauru solution satisfies the human rights tests and the Malaysia solution does not; secondly, we know that the Nauru solution succeeded when last it was tried and there is no reason to believe—or to presume, as the government does—that it cannot succeed again. So why would you not give it a try?

We should rise above partisan politics in this debate when human lives are being lost. But rising above partisan politics means you acknowledge that, just possibly, your political opponents did get it right. It means putting your pride to one side and acknowledging the demonstrable fact that the Howard government's policies worked, that the Rudd and Gillard governments' polices have failed, and that if you really want to solve this problem the starting point for any rational, dispassionate decision maker is to see whether the policies that worked before will work again.

Senator CAMERON (New South Wales) (12:05): I rise in support of the Migration Legislation Amendment (The Bali Process) Bill 2012. I indicate that I have changed my mind on this issue. I have done what Senator Brandis has asked me to do, which is to have a look at these issues dispassionately. I certainly have looked at it and in my view this is the best way forward in the short term.

I want to try to put my change of mind into some context. The UNHCR 2011 report on refugees shows that there were 4.3 million people newly displaced around the world. Worldwide there are 42.5 million people who are either refugees or are internally displaced. There are almost a million in the process of actively seeking asylum. Afghanistan is the biggest producer of refugees, with 2.7 million—and surely we have a responsibility in terms of the situation in Afghanistan—Iraq has 1.4 million, Somalia has 1.1 million, Sudan has half a million and the Democratic Republic of the Congo has 491,000. The countries hosting the largest number of refugees were Pakistan, with 1.7 million, the Republic of Iran, with 886,500 and the Syrian Arab Republic, with 775,400. The situation in those countries is dire. You certainly would not want to be a refugee in any of those countries. In Australia, the number of refugees and asylum seekers has remained relatively stable and small by global standards, with 23,434 refugees and 5,242 asylum seekers hosted at the end of 2011. In Afghanistan and Pakistan, the Hazara population is still subject to genocide.

I take the view that, with 3.7 million refugees in the Asia-Pacific area, we need to deal with this both in the short and the long term. Some of these refugees are looking for economic betterment. Some of them are looking for family reunification. Some of them are fleeing war and conflict. Some of them are fleeing religious, racial or sexual persecution. Some of them are fleeing natural disasters, climate change and food insecurity. This is not a situation that will change quickly. This is a situation that government, regardless of their political background, will face in this region for years to come.
I abhor the loss of life at sea. Children are losing their fathers and mothers. Parents are losing their children. People are losing siblings. These are human and personal tragedies of the highest order. I am troubled by the Nauru approach. I am troubled by the Malaysian approach. I have argued continually over many years my opposition to the Pacific solution. I have done that publicly and I have done that within the Labor Party. I do not see, regardless of the arguments that the coalition senators have put forward here, how Nauru could ever be contemplated as some kind of success. But as Keynes and the Nobel Prize winning economist Samuelson said, when the circumstances change we change our minds. And they asked this question: what would you do? I have changed my mind. I met with 41 backbenchers yesterday. It was clear that those 41 backbenchers had no silver bullet to the problem that we are facing. But they all had one view and that was that we had to put in place a humanitarian approach. What we are doing today is dealing with hard choices. There are no easy solutions. The advice to the government has been that Nauru will not work and that it would not be a disincentive. You have to remember that when the Nauru processing centre was in place, on 19 October 2001 we had SIEVX, a ship that went down causing 353 people to lose their lives. This was under the Pacific Solution.

We are now being told that the boats should be turned around and we have been asked by the Leader of the Opposition to examine our consciences. I have examined my conscience and my conscience says that we should do whatever we can to stop deaths at sea. There are two issues that are coming through in the contributions being made here today. One is the hypocrisy of the coalition on the issue of humanity. The other issue that is coming through loud and clear is the policy purity of the Greens. Gough Whitlam said only the impotent are pure. The Greens are standing flatfooted but pure. You should think about the brothers, sisters, mothers, fathers and friends who are dying on the oceans to the north of Australia. These are human beings. They are not statistics; they are not simply refugees; they are not simply asylum seekers. These are human beings who, for one reason or another, want to make a better life for themselves within this great country.

The opposition hypocrisy is huge. Many of the speakers who are listed to speak here today or who have already spoken were silent on the cruelty of the Pacific solution—absolutely silent. Where were Senator Abetz and Senator Brandis when genuine refugees, including 12-year-old, 14-year-old and 15-year-old kids, were sewing their lips together as a desperate cry for help under the Pacific solution? Where were the coalition voices in support of humanitarianism? They were nowhere to be heard. Where was the action from the coalition on humanitarian issues? It was nowhere to be seen. The hypocrisy of the coalition is huge. Where was the member for North Sydney, Joe Hockey, during the child overboard fiasco? He was nowhere to be seen. Where were the coalition voices on that issue? They were nowhere to be heard. Where was the Leader of the Opposition when refugees were being vilified and ostracised in the Australian press day in and day out? He was nowhere to be seen? Base politics were driving the Pacific solution and the coalition's position on refugees. So I just find it a bit tough, a bit hard to take, when the coalition stand up in here and talk about humanitarian approaches to refugees, when for almost a decade their approach was the antithesis of a humanitarian approach to refugees.

I say to Senator Abetz, in response to his statement that there was a great,
compassionate position adopted by Mr Ruddock, the then minister: in 2001 Mr Ruddock was calling for children to be removed from their parents in these concentration camps that the coalition had set up at Baxter and elsewhere in Australia. Take the children from their parents—that was the refrain from the coalition. What is humane about that? Absolutely nothing.

Then there was a young boy in Villawood. When Mr Ruddock was asked about that young boy and his plight in Villawood, Mr Ruddock could not bring himself to describe this child as a boy, or a human being; he described the child as 'it'. That was the humanitarian approach from the coalition. So I will not be lectured by the coalition on humanitarian policies or successful policies. What is successful about describing a young child as 'it'? What is successful about taking children from parents? What is successful about putting families behind barbed wire for year after year, until they are psychologically destroyed? The hypocrisy from the coalition knows no bounds. And the impotence from the Greens almost rivals that. I say you should not have been silent on the cruelty of the Pacific solution.

I want to come to this Malaysian arrangement. As I have said, I don't like it. I have probably fought longer on these issues than many in this parliament. It has been an issue that I, as a union delegate, as a union official and as a senior union official in this country have argued on for years. But I just do not want to see any more innocent people being killed on the high seas. I do not want people losing their mothers, their fathers, their brothers, their sisters, their children. It is just not acceptable. The 41 backbenchers yesterday were crying out for a compromise on this issue. We were crying out for something to be done. This is not a perfect proposition that is before the parliament—in fact, it is far from perfect. But I think, for a 12-month period, as is outlined in this bill, we should give it a go—because the Malaysian approach is an approach that the UNHCR have had a look at, that the UNHCR were involved in, that the UNHCR see as a step forward to what the real solution in this region is: a proper regional approach to dealing with refugees and displaced persons.

That is the situation the UNHCR see. They and others argue that Malaysia do a lot of heavy lifting in terms of refugees. They do far more heavy lifting than us—there are about 1.2 million displaced people, I think, in Malaysia. But what the UNHCR say is that the implementation of the Malaysian guidelines contain important protections and safeguards. Those include respect for the principle of non-refoulement. Non-refoulement is simply not sending people back to where they could be tried and killed or subjected to the death penalty. They say the principle of family unity and the best interests of the child are in this agreement; that humane reception conditions, including protections against arbitrary detention are there; that the lawful status to remain in Malaysia until a durable solution is found is there; and the ability to receive education, access to health care and a right to employment are there. There will be no employment on Nauru. They will be there, with all that that barren rock provides. What is it about Nauru that is better than Malaysia? Absolutely nothing. So the UNHCR see some hope that this could lead to a more lasting solution.

I want to go back to the coalition and their hypocrisy, and quote what the Secretary-General of Amnesty International, Irene Khan, said in 2002. She said this about the coalition policy that they are arguing was so successful. She said:

It is obvious that the prolonged periods of detention, characterised by frustration and
insecurity, are doing further damage to individuals who have fled grave human rights abuses. The detention policy has failed as a deterrent and succeeded only as a punishment. How much longer will children and their families be punished for seeking safety from persecution?

That was the Pacific solution. That is what the coalition is arguing we should adopt again. I will not support that, and the government will not support that. It is not what we should be doing. We should be looking at a longer-term proposition, and there are two areas that we should be looking at. One is the UNHCR's 10-point plan of action on refugee protection and mixed migration, which can guide countries in relation to refugees. The other is the core principles adopted by the fourth Bali regional ministerial conference in Indonesia. The UNHCR's plan of action boiled down to this: that the people who need protection receive it, that those who do not are assisted to return home and that all people are treated with dignity while appropriate solutions are found. That is something the Pacific solution never, ever contemplated.

The statement from the fourth Bali regional conference said that irregular movements facilitated by people smugglers should be eliminated. That is what this bill is seeking to do. It said that asylum seekers should have access to consistent assessment processes. That is what this bill is seeking to do. It said that persons found to be refugees under those assessments should be provided with a durable solution. This is the first step to a durable solution for refugees and asylum seekers. The statement also said that people found not to be in need of protection should be returned and that people-smuggling enterprises should be targeted through border security arrangements, law enforcement activities and disincentives to human trafficking and smuggling.

My view—and my view has changed—is that this is the best approach we can adopt. It is a compromise position that I think the Australian public is crying out for. It is a short-term position to allow some of the longer-term Bali and UNHCR processes to be put in place—something I would be far more comfortable about. As a union official I had to accept many short-term decisions and accommodations for my membership so that they could get better conditions in the longer term. This is a similar situation. Negotiators find themselves in this position constantly. We should not go back to a position where we try to turn boats around and put our Navy and asylum seekers in jeopardy. We should not go back to the Pacific solution, where young kids are sewing their lips up and hypocrisy abounds in the coalition. I call on the Greens to reconsider their position and to not be impotent, to actually make a contribution to this solution and help refugees. *(Time expired)*

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (12:25): I rise today to speak on the Migration Legislation Amendment (The Bali Process) Bill 2012. This is a political solution; it is not a solution for asylum seekers and refugees. Today an editorial from one of the Tasmanian newspapers, the *Examiner*, says:

> It looks very much like a knee-jerk reaction to terrible news reports and graphic images on TV, when really they've had years to find a solution. The antics in Parliament yesterday resembled bipartisan theatrics, struggling to mask the usual party politics.

Frankly, that is what has occurred. Everything has become part of the 30-second grab. Everything has been along the lines of, 'Let's just say the legislation will save lives, and not test it against any evidence base, and then say that if you don't support that legislation then in some way you don't support saving lives.'
Let me tell you what this legislation has actually done. The government tried to establish a Malaysia solution. That Malaysia solution was that they would take people from boats and send them offshore to a country that has not signed the refugee convention and where they were not going to be protected. These are vulnerable people who have done nothing wrong. They had tried to come to Australia to exercise their right to asylum. That is a perfectly legal thing to do around the world.

Australia was going to do that, and as a result it went to the High Court. The High Court struck down that legislation as being against our own law—against our own Migration Act 1958. The court said that you cannot validly declare a country to which asylum seekers are taken for processing unless that country is legally bound by international law or its own domestic law to (1) provide access for asylum seekers to effective procedures for assessing their need of protection, (2) provide protection for asylum seekers pending determination of their refugee status, (3) provide protection for persons given refugee status pending their voluntary return to their country or their resettlement in another country and (4) meet certain human rights standards in providing that protection. The court held that Malaysia is not legally bound to provide the access and protections that the Migration Act requires for a valid declaration, that Malaysia is not a party to the refugee convention or its protocol. The arrangements that the minister signed expressly said that it was not legally binding—that Malaysia was not legally bound to and does not recognise the status of refugees in domestic law. And that is why it was struck down.

So the government then tried to remove those provisions from the Migration Act so that it could proceed. That is precisely what Mr Oakeshott has done in this bill. He has removed from asylum seekers any protections. Even worse, the bill does not even specify Malaysia. People out there are thinking, 'This bill must specify Malaysia.' It does not. What it does is say that the minister here can send people to any country which is a signatory of the Bali process, and the countries that are signatories to the Bali process include Iraq, Iran, Afghanistan and Syria. When people go around with this 30-second grab of 'This legislation saves lives,' what they are saying is: 'This legislation takes away all of those protections of their human rights and says that an Australian minister can send those people to countries outside the refugee convention in which there is no legal protection.' Any one of those countries will and could do. That is what this legislation is doing. Anyone who deludes themselves into thinking that it provides any kind of safety for an asylum seeker is wrong.

Let's separate out the issues. Everybody is devastated by the tragedy of people losing their lives at sea. This is something which has worried me for many, many years and it goes back especially to the SIEVX. I would remind this chamber that the SIEVX, where 353 people drowned, sank after the Pacific solution was introduced by the former Prime Minister John Howard. It sank after the mean-spirited temporary protection visas were introduced. Why were there so many women and children on board the SIEVX? Because they were told that they could never get family reunion in Australia because of the TPVs and, as a result, the only way they could come here was on those boats. That is why the women and children were on the SIEVX—after temporary protection visas, after the Pacific solution, after billions of dollars was wasted in punitive action against some of the world's most vulnerable people.

If those billions that were wasted on the Pacific solution had been put into supporting the implementation of United Nations
refugee convention in the region, we would have had a regional solution a very long time ago.

I pushed for a royal commission into the SIEVX and, when Labor came into government, I asked for a royal commission. Where is it, because it was Labor policy? I found that in 2007 it disappeared from the Labor platform, and that was the end of any royal commission into the SIEVX. I asked why. 'Well, it just did; it was removed from the Labor platform.' The reason it is relevant here today is this. I have been to the memorial services and talked to some of the survivors. They have said that they were in the water and boats came and there were lights on them in the water. They started swimming towards those boats and they thought they were safe. Then the lights went off and the boats left and people drowned. I have always wanted to know, from that day to this, whether Australia's intelligence services—and we have many of those in Northern Australia—were tracking that boat and knew where it was. Why were people in the water and not being rescued if we knew where they were? What was going on there? No-one has ever answered those questions. That is why to me codifying the provisions of the safety of life at sea convention is absolutely critical.

In the Senate's *A certain maritime incident* report it was recognised that we needed to codify that, because there is a tension between a policy of deterrence—we want to send these boats back; we do not want these people; therefore we will not be rescuing them until the very last minute—and our obligations under the safety of life at sea convention. We need to codify those obligations, because all the waters around Christmas Island are international waters, but they are in Indonesia's search and rescue zone. But Indonesia has said, 'We don't have the capacity to rescue people in these waters.' They said this week that they have one boat which cannot go to sea in a swell of four metres. They cannot rescue people. But we are saying: 'We know that boat is in the water. Today is Tuesday. We have contacted the Indonesians and told them the boat is there and it has said it's in distress.' On Thursday, when people were in the water, we had aircraft overhead and we knew what was going on. It was on Thursday that we informed the Indonesians that we were taking over that rescue operation. That is when we went in and started pulling people out of the water. Why is it that, when we know a boat is in trouble, we do not proactively go and save people and not wait for them to be in the water? Why? That is why I have said very clearly that we need to codify. We need to make sure we are on track with this.

Equally, we have in Indonesia, right now, about 8,000 people in camps and many thousands more in Malaysia. We in Australia take 60 people—60 people combined between Indonesia and Malaysia. So, if you turn up now at a camp in Indonesia or Malaysia, you will have a 76-year wait to come to Australia or to be resettled. On that basis, if you are there, are you not going to be vulnerable to people who come up and say to you, 'Well, you're going to be waiting a lifetime, if ever, so what about my boat?' The way to deal with it is to increase our funding to the UNHCR in Indonesia, so that not only can it work on assessing the refugee claims faster but secondly it can start educating people in the camps about how the convention works—what the processes are, what the safe pathway is—so people have a much better understanding. That is why we need to increase our refugee intake and do that immediately. If we start taking people out of those camps into Australia right now, people are going to see that there is a safe pathway to Australia and they will see that
they do not need to be so desperately taking these highly risky journeys at sea. But you would only be doing that if you actually genuinely wanted to support asylum seekers. That is why we say that is the action to take if there is a genuine commitment across the parliament to support asylum seekers in the region.

In the last year there has been a 20 per cent increase globally in people seeking asylum—so it is not about whether Australia’s policy has failed or not failed; there has been a 20 per cent increase. And let’s look at the push factors. People are not leaving Iraq, Afghanistan, Pakistan and Sri Lanka for no reason at all. They are leaving there because they are displaced, because they are being persecuted. I heard a report on the news just yesterday of people in Pakistan being pulled off buses and being shot there by the side of the road. They are the people who are trying to get away from that level of persecution. So there has been a 20 per cent increase in people seeking asylum worldwide but only a nine per cent increase in Australia. Our policies are already a deterrent, if you like, in the context of the global refugee intake. In fact, the Americans look at us and say: ‘What on earth are you talking about? We deal with that virtually every weekend.’

So the issue here for us is to say to ourselves, as one of the richest countries on earth: why can’t we use our leadership role in the region to genuinely lead, to uphold the refugee convention, to support the UNHCR in the region and to give leadership to those other countries to sign up to the convention, which will then enable us to work on a genuine regional solution? The situation is going to continue and will get worse this century because of climate change and extreme weather events. We are already seeing people displaced around the world because of that, and I have to say it is to my shame that Australia in the United Nations has been blocking a definition of an environmental refugee for this very reason—because we anticipate, we know, how many will be coming from the Pacific and Bangladesh and other places because of climate change into the future.

If we are serious, there are things we can do, and those things are outlined in the amendment that the Greens are going to move today. I would implore both the government and the coalition to support this amendment, because these are things that can be done today—not next week, not in three months but today. They are, firstly, to provide safe pathways for refugees to discourage people from taking life-threatening journeys; and, secondly, to increase Australia’s humanitarian intake from 13,750 to 20,000, including additional places to be immediately allocated to targeted resettlement of 1,000 people from Indonesia and 4,000 people from Malaysia. They are decisions that you could sign off today. The Prime Minister could do that without the parliament. She could actually go and sign off on that today.

Further, we could immediately increase funding to the UNHCR by $10 million to boost the capacity of refugee status determination assessments in Malaysia and Indonesia. We could then enter into urgent discussions between Australia and Indonesia to address the critical need for cooperation and effectiveness of intelligence sharing and resourcing between Australia and Indonesia in order to save lives at sea. I welcome the fact that the coalition have said today that they would be prepared to see more patrol boats go into the area so that we might anticipate some of the problems and be more prompt and able to rescue, but again it goes to this issue of whether we anticipate or whether we wait until people are in the water. We want to codify the International Convention for the Safety of Life at Sea.
obligations across all relevant government agencies.

In terms of a framework for a long-term regional solution, underpinned by the 1951 Convention Relating to the Status of Refugees and the related 1967 protocol, we should establish a multiparty committee at the highest level, convened by the Prime Minister in the context of the convention and with experts around the table in international law, in refugee matters, to make sure that we come up with something which will not be struck down by the courts, which will provide leadership in the region and which would give confidence to other countries in the region that we are genuine about our responsibilities and our willingness to play our fair-share role in this context. What we are saying at the moment is that we are a rich country and we will not take on our fair share. We expect everybody else to deal with it—out of sight, out of mind; send the people somewhere else away from us. It will turn down the political heat and it will look as if we have done something when, in fact, we have done nothing other than strip from vulnerable people arriving on boats the very basic protections of human rights. That is something that there is no way anybody who really thinks about this as a matter of conscience could ever support.

A lot of the things that I have listed in this set of actions today are things that Tony Abbott, the leader of the coalition, said yesterday that he would support. He said he would support an increase in the humanitarian intake. He said he would support additional funding going to the UNHCR. He said he would support a multiparty committee. Today, as I indicated, he said they would send more boats to the area. I have yet to have a discussion about codification, but that is another area. We want to negotiate with both the coalition and the government because that means we could leave this parliament today with a phone call to Indonesia already having taken place, with a phone call to the UNHCR already having taken place, with 1,000 people in Indonesia and 4,000 in Malaysia being told in the next 24 hours that they would be leaving the camps. They are the things that will deter people from risking their lives on boats trying to get to Australia, because they are doing that out of desperation.

If you think desperate people will not continue to take desperate actions, think again. When this Malaysia solution was on the table previously, a boat tried to bypass Australia and go to New Zealand—an even more hazardous journey. Unless you reduce the number of people in the camps and reduce the number of years they have to wait to think they are ever going to be given an opportunity for resettlement, you are not going to take the pressure off people feeling that they have to take this desperate action.

I have written to the Prime Minister and I am writing a letter to the leader of the coalition, Mr Abbott, as well, asking whether they would agree today to take these actions, and then we can sit down and work out something in the longer term. Let's take the actions that we can all agree on that are immediate, that go to the issue of safety of life at sea. That is critical. There has been a heartfelt outpouring from across the country, with people saying, 'Don't let any more people drown,' and I could not agree more. The best way of ensuring that is to get people to the place, to rescue them and take people out of the camps so that they do not feel the pressure to get on the boats in the first place.

Senator Hanson-Young referred earlier to our joint second reading amendment, and I now move that amendment:

At the end of the motion, add:

but the Senate:
(a) calls on the Government to take immediate action to:

(i) provide safe pathways for refugees to discourage people taking life threatening journeys;

(ii) increase Australia’s humanitarian intake from 13,750 to 20,000, including additional places to be immediately allocated to targeted resettlement of 1,000 people from Indonesia and 4,000 people from Malaysia;

(iii) immediately increase funding to United Nations High Commission for Refugees by $10 million to boost the capacity of Refugee Status Determination assessments in Malaysia and Indonesia;

(iv) establish a multi-party committee, charged with developing a framework for a long-term regional solution which is underpinned by the 1951 Convention relating to the Status of Refugees and the related 1967 Protocol;

(v) enter urgent discussions between Australia and Indonesia to address the critical need for cooperation and effectiveness of intelligence sharing and resourcing between Australia and Indonesia in order to save lives at sea;

(vi) codify Australia’s Safety of Life at Sea Convention 1974 obligations across all relevant government agencies and increase Australia’s rescue capacity in Australia’s northern waters; and

(b) resolves that a message be sent to the House of Representatives immediately to acquaint it with this resolution.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (12:45): We have an opportunity today to deal with the big question in the public arena at the moment: whether the Migration Legislation Amendment (The Bali Process) Bill 2012 will resolve the issues we are looking at. I am obviously not a lawyer, but many lawyers would understand the mischief rule. The question is whether this legislation will stop the mischief. I think that this bill, unamended and without complementary policies, simply will not pass that basic test. The boats will keep coming if we support this legislation. I do not think there would be a dent in the traffic. Senator Brandis ably demonstrated that earlier with the numbers, when we were discussing implementation of this very policy.

Why do these people take the risks? We need to look very carefully at the demographics. These are not just groups of people; there are 14 million people in the world today seeking refugee settlement—not migration settlement but refugee settlement. There is a spectrum of those seeking refugee settlement, and they go all the way from those people who are concerned about their status—they are concerned that people are moving against them to persecute them, so it is pre-persecution, and they would rightly be considered refugees under the refugee convention—all the way around to people who have already suffered persecution and who are hiding and in fear of death. It is a huge spectrum.

Refugees under the convention are not all entitled equally to settlement; they are all entitled equally to the rights of a refugee. Because there are so many, the UNHCR has decided that there has to be a priority, a list. There are basically three fundamental categories, and at the top of the list is what the UNHCR refers to as the priority 1 list. The priority 1 list is generally not individuals but often a demographic or a spatial area. I understand that at the moment the priority 1 list refers to those individuals who are seeking refugee settlement more broadly in the Horn of Africa, and it deals specifically with individual groups in that area. They...
beyond all others clearly require urgent settlement. In a perfect world we would be able to find 14 million places so that people do not have to live in persecution. But we do not live in a perfect world, and that is simply not possible. But Australia does pull its weight. Our rate of humanitarian refugee intake per head of population is amongst the best in the world.

I have described before in this place the people in camps like Kakuma in Kenya. It is difficult to conceive just how bad their lives are, with persecution and levels of safety that even in some war-torn countries would be considered very bad. The security issues around places like Kakuma are appalling, and that is why we have to deal with the situation these people are in. Australia is a very attractive nation—it is a wonderful place to live. Many people around the world would like to visit Australia and move here, and it is the same with refugees. In these circumstances we need to make a clear decision. It is my personally held view, and the view of the coalition, that our humanitarian visa demographic should be filled with 100 per cent priority 1 cases and the family reunification demographic attached to that. That is, fundamentally, why we have the convention. We have all agreed to the rules that provide assistance to those who most need it.

The other thing that makes us such a popular destination, apart from the beauty of our country and all the aspects of Australia, is that at the moment it is seen certainly by those purveyors of human misery who traffic in human lives as a rolled-gold opportunity for permanent residence. It is not hard to sell it. We have only one Ayers Rock in Australia for the tourists, and we have the only permanent residency outcome in the world for people smugglers. That is why they target this country—because we have a policy under which if you land on our shores it is highly likely, outside of some severe security issues or some other issues that will affect a very small number of people, that you will get to live in this country permanently. People pay a lot of money for that. I do not want to say 100 per cent, but close to 100 per cent of the people who come here by boat are not on the priority 1 list, the list of people most in need.

These are very complex circumstances and they need a sophisticated policy response. The legislation we are looking at today has to be part of a suite of responses. From history, we absolutely know that offshore processing works. It is not a maybe. We know that, as part of a suite of initiatives, offshore processing on Nauru and Manus Island clearly helped to create a disincentive. But one measure in isolation will never achieve the desired outcome. As I have said, a complex set of circumstances requires a sophisticated suite of policies.

Any policy discussion should start with the question, "What are we trying to do today?" We are trying to stop the deaths. Those deaths will not happen if people are not in boats. So, in effect, we have to stop the boats. Why do the people come? They come because they can achieve a permanent outcome which is not achievable in other parts of the world. So we need to change that outcome. From all that, it is quite evident that an effective suite of policies would include stopping the boats and changing the outcome of permanent residency by reintroducing temporary protection visas. We know of course that those were elements of a previous government's policy and that that policy worked.

The Howard government did not suddenly or immediately arrive at the solution of offshore processing on Manus Island and Nauru, stopping the boats and introducing temporary protection visas. As everyone
does, as any government does, we floundered. There were horrific party meetings about what we should do. It took us some time to arrive at the solutions we eventually came to. As you would in any new complex environment, you have a bit of a crack at this and then, if that does not work, you have a crack at that and maybe that does not work either, so you try something else and so on. We know the suite of measures we ended up with—turning back the boats, temporary protection visas and offshore processing—worked because we tried them and found them to work. We tried lots of other stuff, but this was the suite of measures which did work.

Sadly—but it is just how politics works—today those measures are seen to be John Howard's policies and therefore they are not available. I think that is very sad because they are tried-and-true policies which have worked and they are probably, in the immediate sense, the only ones that will work. They should be part of any suite of measures we introduce.

On the subject of stopping the trade, I commend Senator Milne for some of her remarks in one particular area. She asked, 'Why do we not act before the people are in the water?' It is a very good question. Why don't we act? If we were turning back the boats, Senator Milne, at 32 nautical miles off the coast—which is where the most recent vessel was when it sent its first distress signal—we would have scrambled boats; we would have got there, 32 miles off the coast. We would have turned the boat back; and we would have ensured that no lives were lost. I do not see the policy of turning the boats back as meaning we wait until they get here and then say, 'Off you go.' A far more sophisticated operational policy approach could save lives at sea. You might ask, 'Where is the evidence for that, Senator?'

There were no lives lost at sea during the period we were turning back the boats.

I turn now to the issue of Malaysia. We do not have evidence, as we do with Manus Island and Nauru, that it would work operationally. It is just another place offshore, so I am assuming that, if it did work operationally, it would have pretty much the same impact as Nauru and Manus Island. Senator Brandis indicated earlier that it does not practically work and to me that sends a signal that no single one of these initiatives is going to achieve the desired outcome on its own.

The fact that, after so many deaths and after 332 vessels have got through, the boats continue to come sends me a very clear message that, without a comprehensive suite of legislative and policy measures, things will not change and the boats will continue to arrive. The Malaysia solution simply strips away any protection of human rights and the Malaysians do not have the very best history in that regard. It is not as if we are trying to protect people against something which is unknown. That is why we cannot and will not support this legislation without a significant amendment to ensure a level of protection which, at the moment, does not apply in Malaysia.

Sadly, this legislation represents a lost opportunity for all involved in this very complex space. It is a lost opportunity for the people languishing in Kakuma, a lost opportunity to do something about the criminals making millions of dollars trafficking in human misery, a lost opportunity for those on the other side and a lost opportunity for the Australian public. It is a very complex space and I think this legislation has let us all down. We have lost a great opportunity as a parliament.

This is one of those times when I know those on the other side are being fair dinkum
about what they, individually, would wish to do. As a body, however, they are still looking at this through the prism of politics. I acknowledge that that happens and that it is a difficult thing to overcome. But I implore them to swallow their pride and immediately introduce legislation to restore temporary protection visas, send orders to stop the boats and introduce legislation to allow processing in countries which are signatories to the refugee convention.

Senator Di Natale (Victoria) (12:58): As it is for many people in this place, this is an issue I feel very deeply about. Both my mother and father came here in boats—not under the threat of death or torture but in the hope of a better life. I understand better than most the courage required for the sacrifice involved and the sadness that comes with turning your back on your culture, your language and your traditions because you have lost hope. It is this legacy I bring to this debate.

First and foremost, let us never forget that this is not a debate about boats; it is a debate about people who have fled their home countries because they fear death or persecution—mothers, fathers, brothers and sisters. At the heart of this dilemma lies a central question: should we punish people who seek refuge in the hope that we prevent further suffering or should we protect them and provide them with the refuge they seek? I know there are many good people in this place because they fear death or persecution—mothers, fathers, brothers and sisters. At the heart of this dilemma lies a central question: should we punish people who seek refuge in the hope that we prevent further suffering or should we protect them and provide them with the refuge they seek? I know there are many good people in this place because they fear death or persecution—mothers, fathers, brothers and sisters. At the heart of this dilemma lies a central question: should we punish people who seek refuge in the hope that we prevent further suffering or should we protect them and provide them with the refuge they seek?

I know there are many good people in this place who believe punishment is necessary because it acts as a deterrent to others and in doing so it might prevent further deaths. I also know there are others in this place who believe that punishment is necessary because they have never believed that refugees have a right to enter Australia by boat and that doing so somehow represents a violation of our borders. 'We decide who comes to this country and the circumstances in which they come,' best reflects that sentiment. I am not going to spend any time on this argument except to say that many decades ago, in response to unimaginable cruelty, nations across the world gathered together to ensure that all people have a right to seek refuge. We are not just obliged to do it under international law; it is the moral thing to do, it is the right thing to do, it is the just thing to do. Rather than focus on that, I want to focus on safety at sea and deterrence because, like many good people in this place, I have been greatly disturbed by the recent deaths.

If our primary concern is the welfare of people making this perilous trip, we are not confronted with a simple choice between stopping deaths at sea and relative safety. It is much more complex than that. It is not a simple choice for the individuals involved and it is not a simple choice for those of us charged with deciding how to respond. The first question to answer is: does deterrence work? If the risk of death at sea is not a sufficient deterrent, it is hard to imagine that anything the government does will make a substantial difference. Just today I have heard from NGO workers in Indonesia who tell us that asylum seekers are aware of policies in Australia but that the threat to send people to Malaysia will not stop them. Only today we heard from Senator Milne who said there are many thousands of people in camps in Indonesia and Malaysia, yet despite those many thousands we have settled but a few.

I do not think anyone would argue that refugee movements for the large part are a reflection of broader international trends. And the fact that we are a wealthy, safe and democratic nation makes Australia a desirable location for people who seek our protection. I know that the coalition argue that their policy stopped the boats, despite the fact that, as Senator Milne said earlier, the sinking of the SIEVX, with over 350 people on board, occurred several years after the introduction of TPVs and months after...
the introduction of the Pacific solution. It is true that fluctuations in refugee numbers have occurred after changes in government policy but this is a case of correlation rather than causation. Just because something happened during your time in government does not mean you are responsible for it. I do however accept that these facts are contested. I also accept that, if this was a decision that carried no other consequences, there might even be an argument to test it. I understand the Australian community are desperately sad at what they have seen and they are reaching out for a solution—so too am I. That is why this is not simply an argument about deterrence and whether it works; there is much more to this debate than that.

If we do accept that government action plays some role in deterring people from embarking on a dangerous boat journey—and I do not accept that that is necessarily the case—there is still a much larger question to answer: should the government turn away people who are seeking our protection? Turning people away—even if it is for the right reasons—who have a genuine right to asylum and sending them back to countries which have not signed on to the refugee convention also has terrible costs. It means committing people who have already endured untold suffering to further suffering. Some people say, 'They have their lives,' but many refugees will say that such a life, a life without hope, is not a life worth living. They may not lose their lives at sea, they may not make the six o'clock news, but many die or suffer in silence. Some will take their own lives, young children are damaged and the suffering endures behind locked doors. It might not have the impact of a death at sea but their suffering is no less important.

I will never forget the great harm inflicted on the thousands of people who legitimately sought protection but were sent offshore to suffer away from the gaze of the Australian public—the suicides, the self harm, the kids who screamed in their sleep. That is the consequence of the bill we are being asked to consider today. There is also another great injustice at the heart of this bill—that we would punish one group of traumatised and vulnerable people who are legitimately seeking refuge and protection here on our shores, as is their right, simply to send a message to an entirely different group of people. We do not accept that for Australian citizens. We never have and we should never accept it for people from other nations who seek our protection. There has been a lot of talk over the past few days about policies that work, policies that are effective, policies that have made a difference. But the real reason we are here today is that we cannot agree on how we actually define a successful policy. What is a policy that works? We know that some people are going to argue that stopping the boats is all that matters and that is the only thing that is important. But I cannot ignore the fact that offering refuge to people in need of protection, not inflicting further suffering on an already traumatised group, is just as important. I have always believed that a wealthy country like Australia, a country with so much to give, should offer that protection because it is a sign of strength, not weakness.

Ultimately, though, I take my guidance from those people whose welfare we purport to protect, those fleeing torture and persecution in their home country, like the 14-year-old Pashtun kid living on the Pakistan border who watches his father and older brothers taken out of a bus and shot at point-blank range. He leaves his home country, fleeing the very real prospect of torture or death; he arrives in a transit country on our doorstep where he faces the threat of imprisonment, where he will never get a job or an education; and he makes the decision to come to Australia. From the
perspective of a refugee like him, the
decision to board a boat to come to Australia
is an entirely logical one. Return to your
home country or stay in a transit country and
risk death or imprisonment, a life without
any meaning or hope, or take that risk,
knowing what it means, in the hope of a
better life. For some this is simply the lesser
of two evils.

I am not here in a show of party unity.
That is not why I am here. I have
wrestled with my conscience on this issue. I have
looked for compromise, and I do understand
that in politics, just as in life, compromise is
important—it is essential. But I have always
believed that real leadership means knowing
when not to compromise, because
compromise can soon become betrayal—
betrayal of the refugees on board when the
SIEVX sank and instructions were issued to
prevent any of them reaching Australia via
boat, and it was the Greens who stood up for
them; betrayal of the values that I hold dear;
and, above all, betrayal of people seeking our
protection.

We are at a stage in this debate where we
have reached at least some agreement. I
believe there is consensus on action. It seems
now that all of us in this place agree that we
must increase our humanitarian intake, and I
think that is progress. We all agree that we
need to work with our neighbours, both
Malaysia and Indonesia, to improve the way
we process and care for asylum seekers. We
agree that they need to have legal safeguards
so that people are safe while they wait. In
short, we all agree on the need for a regional
solution. It seems we are also reaching
agreement on the fact that we must
adequately resource the UNHCR. There are
such small numbers of people charged with
the responsibility of processing the many
thousands of men, women and children
lingering in camps near our shores. As
Senator Milne said earlier, with such limited
capacity and such great need, it is no wonder
that so many people are taking risks to come
to Australia. We can do something about this
problem today: we can adequately resource
the UNHCR so that we process more people
and provide a safe pathway for these people
who have every right to seek refuge and our
protection.

I would also say that in some ways this is
a watershed debate. I know it might be a
forlorn hope, but I do believe that many of us
in this place are here with the best of
intentions. The suggestion that we should
have a multiparty committee to try and make
progress on this issue is a good one. Why not
meet behind closed doors, away from the
glare of the media spotlight, and do our best
to depoliticise this issue? Let us not pour any
more fuel onto this fire. We also need to
think about uncoupling the zero-sum game
that comes from pitting onshore and offshore
refugees against each other, by establishing
quotas that work independently of each
other. We heard from Senator Milne about
the critical need to take concrete and
practical steps to improve safety at sea for all
people who seek to make this dangerous
journey.

I know that not everyone will agree with
our position. I know that. I have heard from
some of them. I have spoken with some of
them. I know some of them are angry. I
know many of them understand. But it is a
position taken in good conscience, knowing
that there is no single right answer to this
terrible, terrible dilemma. I say to those
people who criticise our position that they
are not just criticising us. They are criticising
Amnesty International and the many other
human rights groups we have spoken to and
sought guidance from, the UNHCR, and the
many thousands of NGO workers currently
in camps, doing the work of processing
refugees and trying to provide them with a
pathway to a better life. I do understand that
despite our best efforts and regardless of what we do here today some people will continue to take risks to come to Australia. I understand the courage and sacrifice that is necessary to take those risks. I also understand the deep sadness associated with that decision. But it has always been my belief and always will be my belief that we as a rich, prosperous, generous, compassionate nation have an obligation never to turn away people who seek our help and our protection and who seek to make their lives a little bit better.

Senator BILYK (Tasmania) (13:15): I rise to speak in favour of the Migration Legislation Amendment (The Bali Process) Bill 2012. Today we need to come here in a spirit of cooperation, not of conflict. The extraordinary debate that occurred yesterday in the other place and the debate that is occurring today in this place demonstrate that we cannot continue to sit by while men, women, children, mothers, fathers, sons and daughters die at sea pursuing the life that we enjoy in this free country. Today we need to pass legislation that stops the continuing tragic loss of life at sea. It is at this moment, in this place, that we will be judged by the Australian people. Today we need to pass legislation that stops the continuing tragic loss of life at sea. It is at this moment, in this place, that we will be judged by the Australian people. It is at this moment, in this place, that the Australian people will point and say, 'This the moment that you had to act.' Please do not let them have to add: 'Why didn't you?'

This bill was put forward by Mr Oakeshott, as we know. It is a bill that shows what can occur in the other place through compromise and negotiation. It is an example of what should occur in this place. Our goal, in this place, should not be to advance the interests of our respective parties but to advance the interests of the Australian people and to help those who seek our protection—it is their legal right to seek our protection, to seek asylum. After all, that is what we are here for. This is not the time to apportion blame. This is not the time for vitriolic shouting across the chamber. Quite frankly, the Australian people do not give a hoot about that.

This bill is supported by the government. It might not be the ideal solution to the problem, but it is a solution. As my dad used to tell me: 'If you want to get anything done, you have to make a start.' Today, Senators, we have to make a start. It would be easy to come into this place and say, 'It doesn't do what I want, so I won't support it.' It would be easy to walk into this place holding our pure, unmarred virtues. And it would be easy for you to walk out of this place, having voted against this bill, patting yourself on the back knowing that your pure virtues were still intact. You could stand up to the Australian people and proudly tell them: 'I didn't compromise! I didn't negotiate!' And people will continue to die at sea in the most horrific circumstances. Mothers will watch their children slip from their fingers, and you will continue to sit in this place with your shiny virtues intact. Fathers will try to save the ones they love, and be unable to, no matter how much they strive and struggle, and you will still hold onto your pure virtues. Aren't you lucky! Aren't you wonderful! But the Australian people will judge you and I believe they will judge you harshly.

As I said earlier, this bill is a compromise. The bill that went through the House of Representatives yesterday combines a key element of the government's policy, the arrangement with Malaysia, with a key element of the opposition's policy, a detention centre on Nauru. This is the only possible bill that we can pass in the Senate today. If we walk out of this place today having failed to pass this bill we will have failed the Australian people and those risking their lives at sea. More accurately, each of you who votes in opposition to this bill will
have failed the Australian people and those seeking refuge.

Labor has agreed to a key element of the opposition's proposal—processing on Nauru. It is now time for the opposition and the Greens to move a little. The government has been advised very clearly that our arrangement with Malaysia will be an effective deterrent. We have been very clearly advised by the same experts who advised the opposition when they were in government. But we have seen that, despite the risks of travelling at sea, people are still willing to take the risk. We must stop this. We must stop people putting their lives at the kind of unnecessary risk that has resulted in loss of life such as that we have seen in the last few days. We have to stop people being exploited by criminally negligent people smugglers who do not care about the people whose lives they put at unnecessary risk. We need to say to the people smugglers: 'You can no longer pretend to asylum seekers who get on your boats that they will end up in Australia.' They will not end up in Australia. Under our arrangement with Malaysia they will end up in Malaysia. Of course, because we have adopted part of the opposition's plan there will be a detention centre on Nauru.

We are all concerned with ensuring that those people are treated properly. We have negotiated human rights protections with Malaysia. Under the arrangement, transferees would be treated with dignity and respect and in accordance with human rights standards. They would have access to self-reliance opportunities, including employment, and to an appropriate level of essential health care, and school-age children would also have access to education, which is, of course, critically important. The Office of the United Nations High Commissioner for Refugees, the UNHCR, was closely consulted and involved in negotiations with both governments in the lead-up to the signing of the arrangement. The UNHCR's comments shaped the final text of the arrangement. Its involvement was crucial to both Australia and Malaysia. Those opposite cannot logically argue that people should only be sent to countries which are signatories to the refugee convention while at the same time arguing that they should be sent to a country which is not a signatory to the refugee convention. I would like to remind those opposite that Nauru was not a signatory to the UNHCR convention when they implemented the Pacific solution. Despite their concerns today, the opposition did not hold the same concerns when they were in government.

The key thrust of this bill is to introduce membership of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime as the basis for eligibility as an offshore processing country. The bill is premised on Australia's interest in working in partnership with regional countries under the Bali process and the Regional Cooperation Framework. The government secured the agreement of the Bali process to establish the Regional Cooperation Framework with the objective of securing a long-term and sustainable approach. The Bali process is a key regional forum involving 43 member countries, including Indonesia, Malaysia and Thailand. It is a forum which enables key countries to be involved in a regional solution to this challenge. It is only by acting regionally that we can make a difference, and so we must act with the help of our regional friends and allies.

I take a moment to speak to one part of the opposition's policies. Their idea of threatening to turn the boats around is dangerous and ineffective. When in the past people smugglers faced the threat of having their boats turned back, they simply sabotaged their own boats, putting the lives
of the people on board at risk. This will not reduce the number of deaths at sea. Reports have revealed documents from the Australian Customs and Border Protection Service from 2010 that analyse the coalition's 'turning back the boats' policy of 2001. I quote:

There were very few benign or compliant boardings under the policy, and a pattern of objectionable and belligerent behaviour quickly became evident ... PII[s] [potential irregular immigrants] frequently became hostile and occasionally inflicted self-harm …

Or another quote:

Even if there was consent to the vessel being turned back, Border Protection Command notes that when it boards these vessels, nearly all of the vessels are found in a poor condition and poorly maintained. It is therefore difficult in many situations to properly determine that the vessel would be seaworthy enough to allow the vessel to continue on without the loss of life.

It is a policy that the United Nations refugee chief said breaches the refugee convention, a policy that was recently found to be illegal in the European Court of Human Rights. It will put the lives of refugees and the Australian Navy and rescue personnel at risk as well. It has done so in the past and it will do so in the future—and this is unacceptable. It is unacceptable to the people of Australia and it should be unacceptable to this place. The opposition's policy, despite their claims, does not work as a deterrent for stopping people hopping on boats and travelling to Australia.

I want to speak for a minute about temporary protection visas, because I think I heard Senator Scullion mention them. Temporary protection visas did not work in Australia. With the overwhelming majority of people on them ending up as permanent Australian residents, they are hardly a deterrent. If the coalition are so sure of TPVs, why did they reject an independent inquiry into their effectiveness? We know that more than 95 per cent of TPV holders were irregular maritime arrivals and that they went on to get permanent visas to live in Australia. The harsh TPV conditions preventing family reunions also forced more women and children to risk their lives by jumping into leaky boats. Temporary protection visas did not stop boats arriving. These human beings deserve to be treated with respect. This parliament can no longer not act to ensure that they are treated with that respect; it must go to saving lives.

As a former member of the migration committee, I visited some detention centres. I heard the horrific stories about the places that these people were fleeing from. They are real horror stories. I have also read the Anh Do book, *The happiest refugee*. If I can suggest anything to anybody in this place it is that they read this book if they have not read it. They will find it hard to put down. There are some parts of it that are quite humorous, of course. He is a comedian. The book is about his true journey in a boat from Vietnam to Australia. Part of his journey involves pirates boarding the boat and other things that were happening on the boat, including them having to be down in the engine rooms and things like that. This part literally made me want to throw up; it was an awful, awful part of the book. However, it was a great book all in all, and I highly recommend it. So I would suggest that people read it. It is a true and honest account of just one person's trip to Australia, and it is well worth people investing a couple of hours of their time to look at it.

Today we have a chance to resolve this issue. We have a chance to leave this parliament before the winter break with legislation in place to prevent the loss of life that we have seen. The House of Representatives reached an extraordinary compromise yesterday. It showed the best of parliamentary process, when individuals with vastly different political opinions came
together in the spirit of compromise. Today, let's not show the people of Australia the worst of parliamentary process. Instead, let's show them that we can come together in this place and pass legislation which will prevent further tragedy from occurring. I believe it is what a large majority of the people want. Ultimately, this bill is about saving lives. The government believes that the best way to prevent people from hopping onto boats and risking their lives on dangerous journeys is through offshore processing as part of a proper regional framework, because it removes the product that people smugglers are selling: permanent resettlement to Australia.

I cannot stress how important this bill is. Senator Di Natale asked, 'What is a policy that works?' and it is a legitimate question. To me the answer is that if the policy saves one life it is a policy that works. If a policy saves more than one life, then obviously it is a policy that works. If this bill passes today it will save lives. That is how important it is.

I would like to reiterate some of the issues of concern I have. One, in particular, concerns the temporary protection visas. Ninety-five per cent of people on temporary protection visas ended up being resettled in Australia. They had some fairly harsh conditions attached to them, one of which was preventing family reunions. So in actual fact I think TPVs added to the number of people seeking asylum, because women and children wanted to be with their husbands and fathers—however their family might be made up. So they would jump on the boats and risk their lives to be together. If we were to put ourselves in the position of these people, under the same circumstances we would resort to this sort of action. It is unfortunate they have to resort to this sort of action, but I am pretty sure it is one I would resort to. I would do anything to save my children's lives or get away from the horrific activities taking place in the countries from which these people are fleeing.

The government has been advised very clearly that the arrangement with Malaysia will be an effective deterrent. We have been very clearly advised by the same people who advised the opposition when they were in government, so I am not quite sure why that advice is not acceptable to the opposition now. If we walk out of here today without having passed this bill I think we will still see people put their lives at risk, because they have no other options. I call on senators to think about this. I understand that it is a very emotive debate for a lot of people—probably for everyone. It is not something we were planning on negotiating this week; I understand that as well. But a good policy to me is one that will save a life. This will save a lot more than one life. I commend the bill to the Senate.
course in my judgment would be a betrayal of our duty as parliamentarians, and on the other hand passing a bill that is not perfect, one that does not meet all of the requirements of any of the parties but offers some prospects of dealing with the very serious problems we face.

There are, for all intents and purposes, three parties in the Senate: the government, the coalition and the Greens. We have differing positions on what to do about this problem, but this Senate can never pass any legislation unless at least two of those three parties join together to pass it. On this issue the parliament will remain impotent and the problem will continue to fester unless two of the three parties here face up to their responsibilities and pass a bill that addresses the problem of unauthorised boat arrivals. That bill inevitably will be a compromise. It will not meet all of the requirements of any party. That is the nature of compromise. But since no one party has a majority here we in fact have a duty to compromise.

The government has put forward a bill that embodies a compromise between our position and that of the coalition. It has not been an easy thing for us to do. Many of us are unhappy about it but we accept that it is our duty as the government party to take that initiative. Oppositions also have duties, although in recent years that fact seems to have been lost in this Senate. It is true, as Lord Randolph Churchill said, that the first duty of an opposition is to oppose. But it is not the only duty an opposition has. Sometimes the duty of an opposition is to put the national interest first and come to a compromise with other parties. That is what Kim Beazley did in 2001, in the wake of the *Tampa* affair. I well remember the storm of criticism that Kim Beazley endured from both Labor Party MPs and supporters for supporting in many respects what John Howard did in response to the *Tampa* incident. And of course the main beneficiary of that storm was the Greens party, who benefited from the large number of Labor voters who were offended by the stand Kim Beazley took at that time. But it was a price that Kim Beazley was willing to pay because he was a patriot who saw that the national interest had to come ahead of party interest.

In his remarks to this Senate, Senator Scullion talked about the need for a sophisticated policy response. I entirely agree with him. But alas we have not seen a sophisticated policy response from those opposite. Rather, we have seen a slogan, 'Stop the boats'—a slogan empty of the sophistication that Senator Scullion called upon this Senate to employ. Senator Scullion accused the government of being fixated on the prism of politics when alas it is the prism of politics that has fascinated and trapped those opposite. We have an opposition that puts party interest ahead of the national interest. It is the empty slogan of 'Stop the boats' that has handcuffed the opposition from playing its proper role here today.

The damage that will be done if the coalition parties reject this legislation will be immediate. There will be damage in the form of more people risking their lives at sea and, tragically, it will inevitably result in more people losing their lives at sea. There will be damage in the form of the diversion of our defence assets from their tasks of defending Australia to the task of border protection. Our defence personnel perform this difficult and dangerous work without complaint. But it is not what they enlisted to do and it is not what the Australian taxpayer is paying our Defence Force to do. That is the responsibility that the opposition will incur if they reject this legislation today. That is the odium that they will bear. That is their choice.
It might be said that the Greens will bear a share of that odium, because they are also intending to oppose this legislation. I agree that it is unfortunate that the Greens are continuing to oppose this legislation. But the Greens at least enjoy the virtue of being consistent. They have always been opposed to offshore processing of unauthorised boat arrivals. That is their position and they are sticking to it. The Greens have always preferred to vote for 100 per cent of nothing rather than 80 per cent of something. That is, tragically, the conduct of a protest movement that has senators in this place.

But the coalition parties have no such excuse, because they have always been in favour of offshore processing. They were perfectly happy to send unauthorised boat arrivals to Nauru and Manus. The coalition are not opposing this bill because they are opposed to the principle of offshore processing. So why indeed is the coalition opposing this legislation? They say that they want offshore processing and we are offering offshore processing. They say that they want to send unauthorised boat arrivals to Nauru and we are agreeing to make that possible, despite the fact that many on our side in this chamber are opposed to it. They say that they want back temporary protection visas, and we have agreed to a bipartisan and independent examination of that possibility—again against our better judgment and against the strong convictions of many on this side. We have shown our willingness to compromise all along the line and the coalition has shown none.

Why is that? Is it because the coalition is in fact interested in policy outcomes? Not at all. The coalition is interested only in political victory. This is the prism of politics that Senator Scullion spoke of. Physician, heal thyself. The coalition are concerned only with blocking any initiative that comes from this Labor government or, for that matter, from the Independent members in the other place. Senator Scullion also called upon the government to swallow its pride. Our pride has been swallowed. This is a bill that was moved by an Independent member of the House of Representatives. We saw that as an appropriate mechanism for ending the political stalemate that has so bedevilled this issue. As the Prime Minister said, no-one wins, no-one loses and we get something done. The opposition are determined to render this parliament impotent and unworkable to further their demands for an early election. This opposition is concerned solely with politics, with opinion polls and with short-term advantage.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:41): I move:

That the debate be now adjourned.

Senator Birmingham: I rise on a point of order, Acting Deputy President. Is there any opportunity to speak on this motion?

The ACTING DEPUTY PRESIDENT (Senator Crossin): It is a procedural motion. There is no opportunity to do that.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:42): by leave—In order to facilitate the future business for today, the motion that we dealt with at commencement was limited to the period before question time. I will seek leave to move a motion that will deal with the business program for the remainder of the day.

Question agreed to.
BUSINESS
Rearrangement

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (13:42): by leave—I understand that this motion is currently being circulated, but I will go through the detail of it for all senators. It has been subject to discussions among the parties. I move:

That, on Thursday, 28 June 2012:
(a) the hours of meeting shall be 9.30 am to adjournment;
(b) the routine of business for the remainder of the day shall be as follows:
(i) consideration of the following government business orders of the day relating to the:
   Migration Legislation Amendment (The Bali Process) Bill 2012,
   Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 and related bill, and
   Social Security Legislation Amendment Bill 2011 and 2 related bills,
(ii) petitions,
(iii) notices of motion,
(iv) tabling and consideration of a report of the Selection of Bills Committee,
(v) postponement and rearrangement of business,
(vi) formal motions—discovery of formal business,
(vii) tabling of documents, and
(viii) government business;
(c) divisions may take place after 4.30 pm; and
(d) the question for the adjournment of the Senate shall not be proposed until a motion for the adjournment is moved by a minister.

Senator LUDLAM (Western Australia) (13:44): I thought it might actually have been worth continuing a degree of negotiation before we came to put this amendment to the hours of business; however, the government have chosen to bring it on now, so we will deal with it now. We will not be supporting this motion. When we arrived here this morning, obviously with the tragedies of recent days on the minds of all senators, the Greens agreed—and it actually went through with a minimum of debate—that we would be debating the Migration Legislation Amendment (The Bali Process) Bill 2012 and that we would be debating the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 and a related bill.

Senators who are alert will note that this amended motion now proposes that we debate the Stronger Futures package, I understand—and the Greens will not consent to that. If the government sees fit to withdraw this motion, we would be quite happy to continue negotiating the way the chamber is managed over the next few hours, so that we are not sitting until the small hours of the morning.

I have to say, on behalf of my colleague Senator Rachel Siewert, who has done a huge amount of work on the Strong Futures bill, that there was a degree of goodwill shown by the government last week and into this week that this bill would not be debated in the absence of a senator who has put her heart and soul into this issue. We do have strong disagreement with some elements of the bill, but I do not propose to go into the substance of the debate now. The government is now proposing to chop through—presumably this afternoon or when we sit until four o’clock in the morning, if that is the will of the government—a bill of such importance. There is such a large number of people whose views will not be
properly represented in here. There is a counter to the government's view. There is strong dissent, in the community to the bill that the government has just parachuted back onto the Notice Paper without warning, and those views need to be heard.

So we will not be supporting this motion. I would be delighted if I could get an indication from the coalition as to whether they would support a Greens amendment to take the bill out. If the government chooses to withdraw the motion, that would be greatly appreciated by the Greens, but we simply cannot support it as is. I encourage the government to come back to the table and work out a way that this bill can be debated properly, with all interested parties and all interested views, and relevant views, at the table, in order to bring to bear the very strong concerns of Aboriginal people right across Northern Australia with provisions in the bill. It is utterly undignified to now propose that the Senate simply chop that bill through. We will not be supporting this motion, but I will be delighted to hear from Senator Fifield, if he wants to put a coalition view as to how the business of the Senate should be managed through this afternoon. The Greens have been willing to compromise, willing to negotiate—and we still are; I give that commitment on behalf of the Australian Greens—but we will simply not consent to the bill that was not agreed to this morning suddenly being parachuted back onto the Notice Paper, presumably to sit us through and legislate by attrition. It is an utterly inappropriate and offensive way to deal with an issue as important as this.

Senator LU DLAM: I foreshadow an amendment, but I will not waste the chamber's time—it is quite a big day—if there is no support for an amendment from the coalition. But I will flag, at the outset, that we will be voting against this motion if it is not amended.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (13:48): The Australian Greens have sought the view of the coalition. The coalition view is to support this motion. It will be noted by the Australian Greens that there is no guillotine attached to this motion. And, before the Greens get high and mighty and talk about community opposition to certain legislation, and the need to discuss these things, they might care to reflect on the carbon tax and the guillotine and some bills that we opposed—which, in fact, did not have any time for debate, with the Labor-Greens alliance guillotining 125 bills through this place. So, please, none of this cant, none of this hypocrisy, none of this suggestion that somehow the Greens are concerned that the government's agenda is in disarray and that it chops and changes. That is something we have come to recognise. Usually when it has to chop and change it is because there are problems within the Greens-ALP alliance in this place.

But we have given our indication that we will cooperate with the government's agenda on those issues that are important. We believe those three bills are. We do not support a guillotine, unlike the Australian Greens, and if it means sitting late then that will be our legislative duty.

The PRESIDENT: The question is that the motion moved by Senator Collins be agreed to.
The Senate divided. [13:54]

(The President—Senator Hogg)

Ayes.................47
Noes...................8
Majority............39

AYES
Bernardi, C          Bilyk, CL
Birmingham, SJ      Bishop, TM
Boyce, SK           Brown, CL
Bushby, DC          Cameron, DN
Carr, KJ           Carr, RJ
Cash, MC            Colbeck, R
Collins, JMA       Cormann, M
Crossin, P          Edwards, S
Eggleston, A        Evans, C
Farrell, D         Fawcett, DJ
Feeley, D           Fifield, MP
Furner, ML          Gallacher, AM
Hogg, JJ            Johnston, D
Kroger, H          Ludwig, JW
Lundy, KA          Marshall, GM
McEwen, A (teller)  McKenzie, B
McLucas, J         Moore, CM
Parry, S           Polley, H
Pratt, LC          Scrutton, NG
Singh, LM          Smith, D
Stephens, U        Sterle, G
Thistlethwaite, M  Thorp, LE
Urquhart, AE       Williams, JR
Wong, P

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

Question agreed to.

The PRESIDENT (13:59): For the benefit of those in the public gallery, I advise that the effect of that motion is that there will be no question time in the Senate today, if that is what you were expecting.

Honourable senators interjecting—

The PRESIDENT: Order! I think it is fair to tell the public about that.

BILLS

Migration Legislation Amendment
(The Bali Process) Bill 2012
Second Reading

Debate resumed on the motion:

That this bill be now read a second time, to which the following amendment was moved:

At the end of the motion, add:

but the Senate:

(a) calls on the Government to take immediate action to:

(i) provide safe pathways for refugees to discourage people taking life threatening journeys;

(ii) increase Australia’s humanitarian intake from 13,750 to 20,000, including additional places to be immediately allocated to targeted resettlement of 1,000 people from Indonesia and 4,000 people from Malaysia;

(iii) immediately increase funding to United Nations High Commission for Refugees by $10 million to boost the capacity of Refugee Status Determination assessments in Malaysia and Indonesia;

(iv) establish a multi-party committee, charged with developing a framework for a long-term regional solution which is underpinned by the 1951 Convention relating to the Status of Refugees and the related 1967 Protocol;

(v) enter urgent discussions between Australia and Indonesia to address the critical need for cooperation and effectiveness of intelligence sharing and resourcing between Australia and Indonesia in order to save lives at sea;

(vi) codify Australia's Safety of Life at Sea Convention 1974 obligations across all relevant government agencies and increase Australia's rescue capacity in Australia's northern waters; and

(b) resolves that a message be sent to the House of Representatives immediately to acquaint it with this resolution.
Senator BIRMINGHAM (South Australia) (13:57): I rise to continue this debate on the Migration Legislation Amendment (The Bali Process) Bill 2012. This is a very complex and serious issue, but it is underscored with one very simple question: how do we stop the human tragedy of lives being lost at sea with minimal impact on the human rights of those we are trying to save? That is the simple question that this parliament should be seeking to answer. That is the question the Australian public, the media and the polity generally are all seeking to have addressed. It is perhaps more than some are saying at present, which is simply that we must do something to stop lives being lost at sea. I agree that we must do something to stop lives being lost at sea. But that 'something' must be an option that has the least impact on the human rights of those people whose lives we are trying to save.

There has been, I think, a realisation—an awakening of sorts—across the Australian community and across the body politic about this issue and the need to genuinely stop human trafficking, the need to genuinely stop people-smuggling, and the need to genuinely stop the boats that come to Australian waters carrying those seeking asylum. That awakening has been that there is a real threat to the lives of these people. It is sad that it has taken the loss of so many lives for that awakening to occur universally across this parliament and across the community. It is a fact that the coalition have long known. We have long known that it is in the best interests of those who seek to make the voyage that they be discouraged from doing so—just as it is in the best interests of Australia in terms of how we maintain integrity and support for Australia's migration program and, in particular, the humanitarian and refugee impact of our migration program for us to control our borders effectively. So I welcome that the fact that everyone now appears to agree that there is a need to stop the people smuggling.

The division between the parties lies on just how to stop the people smuggling. Those questions of how and the policies that stem from trying to answer those questions must be addressed by looking at two factors—firstly, of course, what will actually work, what will make a difference; and, secondly, what will work in a way that does not compromise the other principles that Australia should hold dear. On the first question, about the legislation before us, which provides for the government's so-called Malaysia solution, the answer is unknown. As Senator Brandis said in his contribution today, Mr Andrew Metcalfe, who has been quoted and cited by many in this debate, has acknowledged that the Malaysia option is untested and that it is conjecture as to whether or not it would work. We do know that past policies appear to have had an effect and appear to have slowed—indeed stopped—the arrivals. We do not know whether the Malaysia option could achieve the same outcome.

On the second question, as to whether it would work and whether it could be implemented without compromising other core principles that Australia should hold dear, the answer is clear. The option of the Malaysian approach proposed by the government and made available by Mr Oakeshott's bill would compromise other principles that Australia holds dear. It would compromise the core principle that Australia has held dear for many decades—ever since we signed and ratified in 1951 the United Nations convention in relation to refugees. In 1951, under the Menzies government, Australia took that step and decided that it was appropriate that we guaranteed those who sought refuge in this country a certain standard of protection. This bill, if passed,
would strip those protections—protections that have existed since 1951—from those who may arrive on our shores and be sent to Malaysia. I am unwilling—and I am pleased that the coalition is unwilling—to strip those sorts of human rights protections from our migration laws.

Let's look in particular at what it would seek to strip. It would strip from our Migration Act section 198A. Under section 198A, if the minister for immigration is to send people to an offshore country for processing, he is required to acknowledge that that country:

(i) provides access, for persons seeking asylum, to effective procedures for assessing their need for protection; and
(ii) provides protection for persons seeking asylum, pending determination of their refugee status; and
(iii) provides protection to persons who are given refugee status, pending their voluntary repatriation to their country of origin or resettlement in another country; and
(iv) meets relevant human rights standards in providing that protection;

These are core protections that the Howard government enshrined in the Migration Act to ensure that people who were subject to offshore processing were guaranteed appropriate human rights protections. The Labor government, through this bill, will take those protections out. They will take those protections out because they cite the High Court case that invalidated their plan to send people to Malaysia. Yes, it did invalidate their plan—and it invalidated it in part because of section 198A.

There is a question as to whether or not Nauru could still operate as an option under this. The coalition believe it could; others have disputed that. But the coalition have accepted and agreed that, if need be, those protections could be taken out of the Migration Act. However, we are unwilling to see those protections removed without replacement protections put in place. Those replacement protections, we suggest, should be, as a core standard and a core minimum, that a country be a party to the UN refugee convention. It is a simple test—a test that at least would pass the High Court with a clear yes or no. Is the country a party to the UN refugee convention or is it not?

Does that, in and of itself, guarantee the human rights of those who are sent to that country? No, of course it does not. I recognise and acknowledge that just being a party to a UN convention does not guarantee rights. There would need to be a second test applied at the policy level, by whoever the government of the day is, and that would be as to whether those rights actually will be and can be guaranteed in that country. Malaysia would fail on both of those tests. It would fail the test of whether it is a signatory to the UN refugee convention because, of course, it is not. And it would fail on the test of whether human rights protections can be guaranteed for those we send to Malaysia, because quite clearly, transparently, those human rights protections cannot be guaranteed in Malaysia. We knew they could be guaranteed in Nauru, even though Nauru was not at that stage a signatory to the UN refugee convention, because Australia operated the facilities on Nauru. When we detained people on Nauru to assess their application for refugee status, it was Australia that ensured adequate education facilities for children who were there, adequate health facilities for those who were ill, adequate protections across the board for every person who went to Nauru. None of those protections, none of those education facilities, none of those health facilities, none of those safeguards could be guaranteed for the people that the Labor Party proposed to send to Malaysia—not one of them.
If this bill were to be passed, if the Labor Party were to get its way, how would we look—as an apparently compassionate, humanitarian country that signed the UN refugee convention in 1951—when the first person that we sent to Malaysia found themselves ill and was denied health care or was unable to access health care that could have been life saving? How would we look when that person—a minor, potentially—found themselves in Malaysia needing education and was unable to access education services? How would we judge ourselves if indeed somebody were to find themselves in Malaysia unable to access basic justice services if they are attacked or, indeed, subjected to torture or other forms of inhumane treatment?

This proposal fails every decent test of human rights. Don't just take my word for it. This morning my colleague from the other place Judi Moylan, the member for Pearce, spoke at a press conference. Ms Moylan's record is impeccable on these issues. There is barely a parliamentarian in this place who has spoken with as much passion and concern for those seeking asylum as Judi Moylan has. Her words this morning were:

The Oakeshott bill is actually the worst of all options, because the government actually removed section 198A from that bill, which was some of the protections we would normally afford to asylum seekers.

Ms Moylan, the member for Pearce, with her impeccable record of concern for refugees and asylum seekers, described this bill—or all those that were canvassed in the long debate in the House of Representatives yesterday—as the worst of all options. There is no way that this Senate should allow the worst of all options to be passed. There is no way that this Senate should allow to be carried into law something that would strip from those who are desperate and those who are seeking a new life basic protections of their human rights.

There have been numerous things said by those opposite during this debate, both here today and in the other place yesterday. Ms Gillard said, 'We must get something done.' She embraced, she claimed, the Oakeshott bill because it would ensure that she could not claim a win and the opposition could not claim a win but that we could leave this place and get something done. It is not enough to get something done; you must get the right thing done. And the right thing would be to pass legislation through this parliament that we could all be proud of because it guaranteed continued protection of the human rights of those seeking asylum whilst providing disincentives for people to make the dangerous boat journey to Australia and risk their lives. Such legislation would bring back the policies of the Howard government that did appear to work, that did stem the flow of boats and that did see, by 2007, that flow basically reduced to zero.

It is the Labor government of Mr Rudd and Ms Gillard that unwound those policies and that created this problem. I know that the steps they took were in some ways done with good intentions and that many had heartfelt concern that the policies that had been enacted were cruel. We now know, though, that policies that encourage people to come to this country and encourage people to potentially put their lives on the line have even more devastating consequences.

We should not take the Prime Minister's advice to 'just get something done'. 'Something' will not suffice. It must be the right thing. I take to task words that I heard Senator Bilyk and others use today, that this is the only bill that can be passed. That is not true. This may be the only bill that is on the Notice Paper but it is far from the only bill
that can be passed. We saw just before I spoke a change to procedures of the Senate for today that added another piece of legislation for passage through this place today.

I am confident that if the government were willing to drop its inflexible position and talk to the opposition about passing the legislation that Mr Abbott committed yesterday to be willing to pass, it could sail through this place very quickly and it could sail through the other place very quickly. I am confident that, having willingly given whatever time is necessary in this place to debate this topic today, the coalition would equally willingly give whatever time was necessary to debate a proposal that actually had a chance of getting through this parliament and making a difference. So instead of stubbornly coming into this place and saying to us, 'This is the only bill that can pass today; therefore you must support it,' the government should grow up. The government should recognise that this bill is not going to pass but there are options that could and that those options should be embraced.

Lastly, I take to task what Senator Feeney said before me. He acknowledged the Greens for being consistent in their position but then somehow suggested that the coalition had not been. Nothing could be further from the truth. The coalition established temporary protection visas and the coalition established offshore processing at Nauru. The coalition opposed the Labor government's repealing of temporary protection visas and the coalition opposed the Labor government's unwinding of offshore processing at Nauru. The coalition today supports the reinstatement of temporary protection visas and the reinstatement of offshore processing at Nauru. Our position could not be any more consistent and could not be any clearer. This stands in stark contrast to those opposite, who have flip-flopped throughout this. As I acknowledged before, this is perhaps based, I am sure based in many cases, on the best of intentions but they have now come to the worst of all possible solutions.

I finish by reminding the Senate of the question I posed at the start: how do we stop the human tragedy of lives lost at sea with the minimal impact on the human rights of those whose lives we are trying to save? The answers to that question are clear. They have been delivered before in the policies of the Howard government. They should be delivered again, and the answer is most certainly not sending these people to Malaysia.

**Senator RHIANNON** (New South Wales) (14:17): I rise to support my Greens colleagues speaking in this debate. This Australian parliament is seeing two days of very historic, significant debate. I had the opportunity to hear some of the speeches in the House of Representatives and I have been able to listen to all the speeches in the Senate today. I certainly acknowledge that many MPs are looking for a humane approach to refugees who wish to come to this country. But the bill before us should not be supported. As Senator Christine Milne said, the Migration Legislation Amendment (The Bali Process) Bill 2012 is a political solution, not a solution for asylum seekers. The Greens are opposing this bill because we want to welcome refugees to Australia, refugees who have a right to come to this country. But the bill before us should not be supported. As Senator Christine Milne said, the Migration Legislation Amendment (The Bali Process) Bill 2012 is a political solution, not a solution for asylum seekers. The Greens are opposing this bill because we want to welcome refugees to Australia, refugees who have a right to come to this country. We are opposing this bill because we want to save lives.

The Greens' commitment to work with all parties and crossbenchers to find a solution is clearly reflected in the amendment that Senator Milne has moved. That amendment sets out some very specific ways that we could come together to ensure safety of refugees who so often take a very perilous
trip when they decide to leave their country. That Greens amendment covers providing safe pathways for refugees, increasing our humanitarian intake of refugees, increasing funding to the UNHCR, entry into urgent discussions with all parties about how to bring more resolution to this issue, and establishing a multiparty committee in the context of the refugee convention to further develop this work. People seeking asylum have the right to seek refuge in Australia and the essence of this bill is that it denies that right. That is what is so fundamentally wrong with this bill and why it should be opposed.

In the context of having this important debate in the parliament and considering how refugees are able to come to this country, it is worth remembering that this issue has not been always so deeply politicised as we are seeing now. In the 1970s and 1980s there was a bipartisan approach that was reflective of our responsibilities. In that period there were waves of refugees coming from both South-East Asia and South America wanting to come to Australia. They were politically fraught times but there was a unity between the political parties in our parliament that did not politicise the issue, did not use refugees and attacks on refugees and a whole lot of implications about their rights, the types of people they are and what they were doing here, to try and win elections.

This is a time when we need to remember that former prime ministers Whitlam, Fraser and Hawke actually worked together—again I emphasise that this issue was never featured in elections, and it was complex—on how people who were seeking refuge could be given safe passage. That was worked on in a collaborative way and that was achieved. I draw senators’ attention to a recent most important speech that former Prime Minister Malcolm Fraser gave when he delivered the 2012 Whitlam Oration. I recommend that senators read it. There are a number of quotes relevant to our debate today and there are two that I would like to share with the chamber. In reference to refugees coming here from South-east Asia, Mr Fraser stated:

Gough Whitlam did not play politics with this. It would have been easy to do.

He went on to say:
Bipartisanship on issues of immigration was maintained.

That saved lives. That brought dignity to people and made it easier for those refugees, when they came to Australia, to be able to settle here. But, most importantly and most relevant to what we are discussing now, it meant that the government of the day was able to work with those communities looking for refuge in Australia so their passage was as safe as possible.

Mr Fraser also said—and this is relevant to today and it is a very sobering comment:
Our treatment of refugees, and the poisonous debate engaged in by our major political parties has done Australia much harm throughout our own region.

I am opposing this bill for many reasons. Many of them are very personal. I visit Villawood quite often. I have met refugees whose stories are just so heartbreaking. They are heartbreaking for what they have gone through and heartbreaking for what they are now enduring. I am opposing this bill because of the two refugees I met recently who came here as children and who spoke at the Greens event for Refugee Week: Juma Abraham, from Sudan, and Masihullah Mobin, from Afghanistan. Their stories made me very proud of humanity and proud that I had the privilege of meeting these people but also quite ashamed about what human beings periodically do to other human beings. They have lost so many relatives. It is lucky that
they are alive here now. But they are in Australia and they are so thankful. I am particularly thinking of Masihullah today, because he was on a boat that overturned. His only relative who was sent with him, when he was 15, died on that boat, and Masihullah had a horrendous time before he was able to come to Australia.

I am also thinking of many of the people I saw in a film recently that I have already spoken about in this parliament, called Between the Devil and the Deep Blue Sea. I would recommend that all MPs see this. It really does bring clarity to the issues that we are discussing today. This film was made by Jessie Taylor and Ali Reza Sadiqi. These two filmmakers went to Indonesia and met many of the people who are seeking refuge here, who are just seeking a better life somewhere. It explained clearly that the queues do not exist—that is meaningless. It explained the decades and decades that people have to wait, the corruption that exists within the process that they have to go through, often even within the UNHCR process, and just why they feel so hopeless in their lives. Then you start to understand why they get on these boats. You saw sometimes the boats break up, and you expected that people were losing their lives. You felt that you had got to know many of the people that you met in the film—their wishes and their hopes for the rest of their lives and for their children. The end of the film was very moving. It showed photos of those people and, underneath, a description of what had happened to them. With so many of them it was 'drowned', 'missing' or 'settled in Australia'. That was how the film ended, and it was very moving for everybody. I speak of that because they are the people that I am thinking of when I consider this bill. This bill is a betrayal of those people and all people who have a right to seek refuge in this country.

We have heard many speakers. I was disappointed with some of the comments many of the Labor speakers made because they were not acknowledging that this bill is a misuse of international law, that this bill pushes Australia's responsibility under international law onto other countries. This bill is in effect another form of deterrence. I am not denying that many in the Labor government have very humane feelings and are distressed by what is happening, but there clearly is a desire here within the Labor government, in bringing forward and backing this legislation, that the boats will stop. Under this bill, people can be sent to other countries. What we have here is a failed policy. It is a failed policy for refugees and it will be a failed policy in terms of Labor's desire to use this legislation to stop the boats.

I think it is important to reiterate that people seeking refuge have a right to do so. Naturally they will look to Australia. Many people think that is because we are a wealthy country in the region. What goes with that is a huge responsibility, much of it a moral responsibility as well as a legal responsibility. But, from the many talks that I have had with refugees and people who work in this area, I know that people also look to this country because we have such a fine record of welcoming refugees to this country. I just spoke about what happened in the 1970s and 1980s. That is in our memory. It was such a fraught time. The Vietnam War divided this country so deeply, but we came out of that, and people who wanted to take refuge in this country from Vietnam were allowed to do so, and it was done with unity across political parties.

Senator Cameron said that people are crying out for compromise. We have heard that statement made quite often in this debate. What we need to reflect on is: how can you call it compromise when
that Labor is supporting—and may have had a considerable hand in getting off the ground—contradicts the refugee convention? This is not a compromise. A compromise is when you ensure that the outcome you are trying to achieve is to some extent achieved. But we are not getting anything better for refugees here. There is no improvement in the current standards for refugees coming to this country. This bill takes things backwards.

As Australians, we need to recognise that we have responsibilities to accept refugees. The number of those seeking refuge in our country will fluctuate. At times, I think we should be willing to accept many more refugees to this country—when wars break out, when there are natural disasters, when people are being persecuted. Sri Lanka is an example at the moment. The civil war has ended, but so many Tamils are taking to boats, and it is because of the extreme persecution in that country. It is similar with Afghanistan. Why are people doing that? Because of the persecution that is continuing in that country, as well as the war. That is why people are taking to the boats in an attempt to escape. Attempted genocide, wars, natural disasters—these are driving people to come to our country, and these are issues that need to be addressed. I obviously recognise that we have an immediate issue here with the boats, but we cannot divorce what we are facing here from why people make that extraordinary decision to leave their home, to leave their country, to leave their communities, to seek a better life—often just to seek safety in the first instance.

In this debate we often hear terms like 'queue jumpers' and 'risks to the national security of our country'. The term 'border security' is frequently used. We hear talk about people smuggling. I think so much of that language politicises this issue, and again it is a reminder of how far we have moved away from the times of the seventies and eighties, when there truly was a bipartisan position, but a bipartisan position based not on the lowest common denominator in terms of how we treat refugees but on honouring our responsibility under the refugee convention.

I think it is worth also remembering, when people talk about people smuggling, that essentially, across the world, there are informal and formal networks of people moving across borders to seek a better life. That is what is happening. Part of our responsibility is how we respond to that issue, because so often it is a perilous journey that people take.

Australia's responsibilities to refugees, I believe, should also ensure that their journey is not life threatening, and this bill will not save lives. It is an abuse of the refugee convention and therefore of refugees. For all those reasons, it should not be supported.

Senator CROSSIN (Northern Territory) (14:31): I rise this afternoon to provide some input into this debate on the Migration Legislation Amendment (The Bali Process) Bill 2012. I guess when I started in the Senate, quite a number of years ago now, the issue of refugees and their rights, what it meant to them and what it meant to this country probably were not exactly on my radar. I had provided my service to the community through education, and I came to the Senate with a knowledge of rural and regional Australia and Indigenous Territorians, having lived at Yirrkala and then in Darwin.

Through the course of my time in this parliament, I became involved in the Senate's legal and constitutional affairs committees. I was involved in the legislation and references committees in opposition, when the legislation committee was chaired by Marise Payne, and since we have been in
government I have become Chair of the Legal and Constitutional Affairs Legislation Committee and Deputy Chair of the Legal and Constitutional Affairs References Committee. You might say: what has that got to do with today's debate? Well, the legal and constitutional affairs committee deals with all matters to do with immigration and citizenship. That is the committee that deals with every piece of legislation, pretty much, that comes into this parliament that has anything to do with immigration. We have looked at a whole range of issues, particularly in the last four or five years. We have looked at each and every time that the Migration Act has needed to change for the character test. We have looked at the situation in detention centres. We even looked at the Malaysian solution—shall we say—when it was sent to us as a reference. We also sit three times a year at estimates and we question and listen to officials from the Department of Immigration and Citizenship.

Through that process I have come to understand exactly why people get on a boat and what Australia's role is in this, but, even more so, what our role in this is internationally. If you sit and listen to the experts that we hear from at estimates—and I am going to say that they are experts; they are the likes of the secretary of the department, Mr Andrew Metcalfe, who has been in Immigration for many, many years, and the very senior officers that he brings with him to estimates, who deal with this every minute of every day, who know every figure, who know every fact, who know every explanation, who know exactly what is going on around this world—you build up a bank of knowledge about why we have got to the situation that we are in today. It is pretty hard to go through that bank of knowledge in a 20-minute speech, and I caught some glimpses of it yesterday in the House of Representatives, but you build up a bank of knowledge that gets you to understand that life is pretty good in this country—in fact, it is damn good in this country—but life is pretty traumatic for a lot of other people in certain countries around this world.

Life is so bad for some of these people around this world that we could never possibly imagine what some of these people have been through. We heard Senator Ludlam's explanation today about a little boy who gets off a bus and sees his father and brother shot before his very eyes. We say that in 20 words or less and in three seconds or less, but just pause for one minute and think about the lifelong image and feelings that that person then takes with them for the rest of their life. Let us talk about the women who are fleeing from Afghanistan and Iran. Let us talk about the men who are running away because they are so frightened for their lives. It is very hard, I think, as Australians to try and really imagine and have any empathy with these people when we know that we will hardly ever or never be confronted with that situation in this country.

Let us put that in the context of what other countries are experiencing—the flow of refugees into Europe, even into places like the United Kingdom, and into other places around the world. A couple of years ago when I was representing this parliament at the IPU and we were over in France and Italy, they were talking about 38,000, 40,000 and 45,000 people a year trying to flee from their countries and get into those European countries. We are debating today less than 5,000 people. We are having an argument today about whether we will increase that quota to 20,000, in a country as big and brave and bright and beautiful as Australia. Sometimes, when I sit here and I hear some of the arguments, I do not get it. I just do not get it. I have been known to say publicly, on
the record, that I am not in favour of offshore processing one little bit. I actually think we should have a processing centre in Indonesia and I actually think we should take from Indonesia more of the refugees who have found their way to that country. Then I stop and think and wonder whether that would just put pressure on that country, whether more people would just find their way to Indonesia. So that is probably not a solution either. But certainly I was never in favour of the Malaysian agreement, and people know that in the last 12 months many of my colleagues on this side spoke out publicly about that agreement. I do not think it is the ideal thing. I have wanted the safeguards about the UNHCR being involved. I desperately want Malaysia to sign the United Nations convention, as well. I want the assurances about minors that I heard people speak about yesterday.

But the thing that I want more than anything else is to try to assist people in Indonesia who are refugees and are so absolutely desperate that they flee for their lives and the lives of their families and risk their lives by taking that trip on a boat. I am going to go to that for a few minutes. A couple of months back my husband was on the jury in Darwin for one of the crew of those boats and, once the trial was over and the crew were found guilty and convicted, he was able to talk about the case and the situation. Think about the fact that most of the crew get on these boats believing they are going on a fishing trip, or they are conned and told that they are just taking a group of people to another island in their archipelago, and then, hundreds of kilometres out to sea, they are met by another ship which they and all the people are shunted onto without their agreement. Think about the fact that they have limited water or limited supplies on that boat because they think they are going for two days but end up going for many days. Think about the fact that there are people out there who are willing to sell that commodity to people. But there are also people who are so desperate for their own safety and a future that they get on that boat no matter what. I think that is where we lose sight of what we are actually trying to achieve here.

Of course, I represent constituents on Christmas Island. I have gotten to know and really love that community in my 14 years as a senator; but, by God, I have seen that community change over those years. I saw that community change the minute the coalition decided they were going to build the most grotesque establishment in which to put refugees. To me, words still cannot describe the detention centre on Christmas Island. You have just got to go there and look at it, stare at it, and wonder how we could possibly ever have built such a thing in this country. It was to my great sadness that I learnt, once we got to government, that we were going to have to open it and put people in there.

The Christmas Island community is pretty strong and pretty resilient, but they are tested time and time again by people crossing the seas, crossing those waters, desperate for a free life. We all have very vivid recollections of the tragedy on the Christmas before last, when people—it is true; I heard people talk about it yesterday—actually stood on the rocks at the cove on Christmas Island and, before their very eyes, in front of them, saw that boat smash and people lose their lives, when they were literally just an arm's length away. I went up with Warren Snowdon to the memorial service that they had on the island. I have fought very hard for them to get an emergency management officer, who they have now got, and for better equipment on the island, which they have now got. But in the last week we have seen two more boats. In the last week we have seen my ordinary
constituents, people who live a very different life on a day-to-day basis on Christmas Island, having, as emergency services workers, to put on those clothes, get in that ambulance and go down to that wharf to help drag body bags off the boat, help people onto the island and help get into the hospital people who had nearly drowned and lost their lives but who were at least still alive.

Christmas Islanders can stand a lot, but I tell you what: I often wonder at what point those people are at breaking point. We offer them counselling; and they are great community, so they can provide each other with support—plenty of cuddles and cups of tea. But I will never forget the stories that some of those constituents have told me personally about the horrors of that boat smashing on those rocks the Christmas before last. And of course last week the people of Christmas Island had to step up again, and they have had to step up again this week. Tragedy after tragedy is on their doorstep—literally on their doorstep. They see the dreadful outcomes when those Navy vessels come into their port. One thing I want to do today is publicly acknowledge that community: the nurses, the doctors, the ambulance drivers, the people who put together the emergency kits, the radio operators, the people who just make cups of tea for the nurses and police and doctors and psychiatrists while all this is going on, and the administrator Brian Lacy and now the acting administrator Steve Clay who have all had to pull together again.

So where does that leave us as we come to this debate in this chamber again today? As I said, I am not a big fan of the Malaysia agreement. One of the things I have seen though in the last 48 hours is us as a government trying to compromise and find a solution to this. We have worked through the Malaysia agreement as part of the Regional Cooperation Framework, in conjunction with Indonesia and Malaysia. We have always ruled out Nauru, but I think that, with what we are seeing now week after week, with so many people desperate to get on a boat, we need to reach a compromise in this parliament.

For whatever reason, people are conned into throwing away their papers. We hear that time and time again in the Senate Legal and Constitutional Affairs Legislation Committee, which I chair. People are told one story on a boat. They are told, 'It's probably best for you when you get to Australia if you don't have any papers with you. It will be easier.' That is wrong. They are probably told, 'Really, you won't need those papers. You'll get new ones when you get to Australia.' That is wrong. How are they to know the difference? But if you listened to Senator Eric Abetz's contribution this morning, you would think that those people would deliberately throw those papers away. Think about that: why would they do that? If you were trying to come to this country for a better life because you were that desperate to protect yourself and your family, you would want all the evidence in the world you possibly could. I do not believe for one minute they deliberately throw those papers away. They put their trust in the people who are trying to get them here, and that is what they do because they think that is in their best interests. But really what is in their best interests is that they never have to get on that boat at all because they know that there will be no opportunity for them to be here.

I know that the coalition are wedded to temporary protection visas, and I know that if you look through the transcripts of the departmental secretary, Andrew Metcalfe, time and time again you will see that the evidence is very, very clear. Once TPVs were introduced, the number of boats coming to this country actually increased, because a
TPV did not allow family migration and reunion while you had that visa. If people who were seeking refugee status had family in this country, they knew they could not get here by reunion, so they got on those boats. The statistics are there. If you look back through estimates, if you look back at the charts which the department gave us time and time again, you will see that because of the way in which TPVs were handled in this country they did not stop the boats. People did not say, 'Oh, I'm going to get a TPV; therefore I won't get on a boat'. People said: 'My family in Australia has a TPV; I'll never be able to have any family reunion under the migration program, so I'm going to get on a boat to be with them anyway.'

What have we done in a spirit of cooperation? We have said: over the next 12 months let's have a look at that. Let's have an inquiry. Let's do what we are really good at in this place: get all of the evidence from the experts, throw it in front of a select committee or a Senate committee and let's have a really good look at the effect of TPVs and whether they were effective or not. That is a compromise. That is a negotiated outcome. I do not understand why the coalition do not see that we are meeting them halfway here—I would have thought, to reintroduce them.

We do not like the Nauru situation, either, because most people who ended up at Nauru were actually deemed to be genuine refugees and were brought to this country as well. So it really was not a deterrent. It was really a turn to the left for some people for a few months, but they ended up here anyway. But, in the spirit of cooperation and negotiation, we have said we will put that back on the table and we will open Nauru again. And we have said we would increase the quota to 20,000. As with all negotiated outcomes and in all stand-offs—and I have been there many times as a trade union official and I have been there many times when I have had belligerent teenagers who wanted more money out of me when they went to the movies or they wanted that extra hour coming home late at night—there is always a compromise and there is always a middle ground. In the last 24 hours I think we have found that middle ground. We have found the compromise. We will have Nauru as well as Malaysia, we will increase the quota and we will have a look at the effect of TPVs. I really just do not get why you will not support that.

For those of us who are still very wary about this whole situation, there is a 12-month caveat. I wondered last night what else you would want in order to pass this legislation. The only thing I could think of was is this. I say to the coalition: is your attitude 'our way or no way'? Is it my way or the highway? That is just not going to work in this situation. We really do not know if any of those solutions will work. We really do not know that. Every successive government has tried something different. Sometimes the boats come and sometimes they do not. Sometimes the rest of the world is peaceful and we do not have the situations in Iran and Afghanistan, and then suddenly we do. It is there before our very eyes, and we have thousands of people wanting to flee those countries to improve their own situation.

But people get on those boats and it is incredibly dangerous. They lose their lives. I do not stand for one minute the crocodile tears I saw in the chamber yesterday. We are all saddened by what we have seen. I could not have been sadder than when I stood on those cliffs at Christmas Island surrounded by islanders who were still traumatised by what they went through. If you are going to
do something today, do something for my constituents on Christmas Island. Do something for the people who are in the Navy and the customs and border protection departments of this country. Stop that trauma and stop them having to deal with such incredible duress in their working lives.

People have a right to seek refugee status in this world. They have a right to do that. We have signed a piece of paper under the heading of the United Nations to say that we recognise that and we support those people. What we have to do now is make sure that, when seeking asylum and seeking refugee status, they do it in a very safe way—they do not put their lives at risk, they do not put their family at risk and they do not put their future at risk.

I am really saying to the coalition today: have a break sometime this afternoon and re-assess this. Re-assess where you are going. If this is not the solution, then what is? What is the solution? This is a compromise for a 12-month period. Even though I am not going to give it the full tick and I do not give it 10 gold stars, I am at least prepared to say, like Anthony Albanese, that we have got to do something so that people do not put their lives at risk and so they end up getting the safe and secure future that they deserve in this world.

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:51): I rise to follow what was a very good speech by my colleague Senator Crossin. I want to start by discussing the historical context of this debate, not so much because I want to apportion blame but because I think we need to understand why it is this has become in this country such a difficult debate, why it is that positions have become so entrenched and why it is that this parliament has become so diminished by the inability of its members to shift from entrenched positions.

This is a debate which takes place in the shadow of past events, past conflicts, past elections. I was elected during the election which has come to be known as the Tampa election. That was the election I was elected in—something which I have always thought was somewhat sadly ironic. It was an election which, despite the protestations, the verbiage and the verbal sidestepping, was firmly about the politics of immigration, asylum seekers and race. It was an election in which those issues were far more than dog whistle; they became foghorn issues. And no-one who campaigned in that election and saw what was happening in our community as a result of the decisions of the then government and the public statements of the then government would have any doubt about that fact. It was an election which I think was a regrettable milestone in Australian politics.

In my first speech to this place I spoke about the fact that, over our history since white arrival, race had been an uncomfortable topic for us. We were of course a country that, for example, had a bipartisan commitment to a White Australia policy for many years. But after the dismantling of that policy—and I pay tribute to both parties of government for that; both sides of politics had people who worked on that issue—you would have to say when it came to the issues of migration, the issues that tapped into some of that unfortunate undercurrent, there was a sensible centre in Australian politics that sought to moderate the debate and that was made up by people of goodwill in the Labor Party and in the Liberal Party. Let us not forget, the moderates in the Liberal Party were very important over many decades on issues of immigration and race in this country to ensure that what could have been an
incendiary issue at times was not made so. The sensible centre, the voice of moderation: that is what was needed in the past and that is what is needed today. As I said, I think that sensible centre enabled difficult issues to be managed and to be handled in the national interest. It recognised that care needs to be taken by elected representatives, by leaders, to ensure that such issues do not become incendiary in the electorate in the way that we have seen at times in Australia’s history.

Of course, there were notable exceptions to that, and I count probably first amongst those the former Prime Minister Mr Howard, who is known for his comments in 1988 in which he argued for a reduction in Asian immigration, something that those of us who understand discrimination firsthand will never forget. I will never forget that debate and what it meant for me, my family and my community. Mr Howard was the Prime Minister who, when Pauline Hanson said we were in danger of being overrun by Asians, defended her right to speak, not the rights of people whom she was attacking—a failure of leadership that will never be forgotten.

This same Prime Minister and ministers in his government engaged in some of the most brutal politicking in recent times on issues of asylum seekers in the lead-up to the election in 2001. We all know what occurred in relation to the *Tampa* vessel, which has been discussed at length and is now part of the history books and of course was also taken through the courts. A refusal by the government to accept asylum seekers was played out, if I may say so, for maximum political effect. We also know that that was the government responsible for the events which led to what is known as 'kids overboard’—the 'certain maritime incident’—in which ministers asserted that children of asylum seekers had been thrown overboard, a fact that was not correct, a fact that was untrue. Ministers in that government described asylum seekers as queue jumpers. Ministers in that government linked the issue of asylum seeker policy to a pipeline of terrorists. We had a Liberal government who refused to let children out of detention because that would mean the end of mandatory detention, notwithstanding the pleas from the medical community and others to do so.

It is difficult to reconcile those facts and so many others with the newfound compassion for asylum seekers that some in the Liberal Party purport to have. Forgive us for finding that difficult to reconcile. It is difficult to reconcile their newfound desire to ensure that the refugee convention is sacrosanct, when it was never the case when they were in government that this was such an important point of policy and point of principle. It is difficult to reconcile that with their position whereby they say, ‘We will tow boats back to a country that is not a signatory of the refugee convention, but we will not allow you, through an arrangement where both governments are engaged and the UNHCR is engaged, to send people back to Malaysia.’ Those two positions are not consistent. It is not for me to justify that; it is for those opposite. But I think most people—responsible listeners, reasonable listeners, reasonable observers of this debate—would say: how is it possible that you can go from a position where you say ‘we don't like queue jumpers’, where you draw a link to a pipeline of terrorists, where you do not care about the refugee convention, to a position where you would vote against this legislation on the basis that Malaysia is not a signatory? It really beggars belief.

But I did not want to come in here just to talk about who was right and who was wrong, because I think what is more important now is to say: what do we do? One of the consequences of the politicisation of this policy area has been that it has become
nearly impossible to have a sensible policy debate. People have become entrenched in their positions and that has led, as I have said, to gridlock—and this is to the diminution of this parliament. We need a sensible centre to find a practical response. Instead, it is a debate where we see extreme views dominating, preventing the answer being found. It is a highly politicised debate, a highly charged debate, a highly emotional debate, a debate in which it is easy to take a position that is counter to any practical response.

In this context I make reference to my own policy journey on this issue. Others in the Labor Party have spoken about their own journey as well—including my friends Senator Crossin and before her Senator Cameron, Mr Steve Jones in the other place, and others. Many of us in the Labor Party expressed concerns prior to coming to government about offshore processing. For us it was very much linked to the history that I have just described of the Howard government's response and the way politics was so brutally played out then. In the Labor Party in the past many people have expressed their great concern regarding offshore processing, but I would say this: I do not believe it is tenable any longer to argue that push factors alone are responsible, and I do not think it is tenable for us to say that we do not have a responsibility to try and find factors which deter people from getting on boats. That is my position. The loss of life that we are witnessing demands a response.

I want to say something briefly about the position of the Australian Greens. My difficulty with the position of the Australian Greens is that there really is no practical response. The hard, inescapable truth is that words will not prevent anyone getting on a boat. I understand the view of the Greens party on offshore processing and the refugee convention. However, I again say it is easy to come in here and speak about words, speak about a convention, but what we are charged with today is working out what legislative response we can put in place to prevent people getting on boats. Many fine words have been spoken in the last two days in this and the other place. There have been many tears shed. Speaking fine words and showing genuine emotion have their place but as political representatives we are called today to do far more than that—we are called to try and find an answer. The answer, particularly in this debate, can be found only if people are prepared to compromise. This is a debate where the extremes mean there is no common ground and there is no answer.

Let us review briefly why the legislation before the chamber reflects a compromise from the Labor government's position. I commend Mr Oakeshott for bringing this bill forward, because the bill is a genuine attempt to find that common ground and compromise. There have really been three matters at issue between the government and the coalition. They are the Malaysia arrangement, the opening of a detention centre on Nauru and temporary protection visas. The government's position has previously been that we did not wish to proceed with the opening of a detention centre on Nauru because we accepted the advice given that that would not be an effective deterrent. What has the Prime Minister said we would do? She has said that if this legislation is passed we will proceed to do that—we will proceed to open a detention centre on Nauru.

The Labor Party has also had longstanding opposition to temporary protection visas. Senator Crossin went through what the government is proposing in respect of that system—a process to examine it, run by agreed reviewers, independent of government and agreed with the opposition. Terms of reference, as I recall, will also be
agreed with the opposition, and the report will go to both the Leader of the Opposition and the Prime Minister concurrently. As someone who was in opposition for many years prior to becoming a minister in a government, I know that is an offer that would never have been contemplated by the Liberal government. We also wish to proceed with the arrangement with Malaysia because the advice we have is that that will provide a deterrent. So there has been substantial compromise by the government.

In light of that I find it extraordinary that we see coalition senators come into this place saying again and again why it is that they cannot support this compromise. Effectively what they are saying to the chamber, and to the Australian people, is that their way is the only way: 'We are not prepared to do anything other than what we want to do; we are not prepared to work with the government or the crossbenchers in the lower house to support legislation that will deal with this issue; the only legislation we will accept is legislation that reflects our policy.' Had the government taken that position, this bill would not be before the chamber—it would not have passed the lower house. But the government has been prepared to compromise. As I said, regrettably this is a debate that has been dominated by too many extreme views. It has a particularly sad history. When you have a debate dominated by the extremes, where you have people unwilling to compromise, answers fall through the cracks. In this area that has some tragic consequences.

I do not stand in this chamber, and nor do I think any government senator stands in this chamber, saying that this bill is the complete answer. What we collectively face as a nation and as a parliament is an enormously complex policy challenge, an enormously complex policy problem, which is not cured by sound bites or three-word grabs, a policy problem the world is grappling with and that involves millions of people seeking a better life in a different country. I do not stand in this chamber saying that I believe this bill is necessarily the complete answer, but I do know this: it is the only answer before us. It is the only answer that can become law today. It is the only chance for this chamber to put in place a legislative response today which has the capacity to prevent more tragedy. I say to those opposite and to the Australian Greens, we should do all we can to prevent more tragedy.

Senator STEPHENS (New South Wales) (15:08): I have been listening all day to the contributions on the Migration Legislation Amendment (The Bali Process) Bill 2012 from senators on all sides of politics. It seems to me there is fundamental agreement that there has to be some way through, some way to break this impasse. For me, without reflecting on the position of any individual person or on the concerns they have raised—I believe the issues raised have been heartfelt—it now comes down to a public policy issue. I know that probably sounds a bit corny. But, when you think about where we are, the issue of asylum seeker policy in Australia and the fate of boat people seeking refuge is what, in public policy terms, would be called a ‘wicked problem’.

A wicked problem is a complex policy issue which goes beyond the capacity of any one organisation, individual or group to resolve, understand or respond to. A wicked problem is one that is very difficult to define because it has many factors, multiple causes and a lot of interdependent issues. The issues in a wicked problem are very unstable and unpredictable, as we have seen in this case. Since the debate started yesterday, yet another boat has appeared on the horizon—another issue for us to factor into our considerations. A wicked problem is one that
is socially and politically—and, in this case, internationally—complex. A wicked problem is one the responsibility for which cannot be sheeted home to just one individual, one organisation or, in this situation, one nation. Wicked problems are often characterised by chronic policy failure and that is certainly the case with what we are being confronted with here.

Importantly, wicked policy problems are often immune to being resolved by appealing to the facts, because disagreement about the facts is merely a ruse to mask the underlying politics of the issues. I think that very fairly describes what this debate has been reduced to. It is a hugely concerning issue. When an issue is simplified into competing stories, as we have seen in this debate, and each story is used to propose a different policy solution, the truth is that none of the stories are completely wrong—but none of the stories are completely right either. Each story focuses on some partial aspect of the debate. That is what we are confronted with today. No individual and no party can take the moral high ground here—frankly, there is no moral high ground to take.

The Oakeshott bill we have in front of us is a genuine effort to resolve the political impasse, to address this wicked problem. If we do not conclude this and allow government agencies to move on a regional solution, we will remain with a political impasse that is about the life and death of hundreds of men, women and children. These are people deserving of the same dignity and respect every person deserves and they are the same people whom every speaker today and yesterday has expressed concern about. For me, that is the wickedness of this problem.

Australians are worried. They watched the debate unfold yesterday and they are watching us today. As is everyone else in this chamber, I am getting hundreds of calls and emails in my office at the moment. People are saying: ‘For goodness sake, do what you are elected to do and fix this now. Take some decisive action. Stop playing petty politics with people's lives and do the right thing.’ Every one of us is getting those messages all day, every day—in our inboxes, over the telephone, in our electorate offices and here at Parliament House. This morning, among the many we have been receiving, all New South Wales senators got this email, one which captures what so many of us are concerned about:

Dear Senator
I know this morning you will be discussing and hopefully voting on the Oakeshott bill regarding the safety and arrival of asylum seekers by boat. As a voter in NSW I wanted to let you know that I want you to vote for the bill and pass it. I don't believe the bill contains all the answers to this important issue, and I do have concerns about some aspects of it. But not voting for it will allow the status quo to continue, that is two boats sinking and more than 100 people dying in the last week. I know you will consider all the information, and will do some soul searching. Please, as senators, work together, put aside party politics, and DO SOMETHING! Pass this bill, and review its effectiveness in a year.
Again, as a NSW voter, I WANT YOU TO PASS THIS BILL.

I have to say that, like many of my colleagues, I wish we could resolve this complex, wicked problem through onshore processing. I accept that few in this parliament support that view, but it does not stop me arguing for it and, even though I advocate an onshore solution, I am supporting this bill simply because it allows the executive government to take decisive action. I am reminded in all this of the observation that all it takes for evil to win is for good, decent folk to do nothing. I believe I am surrounded by good, decent folk in this place and it makes me ashamed, on behalf of
Australians, that the parliament has been reduced to inaction, that partisan politics has created this paralysis, because I believe the nation deserves better—in fact, humanity deserves better.

What we are confronted with today is the statistics we have heard throughout the debate. Minister Carr spoke in the chamber about the UNHCR's global trends. They go to the heart of the enormity of the problem which is being confronted globally. He spoke about his pride and I share his pride that Australia is a generous nation—we are proud of our nation's record of resettling people who are seeking refuge from persecution and strife; that we have a long history in this country of doing it well; and, that we are acknowledged around the world for being generous about these issues. As he said, we rank in the top three resettlement countries world wide.

Our nation has been built on refuge and asylum from the earliest days. From the first colonial settlement, that is what Australia has been built on. We have always said as a government that the asylum seeker case load would change according to the factors in asylum seekers' home countries. So when I talked earlier about a wicked problem I was trying to say that there is no black and white here, that the asylum seeker debate shifts constantly depending upon the failed states around the globe, persecuted minorities and the outcome of the Arab spring. The issue is not fixed; it is a transient, complex issue. It is not one we can contain, it is not one we can manage; it is a challenge that we have as a nation to do the right thing by people who are seeking asylum and to manage the expectations Australians have that we will do our best to deter people smuggling and people risking their lives in these boats.

When we had this debate last year about the High Court decision and the report of the Legal and Constitutional Affairs References Committee about Australia's agreement with Malaysia in relation to asylum seekers, quite a bit of information was put into the public domain for the first time about the potential number of people who have drowned taking this perilous journey on the boats we do not even know about, the ones that disappear off the radar, the ones that initial intelligence tells us are planning to leave Sri Lanka, Malaysia and Indonesia and head for Australia. The biggest conundrum we have, I think, is to understand that we do not even know how many people have drowned. They are lost to their own countries and they are lost to us and nobody can even register the fact that they no longer exist. What an extraordinary responsibility that should bring to all of us.

I ask all of my colleagues in this place to say: 'This impasse has to be broken. We have to do something.' The proposition before us in the Oakeshott bill is a very genuine attempt to resolve this issue, to give it our best shot, to come to the way in which we can remain committed to the Malaysia agreement, which everybody says is the best way to break the people-smuggling trade and to take away the avenue that allows desperate asylum seekers to embark on that horrible journey. At the time the minister dealt with the Malaysian government, he satisfied himself about many of the issues which have been raised here today—the way in which we can work so closely with the UNHCR, how he takes seriously his responsibility as the guardian of minors who are part of this process. These are all hugely humane issues which have been taken into account.

For me, the biggest disappointment is the partisan political nature of the way in which the debate has sunk into hyperbole and
hypocrisy. Partisan politics forget the fact that we are talking about real people, real lives, families who have dreams, hopes and aspirations. We cannot just remain the privileged ones who are allowed to follow our dreams, our hopes and our aspirations. The Australian people expect us to step up to the mark, to make sure that there are orderly arrangements, to provide a framework that allows the best humanitarian considerations to be brought into play under a regional cooperation agreement, to effectively find a way to get rid of the people smugglers' product—this trade in human misery; that is what they are doing. We have a responsibility to do what we can to stop that trade. We have a responsibility to step up to the mark with regard to taking genuine refugees and asylum seekers, so our consideration of increasing the number of refugee places in Australia is a really important concession.

We have been discussing Nauru. Ten thousand people live in Nauru, with barely enough water or food to feed themselves, and no economic opportunity—yet we have now agreed, as part of this compromise, to reopen Nauru as a processing centre. And we all know what happened when Nauru was previously used as a processing centre, don't we? Almost all of the people who were placed in Nauru eventually came to Australia anyway. So Nauru will be used as a processing and transfer base. This is at the same time that we are trying to put into place protections under the agreement that will allow people to be treated with some dignity and respect, and allow us to step up to the mark in terms of our human rights considerations. It will allow us to think about the challenging issues of education, health care and employment, and about how we, now suffering a skills shortage, can start to work with countries to build some economic capacity in a population that may one day go back.

We cannot just leave the parliament today, whatever time we get out, without having resolved this, without having broken this impasse, without giving the executive government—and it would not matter which colour it was—which has responsibility for dealing with these issues, the authority and the opportunity to work with our regional partners. In the Bali process, we had the opportunity—and the Prime Minister is meeting with the Indonesian Prime Minister and President next week—to say, 'We're looking for a regional cooperation agreement that is in all of our interests.' If we do not do that today, well, shame on all of us, because we will have let down the people of Australia who elected us to come in here and be decent legislators. If we cannot do that, then, really, it is a pox on all our houses.

It is distressing to me that, on a matter of principle like this, there is no absolute, right answer and no absolute, perfect solution. We all have to compromise. We all have to come to a position where we commit to working in the national interest and in the interests of these wretched, desperate asylum seekers, and work our damnedest to break this horrible trade that is peddling human misery. As I said, it takes good, decent folk to do something, and I am asking all of you as good, decent folk to support this bill.

Senator Abetz: Mr Deputy President, on a point of order, if I may: the coalition has been faultless in its cooperation with the government to facilitate this bill. I was wondering if the minister might be able to advise us why we now have nine government speakers on the speakers list that were not there this morning. We had pulled people from the list to facilitate the government, and we would just like an explanation, because otherwise I can indicate that the coalition
will insert speaker for speaker. We will not forgo speaking positions so that the government can filibuster on the basis of doing a deal somewhere behind the scenes. I know that happens from time to time, but there are other bills that need consideration.

The DEPUTY PRESIDENT: Senator Abetz, I will take that as seeking leave to make a comment, which you have done—

Senator Abetz: Which is fair enough.

The DEPUTY PRESIDENT: rather than as a point of order.

Senator Abetz: So we're not going to get a response?

Senator FURNER (Queensland) (15:27): I also rise to speak in the second reading debate on the Migration Legislation Amendment (The Bali Process) Bill 2012. I guarantee to Senator Abetz on behalf of the government that we are not filibustering on this particular bill. There are people on this side in government who are genuine about seeing this bill passed. Some of us over here have a strong appreciation and involvement in this particular area and as a member of the Legal and Constitutional Affairs Committee I consider it my right to have the opportunity to speak on this particular bill.

Today is an opportunity for all of us to put an end to the unnecessary loss of life we have seen, and not just this past week. There is a history of loss of life on our seas, for more than a decade now. I can cast my mind back to the seventies, when many Vietnamese people were coming down the coast of my home state of Queensland trying to escape the oppression and difficulties in their homeland. The number of lives lost then was around the same that we are seeing at present in terms of the capsizing and loss of boats on our shores.

As I said, this is an opportunity to stop people making the decision to risk their lives by getting into a boat in the hopes of being settled in Australia. I know that it is a very attractive destination. A lot of my migrant friends tell me quite often how proud they are, how lucky they feel, to be in this country. It is easy to understand why people wish to travel to this country to escape the oppression, conflict or other terrible situation in their homeland. This is a real opportunity to break the people-smuggling model, by showing there is no point in their risking the lives of others. When I say risking the lives of others, I am referring directly to our men and women in the Australian Defence Force and to our men and women in the Customs service and other agencies who deal with these poor refugees who arrive on our shores as a result of those filthy people smugglers. People smugglers are in it only for the sake of a dishonest dollar and have no regard for the lives and future of the refugees they pour into those disgraceful sinking boats. We believe that this bill is the right way to move forward. We call on those opposite and on the Greens to compromise, as we have, and join us. We have put in an effective border protection policy and we know that it will work. All it needs is a commitment, some compassion and willingness and no more bloody mindedness or belligerence from those opposite. They should come forward today and do something about this terrible situation we face.

Without the support of the other parties we will leave this place with no solution to an issue that will escalate over the winter break and with no deterrent to the people smugglers, who have no respect for human life, only for the money that desperate people in search of a better life pay them to be taken across dangerous seas. How many more lives will be lost before an effective policy is implemented by this parliament?

I referred earlier to the tragedies involving loss of life among those escaping South
Vietnam in the 1970s. Let us look more recently, say, at the last decade. In 2011, SIEV20 sank with the loss of 353 men, women and children, in 2001 a couple of elderly asylum seekers died when their boat sank near Ashmore Reef and in 2009, an explosion on board SIEV36 resulted in five men dying, several asylum seekers suffering serious burns and several Australian personnel receiving serious injuries and narrowly avoiding death. I will get back to the issue of the effect on our brave men and women in the Australian Defence Force later. Also in 2009, 12 Sri Lankans died in the Indian Ocean when their boat sank. In 2010, north of Cocos Islands in the Indian Ocean, five men died when they left their stricken vessel. I do not think anyone will ever forget the terrible scene on our television screens in December 2010 when SIEV221 was crashing onto rocks on Christmas Island, killing 30 men, women and children along with a possible 20 more. More recently, just in the last week or so, on 21 June, up to 90 people lost their lives in a capsized boat, followed by around four losses just the other day.

During the estimates hearings, we on the Senate Legal and Constitutional Affairs Legislation Committee hear quite often about the experiences the Department of Immigration and Citizenship has when dealing with issues associated with refugees and border protection. In fact, the department has indicated at estimates that up to possibly 1,000 people have lost their lives in our waters—1,000 people, don't those opposite think it is time we acted on this issue?

Earlier today, we heard from the Minister for Foreign Affairs, Senator Bob Carr, speaking on this bill. He hit the nail on the head when he said that people tend to focus regionally on this issue, but this is a global matter that is affecting many countries. In fact, around 43 million people around the globe are displaced, more than a quarter of whom are refugees. He said there are two million Afghan refugees in Pakistan and one million in Iraq and there are refugees from Sri Lanka, Syria and Iraq. We are not the only nation in the world that is dealing with asylum seekers. We need to remember that we have a duty of care to assist these people who are seeking asylum and to ensure that no more lives are lost.

The opposition say that they do not support our Malaysian policy because Malaysia is not a signatory to the UN convention on refugees. However, when they were in government Nauru was not a signatory to the convention. At the last election, when they used it as their policy, it was still not a signatory to the convention. Mr Abbott is happy to turn the boats back to Indonesia, but it is not a signatory to the convention. That has implications for our relationship with Indonesia. We have built up a healthy and cohesive working relationship with that country and its government. Suggesting that we can turn boats back or turn them around will cause all sorts of diplomatic problems for the relationship we have with Indonesia.

In fact, the countries from which many asylum seekers are fleeing are signatories to the UN convention, including Iran, Afghanistan, Somalia and Sudan, just to name a few—there are a lot more. This proves that protection is not always available from a country that is a signatory to the UN refugee convention. It is a flawed argument that those opposite make on this issue.

I will reflect on evidence that has been provided through estimates, because it is relevant to this debate. One example comes from Mr Andrew Metcalfe, the Secretary of the Department of Immigration and Citizenship, who told us in February this
year that an offshore-processing solution would deter the boats. He said:

It is not just my view but also the department's and other experts' clear view that that would have had a very high chance of success and would have made a very substantial difference to the number of boat people coming to Australia and the number of people dying as a result.

He later indicated to the committee:

It is inevitable that we will continue to see boat arrivals, and we have factored that into the forward estimates for that very reason. Sadly, given the history of the last 10 years, we have seen hundreds of people drown, and there is no reason to believe that the people smugglers are not going to put people in that position. The danger of the voyage is inherently risky. The seas can be very deceptive. The seas near Java can appear calm, and further out into the Indian Ocean towards Christmas Island it can be very dangerous, as we saw with SIEV221 that crashed at Christmas Island. Sadly, I suspect that if we continue to see arrivals we will continue to see people drowning.

That is coming from the longstanding Secretary of the Department of Immigration and Citizenship, Mr Andrew Metcalfe. He has now resigned his position. I understand that he is having a bit of break.

Once again concentrating on estimates, on 22 May this year, Ms Vicki Parker from DIAC told us that the Malaysia solution was the safer option to towing boats back to Indonesia. She said:

In terms of the comparison between tow-backs to Indonesia and the arrangement with Malaysia, I guess they are similar except that one is a virtual tow-back in terms of Malaysia in that it is returned by air—or not necessarily returned, because the people may not have come through Malaysia. But it is using a safe means of taking people back.

The government relies upon the evidence and views of its departments to deal with particular issues. Here is another example of a department giving competent advice on how to deal with people smugglers and boat arrivals.

Also during estimates, we heard from the Chief of Navy, Vice Admiral Ray Griggs, who has been involved in towing boats back. He told the Foreign Affairs Defence and Trade Legislation Committee on 19 October 2011 that in his experience:

There are risks involved in this whole endeavour. As I said, there were incidents during these activities, as there have been incidents subsequently, which have been risky. There have been fires lit, there have been attempts tostorm the engine compartment of these boats, there have been people jumping in the water and that sort of thing. Again, I am going back to 2001.

Not only does turning boats back put the asylum seekers' lives on the line but also those of our defence personnel. Vice Admiral Griggs told the committee this happens when the boats are set on fire. I can relate to that.

As Chair of the Defence Subcommittee, I take an active role in defence engagements in our sphere. I think it was in 2009 when I took the opportunity to go on the Australian Defence Parliamentary Program on Operation Resolute in Darwin. It was an amazing opportunity. On this occasion, two Liberal members of the House of Representatives also participated in that particular experience. Unfortunately, there were no Liberal or coalition senators. I was the only senator from the government on that trip. It gave me an opportunity to see what the men and women do up there, in Darwin, during Operation Resolute, in dealing with people smuggling, boat arrivals and border protection.

There is a three-partisan commitment of the Navy, the Air Force and the Army to deal with this issue. They have been dealing with it for many, many years now, and they do an excellent job. We were fortunate enough to go out on one of the Armidale class ships to
see firsthand a training exercise on how they deal with an illegal fishing boat. They had an old SIEV, which they had captured. They use it for this exercise. They came up alongside it and went through a number of procedures, such as instructing it to pull aside, stop their motors and so on. Naturally, the exercise shows you what can happen in circumstances where those on the boat could set it on fire or start putting sharp objects out the side of the boat and making it difficult for the boarding party to arrive on the boat to take control.

These were live examples in the training exercise that we were fortunate to experience during Operation Resolute. But what struck me as odd was this: you do not have to be a rocket scientist to work out what could happen in an engagement on an unsafe part of the waters, miles out from the harbour of Darwin where you cannot see land, and one of the opposition Liberal members asked the captain or one of the senior crew what would happen if they reached a situation where they decided to tow the boat back to its place of departure. I thought to myself: naturally, you are going to see what we just saw; people are going to be setting fire to the boat; they are going to be wrecking the engines and so on. They were the exact words that the senior naval personnel spoke to the Liberal member for my seat of Dickson, Mr Peter Dutton. People who are on the ground, doing this job day in day out, know that tow-backs will have no advantage. It will put their lives at risk. I have just informed the Senate that Vice Admiral Griggs indicated that that is an issue in itself. So we do not want a situation where we are going to put our men and women at risk as a result of tow-backs—but that is certainly the policy of the opposition. It will not work, it has not worked and it certainly will not work in the future.

Also during the recent estimates, the Acting Secretary of the Department of Immigration and Citizenship, Mr Martin Bowles, told us in the Legal and Constitutional Affairs Legislation Committee that boats are sabotaged so that they are unable to return to Indonesia. He said:

We have seen a range of boats that are disabled, which makes it exceptionally difficult in a practical sense to turn them around. It is still happening—we get a lot of calls from boats in distress ...

He continued:

An observation I have made since I have been around is that there are a lot of boats that appear to be disabled for one reason or another. I cannot speculate really on whether it is happenstance or deliberate, but there are a lot of them.

He also told the committee that he believed cooperation was the key to effective policy. He said:

Based on what I have seen to date, I believe the solution lies within a regional context.

He also noted a decline in irregular maritime arrivals after the government released its proposed Malaysian solution. So, there you have it once again: the experience of a senior person who is involved in this particular area indicating that as a result of our release, just last year, of a policy that will work, he experienced a decline in attempted arrivals onto our shores. In noting a decline in irregular maritime arrivals after we released that policy he said:

What I said yesterday in relation to Malaysia, particularly in relation to what the flow of irregular maritime arrivals in Australia has been like, was: with the announcement of the Malaysia arrangement, we saw quite a significant drop in the number of arrivals for a period of time. The High Court intervened in that process, and then there was a protracted period of discussion around: is it possible to get legislation through and things like that?

I am not going to go into that particular space but as soon as it was quite clear that the legislation would not proceed we saw quite a significant jump in activity in November and December of last year.
You can see there is a need to ensure we get this policy right so that it will deter the people smugglers and the boat arrivals onto our shores.

On the issue of what we as a government have been doing with respect to border protection, we have committed to an increase of more than $2 billion over the last three budgets to bolster the Australian border security regime. We have enforced the law. We have disrupted potential maritime ventures involving more than 7,400 potential irregular immigrants and there have been more than 280 arrests offshore. We have also detected and intercepted more than 99 per cent of boat arrivals before they reach the mainland. That compares with 90 per cent when the Liberals were in government.

The key message we need to make today in reaching an outcome is that there needs to be a compromise. No longer can we be belligerent or bloody minded, and incessantly say 'no'. We need to come to this chamber and compromise. It is for the opposition to ensure that they consider a compromise and reach a suitable outcome to ensure that people are deterred from reaching our shores—(Time expired)

Senator HUMPHRIES (Australian Capital Territory) (15:47): Today, the highest duty facing the parliament is to end the iniquitous trade that has led to the deaths of so many people, to end the business of people smuggling and to end the attraction that so many desperate people find to climb aboard unseaworthy vessels and attempt the journey from Indonesia, or other countries, to Australia. On that I think the parliament would be united.

But what we are not faced with today is a single immutable choice, which we either accept or reject, as to how to actually do that. The government has consistently characterised this debate today as being about their solution or no solution. But there are other alternatives to that.

Senator Wong: How can you as a moderate stand in here and make that contribution. It is a disgrace.

Senator Cash: What about the Left of your party? They have completely compromised themselves on this.

Senator Wong interjecting—

The DEPUTY PRESIDENT: Order! Senator Wong, your speakers have been listened to in complete silence. Senator Cash, I also ask you not to interject. Can the debate continue in the tone that it has been running so far: without interjection.

Senator HUMPHRIES: I stand by the comment that it is utterly inappropriate to accept a solution from this government. This government has demonstrated so many times over the last four years that it cannot get this issue right, that it fails again and again to work out what is going on and diagnose the problem and identify a solution. We are absolutely right in rejecting the one black-letter solution this government offers us, which is to send asylum seekers to Malaysia and nowhere else, because Malaysia is not the option. Indeed, of all the options available to the government Malaysia is absolutely the worst.

We need to be aware that there are amendments before the chamber today. There are amendments from the Australian Greens and from the coalition. Presumably, if either set of those amendments were to be successful, this legislation would pass the parliament this afternoon and become the law of Australia. I assume the Greens have put forward their amendments in the hope that they would be passed, and that would make the bill palatable to them. It has not been entirely clear from what they have said in the chamber—I am looking for some kind
of acknowledgement, but I am not seeing it at the moment.

Senator Ludlam interjecting—

Senator HUMPHRIES: We will find out from Senator Ludlam in a minute what their position is, but I assume they are putting forward amendments in good faith to amend a bill to make it acceptable to the Greens. It would be very irregular to move an amendment to a bill that you do not intend to support, irrespective of whether or not the amendment gets up.

For our part we have moved amendments that we stand behind. If these amendments were passed and incorporated into the legislation it would allow this bill to pass this afternoon and become law. So, we are not faced with the government solution or no solution. We are faced with the government's solution or an amended government bill that makes this legislation consistent with the human rights standards on which Australia has operated for so long with respect to the treatment of refugees. Although there are three amendments on the page, effectively they are one amendment. The amendment says that in designating a country to be an offshore assessment country that country should be determined by reference only to the fact that the country is a party to the refugees convention or the refugees protocol. That is the only thing that we are asking the government to accept in order to make this bill passable by the parliament today. The other place is still sitting. We could easily send an amended bill to the other place. It would pass and the thing would become law. There is nothing else stopping this from becoming law except the government's unwillingness—to quote the word used so often in the chamber this afternoon—to compromise. Compromise works two ways. We are prepared to compromise. You say that you brought a compromise to the parliament, but you have not bothered to work this compromise through with either the coalition, the largest group of parties in the parliament—

Senator Wong: You will regret this. You will look back on this and regret this.

Senator HUMPHRIES: Deputy President, I have sat through a large number of contributions to this debate today. I have not once interjected on any speaker, although I have been mightily tempted to do so. I ask your protection against the intervention of this minister.

The DEPUTY PRESIDENT: Order! I ask for order on both sides. I will make two comments. Firstly, senators should direct their remarks to the chair, not across the chamber. Secondly, interjections are disorderly and they are not assisting the debate. The tone of the debate has been fine up and until now and it would be nice to continue in that manner. Senator Humphries, you have the call. Please direct your remarks to the chair.

Senator HUMPHRIES: The coalition prefer the option of processing asylum seekers on Nauru. We believe that that is an obvious and logical thing to do because there are already facilities, built at Australian taxpayer expense, on Nauru. The government of Nauru is keen for Australia to reopen its facilities there. There are no human rights concerns about operating the facilities on Nauru, firstly, because Nauru has now signed the refugee convention and, secondly, because, even if it had not, Australia would operate the facilities on the island, as it did between 2001 and 2007. There is no question that we can supervise and ensure the maintenance of the human rights of those who are processed on Nauru. We have said that we prefer Nauru. But the effect of the opposition's amendment is not to mandate Nauru. This is not the opposition
saying, 'You must process asylum seekers on
Nauru,' and the government saying, 'You
must process asylum seekers in Malaysia.'

Senator Wong: We have agreed to
Nauru.

Senator HUMPHRIES: You are saying
that if this legislation passes—

The DEPUTY PRESIDENT: Order!
Please address your remarks to the chair,
Senator Humphries. Order, Senator Wong.

Senator Wong: Tell the truth.

Senator HUMPHRIES: I am telling the
truth.

Senator Wong: We have agreed to do
Nauru.

Senator HUMPHRIES: You have
agreed to allow a future government to do
Nauru. You are not going to do Nauru, Senator Wong.

The DEPUTY PRESIDENT: Senator
Humphries, your comments should be made
to the chair, not across the chamber. That
does not assist the debate.

Senator HUMPHRIES: If the
government's legislation is passed, they will
process all of the refugees who come into
Australian waters in Malaysia, in a country
which canes people for being refugees and
nothing else. In the five years between 2005
and 2010, it has caned almost 30,000
unlawful entrants to Malaysia. Malaysia has
laws built into its system of justice which
allow the corporal punishment of people,
including children, for committing any of a
range of minor offences. Children may be
whipped, not more than 10 strokes a light
cane, I am pleased to say, but they may
under the law of Malaysia be whipped for
committing certain offences if they are
refugees. I am not going to use my vote on
the floor of the Senate today to perpetrate
that kind of injustice. I want better solutions
for those to whom Australia has a duty of
care. It is a pity that the Labor Party is not
prepared to make the same kind of—

Senator Wong: Did you even read the
offer?

Senator HUMPHRIES: You can speak
later if you want, Senator Wong. Give me
my chance to say something. The opposition
is prepared to accept the processing of
refugees in any country that has signed the
refugee convention. And there are 148 of
them, with quite a few in this region. Any
one of those countries with which Australia
might negotiate an arrangement could be an
acceptable place to send refugees. The
government proposes, if it passes its
legislation today, to process them in only one
place: in Malaysia, which has an appalling
record with respect to the treatment of
refugees. That is consistent with my
conscience. I am very surprised indeed that
there are some senators who have previously
said that they were not prepared to accept
Malaysia who have stood in this place today
and said that they find that within their
contemplation.

The other extraordinary thing about this
government's plans are how untested they are
and how shaky they are as a realistic
proposition for dealing with the processing
of refugees. There is great opposition within
Australia, rightfully, to the Malaysian deal.
But it may surprise some senators on the
other side of the chamber to learn that there
is also opposition to this arrangement within
Malaysia. Only earlier this week, a senior
representative of the People's Justice Party—
the party headed by Anwar Ibrahim that in
nine months will be contesting elections in
Malaysia and which has, I am told, a very
good chance of forming the next government
of Malaysia—said this:

The Malaysia-Australia refugees exchange
agreement is not acceptable to the Malaysian
public. Asylum-seekers deserve to be treated with
dignity, and cannot be sent to and held in places
against their will. The opposition coalition, consisting of the People's Justice Party, Islamic Party and Democratic Action Party, will continue to object to the scheme. The Australian government's insistence on pursuing this plan will not help to build a friendly relationship with the Malaysian people.

He finished by saying:

The scheme is inhumane.

This is Malaysia; this is a Malaysian politician; this is one of the leaders of the party most likely to form a government after the next election telling us that they do not think that the Malaysian solution is a good idea. And yet the Australian government purports to tell us that it is a great idea: 'Let's send them to Malaysia.' I don't think this government has thought through this situation, because it is looking for a political solution, not a solution which is consistent with our obligations to those people to whom we owe a duty.

So many myths have been perpetrated in the course of this debate this afternoon, by the Australian Labor Party in particular. They persist with this ridiculous argument that Nauru did not work when we were in government, and they define that to mean that most people who were sent to Nauru ended up in Australia anyway. First of all, that is factually incorrect. The majority of people who were diverted under the Pacific solution of the Howard government to Nauru did not end up in Australia. Only 43 per cent of people ended up being resettled, with humanitarian visas, in Australia. And it was that fact which was crucial in breaking the business model of the people smugglers—because, if you had a product you were trying to sell which had less than a 50 per cent success rate, why would you, as a refugee, no matter how desperate, want to buy it? Why would you want to put US$10,000 into a people smuggler's hands if you had less than a 50 per cent chance of getting to Australia? That fact, and the other steps that the Howard government took to end the trade of the people smugglers, did work—it did result in the trade being virtually stamped out. As many people arrived in the last six years of the Howard government's application of that solution as have been arriving every month in the last couple of years under the solution employed by the Rudd and now Gillard governments. Of course it worked: because it stopped the boats; it actually did stop the boats.

As Senator Brandis pointed out earlier today, when you stop the boats, you stop the deaths at sea. There have been at least 550 deaths at sea that we know about—of course, we will not always know about a death at sea; people don't advertise the fact that they are leaving Indonesian waters and heading for Australia, but we know fairly reliably of at least 550 souls who have perished in the sea between here and Indonesia. That did not happen during the Pacific solution, because people did not come on boats; there were virtually no arrivals in boats, and that is what saved people's lives. People had objections to that solution. People did not like aspects of that solution, because it left people in legal limbo for a relatively long period of time—and I accept that as a criticism you can make about the solution—but, demonstrably, it also saved lives. It ended the business model of the people smugglers; it was worth doing then and it is worth doing again now.

Senator Furner was among others who made the claim that we did not have a country to which we sent asylum seekers during that period under the Howard government which were parties to the UN Convention relating to the Status of Refugees. Nauru was not, at that stage, a signatory. That is true: it was not a signatory to the UN convention on refugees. But our concern was to make sure that we discharged our obligations to international treaties and
so forth with respect to the treatment of refugees, so we ensured that those obligations were met by actually seeing that Australia supervised the provision of services to people on Nauru. We knew that they were being properly treated, because we actually had Australians providing the services. If we send people to Malaysia, we cannot have that same guarantee, when Malaysia as a nation refuses to sign the UN convention. We operated the facilities, we knew what was happening to the refugees; it was an acceptable way of being able to ensure that their rights were being upheld. The proof of that fact is that, when the High Court brought down its decision in October last year, striking down this government's ridiculous Malaysian solution because it was in breach of Australia's human rights obligations, it did not find that a Nauru solution, or a model like it, would fall down, because there were other ways of ensuring Australia met its obligations. That is the crucial point.

As I said, we are not insistent that processing be in any one country. We accept that there are many alternatives and we invite this government to explore those alternatives if it wants to. At one stage, it in fact told us that it was exploring those alternatives. It told us it was looking at reopening the facility on Manus Island, in Papua New Guinea. What happened to that proposition? It appears to have lost interest in it. In fact, it talked about a 'regional solution' at one stage—that there be a regional solution to the problem of asylum seekers. What is regional about the solution that the government now has two years later? At best it is a bilateral solution with one country: Malaysia, and that one country becomes the receptacle for Australia's diverted asylum-seeker intake. And of course it is a very costly proposition to Australia because, for every 800 refugees that we divert to Malaysia, we have to accept 4,000 coming here. If that is the currency the government wants to work with—800 to Malaysia; 4,000 to Australia—what will that do given that, in the period since this solution was announced, some 8,000 people have come to Australia by sea? Does that mean that we would need to accept from Malaysia some 40,000 people as our trade-off with this notorious and ridiculous people swap? I don't think so.

Let me conclude as I started, by saying that we are not faced with Hobson's choice here. The ALP have characterised this as their way or the highway, that there is only one solution to this problem—and it is to accept the legislation that is before us today. This legislation could be changed in a very small way by probably 50 words being added to the legislation, or substituted. These 50 words broaden the range of opportunities for the government to process asylum seekers but ensure that we do not breach our obligations to the human rights of those people who come within our obligation of care by ensuring that we do not send refugees to countries that have not signed the refugee convention. That is the fair and decent thing to do. That is a solution that stands right in front of us today. It is only a vote away from being implemented. I urge this government to cut the rhetoric of 'We're the ones who are going to compromise; why don't you?' and accept that you could make a very big step. You could compromise very clearly by simply voting for the amendments moved by Senator Abetz, ending this farce and ending, most importantly, this iniquitous trade in people run by the people smugglers.

Senator LUDLAM (Western Australia) (16:08): I rise to add some comments to this debate on the Migration Legislation Amendment (The Bali Process) Bill 2012. It has been interesting, having spent most of the day in here, that despite the fact that this parliament is bitterly divided on this issue,
there is a striking degree of agreement across the chamber about what we are seeking to prevent. What we are seeking to prevent most immediately, after the few days we have had, are deaths at sea—people undertaking these voyages and finding themselves in unseaworthy vessels in heavy waters and drowning on their way to what they hoped would be a better life in Australia. Although there has been a certain amount of back and forth across the chamber this afternoon, it has been a remarkably respectful debate, given how strong feelings run on this issue.

My office has been getting, as I am sure all senators have, a lot of correspondence and phone calls urging us to compromise—urging us to just do something, to just make this stop—and pass legislation that will prevent these things that appear to us as images on television screens. They appear to our search and rescue crews as human beings struggling to stay afloat, and they appear to the people most concerned as life-or-death situations on the high seas. The tone of some of the correspondence we are getting—and Senator Humphries hinted at this in his contribution—is: what use is the Universal Declaration of Human Rights if you are drowning, and it is pitch black, and you have no hope of reaching shore?

Believe me, if this bill we are debating would prevent those deaths, we would all be on the other side of the chamber. But we will be voting against this bill when it comes up, for the simple reason that we do not have any confidence that it will prevent these horrific scenes we have been witnessing over the last few weeks. I think we are being presented, in essence, with a false choice: 'Just do something; do anything that will work.' Of course we would, if it worked. Compromise is the essence of politics. It has been proposed that politics is in fact the art of compromise, the art of getting the best out of a situation. If we thought a life would be saved or a boat could be prevented from foundering, then of course we would be voting for the bill and then making the best of it from there.

I wonder whether senators have visited the memorial out at Yarralumla. It is a remarkably moving place. I only visited it for the first time a year or so ago, and it took a while for us to get what it was telling us. It was put there, as I am sure all senators are aware, as a memorial to the tragedy of the SIEVX, the suspected illegal entry vessel. It is a tragedy that our country remembers pretty well, and I think it is also a sombre reminder of just how long and how divisive these debates have been in this country. It is quite an experience. You walk through a long line of white poles that wind through the grass. It is a very quiet place down by the lake. Most of the poles have a little dedication on them, a name of a person. But a large number of them do not have names, because we do not know exactly who they were. There is a sign that tells you exactly what the memorial is. About three-quarters of the way down, the path of poles branches out in the shape of a vessel and then you realise, with horror, that this is the vessel that this huge number of people were crammed onto when it came apart at sea.

The memorial represents a number of things for me—among other things, the compassion of the Australians who put it there, and the schoolkids who learnt a little bit about the individual lives that are just numbers to most of us. If you care to, you can go down there and learn a little bit about the people and about the horror they experienced. There were 353 people on that boat, a tiny little boat in an enormous ocean. The tragedy occurred during the period of the former government, well before I got into this place, at a time when the debate was at fever pitch. The system of TPVs that are now
back on the table—I believe the coalition is proposing to bring them back—was in place. It was a time when the deterrence effect of a bunch of different policy instruments was being proposed to deter people from making these risky voyages. If there is one thing this chamber agrees, it is that we do not want people dying on their way to this country.

But of course the flaw in that logic, and the flaw in the logic that underpins this bill that we are debating today, is that the deterrence effect has to be scarier than a war, it has to be scarier than an internment camp in the north of Sri Lanka, and it has to be scarier than torture, or having cigarette butts pushed into your body, as some of the Tamils showed us. I visited a young guy called Joe who was incarcerated in the Perth airport detention centre. It is quite a small centre, it is relatively well run, it is obviously approachable—you can get to it; it is not parked way out in the bush. I and a colleague took the opportunity on a number of occasions to visit some of the people, most of them Tamils, who had fled the war in Sri Lanka. They showed us photographs of their relatives who had been tortured and murdered. They showed us some of the scars and the wounds that they still carried. It made a lasting impression on me.

To try to deter people who have reached the kinds of places that have been described in a bit of detail during the debate—these camps and these queues that people talk about, the endless waits with no guarantee of any kind that you will ever be resettled anywhere, let alone Australia or perhaps New Zealand—you have to realise just how serious your deterrent effect is going to need to be. The people who are fleeing some of these horrific situations have experienced things that most Australians, fortunately, will never—we hope—have to experience. You have to be scarier than war and you have to be scarier than torture. Compared to war or torture, the various proposals and counter proposals about where we dump people offshore, in the event that they do try to make these voyages, must seem very mild. Bitter experience, as modern history has shown, is no deterrent—it is in fact no such thing.

I had the good fortune a couple of years ago—and I hope to visit there again in a couple of weeks—the Mae La Oon refugee camp up on the Thai-Burma border, where 50,000 people live under bamboo within sight of the Koren side of the border. Along that border a bitter civil war between the Koren people, together with some of their northern neighbours, and the Burmese regime. There are somewhere in the realm of half a million to a million Burmese now on the Thai side, many of them in gigantic internment camps. I visited one of those, and people are safer there than they are in their home country, but it is a pretty fine margin. To get a sense of their hopes and expectations, they have makeshift schools, they are teaching themselves primary health care and basic medicine. When I was there, completely out of the blue, I was able to give a computer award to kids who were training themselves to build computer hardware and who were then walking back across the border to home. There are display boards in the refugee camp showing when people would come to take them out of there and give them a new life in Australia. Some of them have been there for years and years and years. Perhaps they will be able to go home, but we know many of the people fleeing Afghanistan, a country that we are currently helping to occupy, may never be able to go home. The Hazaras who have made their way through various countries between Afghanistan and here may never be able to go home.

A deterrent has to be worse than some of the conditions in Afghanistan—for example,
the Taliban poisoning schools because they happen to be educating young women or the United States and NATO forces using white phosphorus and drone strikes that blow entire families away in the hope that they will get the guy they are after. That is what we are competing with in our attempt at deterrence, which, of course, will not work. There were somewhere in the realm of 42½ million people on the move at the end of 2011—refugees like those I met in Thailand, internally-displaced people and people seeking asylum. There is reasonably robust modelling that presumes by mid-century—if we continue to stand by while the climate changes—anywhere between 100 million and 500 million people will be on the move. That is one of the reasons it is important that we pause today to consider how our decisions—on people numbering in the dozens and the hundreds who are attempting to reach our shores, on where we attempt to dump them and how harsh our deterrence should be—will shape future responses, when vastly larger numbers of people are on the move. We are already seeing the way this is shaping domestic politics in North America and in western Europe, where they are coping with much larger refugee flows than we do here in Australia. There will be up to half a billion people on the move by mid-century if climate change gets a grip. I raise that not as a distraction from the immediacy of people trying to reach our shores now, but as a gauge for the responses—with degrees of compassion or pragmatism—we bring to bear on these debates now will potentially shape us or scar us as we move into the future.

The Greens will be voting against this legislation. It is a bit unfortunate that Senator Humphries has left the chamber, because he put a reasonably sensible question during his contribution along the lines of the second reading amendment that was moved by Senator Milne and Senator Hanson-Young earlier this afternoon on behalf of the Australian Greens. It is incumbent upon us on the crossbenches who are proposing to vote against this misguided legislation to come up with a counterproposal that makes sense and will meet the need.

Senators may have had time to read over the amendment that the Greens have moved, and I want to step senators through it, so that you are very clear about our intention. Two clauses in the amendment propose to deal immediately with the people who are seeking asylum today. I should also note, partly by way of response to Senator Humphries' questions to me across the chamber, that all of the clauses in this proposal do not need legislative effect. They could be put into practice immediately. That is our proposition, no matter the fate of the amendment when it is put to the vote. Part (vi) proposes to codify Australia's obligations under the Safety of Life at Sea Convention, which we signed in 1974 across all relevant agencies. I think what we are hearing collectively in this building from the Australian community is: 'Act now. We will work out some of the detail later. But act now to prevent loss of life at sea.' Part (v) of the amendment proposes that we enter urgent discussions between Australia and Indonesia to address the critical need for cooperation and effectiveness of intelligence sharing and resourcing between Australia and Indonesia in order to save lives at sea. Senator Milne spoke at some length in her contribution about how rapidly that could occur—that we engage in immediate high-level talks with the Indonesian government about the degrees to which we can assist them in resourcing air and sea search and rescue efforts so that we get early warnings. If the risk of drowning is not a deterrent for people making these journeys, I have no idea what
is. These are two sensible things we could put in place, no matter the fate of this bill later today, that would go some way towards addressing the horrific loss of life that we are witnessing right now.

Part (ii) of the proposed amendment deals with one step upstream with why people climb onto these vessels. It is important to remember that all the competent crew are gone. All the people who know how to pilot these vessels have been interned. Some of them are in Australian internment camps; some are impounded in Indonesia. All the seaworthy vessels are gone. We have been breaking them up. In an attempt to help and improve the situation, we have made things worse by breaking up boats and incarcerating crew. So what can we do to take the pressure off people, the pressure that they feel, the pressure that was there in the Mae La camp to just circumvent this damn queue—because if it is not going anywhere, then why wouldn't you? Part (ii) of our amendment proposes to increase Australia's humanitarian intake from 13,750 to 20,000—why not effective tomorrow, Friday morning? Increase that intake and start to clear the backlog in those camps. That then creates the sense of hope that, 'Maybe we don't need to put our lives and the lives of our kids at risk on these nasty little unseaworthy vessels, because things are moving.'

We have heard contributions in the debate about how we resettled, using a variety of partnerships with countries in the region, people fleeing from Indochina during and after the Vietnam War. The reason that that worked was that there was a sense that people would end up somewhere, that they are not still going to be there 20 years later. Part (iii) proposes to immediately increase funding to the UN High Commissioner for Refugees—we have proposed a $10 million increase; of course that is negotiable—to boost the capacity of refugee status determination assessments in Malaysia and in Indonesia. Can we just create a small increase in institutional capacity? Senator Hanson-Young pointed out in her speech earlier today that we are proposing to spend $3 billion incarcerating people in Australia—some deterrent that is going to be. Yet we spend a tiny fraction of that amount enabling the UNHCR and local authorities to process people and get them into resettlement destinations.

Under part (iv), having dealt with the immediacy of the emergencies of death at sea, having started to come to grips with the reasons why people put themselves on these vessels in the first place and having created a sense of hope in the camps and worked to build regional alliances, we propose a multiparty committee to do some of the longer term and deeper thinking about how we adapt to these issues, which are not going away. No bumper sticker is going to stop the boats, no matter how tough we talk in this place. The proposal is to establish a multiparty committee that would be charged with developing a framework for a long-term regional solution which is underpinned by the 1951 Convention Relating to the Status of Refugees and the related 1967 protocol. All parties and Independents would be invited to the table to sit with experts, to sit with Amnesty, to sit with refugee advocates, to sit with refugees themselves, heaven forbid, and to sit with the UNHCR to develop a longer term strategy to pull the venom, the blaming and the finger-pointing out of the debate, after we have dealt with the short-term immediate emergency that confronts us at the moment.

To answer Senator Humphries's question, we will not be supporting this bill, but we have put these parts of the amendment together firstly to test the consensus and the will of the chamber, because very few of these things that I have just read into the
record were invented by the Australian Greens. These are ideas that have come forward from the major parties, from the Independents, from experts in the field, from refugee advocates. So none of this is particularly new, but we believe that this is a sensible formulation to deal with the emergency and to deal with the longer term crisis that we face. We will submit that amendment to the will of the chamber when it is put to a vote. I also want to point out that all six of the items in the amendment are consistent with our obligations under domestic and international law and also all six could be enacted without legislative enforcement this afternoon if there were a will to do so. I will certainly commend that amendment when we put it to the vote.

Lastly, by way of closing, I would like to acknowledge some of the people who have been working away in my community in Western Australia to support Joe and people like him and their families, who have made their way by arduous and sometimes downright tortuous and fraught journeys to Australia, only to find themselves behind barbed wire in places like the Perth Airport detention centre or places far worse than that.

My first experience with this was when I worked for my dear friend Robin Chapple MLC when the Port Hedland detention centre, which I think was one of the first ones that ever opened, was still operative in Hedland. When we got there that night I had never seen a detention centre before. I was only dimly aware of what they were for and who was behind the razor wire. I got there at about 8 o'clock at night and they were throwing food over the wall in plastic bags, because if you have guests you feed them. The busload of activists that had brought themselves up from Perth to have a direct experience were treated to quite a feast, actually, that had been cooked inside the Port Hedland detention centre and then hurled over the wall. That was the hospitality that they greeted us with. It still hurts me today to recall the kind of hospitality that we had greeted them with in return.

In Perth there are way too many people and too many groups to name who have carried on their advocacy through the various phases of this debate. In particular the Refugee Rights Action Network—Phil, Victoria, Mary-anne and others, including Anne Petersen; the folk working for Amnesty International who have been so steadfast; and friend and colleague Andrew Bartlett, who, in many ways, led the earlier iterations of this debate in this place. Those people put themselves out there and in some cases put their lives on hold in order to meet the immediate human need, the human suffering that is in front of us directly. But they rely on us to do the policy work, and that is the responsibility that is before us now, no matter what our political allegiances.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (16:28): Yesterday's vote was a milestone vote in the House of Representatives, with the crossbench and the government coming together to support a private member's bill to end the impasse on asylum seekers. In the midst of two recently capsized boats and tragic deaths at sea, this milestone represented a compromise by the government which was not taken lightly but was taken to save lives. There is now only one bill that can pass the parliament before we rise and that is the one we are debating here, the Migration Legislation Amendment (The Bali Process) Bill 2012.

We cannot continue to allow people to risk their lives and lose their lives at sea. In
the midst of these two recently capsized boats and many lives lost, we have an obligation as a parliament not to go into the winter recess for six weeks without coming to a solution on all sides with this issue. Six weeks is too long and the opportunity exists right now to resolve this.

The government's legislation is a strong compromise on all sides. It is a private member's bill sponsored by the member for Lyne, with an amendment from the member for Denison, that brings together both Labor and coalition offshore processing approaches. It is a genuine attempt to end the politics, to have a true compromise, and it is the only bill that can be passed by the parliament today. It is not a time for narrow-minded views or placing politics above the lives of people.

This compromise bill has a number of protections built into it. The bill requires the minister for immigration to, within 14 days of declaring an offshore assessment country, put a request in writing to the UNHCR and the International Organisation for Migration to provide a formal statement of their views of the arrangement, including the arrangements that are in place to provide appropriate treatment to those people transferred. In making a decision to declare an offshore assessment country, the minister must have regard to whether the country will not expel or return a person taken to that country where their life or freedom would be threatened on the basis of their race, religion, nationality, political opinion or membership of a particular social group, and the country will make an assessment, or allow for an assessment, of whether the transferees are refugees as defined under the refugees convention. A transfer may not occur in the absence of a written agreement with the receiving country, and the declaration would be made by legislative instrument.

The bill also requires the minister to table a range of materials pursuant to the arrangement, including a copy of the designation, a copy of the written agreement, a copy of the statement of the minister's reasons for thinking that it is in the national interest to designate an offshore processing country and a statement about the minister's consultations with the UNHCR and IOM, including any formal statement received from those organisations. The minister must, as soon as practicable after 30 June each year, provide an annual report to the parliament on efforts to counter people-smuggling, trafficking in persons and related transnational crime under the Bali process.

We have seen goodwill coming from some members of the opposition but sadly too few. Those on the other side who understand the situation and understand we need to have a compromise unfortunately do not make up the majority, and we find ourselves confronting a barrage of both hypocritical statements and negativity—as we do with so many matters. I would like to address some of the hypocrisy that is flying around the senior ranks of the opposition at the moment. In July 2010 the shadow immigration spokesperson, Mr Scott Morrison, said in relation to the UN convention:

This was a document drawn up in a very different world. I think it's important that the Convention does not become a tool for people smugglers to impose their clients on nations in a way that is unhelpful for the way those nations want to run their own immigration programs.

Scott Morrison also said on Lateline on Monday:

It was never our issue with... Nauru as to whether they were the signatory to the Refugee Convention.

In August last year the opposition leader was asked if they would prefer Nauru to sign up to the refugee convention, and he responded:
Look, this business of requiring that they sign the convention is simply a furphy that's been raised by the Prime Minister.

Now, because of convenience, the opposition heavies are pleading that the reason they cannot support this legislation—a private member's bill that has the support of the government and two Independents—is that these countries have not signed up to the UN convention. It seems obviously hypocritical and an argument of political convenience. Instead, we should be looking to work together to ensure that we can legislate today for a response and a solution to this life-threatening problem.

To set the record straight I would also like to address some of the untrue and misleading statements mentioned by Senator Abetz this morning. Senator Abetz's first misleading claim was that the Malaysia solution has failed based on the number of arrivals since it was first announced. This is extremely disingenuous. The Malaysia arrangement was never implemented—the High Court stopped it. That is why we are at the place we are at now and contemplating this legislation. The legal advice is that, given the High Court case, there is no prospect of any offshore processing being pursued without legislative change, so we will only ever give the Malaysia arrangement and Nauru, together, a chance to work if this bill passes through the parliament. To claim that the Malaysia approach has failed because of the number of arrivals is directly misleading—and the very legislation we are now contemplating would allow that arrangement to be put in place and the solution to be implemented.

The second claim Senator Abetz made was that if the Malaysia arrangement were implemented people smugglers would send children and families. Again this is misleading. While the Australian government would be sensitive to the individual circumstances of asylum seekers, the government is clear that there would be no broad exceptions. This is a tough approach, certainly, but if the government were to make broad exceptions then you would see how the people smugglers would be able to adapt to that. This is exactly what happened when the former government introduced temporary protection visas. TPVs denied family reunion rights to asylum seekers, so we saw people smugglers putting more women and children on boats. Those are the facts of the former government's policies.

The third claim put forward by Senator Abetz was that Nauru worked. It did not. The overwhelming majority of those found to be refugees were resettled in Australia, and Nauru offers nothing more than being like Christmas Island, only further away. That said, in the spirit of compromise the government is prepared to establish a centre on Nauru as part of the legislative package—but only because it will be part of a regional framework involving the arrangement with Malaysia. Nauru, within that arrangement with Malaysia and the regional framework, can be part of a genuine regional solution to managing irregular migration. To say that Nauru worked is patently untrue, but it is a crutch that the opposition have lent on again and again. When tested by our effort to get support for compromise, they back away from it at a hundred miles an hour and then resort to the first disingenuous argument I mentioned before, about the UNHCR's status.

The fourth claim was that TPV's work. This is plainly wrong as well. Temporary protection visas did not stop the boats. Thousands more arrived after TPVs were introduced and, tragically, the percentage of women and children on boats increased after they were introduced. The coalition is fond of saying that TPVs took the sugar—that is,
permanent protection visas acting as some kind of incentive—off the table. People smugglers would not be able to market a permanent visa to asylum seekers, so the theory went. The reality, however, of the experience of temporary protection visas is that more than 95 per cent of TPV holders who were irregular maritime arrivals went on to get permanent visas to live in Australia. Why? Because they were genuine refugees. This outcome hardly suggests that TPVs could be perceived as an effective deterrent.

The fifth claim I would like to challenge is that the coalition had some genuine compromise plan of increasing the humanitarian program to 20,000. That is no compromise at all. We have already said that we want to move to an intake of 20,000. This was just one of the many issues discussed at the Labor Party National Conference. Furthermore, at the time Labor outlined our target of 20,000, the coalition condemned us. On ABC NewsRadio, on Thursday, 1 December 2011, Mr Scott Morrison, the opposition spokesperson for immigration, said:

Well the Minister has gone from a five for one swap to a thirty for one swap to take to the National Conference. I mean, the last time we increased to that level at 20,000 was when we had a genuine Indo-Chinese refugee crisis right on our back door. Now they’re the sort of circumstances when you entertain those sorts of increases.

The reality is that this cynical proposal was about getting the coalition backbench to vote for the coalition’s amendment.

There are two major proposals on the table—Malaysia and Nauru—and we are prepared to do both. The only genuine compromise is one which involves both of these solutions. That is what a compromise bill is. The Senate will also recall that our Malaysia arrangement included an increase in the humanitarian program by 1,000 per year. So this putting forward of the 20,000 as some sort of coalition compromise is not in fact a compromise—it is a backflip and a catch-up, and disingenuous in the context of the current debate.

I believe the Australian Greens also need to be held accountable today. They should not be able to absolve themselves of the responsibility to come to the table and be part of a compromise to get this bill through the Senate. I remember vividly their non-negotiating stance on the CPRS, the original bills which would have seen a price on carbon implemented well before this coming Sunday. If the Greens had been willing to come to the table and compromise back then, we would have had an emissions trading scheme implemented and fully established by now. But, because of their intransigence in that debate, this country was set back in taking action on climate change. I would not like to see the same approach of intransigence and refusing to compromise on this bill. I acknowledge that the Greens are not comfortable with the Labor government’s approach but, given the implications and the current political dynamic, I urge them to reconsider their position. It is most important that we do legislate today and see this bill through. This is the only chance we have, as I mentioned, before the winter recess.

I also take this opportunity to respond to other statements made by the Greens today in their second reading contributions and in relation to their second reading amendment. Firstly, the Greens party have said we have only been taking some 60 refugees per year out of Malaysia and Indonesia. Actually we have taken over 1,500 this year alone. Over the past 10 years we have taken over 5,000. I think that misunderstanding is indicative of the complexity of these issues.

Secondly, the Greens party also say that we should increase our intake to 20,000. With 43 million displaced people around the
world—and I think it is important in all these debates to remember that we are talking about a relatively small proportion, in fact quite a minute proportion, of the challenge the world is facing—that is not an answer on its own. However, we have indicated to the Greens that, if we are able to implement the Malaysia arrangement, we will be in a much better position to contemplate increases to our refugee intake.

Thirdly, Australia and Indonesia already share intelligence and cooperate closely. To imply otherwise is, again, just incorrect. It is done in a low-key and effective way, as you would expect with intelligence sharing. Finally, it is offensive to suggest that Australian agencies need our SOLAS obligations further codified and that, in the absence of such additional codification, they are not giving their all in maritime rescue situations. I felt it was important not only to challenge the misleading and inaccurate statements made by members of the opposition but also to call the Greens to account over their foreshadowed opposition to this incredibly important bill.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (16:42): I thank all senators who have contributed to this debate on the Migration Legislation Amendment (The Bali Process) Bill 2012. I think it has generally been a positive debate, but I think we risk missing the opportunity to do something positive here. During the debate, people have expressed their views, their concerns and their attitudes—and that is an important part of the public debate. But today is a debate about a bill and about a response. It is about whether we do something or do nothing.

I fear the Senate is about to do nothing. I want to urge all senators to think again, to focus on the challenge before us, to focus on their deep concern at the deaths that have been occurring—people losing their lives in tragic boat incidents. I urge senators to focus on that and to ask themselves what our role here today is. Is it to debate temporary protection visas? Is it to debate which government has a better record on boat arrivals and managing our borders? Is it about our views on detention? No, it is about none of those things. It is a bill about allowing the government to respond to a situation which has worsened and allowing the government to make decisions aimed at stopping the sorts of tragedies we have seen in the last few days. I acknowledge that many members have been moved by those experiences. A number of members cried in the House of Representatives. I know a couple of senators here today were tearful. I understand the depth of feeling but we do not come here to express our feelings. We do not come here to express our view that somehow we would prefer the world to be different. We have to focus on the challenge at hand and the challenge at hand to allow the government to make a response which will help us tackle the problem. That means passing a bill which allows us to make arrangements with Malaysia to provide a deterrence to people undertaking these risky journeys at the hands of people smugglers, who care nothing about the lives they lose. We know the organisers do not get on the boats themselves. They push the boats off, having taken the money from passengers, and care not whether they survive at sea. We have to focus on that. If we do not focus on that, we will leave the parliament today having failed to meet the challenge, a challenge the Australian people expect us to meet, a challenge I think we all expect us to meet.

I pay tribute to those senators who sought over the last few days to bring this issue to a
more positive conclusion and to overcome the impasse we have had in this parliament for many months. The government has tried all day to get this bill through. The Prime Minister has engaged with anyone who would talk to her about their concerns, about their ideas, in order to get us to a point where we can pass this bill. The indications to me are that we may not be successful in that endeavour and that will be a crying shame. It will be a lost opportunity. It will mean that we will leave this place without having an adequate response, something that may assist us to save lives and to undermine the evil people-smuggling trade that is flourishing at the moment in South-East Asia.

I note that Senator Xenophon, who has been unwell, has, in his normal flamboyant and eye-catching way, made a contribution to the debate despite not being here. He has sought to be paired with the Labor Party when it comes to a vote on the bill. I understand he is seeking to support a number of amendments moved by the Greens and the coalition, if the bill survives the second reading. He has made it clear that, despite his reservations, he supports us doing something. He says, 'To do nothing is far worse.' He is dead right. He is removed from the atmosphere of Parliament House, he is in his sick bed in Adelaide but he understands from a distance what the Australian public want and what they expect of the parliament. He has asked to be paired and I appreciate the coalition have paired him to vote with the government in support of this bill. He makes it clear, as do many others, that this is a challenging decision for him, that he has reservations, but he centres on the key point I want to make to all senators—that is, we have to focus on doing something. While some people will argue that they prefer we did it this way or that way, they would prefer we try this or try that, we have a stark option today: do something, as contained in the bill, and do something positive, something as advised by the people responsible for the management of this in the Public Service who say that this has a chance of working and that this is our best option.

The Howard government started us down this path when they began the Bali process. They recognised that one-nation-only responses will not deal with the challenges we face. They recognised that we had to engage more closely in Indonesia, Malaysia, Thailand and all through the region. They brought together, through the Bali process, 40 countries with an interest in people-smuggling issues and irregular people movement in the region. That organisation has been focused on our challenges and the challenges of other countries.

Importantly, we need to have a broader perspective in Australia. The debate in Australia always assumes that we are the only ones facing this challenge. The irregular people movement and asylum seeking movement across the world is a massive issue. It affects Europe, the Americas and Asia. We have to work with other nations to try to manage that flow, to assist people who are fleeing persecution or war or just straight poverty. We have to put ourselves in their shoes, to understand their position and try to respond in a humane and compassionate way which will serve Australia's national interest. I think this bill does that. This bill gives us the opportunity to provide strong deterrence, which I know some people regard as hard and which I have found to be a difficult issue to come to terms with. This bill gives us an opportunity to increase our intake of refugees from Malaysia and to support them in their much larger problem than ours in managing refugee populations. I have not seen the latest UNHCR figures, but they have hundreds of thousands of people in their country who are refugees or people moving through and seeking somewhere
safe. Our problems are small by comparison. By working with them I think we can come to answers which will suit both our countries and helps stabilise the region. We do have strong engagement with Indonesia. Over many years they have been assisting us in trying to manage these issues. Some of the criticism made of Indonesia is very misplaced. They have challenges, like us, in managing this problem, but they have engaged constructively with us to deal with these issues. So I urge the opposition and the Greens to think again, to focus on the challenge of today's debate—not on the broader issue that will be with us for many years but on the opportunity today to make a difference, to do something that might help, something that might eventually save lives, by preventing further people from embarking on that journey.

The Greens have moved a second reading amendment. I indicate on behalf of the government that we will not be supporting that amendment, and that has been conveyed to the Greens leader, Senator Milne, I understand. The government have a longstanding commitment to improving company operation with the international community to enhance the treatment of refugees across the region. As I say, we worked strongly through the Bali process to achieve that. Many of the points in the Greens amendment are, I know, directed at improving the lot of refugees and our management of migration issues, but many of them are in fact things that this government have been actively engaged in. One aspect of the Malaysian arrangement is that we are trying to settle more refugees from Malaysia as part of that attempt to stop the flow of people and provide options for the settlement of those populations. I am advised we have taken 1,500 refugees out of Indonesia and Malaysia in 2011-12. I know that when I was minister for immigration we started the process of taking more refugees from those countries as part of a broader response to ensure that there was less movement organised by people smugglers and that people had genuine pathways to have their claims for asylum assessed. So, while I understand the sentiments behind the Greens amendment, the government will not be supporting it. We think it diverts us, if you like, from the key consideration today, what we want to focus on.

The debate has wandered far and wide, and some people have made political points about who is 'purer' than whom, but none of this matters. None of that is of any interest to the Australian public and none of that goes to the heart of finding a response to the terrible circumstances we are confronting. So it is important that today we focus with some clarity on this challenge.

I think we will have let the Australian people down if we leave here saying that we have again reached an impasse, that we have again failed to implement a measure that would help prevent further tragedies. There has been goodwill from a lot of people to try to break that impasse in the parliament, and I think we have made progress. But, at the end of the day, people here will be held accountable for whether they acted today or not. Saying that they would prefer the world to be a better place where there could be more settlement of asylum seekers, and that they think they have a better solution, does not answer the fundamental challenge, which is: what did you do when you had the chance to act? Where were you when you had the opportunity to do something? Were you hiding behind a political stance? Were you hiding behind the politics of the day? Were you expressing compassion but doing nothing? That is where we are today. We have the opportunity to act. We have one chance in this sitting of the parliament to provide a response that assists. There are no
options other than action or inaction, making a difference or not making a difference. I urge all senators to put aside their feelings and their politics, and ask themselves: 'Do I think that this would make a difference to the number of people getting on boats?'

Senator Cash: No, it won't assist. That's the point.

Senator CHRIS EVANS: Senator, I do not know that you have argued that the Malaysian arrangement will not assist stopping people getting on boats; if so, that is the first time I have heard you put that argument.

Senator Abetz: No, it's not!

Senator CHRIS EVANS: You have said you will not support it. You have said you will not support it. I have not heard you say it would not assist.

Senator Cash interjecting—

Senator Abetz: No, it won't.

Senator CHRIS EVANS: Well, that is an interesting position.

Opposition senators interjecting—

Senator CHRIS EVANS: I do not want to get into a slanging match with the opposition. I just want to ask them to think again about whether or not their actions today will serve Australia well—whether their actions today are in the best interests of Australia and of the people getting on those boats to seek asylum here. This is a tough decision for a lot of people—

Senator Fifield: What about the 2007 changes?

Senator CHRIS EVANS: Senator, I am happy to debate those changes with you. I am happy to do that at any time. But today you have the opportunity to do one thing. You have the opportunity to do something or to just sit there and say: 'We won again, because we stopped anyone doing anything positive. We were negative and we stopped anything effective happening.' You take great pride, it seems, in saying that. What I ask you to do, Senator, is put aside your politics and your self-interest, and do something that all the people who provide advice to government have said will assist in slowing the flow of people to this country. That is what I ask of you.

We have bent over backwards in accepting the amendments regarding Nauru. We accepted a proposition that provides some compromise. But what we are asking you to do today is to vote for a bill that has a one-year sunset clause. We are asking you to rise above the politics and say to yourselves, 'It's a bill that lasts for one year that allows us to try to see if we can't make a difference.' That is all we ask of you—to support a bill for one year that allows the elected government of the day to try to make a difference and prevent people drowning. We are asking you to give us that cooperation for one year. It does not stop you arguing your political position. It does not stop you doing or saying whatever you like. But it does allow the government—

Senator Abetz: Mr Acting Deputy President, regrettably, the tone of the debate has been lowered by the continual reference by the Leader of the Government in the Senate to you—

Senator Marshall: What point of order is this?

Senator Abetz: The point of order is very clear, and everybody knows what it is: you cannot refer directly across the chamber. One of the reasons we have that in our standing orders is that invites interjection and lowers the tone of debate.

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop): Thank you, Senator Abetz. All remarks should be addressed to the chair.
Senator CHRIS EVANS: When there is a call for statesmanship, that is what we get from Senator Abetz. That is what we get as leadership—some narky little debating point.

Senator Abetz: Very personal.

Senator CHRIS EVANS: Senator, you do yourself no favours. Mr Acting Deputy President, I urge senators to focus on the challenge and say that we get one chance in this session of parliament to make something happen that may work. I urge the Senate to support the bill and give the government the opportunity to make a difference, to implement something that may well save lives.

The PRESIDENT: The question is that the second reading amendment moved by Senator Milne be agreed to.

The Senate divided. [17:05]
(The President—Senator Hogg)

AYES

Ayes......................8
Noes......................53
Majority..................45

AYES

Di Natale, R
Ludlam, S (teller)
Rhiannon, L
Whish-Wilson, PS

Hanson-Young, SC
Waters, LJ
Wright, PL

NOES

Abetz, E
Birmingham, SJ
Boyce, SK
Brown, CL
Cameron, DN
Carr, RJ
Colbeck, R
Crossin, P
Eggleston, A
Farrell, D
Fawcett, DJ
Fierravanti-Wells, C
Furner, ML
Hogg, JJ
Kroger, H (teller)
Lundy, KA

Bilyk, CL
Brown, CL
Carr, RJ
Evans, C
Faulkner, J
Furner, ML
Hogg, JJ
Lundy, KA
Marshall, GM
McLucas, J
Polley, H
Singh, RJ
Thorpe, LE
Wong, P

Bishop, TM
Cameron, DN
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Ludwig, JW
Madigan, JJ
McEwen, A (teller)
Moore, CM
Pratt, LC
Stephens, U
Thistlethwaite, M
Urquhart, AE

Question negatived.

The PRESIDENT (17:12): The question now is that this bill be read a second time.

The Senate divided. [17:12]
(The President—Senator Hogg)

AYES

Bilyk, CL
Brown, CL
Carr, RJ
Evans, C
Faulkner, J
Furner, ML
Hogg, JJ
Lundy, KA
Marshall, GM
McLucas, J
Polley, H
Singh, RJ
Sterle, G
Thorpe, LE
Wong, P

Bishop, TM
Cameron, DN
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Ludwig, JW
Madigan, JJ
McEwen, A (teller)
Moore, CM
Pratt, LC
Stephens, U
Thistlethwaite, M
Urquhart, AE

NOES

Abetz, E
Birmingham, SJ
Boyce, SK
Bushby, DC
Colbeck, R
Di Natale, R
Eggleston, A
Fierravanti-Wells, C
Furner, ML
Hogg, JJ
Kroger, H (teller)
Lundy, KA

Bernaldi, C
Boswell, RLD
Brandis, GH
Cash, MC
Cormann, M
Cormann, M
Edwards, S
Edwards, S
Fawcett, DJ
Fifield, MP
Fifield, MP
Humphries, G
Humphries, G

CHAMBER
That these bills be now read a second time. 

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

Leave granted. 

The speeches read as follows—

**Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012**

This bill makes consequential amendments to the Tax Administration Act 1953 to give effect to changes to the managed investment trust final withholding rate.

The Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012 (currently before the House of Representatives) amends the Income Tax (Managed Investment Trust Withholding Tax) Act 2008 to increase the managed investment trust final withholding tax rate to 15 per cent to fund payments. The changes will apply to income years commencing on or after 1 July 2012.

Fund payments made by a managed investment trust to non-resident investors, subject to certain conditions, are currently subject to the managed investment trust withholding tax of 7.5 per cent.

The 15 per cent withholding tax for managed investment trusts is still competitive with rates applying in other countries.

It is consistent with the Government’s original commitment prior to the 2007 election.

And it is significantly lower than the 30 per cent non-final withholding tax that applied under the previous Government.

Increasing the managed investment trust final withholding tax from 7.5 per cent to 15 per cent better balances the need for Australia to be an attractive destination for foreign investment with ensuring Australia receives a fair return on profits to be made in Australia.

I commend the bill to the Senate.

**Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012**

This bill amends the Income Tax (Managed Investment Trust Withholding Tax) Act 2008 to increase the managed investment trust (MIT) final withholding tax rate to 15 per cent to fund
payments made in relation to income years commencing on or after 1 July 2012.

Fund payments made by a managed investment trust to non resident investors, subject to certain conditions, are currently subject to a managed investment trust withholding tax of 7.5 per cent.

Increasing the final withholding tax on managed investment trust distributions from 7.5 per cent to 15 per cent better balances the need for Australia to be an attractive destination for foreign investment whilst still ensuring Australia receives a fair return on profits generated in Australia.

The 15 per cent withholding tax for managed investment trusts is still competitive with rates in other countries, consistent with the Government's original 2007 election commitment, and significantly lower than the 30 per cent non-final withholding tax that applied under the previous Government.

Senator CORMANN (Western Australia) (17:17): I rise to speak on these bills: the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 and the Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012. I move the following amendment to the second reading motion:

At the end of the motion, add:

and that these bills be referred to the Economics Legislation Committee for inquiry and report by 14 August 2012.

The coalition strongly opposes this legislation. On budget night Labor announced that final withholding tax on managed investment trusts would double, to 15 per cent. It is important here to remember that it was only two years ago that the government reduced this tax to 7.5 per cent. The measure was withdrawn from the Tax Laws Amendment (2012 Measures No. 2) Bill 2012 last Wednesday. The government, through the Minister for Finance and Deregulation, Senator Wong, told the Senate in question time last week that that was under pressure from the Greens. The government later back-flipped again and the measure was reintroduced in the form of this bill, as a single bill.

The coalition has consistently called on the government to scrap this tax increase altogether. The reason we have done this is that the measures in the bill put billions of dollars in investment in critical infrastructure at risk; they increase Australia's sovereign risk profile, yet again; they undermine our positioning of ourselves as a financial services hub in the Asia-Pacific; and they will not raise the revenue claimed by the government.

Unfortunately, Labor now appears to have been able to do a last-minute deal with the Greens, which, based on what was published about that deal in the press release last night by the Assistant Treasurer, David Bradbury, will make this new tax grab more complex and even more confusing. The deal is not part of this bill, mind you. All we know about the deal is what was in the Assistant Treasurer's press release last night. But we were told that the government will implement that deal in some legislation at some point in the future. What the government is really saying is, 'Trust us, we are from the government and we are going to do this.' But if you look at the government's track record on so many issues—the carbon tax, for example—they have demonstrated again and again that they cannot be trusted. The Prime Minister personally has demonstrated again and again that she cannot be trusted. And of course this incompetent and dysfunctional Labor government has demonstrated again and again that it cannot be trusted.

If this deal is eventually passed by the parliament in the form that was outlined in the Assistant Treasurer's press release late last night, it would mean Australia would
have a two-tiered tax system for final withholding tax on managed investment trusts. We would be the only country in the world that would not have a single tax rate for these sorts of investments that is settled and understood. This dodgy last-minute deal will continue Labor's efforts to make Australia the world champions in red tape, inefficiency, increased taxes and increased sovereign risk, and it will further discourage international investment in critical infrastructure.

A two-tiered system will distort investment decisions and have counterproductive effects by actively discouraging investment in higher-taxed infrastructure projects, including many positive environmental projects that will not qualify for the lower rate. This last-minute deal does nothing to improve what is a deeply flawed piece of legislation that introduces just another desperate grab for cash by a Labor government that is always casting around for more cash to feed its spending addiction.

The full impact of this bill on overseas investment in Australia has never been adequately explained by the government or by Treasury. The deal with the Greens adds further complexity and uncertainty. This is why I have moved the coalition amendment to the second reading motion. The amendment refers the bills to the Economics Legislation Committee for inquiry and report by 14 August 2012, which is the first day we are due to come back after the winter break. As I said at the outset and as the coalition has argued since budget night, this latest ad hoc tax grab by the Labor Party on managed investment trusts is placing billions of dollars in investment in critical infrastructure at risk and is yet again increasing Australia's sovereign risk profile. Labor cannot escape the fact that since the government moved to double the final withholding tax on managed investment trusts from 7.5 per cent to 15 per cent in the May budget, billions of dollars of planned investment has already been put on hold. Even the Greens initially recognised that this tax would threaten critical new investment in infrastructure and in particular investment in highly energy efficient new buildings. The government was left red faced when it was forced to withdraw its new tax from legislation in parliament last week due to a lack of support, before hastily reintroducing it in a separate bill in order to save some face.

Now it has become clear that the only way that Labor can get this bill through the parliament is by doing yet another hastily, rushed and ill-considered deal with the Greens. Labor should stop its constant chopping and changing of our tax arrangements. It sends a terrible message to the global investment community. Former Prime Minister Kevin Rudd and the former minister in this area, Chris Bowen, reduced this tax to 7.5 per cent from 2010-11 onwards. That is only two years ago. They reduced it two years ago only for the Prime Minister, Julia Gillard, Minister Shorten and Assistant Treasurer David Bradbury to now try to double it.

Labor should have cut its losses and scrapped this misguided and ill-thought out anti-infrastructure investment tax. The coalition is committed to lower taxes to help attract investment in critical infrastructure, develop our position as a regional financial services hub and strengthen our economy. Our focus should be on encouraging more investment through internationally competitive taxation arrangements so that we can grow our economy more strongly. The coalition understands that stronger economic growth will deliver increased revenue to government without the need for all these new and increased Labor Party taxes. In contrast, Labor's many new or increased
taxes over the last 4½ years have already undermined our international competitiveness and reduced our economic growth potential into the future.

The chaotic approaches to tax policy and tax administration of this government have already had a very significant impact on our sovereign risk profile. Australia needs a government that spends less so that it can tax less. Australia needs a government that is committed to a more stable, predictable and certain approach to tax policy and administration. We desperately need to focus on being internationally competitive and on being an attractive destination for investment. This is more true now than ever. We need to focus on these things so that we can grow our economy more strongly. We need to ensure that future governments return to this focus that past administrations of both political persuasions have persistently pursued in the national interest.

Industry expectations are that this measure will put billions of dollars of infrastructure investment at risk. Some of the critical infrastructure that would be affected by this tax increase include investments in: hospitals; major roads; electricity generation; office buildings, including energy efficient green buildings; tourism infrastructure, including hotels; logistics infrastructure such as multinodal transport hubs; convention centres; Defence Force housing; and bioscience research centres. And the list goes on.

The government asserts that this measure will raise $260 million over the next four years. However, analysis conducted by the Allen Consulting Group for the Property Council cast serious doubt over those revenue forecasts. The analysis found that the proposed increase in the final withholding tax revenue from MITs would have a profound adverse impact on the economy without raising the expected revenue. It also found that, if there was a one billion drop in investment as a result of the increased tax, the net tax revenue in 2015-16 would be $35 million, which is $40 million than the $75 million predicted by Treasury. The Allen Consulting Group also found that by 2015-16 the increased tax would reduce our GDP by $580 million and cost more than 4,600 jobs a year.

The government, in a pretty clumsy and incompetent way, has sought to rebut the analysis done by the Allen Consulting Group by referencing Treasury analysis. But the government is yet to release any of the supposed Treasury analysis that has taken place. Nobody has been able to put their eyes on any Treasury modelling or assessment of this measure. The government has kept that secret. Senator Boswell and I have been chasing the government day in and day out and trying to force them to release the modelling in relation to the carbon tax. Some of those secret modelling assumptions they are hiding to this day. It is the same again here. The government is out there making these assertions and saying, ‘Our modelling shows this and our modelling shows that.’ But nobody can tell; nobody knows. We are again expected to just take the government on trust.

If you want to have a proper conversation about these things, put your modelling on the table. Then we can have a look at all the different methodologies and assumptions, put them next to each other and make some judgments about what is the most appropriate one to use in the circumstances. That is a job that the Senate Economics Legislation Committee could do very well over the winter break. It could scrutinise this piece of legislation and look at the implications and the potential unintended consequences of the deal that Labor did with the Greens late last night. This legislation is,
of course, now likely to pass through the Senate—although, who knows, hopefully the Greens will consider the contribution I am making on behalf of the coalition. It is likely this legislation will pass through the Senate in its current form, although it should not—it should be sent for scrutiny to the Senate Economics Legislation Committee for inquiry. But, if this is to go through the parliament, it is important to note that it would not make any significant improvements at all. This deal is really quite a bad deal, which was cobbled together by a government that was desperate to save face in the context of a budget measure that was clearly not supported by the Greens in its original form. It is an extremely limited deal with a very limited focus. We still do not have the full details of the deal reached by Labor and the Greens. There is no legislation available, so there will be continued confusion about what rules will apply, when they will apply and how they will apply.

From the limited information in the Assistant Treasurer's hastily-put-together press release it appears that the deal is limited only to trusts that hold newly constructed buildings that meet certain energy efficiency standards. This extremely narrow focus will distort investment decisions based on a new and confusing two-tiered tax rate. This two-tiered system is unique in the world, as I have mentioned earlier, and its complexity will increase compliance costs and red tape. Once again this government is making Australia a world leader in red tape.

The requirement to hold only newly constructed buildings within a fund to qualify for the lower rate flies in the face of commercial reality, where many managed investment trusts are established to invest in multiple infrastructure projects and are not just limited to new buildings. If existing funds try to restructure to take advantage of the lower tax rate, they could potentially face huge capital gains tax and stamp duty costs. This means in practice that very few existing funds will be able to restructure in this way.

This deal will also have significant unintended and counterproductive consequences, especially for potential investments in other forms of energy efficient infrastructure. It does not apply to investments that would retrofit existing buildings to bring them up to the highest possible modern environmental standards. There would be little incentive for overseas investors to invest in upgrading all the buildings, so those buildings would remain less energy efficient for longer—which of course is a concern.

The deal would also not apply to other forms of investment in other forms of renewable and energy efficient infrastructure. For instance, this deal would not apply to green-friendly projects such as renewable energy light rail projects or even wind farms, let alone critical infrastructure such as hospitals, major roads and ports. Did the Greens really agree to such a limited and counterproductive deal, knowing that it would limit investment in such infrastructure that they usually demand we should have more of? Or were they hoodwinked by a sneaky, arrogant government, desperate to save this bad budget measure from being defeated on the floor of the Senate? The original tax-grab was bad enough. This dodgy deal, with its counterproductive consequences, is even worse and it should be rejected.

As I mentioned, I have moved a second reading amendment on behalf of the coalition that 'these bills be referred to the Economics Legislation Committee for inquiry and report by 14 August 2012.' The reason the coalition are moving this amendment is that we believe the full impact
of this bill on the flow of overseas investment into critical infrastructure in Australia has not been properly explained by the government or by Treasury and we believe it needs to be properly scrutinised. We think it is important for the implications, and any unintended consequences of this last minute deal between Labor and the Greens, to be properly scrutinised so that we can all make a judgment on this legislation with our eyes wide open.

That is the job of the Senate: to take legislation that was moved very rapidly through the House of Representatives, put it under a more intensive spotlight, make sure that all of the questions that have remained unanswered are answered and make an informed judgment. There are a number of important questions that need to be answered before the parliament can properly consider the full impact of this bill. What will be the real impact of this tax increase on investment in infrastructure in Australia? What will be the impact on revenue over the forward estimates of the proposed new tiered system, given the questions that have been raised by analysts and industry experts about the actual revenue, which is likely to be much lower than the government has said? What types of buildings would actually be considered to be newly constructed, energy efficient commercial buildings? Would the definition include hospitals or not? Why is it appropriate to provide a lower tax rate to green buildings than the tax rate that would apply to critical infrastructure such as hospitals, roads and ports? In particular, we would be interested in Treasury's view on this point.

Would the lower rate apply to trusts that hold newly constructed buildings that were built before 1 July 2012, or only to those that have been constructed after that date? Would the lower rate apply to buildings that were partly constructed on 1 July 2012? Would the proposed lower rate still apply if a building was altered after construction so that it no longer complied with its higher energy efficient rating? How would ongoing compliance be measured in these circumstances? What would be the capital gains tax and stamp duty implications for existing funds that choose to restructure so that they can qualify for the proposed lower tax rate? How would the two-tiered rate distort capital flows and investment in new infrastructure in Australia? What would be the additional costs of administration of the tax system if investors and the ATO need to administer a two-tiered system rather than a system with one stable and predictable rate? Does the ATO have the technical capacity and resources to administer this two-tiered system or does it require further resources? And what is the status of existing buildings that need to attract investment to make retrofitting arrangements to ensure they are brought up to the highest modern environmental and energy efficiency standards?

It is important that these and other questions are properly answered so that the full impact of this bill and the deal between Labor and the Greens can be properly examined by the Senate Economics Legislation Committee. Ideally, this inquiry would also examine the draft legislation needed to implement that deal, so that the Senate can consider this matter in full when it returns after the winter recess. On behalf of the coalition I urge all senators, especially the Greens, to recognise that this legislation should not be passed in its current form and to support the coalition's second reading amendment to refer this to the Senate Economics Legislation Committee for inquiry, with a reporting date of 14 August 2012.

Senator MILNE (Tasmania—Leader of the Australian Greens) (17:37): I rise today
to respond to the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 and the related bill and to indicate to the Senate that the Greens did have concerns about the effect of the increase in the withholding tax from 7.5 per cent to 15 per cent, because we believed it would have a detrimental impact on investment in Australia, particularly in green buildings—and by green building I mean buildings that meet higher standards of energy efficiency and performance. These concerns were especially in light of the fact that the government abandoned in the budget this year the tax breaks proposal for green buildings, which by the time the budget came around was not actually put forward as tax breaks but as a grants proposal. That was particularly disappointing to the Green Building Council and the Property Council, for example, because they had actually forgone the tax cuts in the budget the year before in order to try to get a better program.

So, in the absence of any kind of particular incentive for energy efficiency in commercial buildings, and with neither the government nor the coalition prepared to support a white certificate scheme for commercial buildings, there is no incentive in Australia to actually build to higher standards of energy efficiency. And the problem with buildings, as we know, is the split incentive. If you own the building you are not paying the energy costs associated with its performance; that goes to the tenants to whom you let the particular space. So you have to find ways in which to make sure you are building better buildings in the first place, and you incentivise more efficient spaces. We have pushed for a long time for transparency of the energy performance data, not only transparency at the time of sale or lease but an ongoing transparency. The government has gone as far as transparency in relation to sale or lease but not ongoing disclosure. In that context, I was keen to make sure that we tried to do something that drove or incentivised construction of green buildings. To that extent, we began to look at this particular increase in the tax rate.

We listened to the concern of the Green Building Council, the Property Council and other bodies in relation to the impact on foreign investment in the Australian property market—in particular, proposed buildings and green buildings. After some discussions we reached an agreement with the government to support the bill on the basis that the government has given us a commitment to introduce legislation in the spring sitting to provide a withholding tax rate of 10 per cent for investment in buildings that achieve at least a five-star Green Star rating or a 5.5-star NABERS energy commitment. The rate of 10 per cent applying to energy efficient buildings will be for buildings that are constructed post 1 July 2012. Basically this is saying that, if money is coming into the country to build commercial buildings, if they do not meet that five-star Green Star rating or 5.5-star NABERS rating then they will pay a 15 per cent withholding tax. If they do meet the higher energy efficiency standards then they will pay the 10 per cent rate. I think this measure will encourage investment in environmentally friendly buildings. This particularly applies to many of the overseas superannuation funds, particularly teachers' and nurses' funds and the like, because they set quite high ethical standards for the way the money is disbursed, and they require that the investment meets some environmental or sustainability objective.

So I think this is going to match quite well, hopefully, with a drive in Australia to start building much more efficient buildings in the first place. This of course will lead to lower electricity bills for people who rent those spaces, and that is going to
increasingly become a key element of which office spaces various sectors choose to rent. Over 50 per cent of the Green Star buildings in Australia at the moment are five-star green or above. We want to encourage investment in more of those buildings. It is good for the environment and good for the tenants.

I think it is a good outcome that government revenue raising is supported while investment in green buildings is protected. It is a win-win scenario in terms of meeting the government's revenue objectives but also driving a greater investment in green buildings. Of course we would have liked to see it extended to the retrofits. Of course we would have liked to see it extended to buildings that are under construction but not completed. Nevertheless, I think this was a major achievement for driving the push into energy efficiency in the construction sector. That is the basis of the agreement we reached with the government to support the withholding tax, and we will expect that legislation on green buildings to come through in the spring session.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (17:43): I thank Senator Cormann and Senator Milne for their contribution to this debate. Schedule 1 to the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 amends the income tax law to increase the managed investment trust final withholding rate from 7.5 per cent to 15 per cent. I think it is worth pointing out that even at 15 per cent the tax is 15 per cent lower than under the former Howard government. The 15 per cent on funds payment made in respect to income years, commences on or after 1 July 2012. Given that is the start date and we are only a few days away from that, we would like to get this legislation through the parliament this evening.

Schedule 1 to the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 makes consequential amendments to the Taxation Administration Act of 1953, with particular effect to the increases in the MIT final withholding rate. The new rate of 15 per cent will ensure that Australia receives a fair return from foreign investments in Australian land and buildings, whilst maintaining competitive rates of tax relative to foreign jurisdictions. The new rate is still competitive with rates applying in other countries and will bring us into line with or better than the United States, Canada, Hong Kong and the United Kingdom. As I said before, it is half the rate that applied under the previous Howard government.

As Senator Milne has indicated in her contribution, the government will introduce subsequent legislation to support investment in the construction of energy efficient buildings. From 1 July 2012, managed investment trusts that only hold newly-constructed, energy-efficient commercial buildings will be eligible for a 10 per cent withholding tax rate. The government welcomes the constructive approach taken by the Greens in passing this important legislation, which stands in contrast to the opposition's position. I commend the bill to the Senate.

The PRESIDENT: The question is that the second reading amendment moved by Senator Cormann be agreed to.

The Senate divided. [17:51]

(The President—Senator Hogg)

Ayes .................30
Noes .................34
Majority.............4

AYES
Abetz, E
Birmingham, SJ
Boswell, RLD
Boyce, SK
Brandis, GH
Bushby, DC
Cash, MC
Cormann, M
Edwards, S
Eggleston, A
AYES

Fawcett, DJ
Fifield, MP
Humphries, G
Joyce, B
Macdonald, ID
Mason, B
Nash, F
Payne, MA
Ryan, SM
Smith, D

Fierravanti-Wells, C
Heffernan, W
Johnston, D
Kroger, H (teller)
McKenzie, B
Parry, S
Ronaldson, M
Sinodinos, A
Williams, JR

AYES

Brown, CL
Carr, KJ
Crossin, P
Evans, C
Faulkner, J
Furner, ML
Gallacher, AM
Hogg, JJ
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Stephens, U
Thistlethwaite, M
Urqhurt, AE
Whish-Wilson, PS

NOES

Bilyk, CL
Brown, CL
Carr, KJ
Crossin, P
Evans, C
Faulkner, J
Furner, ML
Hogg, JJ
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Stephens, U
Thistlethwaite, M
Urqhurt, AE

NOES

Bishop, TM
Cameron, DN
Carr, RJ
Di Natale, R
Farrell, D
Feeney, D
Gallacher, AM
Ludlam, S
Lundy, KA
McEwen, A
Milne, C
Pulley, H (teller)
Sterle, G
Thorp, LE
Waters, LJ

PAIRS

Back, CJ
Bernardi, C
Colbeck, R
Fisher, M
Scullion, NG

Collins, JMA
Conroy, SM
Siewert, R
Wong, P
Pratt, LC

Question negatived.

The PRESIDENT (17:54): The question is that the bills be now read a second time.

The Senate divided. [17:54]

(The President—Senator Hogg)

Ayes..................34
Noes..................30
Majority ..............4

AYES

Ayes

Bilyk, CL

Bishop, TM

NOES

Abetz, E
Boswell, RLD
Brandis, GH
Cash, MC
Edwards, S
Fawcett, DJ
Fifield, MP
Humphries, G
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Macdonald, ID
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Macdonald, ID
Mason, B
Nash, F
Payne, MA
Ryan, SM
Smith, D

COLLABORATIVE_SUMMARY

AYES

Bilyk, CL

Bishop, TM

NOES

Abetz, E
Boswell, RLD
Brandis, GH
Cash, MC
Edwards, S
Fawcett, DJ
Fifield, MP
Humphries, G
Joyce, B
Macdonald, ID
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Bernardi, C
Colbeck, R
Fisher, M
Scullion, NG

Collins, JMA
Conroy, SM
Pratt, LC
Siewert, R
Wong, P

Question agreed to.

Bills read a second time.

Third Reading

The PRESIDENT: As no amendments to the bills have been circulated, I shall call the parliamentary secretary to move the third reading, unless any senator requires the bills
to be considered in the Committee of the Whole. I call the parliamentary secretary.

**Senator FARRELL** (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (17:57): I move:

That these bills be now read a third time.

**The PRESIDENT:** The question is that the bills be now read a third time.

The Senate divided. [17:58]

(The President—Senator Hogg)

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

AYES

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NOES

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Question agreed to.

Bills read a third time

**Social Security Legislation Amendment Bill 2011**

**Stronger Futures in the Northern Territory Bill 2012**

**Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011**

Second Reading

Debate resumed on the motion:

That these bills be now read a second time.

**Senator PAYNE** (New South Wales) (18:01): In speaking to the Social Security Legislation Amendment Bill 2011 and the package of legislation known more colloquially as the Stronger Futures legislation, it does concern me somewhat that in looking at the legislation before the chamber, it does not show any particularly new or insightful leadership or any fresh views with regard to the matters considered in the bills. Just putting adjectives like 'stronger' and nouns like 'futures' in front of existing policy does not actually make it stronger—or new, for that matter.

Basically we see this legislation introduced because over a period of time I do not think the government has really had its heart in implementing a number of the initiatives which were part of the emergency response that the coalition found necessary to put forward in the Northern Territory. If I
were an optimist—and I like to think of myself in that way—and a generous person, I would say that, hopefully, there has been some realisation that those emergency response measures which were designed to enforce the rule of law, to get children to school and to create economies in remote communities, were real, were targeted and would have worked if pursued with some degree of focus and force and some enthusiasm.

After nearly five years of federal investment in this aspect of governance in the Northern Territory, it is beyond time to progress beyond an emergency situation and we need to really move to a position of stability, a position of normalisation, and, more importantly, one where the Indigenous people of the Territory themselves are able to lead the reforms. But it seems to us that instead, due to an at best apathetic response, we still have school attendance rates which are far, far too low, we have very prominent alcohol-related crime and assaults, we have persistent preventable health problems and we have a lack of economic opportunity that just leads to despair, which have not been addressed.

In some cases—and in a number which I know Senator Scullion spoke about in his remarks on this legislation—we are still where the coalition left off after 2007, and so we still require these sorts of measures to be put forward by the government. We are supporting this legislation because we believe that real reforms are still needed. But we will vigorously hold the government to account if they do not deliver the sort of leadership that is backed up by a very real commitment to pursue the end of the disadvantage and the disconnection being experienced in these remote communities.

As I mentioned earlier, one of the major challenges that confronts remote communities—and this will not be news to you, Madam Acting Deputy President Moore, given the work that you have done over many years here in the parliament—is the abuse of alcohol and the multitude of problems that inevitably follow, including assaults, family breakdowns and very poor health outcomes. There are not any new policies in this package of legislation which would enhance or complement any current Northern Territory government policies or initiatives. As far as I can see, this legislation is only duplicating existing measures, so that they can be seen to be taking strong action against alcohol abuse.

I understand that the government has agreed to an opposition amendment to the Stronger Futures legislation which clarifies the power of the federal minister, particularly in relation to the alcohol measures. The amendment makes it clear that prior to modifying, suspending or cancelling a liquor licence or permit the minister is first required to write to the Northern Territory government requesting the Northern Territory Liquor Commission to take action. If after those steps are taken, the Northern Territory authorities decline to act, the Northern Territory government must then provide a written response detailing why that requested action will not be taken. After considering the response from the Northern Territory, the minister may then exercise the powers provided in this legislation to suspend or to cancel liquor licences.

The clause in the Stronger Futures in the Northern Territory Bill 2011 that states alcohol sales must be restricted where harm may be caused to 'Aboriginal people', ignores the fact that it is an entire community that suffers either directly or indirectly from the consequences of alcohol abuse. Whether it is business owners or emergency service workers, they are just some of the other people whose lives and properties are put at
risk as a result of the problem, be they Indigenous or otherwise. We have recommended that this clause be amended to specify that the sale of alcohol is causing harm in the 'community'. That removes any specific reference to the Aboriginal people. It also clearly identifies that excessive alcohol consumption and alcohol abuse have community-wide consequences and therefore require a whole-of-community commitment to overcome.

I also note that the coalition supports the township and community living area leasing arrangements in the legislation. This is a reform which is absolutely vital but it has not been pursued by this government. The Northern Territory emergency response monitoring report from October last year says:

Following feedback from the land councils on these proposals, township leasing is now being pursued as a longer-term priority, unless traditional owners initiate discussions.

The government is not showing the urgency that, in our view, this issue demands. The leasing arrangements should be a top priority, because township leases are vital to enabling private home ownership and commercial development in Indigenous communities.

In relation to food security, this measure is an extension of the previous government's community stores program, where stores were assessed and Outback Stores were supported to enter a community to raise the quality and quantity and reduce the price of food and other household items. Expanding the support, monitoring and enforcement of food standards is obviously important, and we are not quibbling on that point. But we do need to know why 10 years have been set aside for improvement in this area. It does seem to be an extraordinarily long time, and we would have thought that it could be—and should be—accomplished within a shorter time frame than that, or at least give us a chance of trying to meet a shorter time frame. A decade is a very, very long time to put on that assessment.

In relation to the issue of school attendance being tied to welfare, which of course is part of the social security bill, the evaluation report for the school enrolment and attendance measure, known as SEAM, shows that SEAM has not really been implemented properly. Again that engenders even greater frustration with the government's actions in this area. It seems to me difficult to conceive that fewer than 10 parents in the Northern Territory were suspended under the attendance component but school attendance at remote schools rarely exceeded 50 per cent. The conclusion that can be drawn from that report is that there is obviously a focus on the exchange of enrolment data between the schools and Centrelink, but where is the focus on greater working with the families to ensure the children are actually going to school? Our concern is that there is an imbalance, if you like.

One of the biggest overall concerns with the bills is that there do not appear to be interim targets set to ensure that the programs are achieving their aims, because all the measures are to be reviewed after seven years, except the alcohol measures, which are of course reviewed after two. We would like to see a more robust set of guidelines to track the progress of the reforms on a more frequent basis so that you could actually raise a red flag if you thought that the sort of progress you were looking for was not being achieved.

It has been a subject of great debate around some of the aims and objectives set within the COAG process that earlier warnings are necessary—in fact essential—to avoid the sorts of delays with the
government's Indigenous COAG reforms, amongst others, which we have found in closely examining those. The COAG Reform Council in particular have been significantly delayed and, more importantly, frustrated due to the lack of availability of performance data. Those would seem to be a couple of key points that the coalition would be urging the government to consider.

We agree and have recognised for some time that federal involvement, federal investment, is critical to ending disadvantage and the feeling of disconnect or the actual disconnect in remote communities. I think that waiting for seven years, as specified in the legislation, to review what has worked is not good enough. It is not a strong enough requirement within this legislation and it seems to be almost a laying down of energy, if you like, to actually take this on as a hard task and pursue it as a hard task. We think that the measures should be reviewed after three years.

The Social Security Legislation Amendment Bill 2011 is the bill that inserts a new income management measure to enable income management referrals from both state and territory authorities. We do share the concerns which were raised by a number of submissions and a number of individuals who have provided evidence to the committee that there should be an established and transparent appeals mechanism which is applicable to all income management referral processes.

It concerns us as well that the government is very focused on process and perhaps less focused on outcomes than would be desirable. This new tranche of legislation has engendered a great deal of debate and a great deal of correspondence—I am sure all colleagues would acknowledge that—but the government does not necessarily seem prepared to strap on the boots for the sort of hard work that is necessary here, including the enforcement of sanctions and suspensions where necessary. If that continues to be the case, then the challenge that has been identified and agreed to overwhelmingly nationally of closing the gap will take so much longer. Those are the concerns that we see in relation to this legislation and which disappoint us in relation to the material put forward to the parliament in that context. I know that this will be a lengthy second reading debate and that there are also a number of amendments for the chamber to consider, but those points that I have raised and which were previously raised in remarks in the chamber by Senator Scullion are key issues that the coalition has endeavoured to address.

Senator LUDLAM (Western Australia) (18:14): I regret that I have to rise tonight to speak to the Stronger Futures in the Northern Territory Bill 2011. I spoke briefly about the reasons for that regret at two o'clock when we were debating the motion as to whether this bill would be debated tonight at all. I suspect when government senators come to their feet during this debate we will hear some arguments for urgency. I suspect we will hear some arguments for why this bill could not have waited until after the winter break. My reasons for strongly preferring that this debate was not occurring are twofold: first, it is a terrible bill that should not have been presented to this chamber in its present form in the first place; second, the person who has done the most in this building to champion the voices against the propositions being put in this bill is on the other side of the country tonight and is not able to be here.

I spoke earlier of the goodwill that I am very happy to acknowledge on behalf of the government and the whips and I suspect the minister in preventing this bill from coming forward last week when it was originally
scheduled for debate. But here we are, Thursday night, with everybody probably pretty exhausted after a big couple of days in this parliament. We come here to work and nobody will complain about that, but we are expected to simply shunt this legislation through tonight without the key advocate for the reasons this bill should not pass in the first place being present.

I am sure that many senators have received a huge volume of email and traffic that I have received expressing profound opposition and deeply held concerns from people all over the country about extending the Northern Territory intervention with this bill. My friend and colleague Senator Rachel Siewert from Western Australia knows probably more intimately than most of us in here just how strongly felt that opposition is. Before I proceed, I would like to, if I may, seek leave, by agreement with the whips, and understand this has been cleared, to incorporate into Hansard at the end of my speech Senator Siewert's second reading speech.

Leave granted.

Senator LUDLAM: I thank the chamber. I encourage senators to read the speech because it is a great deal more eloquent than the contribution that I will make now, but on Rachel's behalf I will do my best.

The Greens opposed the intervention when it was introduced in 2007 and we oppose it now. You can change the name but the underlying intent of the legislation remains the same, and the failure of the intentions of the original intervention, even with the best faith in the world. If you look back over the time since the original bills came into force in 2007, we have now had some time and some opportunity to assess whether or not it has succeeded—and it has failed. The legislation we are going to knock through tonight, presuming the coalition and the government will vote together, does nothing to address the failures of the original NTER. Instead, it entrenches them for another 15 years. That evidence was given to the Senate committee that travelled far and wide around the country to interpret the messages that were coming back, and I will speak a little bit about that experience down the track. We are not alone in opposing this legislation. We are joined by the Human Rights Commission and by the Catholic bishops. The intervention, and its continuation through this bill, has brought international shame upon Australia at the United Nations. The Special Rapporteur on Indigenous Rights and the Fundamental Freedoms of Indigenous People found that it was 'racially discriminating and infringes on the human rights of Aboriginal people'.

So here we are. The intervention has not worked. The gap is not closing. Probably most of the people here tonight if they were able would have attended the original Closing the Gap ceremony. I can remember it was an event free of politics. It was something that was welcomed and was the culmination of an amazing grassroots campaign that had been working through huge efforts from largely volunteer community groups and Aboriginal leaders and people throughout the communities. It made its way into this parliament and made its way onto the Prime Minister's desk and promises were made, announcements were made, programs were set in place. The intervention as a vehicle for achieving some of those things was a pretty clumsy and warped way of effectively hijacking the Closing the Gap debate. Use the bumper sticker, use the slogan, and insert these failed and coercive policies into that frame, which does an enormous injustice to the people who got that campaign onto the front page.

There are no Aboriginal people in the chamber tonight for this debate and so as a
white guy from Fremantle I am going to quote somebody who is not here. This is entitled 'A letter to the politicians of Australia who will debate the Stronger Futures Legislation, June 2012'. The writer says:

Palya Everyone,

I never thought I would be so affected by this statement from Rosalie and Djiniyini. It is like having everything I dreamed of disappearing from my sight. I am so upset at this happening to us and after all the hard work we have put into trying to stop the Stolen Futures Legislation getting passed in Parliament and becoming Law.

I don't know yet if it has been voted on in the Senate, but when I think of politicians in Canberra, who never bothered to get to know First Nations People or understand our Culture and simply don't care that we are human beings as they are, it makes me very sad and my heart aches for all those who have never known freedom in their lives and the deaths of the children who saw nothing but despair in their future lives and ended it with a rope or other form of suicide. I can only cry from the pain they felt and the hopelessness they looked forward to.

I can only ask those politicians who don't care for their fellow human beings, "Do you feel good about what you are doing to the First Nations People today? Does this power you have over our lives make you a better person? But most importantly, will you tell your grandchildren, what you did to the First Nations People this day and how you destroyed the lives of so many First Nations People and caused their deaths prematurely? Will you have the guts to admit what you have done, to your grandchildren, or will you hide this truth from them when they ask you, that question of curiosity, 'Who were the First Australians in this Land?' Will you feel the shame of Generations of First Nations People being trampled underfoot by your political policy of Racism and Discrimination and greed and how you used your power to keep them forcibly shackled to a yard or fenced-in area away from their Country and Communities, all because you wanted their wealth in their Land ownership, the wealth you will never know!"

She concludes:

I wonder how you will tell your grandchildren these atrocities you did to the First Nations People.

If you will tell the truth to them.

If you will finally say you are sorry for what you did and mean it.

If you will shed a tear for the People who only wanted to live their old age in freedom on their Traditional Lands and teach THEIR grandchildren the wealth of knowledge they had.

These beautiful People are no longer with us now. They died of broken hearts and Stolen Dreams by politicians who never cared to treat us like human beings.

You will have to look into your grandchild's eyes and see the emptiness they feel of losing such a wonderful Heritage and Culture forever, for your greed.

DENI Langman

Traditional Owner of Uluru

Those words come from the centre of the country. She obviously cannot be here tonight, but, through the clumsy mechanisms that are available to us, after the kind of evidence-gathering processes that we can avail ourselves of in the parliament, mostly just sitting down and listening, we will put these views as best we can.

The failed strategy of the intervention will be set in concrete for 15 years by this legislation. It is interesting that you would stand up and critique that, because actually what this area of policy needs most is some continuity. Steady resourcing of programs and long-term commitments are welcome, not just in this portfolio but in many cases across the board, but what happens if we get the original settings wrong? What happens if we look at the evidence that has accumulated since 2007 and conclude that we can set it aside and just plough on as though we did not know? Funnelling resources through a policy framework that is flawed is not defensible. It is not defensible, particularly
when there are alternatives, and of course there are.

Ideas for such alternatives have been emerging, but not really through the inquiry process, which was mishandled. Inadequate notice for people, time frames that were crunched and, very importantly in this area, lack of translation were major problems. Some of the alternative paths—and I suspect Senator Wright, when she comes to her feet a little later in the evening, will speak of them; I know this is a passion of hers—include justice, not jail; building communities, not prisons. The phrase that has come to be used—and I came across it first after having my eyes opened by former Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma at an event in Sydney—is 'justice reinvestment': schools, youth workers, child centres, counselling, drug and alcohol work, not incarceration.

I put up a reference to the Legal and Constitutional Affairs References Committee—and I was to be pleased to have it supported—for an inquiry into access to justice. I have some insights on this issue, and it is wonderful to see the idea taking hold. Before former Attorney-General McClelland was moved into a different portfolio, there were very interesting signs coming out of the Attorney-General’s office that this was an idea that could be taken up—putting the money at the front-end for treating people and treating the reasons why there are such catastrophic levels of incarceration of Aboriginal people, particularly young people. I will leave those issues to Senator Wright to address later in the debate.

In the area of education, an alternative approach to that taken by the government suggests that education should be used for empowerment, rather than punishment. Why exactly is there a ban on bilingual education in the Northern Territory? It is shameful that people cannot learn in their own language, where requested, in addition to English. Schools can be centres of culture and community but not without properly resourced staff and equipment. The Improving School Enrolment and Attendance through Welfare Reform Measure is a punitive program that links welfare payments to school attendance, and does not make coming to school an empowering or happy learning experience. The Greens oppose it.

Compulsory income management is one of the headline issues around the intervention. When you come off a plane in Alice Springs or in the Top End, that is one of the first things that you will hear about if you stop and listen. It is being expanded under this legislation. Jimmy Wavehill, one of the old men who walked off the Wave Hill station and helped spark the original land rights movement in this country, in the action celebrated in the Kev Carmody and Paul Kelly song From Little Things Big Things Grow, told a staff member of ours that the income management BasicsCard reminded him of the ration card. That is how demeaning and insulting the system is to people. You turn up at the shopping centre and you stand in the blackfellas’ line with your BasicsCard, because you are being told that you are not grown-up enough to look after your own affairs. These people are being treated like dirt. Jimmy in particular fought for his rights and, in old age, after raising a family of children with his wife, is being treated like an infant again. There is no evidence that income management actually works to improve budgeting or any other outcome. I challenge members of this parliament to describe to us whether they would submit to this kind of thing—if somebody in Canberra was going to hold onto half your cash for you and work out
what it is that you can and cannot buy, at certain kinds of shops that might be a long, long way from where you live.

I will be moving, at the request of Senator Siewert, a second reading amendment that catches the issue of alcohol. I know this is a vexed issue, that it is complicated and that there are no simple solutions, but there are alternatives to blanket alcohol bans. Some of the best places in the north-west, which I am a little more familiar with, are the ones where solutions bubbled up from the grassroots, from the communities themselves. In some Kimberley communities, there are solutions that have been brought to bear, but none of them are alike. In every area where it has worked, it has been slightly different. Communities need resources to develop local solutions to alcohol misuse and abuse. There are culturally appropriate and accessible alcohol treatment programs. But the approach under the intervention is to put up signs, at the edge of which people drink. I have seen these. I have spent a fair bit of time in the Territory, and you can see these monstrous great signs by the side of the freeway saying, 'You are coming into a prescribed area,' with a whole lot of fine print about things you are not allowed to do. There are serious problems associated with alcohol around the country, through every racial group in the country. Putting up signs—if that is considered to be some form of rehabilitation—is not considered, in those prescribed areas, as a sign of support. It is not setting any kind of floor price. It is not implementing alcohol-free days. These are some of the answers that we should be experimenting with—or supporting the experiments that exist. Gigantic billboards are not.

I would like briefly to foreshadow some of the amendments that the Greens will be moving to these flawed bills. I will speak at much greater length on the amendments when we get to the committee stage of the legislation. And, as I said, I will be moving a second reading amendment, which I believe has been circulated to the whips. It reads:

At the end of the motion, add:

but that the Senate recommends that, after community consultation, the Government develop a policy for the implementation of take-away alcohol free days, and a floor price for alcohol. These are two of the measures that have come through the process which those who have been closer to this legislation and this debate than me would be very familiar with. Senator Siewert's amendments in the committee stage, which we will discuss, go to a number of issues. One will ensure that the Australian Human Rights Commission criteria for meaningful consultation go into the definition in the legislation. There are also amendments to the objects clause referencing effective participation. There are amendments to remove the entire schedule containing SEAM. If that schedule is not removed, we will then move amendments to improve community and family involvement in the drafting of attendance plans and ensuring that parents understand fully their obligations under those plans.

We are proposing amendments to remove the schedule containing income management from the legislation entirely, for reasons that I just described. If this schedule is maintained, we will move amendments to remove the power to refer by state and territory agencies and reduce the amount of money that can be quarantined. So, if we cannot get rid of that obnoxious schedule from the bill, perhaps we can at least condition it and wind back its impact on people somewhat.

There are amendments to remove the ability to make new alcohol protected areas and requiring all present bans to sunset in three years, unless of course communities
choose, through their free will, to maintain them. This will allow alcohol protected areas to be transitioned into alcohol management plans. We will discuss amendments to remove harsher penalties for possession and consumption of alcohol and amendments to ensure that judges can consider customary law and culture in bail and sentencing for all offences in the NT—and take a look at some of the experiments and the degree to which these ideas have been tried in Western Australia, where very similar issues are obviously prevalent. We propose amendments to sunset the legislation in five years rather than 10, and I hope that this is something, at least, that we can carry.

I am not familiar enough with this legislation, having been dragged into it kicking and screaming, quite literally, to know whether we have coalition or perhaps even government support for some of these amendments, but I hope to test some of these propositions later in the evening. We have also an amendment which will change the requirement for investigating premises from 'causing substantial harm to Aboriginal people' to 'causing substantial harm to the community'.

It is five years since the NTER insulted Aboriginal people. I can remember quite clearly the day that Prime Minister Howard announced it. I was at the place of a friend who actually ended up being my campaign manager, because we were in the early stages of the campaign that would eventually, for better or worse, bring me here. My friend and dear colleague burst into tears, because it was so clear what was being done. The politics of it were so brutal—the way the announcement was made, ripping off the *Little children are sacred* report and pretending that that was what this was all about. I can also remember quite clearly sometime later the original authors of that report reminding the public and reminding the government that not a single one of the recommendations in that report was acted on. Their report was hollowed out and used as a political shell to advance an agenda of control and coercion that is absolutely inappropriate for us to be entrenching and consolidating in 2012, for heaven's sake.

The result, which was described in a recent issue of *Arena* magazine, is pretty messy and disturbing. I commend this to the chamber, and perhaps we might even, by leave, once it has been to the whips, seek to table a copy of that document for the permanent record. By the government's own measures, outcomes and indicators, this policy is failing. Unemployment and welfare dependence in many cases are worse than they were before the NTER was instituted. Children are being hospitalised and school attendance has not improved. Suicide and self-harm rates have doubled since the intervention. I believe that some of the senators who will come in here later this evening and vote for the bill profoundly wish that they were not, but perhaps some contributions could be made about why, when the indicators are all going in the opposite direction, we are insisting on carrying on. These are not results that should be simply continued; they are results that should be heeded, understood and not perpetuated.

I am also not claiming that there was nothing good in that package, because clearly there was. I believe that the senators who took evidence on the way around the country heard evidence that there are measures that work. Let's take those and let's continue them, but let's not continue the false hope of a continued coercive approach that has made people in the NT and across the country feel even more powerless than they already did. We owe these people better. The government came in and provided a moving
apology. We do not want it to conclude its time owing more. I move:

At the end of the motion, add:

but that the Senate recommends that, after community consultation, the Government develop a policy for the implementation of take-away alcohol free days, and a floor price for alcohol.

I now incorporate into Hansard Senator Siewert's second reading speech.

Senator SIEWERT (Western Australia—Australian Greens Whip) (18:34): The incorporated speech read as follows—

The Australian Greens oppose this package of legislation.

But we are not the only ones.

I read here from the statement of the Yolngu Nations Assembly, who represent the people of 8 Aboriginal nations in Western, Central, and East Arnhem Land:

To the Leaders of the Australian Federal and Northern Territory Parliaments:

The Yolngu Nations reject the Stronger Futures Bill (and those associated) and call on the Senate to discard these Bills in full. We have clearly informed you that we do not support the legislation.

The Australian Federal Government can achieve all its aims through partnership in our communities. They have no need to grant themselves the continued and new powers contained within these Bills....

The Yolngu Nations call on both the Australian Federal and Northern Territory Governments to end their interventionist policies and agendas, and return to a mindset of partnership based on the principles of Self-Determination.

Partnership and Self-Determination

I'd also like to share with you comments from the CEO of Malabam Health Board in Manningrida

Do you all know what a lorrkon is? It is a hollow log. We use logs for coffins. Since the intervention and since this new policy has come in that is all we are seeing. We are seeing hollow people walking around. This place is definitely different from the place it was before the intervention. That is not to say that we do not have our issues; we do, as do a lot of other communities. Personally, and again this is only my personal view, they seem to be exacerbated and have been since the intervention. I am not confident that Stronger Futures is going to rectify any of that, but that is what we have got to deal with.

Sentiments like this were expressed by many witnesses we spoke to during the Community Affairs Committee inquiry. I cannot overstate the opposition to these Bills. It came from Aboriginal leaders, Aboriginal people, Aboriginal organisations, community service organisations, the NT anti discrimination commissioner; teachers; social workers; academics and the Australian Human Rights Commission—our National Human Rights Institution. And just recently, the Australian Catholic Bishops Conference and Catholic Religious Australia issued a statement, calling on us—on Federal Senators not to pass this legislation

I could go on and on listing organisations and eminent persons that reject these Bills. Rarely in my time as a Senator have I seen such consistent, fierce and wide ranging opposition to a suite of legislation.

The Stronger Futures package effectively extends the measures put in place by Northern Territory 'Intervention'. The Australian Greens opposed the Intervention and we likewise oppose the Stronger Futures legislation.

There is no substantive evidence to show that the Intervention has had a positive effect on the lives of Aboriginal people in the NT. Rather, it is clear that the top-down, punitive nature of the Intervention is actually undermining and disempowering Aboriginal people and communities.

The ineffectiveness of these measures is not surprising considering international research on Indigenous economic development points to the success of community driven measures over top-down approaches.

Let me repeat—we oppose this legislation. Time after time we have criticised the Intervention, and this policy is no different.

I'll explain why.
Extension of an Ineffective and Expensive Approach

- It became quite obvious during the Community Affairs Inquiry that the consultation process undertaken by the Government was totally inadequate.
- Numerous problems were raised about the process throughout the inquiry: meetings were scheduled at times people could not attend; inadequate notice was given, not enough time was given to discuss the issues; comments were misreported; there was no follow up and materials were not translated in local language.
- Therefore, if as expected this Bill passes 2nd Reader vote, we intend to move amendments which incorporate the AHRC’s criteria for meaningful consultation into the definition of consultation in the legislation, as well as amendments to the objects clause referencing effective participation in the objects clause.
- It has been made clear during the inquiry that the NTER has caused erosion of community governance and disempowerment of Aboriginal people. In particular through: the manner in which Federal, State and Territory Governments engaged with Aboriginal communities; the ‘top-down’, punitive nature of NTER measures and their interaction with other reforms. The parallel changes to CDEP, remote service delivery, housing, homelands and abolition of Community Councils in the local Government reforms has "reduced control at the community level and increased centralisation of decision making."
- The top-down, paternalistic, punitive nature of the Intervention from the outset has meant that its ability to improve the lives of Aboriginal people in NT was non-existent. Evidence of this can be found in the summary provided by Dr. Bath, NT Children’s Commissioner, of ongoing child welfare issues in the NT.

School Enrolment and Attendance through Welfare Reform Measure (SEAM)

- Evidence indicates that SEAM has not significantly improved school attendance rates in the trial sites, and the Greens express serious concern that it was being extended across the NT without evidence of its effectiveness.
- The APO NT note in their submission to the inquiry:
  The official evaluation of the SEAM trials is incomplete. Nevertheless, the 2009 Evaluation Report makes clear that in 2009 there was no observable improvement in school attendance. On this basis, APO NT submits that the introduction of the Social Security Bill, seeking to continue and in fact extend SEAM, is unjustifiable.
- Evidence cited during the inquiry pointed to the effectiveness of holistic, long-term, well designed, targeted and incentive based programs that are community led and community owned.
- St. Vincent de Paul Society noted that numerous proactive solutions to improving attendance were provided by communities during the Stronger Futures consultations. It is deeply disappointing that these suggestions were not incorporated into the Bills. They included:
  - Development of programs to get elders to help parents get kids to school
  - Return of bilingual education
  - More language and culture in schooling.
  - Using local elders to teach culture in schools
• homework centre in community where parents could help out at the centre
• football programs
• linking excursion and incentives to attendance
• Full time parent liaison officers
• More teachers and qualified youth workers to work in community to develop quality
• programs for young people
• Community activities to bring children and parents together
• Local qualified teachers given preference over teachers from elsewhere
• Recruiting local people into teaching profession
• Specialised teacher training to work in Indigenous communities
• Get teachers to do specific training about the community and local culture
• Have the community involved in the process of hiring teachers
• Parent support groups
• School council
• Improvements to early childhood education
• mobile preschool
• community childcare
• community bus to get little ones into early education

The Australian Greens are very concerned that the Government intends to spend over $110 million over 4 years on a policy that cannot be shown to be effective when that money could be spent on properly resourcing schools in the NT and putting in place programs that will actually improve school attendance.

We will be moving an amendment to delete this schedule, and we encourage the Government to spend the allocated money on some of the initiatives I just outlined.

• If the schedule is not removed, we will be moving amendments to improve community and family involvement in drafting of attendance plans and ensuring parents understand fully their obligations under those plans.

**Income Management**

• The Australian Greens strongly oppose the continuation of compulsory income management in the NT, its expansion to five communities in other states and the broadening of referral power to State and Territory authorities — enabling the expansion of income management across Australia.

• There is a complete lack of evidence that compulsory income management leads to better outcomes or improved ability to budget.

• Ms Cox, an academic from Jumbunna Indigenous House of Learning at University of Technology Sydney, stated unequivocally during the inquiry: "My conclusions were that the studies and statistics available showed no valid or reliable evidence of measurable benefits of income management to individuals or communities."

• We will be moving an amendment to remove this schedule from the legislation.

• If this Schedule is maintained, we have serious concerns that allowing referrals from State and Territory agencies may raise access to justice issues. We will therefore be moving amendments to remove the power to refer by State and Territory agencies and ensure that decision making remains with the Secretary of Department.

**Tackling Alcohol Abuse**

• The Australian Greens believe that blanket bans on alcohol, such as those imposed by the Intervention, are not the most effective way of tackling alcohol abuse particularly as the necessary supports such as adequate access to rehabilitation services have not been provided. This is consistent with the evidence—alcohol abuse has not decreased in the NT, and in many places it is worse than it was before the intervention.

• We are concerned that that this legislation automatically transitions prescribed areas into alcohol protected areas, imposing alcohol restrictions without consultation.
We will be amending this aspect of the Bill, to remove the ability to make new alcohol protected areas, and requiring all present bans to sunset in 3 years, unless communities choose to maintain them. This will allow alcohol protected areas to be transitioned onto Alcohol Management Plans.

There was a great deal of concern expressed throughout the inquiry about increasing penalties for possession, consumption and supply of alcohol. In particular that amounts under 1.35 litres could attract a penalty of up to 6 months imprisonment.

We will be moving an amendment to remove these harsher penalties.

What is sadly lacking from the Stronger Futures legislation is any attempt to reduce supply such as through setting a minimum floor price for alcohol and takeaway free days. Evidence to the inquiry indicated strong support for this type of measure and provided strong evidence for the effectiveness of such measures.

**Customary Law**

The Australian Greens support the provisions which will allow consideration of cultural practices and customary in bail or sentencing decisions for offences related to cultural heritage. However, we believe the legislation does not go far enough.

I’d like to give a quote which has relayed to us during the inquiry, by Representatives from North Australian Aboriginal Justice Agency:

> There is an American academic, Patricia Williams she is a black woman who describes the majoritarian privilege of not noticing one's self. That is the danger with this sort of law, that we, being white fellows, do not recognise our culture and our custom as we think that is the status quo. When it is Aboriginal people it is custom and culture and it is excluded. That is why at the core of this law there is something that really should trouble us.

Prohibiting the consideration of customary law sends a clear message to Aboriginal people — their culture does not matter. This is a serious dismissal and stands in stark contrast to international law and best practice which shows the vital role culture plays in improving outcomes for Aboriginal people.

As such the Australian Greens strongly oppose these provisions and will be moving an amendment to ensure judges can consider customary law and culture in bail and sentencing.

**Land Reform**

The Australian Greens acknowledge that there is a genuine and pressing need for land reform in the NT to facilitate granting of leases for community infrastructure, utilities, home ownership and businesses. As such, we also support the intention of the legislation. However, we share the concerns of the Land Councils who considered that the NT Government is better placed to make the reforms and that the regulation making power in the legislation is very broad.

**Permits**

It is disappointing to the Australian Greens that these Bills do not address changes made to the permit system as part of the Intervention. We will be making amendments to repealing changes made to the permit system as part of the NTER.

**Food Security**

The Australian Greens are broadly supportive of a store licensing regime, which improves food security in Aboriginal communities and is community driven. However, we are concerned that the penalties in the legislation are unnecessarily harsh, and the monitoring powers are too broad.

It is of great concern to the Australian Greens that this legislation does not attempt to address the issue of cost of food in remote communities in the NT.

Considering the impact of high food costs across the NT on the health and wellbeing of Aboriginal people, the absence of measures to mitigate it is a glaring gap in the legislation.

A call for a culturally competent approach which supports local governance

As is abundantly clear from my comments, not only to the Greens, but to many Aboriginal
people and a huge number of organisations, that the approach taken by the Federal Government is wrong. It disempowers Aboriginal people and erodes community governance. Because of this it will never be effective.

- Many submissions to the inquiry called for a new approach—a culturally competent approach which supports communities to achieve their own development objectives through proper consultation; local governance and cultural competency.
- The Australian Greens strongly support such an approach.
- The first step that approach is to ensure proper participation of affected communities through improving the Government's dismal consultation process. We will be addressing this in our amendments.
- Local Governance must also be supported, rather than undermined. As the national Congress of First Peoples writes: There is extensive Australian and international research which consistently concludes that active participation of Aboriginal people in decision-making on issues affecting their communities is fundamental to effective governance and a precursor to sustained development ...
- This is supported by research from the Harvard Project on American Indian Economic Development, which demonstrates that when Indigenous communities: "make their own decisions about what development approaches to take, they consistently out-perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision."
- The Australian Greens strongly support such an approach, programs which do not foster local governance are bound to fail. To do anything else would not only be counter-productive but would fly in face of years of domestic and international research. It is disappointing that the Government has not dedicated more resources to this end.

Cultural Competency

- Finally, for efforts in the NT to be effective it is absolutely vital that Governments and their staff have the cultural competency to effectively implement programs. As the AHRC explains:

  The Stronger Futures engagement mechanisms and consultation processes will be ineffective unless they are supported by a skilled and culturally competent government workforce. The NTER Review Board found that new attitudes must be developed to redefine the relationship between the bureaucracy and Aboriginal and Torres Strait Islander peoples including a greater understanding of Indigenous cultures and world views.

Conclusion

- The Australian Greens believe that the Federal Government must re-examine the approach they are taking in the NT. International research and best practice points to the importance of empowerment and local governance in improving outcomes for Indigenous people. Stronger Futures, rather than empowering Aboriginal people, undermines their governance and devalues their culture. Until we see a change in approach, until Aboriginal people are empowered to lead their own development, efforts in the NT will not be effective.
- This legislation will mean that the Intervention will ostensibly be in place for 15 years. While we welcome the commitment of resources for a further 10 years, subjecting people to an ineffective and damaging policy for 15 years is completely unacceptable. If this legislation proceeds, we will move amendments to reduce the sunset period to 5 years.
- The Government should abandon Stronger Futures. If neither the Government nor the Coalition can see the fundamental flaws in the approach of this legislation, substantial amendments are needed to mitigate the impact of these Bills.

Senator CROSSIN (Northern Territory) (18:34): I have waited many, many weeks and many, many months to provide my
contribution to this debate on what we would probably call the Stronger Futures packages. We are talking tonight about three bills: the main bill itself, the Stronger Futures in the Northern Territory Bill 2012; the consequential provisions bill; and changes to elements of the social security legislation.

Five years ago, when the Northern Territory Emergency Response occurred, or the 'intervention', as we now all commonly call it, I was shocked. I was literally shocked. I just could not find words that night or the next day, as people across the Northern Territory were ringing me. My colleagues in the Northern Territory were ringing me, absolutely bewildered at why the Howard government would move into Aboriginal communities with the speed and the stealth and the lack of consultation with which they did. The intervention was introduced in less than 48 hours with not a word to anybody, with total disregard for the work of Clare Martin, who was then the Chief Minister of the Northern Territory, and a total disregard for any of the reforms that the Northern Territory government had put into place.

I am hoping that, with the passage of this legislation, we can just get a few facts on the record tonight—and so far, from the two speakers I have heard, we are very far from the facts. For example, Senator Payne, the school attendance and enrolment management program has only been on trial in the Northern Territory in fewer than eight schools, so you cannot talk about improvement of attendance across the Northern Territory. It has not even been in all of the schools across the Northern Territory. So let's start talking about a few facts here. I say that bearing in mind also the number of emails I have received from particular groups that seek to lobby about this, sitting in the heart of Melbourne and Sydney rather than the heart of Borroloola, Ngukurr or Lajamanu.

But I am hoping that with the passage of this legislation we can ensure that the intervention is placed in another sorry, sad chapter of the history of the communities in the Northern Territory. Key legislative NTER measures will cease by 12 August. This is not a continuation of the intervention. If this legislation goes through, it will stop the Howard government's intervention. As I said, along with many others I was totally shocked about the motives, about the disregard for Indigenous people, about the lack of respect—disbelief and an absolute sense of betrayal. I have travelled the length and the breadth of the Northern Territory many, many times over the last five years. I have probably not gone to as many communities as I wanted to and I have probably not gone back to them as often as I wanted to, and I would have to say the same, probably, for Senator Scullion. Of all the people in this place, we know only too well the hurt and pain that Indigenous people have endured in the Northern Territory because of those policies.

Within a year of coming to government we announced that we would do a review, which we did. It reported in October 2008, and this government handed down its response in 2009. We accepted the need initially to reset our relationship with Indigenous people. That is the first thing we wanted to do as a government. We recognised that high levels of disadvantage still had to be urgently addressed—and they still do. There are improvements out there in communities, but circumstances are nowhere near what we would find acceptable in this day and age. One of the first things we did was reinstate the Racial Discrimination Act, and we introduced a scheme of income management that was not racially discriminatory. In the Northern Territory now it is applied to everybody. I do not particularly like the model. I have made my
views known very loudly and clearly to the government to which I belong. I believe it needs to be a model that you opt into—totally, voluntarily—or it needs to be a model whereby families that do need assistance are targeted. I think today's amendments, which unfortunately the Greens want to remove, are the way to go. They are the kinds of amendments I think we need, rather than the obligatory, mandatory income management regime.

But, I have to say, as I get around the Territory I meet lots of people who actually like it. I never hear their voices being echoed by lobby groups. I never hear their voices being articulated in this chamber. But they actually like it. A couple of women out in one of the communities said to me when I was there about five weeks ago that they like the fact they can go into the local store and know they have a certain amount of money to spend on their food and goods. They like the fact that it is budgeted for them. They actually like that! People say to me, 'I like the fact that the fellas in my life, the young boys in my life, my grandsons, can't humbug me for all my cash,' and there are many thousands in the Northern Territory who have that view. So we have to accept that there are some elements of this package that the people I represent want continued.

We also redesigned the alcohol and pornography restrictions, the law enforcement powers and the community stores licensing. But, if you have a look at or have a very good read of the Stronger Futures legislation, it really goes to only four measures. One is to sort out what is happening on community living areas. We have needed to do that for long time. Do you know why that is in there? The Indigenous people are frustrated with the intransigence of the Northern Territory government, so they came to us and asked, 'Can you work with the Northern Land Council and the Central Land Council and get a move on this?' For those people who might be listening, community living areas, or CLAs, are those communities that are excised on pastoral properties. At the moment, no-one can own anything on them. There are usually no stores on them. No-one can get a lease to do anything on them, because of the nature of the lease on that land. It is a CLA, a community living area. They want that sorted. That is in this legislation. Why would those opposite object to that?

I want to go through the other issues one by one. Regarding alcohol management, the plans we want to introduce through this will take us to regional centres and remote communities. Communities will be able to have their own alcohol management plans. Groote Eylandt, where they have had their own alcohol management plan, has been particularly successful. From 2004-05 to 2008 their antisocial behaviour declined by 74 per cent. Property crime dropped by 68 per cent. Aggravated assaults dropped by 68 per cent. In Nhulunbuy, where there are some alcohol management plans, the number of people in protective custody has halved since 2009.

We know that there is more work to be done, and we are working with the Northern Territory government, who of course have announced their 'enough is enough' laws. But what we see is that people want their own alcohol management plans. Barbara Shaw is out there advocating that we do not pass this legislation. In her particular town camp they are negotiating their own alcohol management plan. When I asked her in Alice Springs, 'Do you think that having an alcohol management plan camp by camp or community by community is a good way to go?' she said, 'Yes. It's no good my camp having an alcohol management plan and then using it in my grandfather's community. It should be his people in his community.
making up their own rules.' That is what this legislation allows to happen. That is exactly what this legislation allows to occur, so that, community by community, people can sit down and empower themselves and go back to having their own alcohol management plans. That is something the original intervention took away.

Alcohol consumption in the Northern Territory is the highest in the world; it is 14.6 litres per person per year. Even the national level is only 10.3 litres. We need to do something about it, and we are working with Aboriginal communities to do something about it. There will now be penalties for grog running. That is, if you are supplying 1,350 millilitres of pure alcohol— and we are going to make amendments to ensure that that is really clear to people—you are going to be penalised now. You cannot stock up the boot of your car and run it into communities and get away with it anymore. This legislation will empower police in communities to deal with it.

The other thing I want to say is: what is not in this act is those horrible, shocking, blue community signs, which I think were probably Mal Brough's idea to put up all around the place. Those signs can now be taken down and replaced with signs that are more respectful and that have had direct community input into them. So, yes, it will be illegal to take alcohol into communities, because they are dry, and it will be against the law to have certain pornography in those communities—just as it is illegal for me to take my cattle dog into a national park, and there is a sign there saying stop, you cannot do it. It is the same with these communities. So those horrible, godforsaken silver and blue signs can come down finally with the passage of this legislation, and Aboriginal communities will be able to replace them with their own signs that they have designed and that they have negotiated for, ensuring that they comply with the legislation. I think that is a great thing and I am going to be out there every day advocating that they do that.

This legislation will license community stores—92 have been licensed—and with that comes improvement in quality, quantity and the range of fresh food. With licensing comes improvement in the management and operation of stores. They are cleaner, they are more hygienic and, guess what, they now employ Indigenous staff. As well, licensed outback stores do not have book-up any more. It has meant an end to book-up—an end to a cycle of debt. Book-up is where you go into a store and say, 'I really can't afford that $100 worth of food but give it to me anyway, and when I get my Centrelink money next week I will pay you back.' But you can never pay it back because the next week you need the next $100 worth. That cycle of debt is now ended because outback stores will be licensed and the BasicsCard has been introduced.

This is about food security in remote communities. The stores have been managed and handled in a shonky way by people who have no regard for the kind of food they sell or the people they sell it to. The only regard they have is for how fat their wallet is going to be at the end of the week. This will stop with the licensing of outback stores. That is what is in this legislation. How could anyone say that that is not a good thing? Indigenous people everywhere say to me, 'Sister, I want my store looking just like your Woolies supermarket; I want my store to have proper fruit—I don't want to pay $10 for three oranges anymore.' That is what outback stores have been doing, store by store. If it is not outback stores, it is ALPA—and I gave a speech just last week on how fantastic ALPA is in the Top End. There will be penalties if the store licence is breached. Stores will be designated food security areas. This is about ensuring that there will be competition out
there. Competition always drives a better outcome.

I turn to land reform. Five-year leases will not be extended. Fair rent will continue to be paid for the period those leases are in force. The issue of leasing was polarised by the former minister, Mal Brough—there is no doubt about that. There was no attempt to get people to work with the previous government on this. Leasing became a threat—sign up to these 99-year leases on Galiwinku or you will not get any houses. We do not operate like that, and we have never operated like that. We have empowered Indigenous people. We have sat with Indigenous people, through the department and through Jenny Macklin, day after day and got them to understand that at the end of the day if you lease your land, on which we can then build a building, you will get rent for the land that you lease—you will get payment for the land you have leased.

Let me put this on the record: under the current leases, nine major communities in the Top End will receive payments equal to the royalties of a small mine—about $1 million to $2.5 million—once an agreement with the Valuer-General has been reached. For the first time ever communities will be paid for the land that they lease to governments or to people who want a house on that land. They will get money out of that. I will be damned if I know why anyone would not want to support legislation that ensures that.

So they are three areas: alcohol, store management and land issues. The fourth area is school enrolment and improvement in attendance. I am probably the only person in the federal parliament who has taught on an Aboriginal community. I am probably the only person who has gone to school on Monday with 25 kids in my class, and three on Tuesday, six on Wednesday, 25 again on Thursday and maybe two on Friday. Then the following Monday I get another 25—but they might be a different 25 from the 25 I had the week before. I have been there and I have experienced how damned difficult it is trying to teach kids when you cannot even get the same child consistently day after day.

Whose fault is this? It is everyone's fault. Finally we now have the Northern Territory government stepping up to the plate with their Every Child, Every Day strategy. That is about ensuring that the Department of Education and Training starts to bring people into the schools, starts to work with Indigenous parents, starts to develop attendance plans with them and starts to get to the grassroots reasons those kids are not attending every single day. This is an intervention as much on the Northern Territory government as it is on trying to get kids to school every day. We know the statistics for child attendance, and I am not going to go over them again here. What I do want to say is that I do not know of any answer other than to have a piece of legislation that is going to draw all the parties together. It will make the department of education in the Northern Territory and the teachers in the school communities come to the table. It will make the parents come to the table. Let's get to the bottom of why those kids are not coming to school. Thirty-three school community agreements have already been completed and it is anticipated that a further 22 will be completed by the end of this year.

I think I saw in the last statistics from the Northern Territory department of education that, with the 480 children they have been working with in the trial schools, there have been 39 breaches to date. At the end of the day we do not want any breaches at all. We want to see the education system strengthened so that there is a plan in place to get children to school every single day of every single year. I would hope, at the end of
the day, that we have a commitment from the Northern Territory government and from our Centrelink social workers to work with families. That is where we want to be at. We want to work out whether a child is not going to school every day because they do not have shoes, because they are hungry or because they have not been able to sleep at night. You know what? Those are some of the really basic excuses you get for a kid not turning up to school in the Northern Territory.

Schools in the Northern Territory are fabulous places. A lot of my friends and colleagues work in them and they are places of fun and joy. I think it is time. People are screaming out at me. They say: 'Trish, you have to do something about getting my grandson to school. I want my kids to have an education. I want my community to be well educated. I just can't get my grandson to school. You have to help us do something.' That is what this legislation does.

There is one part of this legislation I strongly disagree with and I am toying with the idea of asking the Senate Legal and Constitutional Affairs References Committee to inquire into the provisions relating to customary law. I think we are making a very big mistake in not accepting the fact that the customary law provisions need to be removed from this piece of legislation. Schedule 4 of the bill amends the Crimes Act and proposes to insert new section 16AA. The effect of this provision would be to prohibit a court, in bail or sentencing matters, from taking into account customary law or cultural practices which may lessen or aggravate the seriousness of criminal behaviour. I refer to the comments about this provision made by Chief Justice Riley on 30 May 2011, when he gave an address to the centenary ceremonial sitting of the Supreme Court of the Northern Territory. He argued:

The effect of that provision, whether intended or unintended, has been held to be that customary law and cultural practice must not be taken into account—and went on to say that, because of this: Aboriginal offenders do not enjoy the same rights as offenders from other sections of the community. It seems to me this is a backward step.

Whether, as he says, the effect of the provision is intended or unintended, clearly customary law and cultural practice should be taken into account. I think this is a flaw in this legislation and I think it needs to be addressed. (Time expired)

Senator WATERS (Queensland) (18:55): The Social Security Legislation Amendment Bill 2011 and the two related bills together comprise the so-called Stronger Futures legislation—rather disingenuously named in my view. The Australian Greens oppose this legislation. The legislation proposes to extend both the time frame and the geographic scope of an ineffective and damaging policy, which is the NT intervention under another name. This is despite widespread opposition to the intervention and a serious lack of evidence that it has been at all effective in improving outcomes for affected communities.

I want to put on record, in line with the comments of my colleagues in the Australian Greens, why continuing the intervention is not the right path for Australia. In short, it is a top-down, heavy-handed, disempowering policy. It was made clear during the Senate inquiry into these bills that the NT emergency response has caused an erosion of community governance and a disempowerment of Aboriginal people. This disempowerment has been caused by a number of factors, including the way the federal, state and territory governments engaged with Aboriginal communities throughout the intervention and the general
top-down, punitive nature of the intervention measures and their interaction with other simultaneous reforms. There was reduced control at the community level and increased centralisation of decision making due to the parallel reforms to the Community Development Employment Program, remote service delivery, housing and homelands and to the abolition of community councils in the local government reforms.

This heavy-handed approach flies in the face of research from the Harvard Project on American Indian Economic Development, which the Senate inquiry into these bills heard extensive evidence about. Their research demonstrates that when indigenous communities:

... make their own decisions about what development approaches to take, they consistently out-perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision.

I will talk a little bit now about how income management potentially breaches human rights obligations. The Law Council of Australia has described income management, which of course is a core part of these bills, as 'unacceptable' and in direct contravention of Australia's international human rights obligations. While the Stronger Futures package, unlike the 2007 intervention, will no longer involve the suspension of the Racial Discrimination Act—and for that small mercy, at least, we are grateful—there are very serious concerns that these laws will have a disproportionate impact on Aboriginal and Torres Strait Islander Australians. This is because, although the law will apply to everyone, the people who will be impacted by the law are, disproportionately, Aboriginal and Torres Strait Islanders. Clearly, therefore, it is indirect discrimination.

In our view the package also gives state and territory authorities far too much discretion to impose income management on any person in Australia. The Australian Human Rights Commission advised the Senate inquiry that it is concerned by the breadth of the minister's discretion, which allows income management to be introduced across the country without consultation with affected communities. Indeed, there is no evidence that the communities in the five targeted areas were consulted prior to the budget announcement or the introduction of the social security bill. Not only is income management being extended to five communities but the minister will be able to grant other state and territory authorities the ability to put any other Australian outside of those specific intervention areas on income management, which is, quite frankly, outrageous.

The original intervention was not based on evidence and the same is true for this continuation. It just has not delivered. One would think and hope that a continuation and expansion of a policy of this magnitude would be supported by a solid evidence base. But research suggests this is not the case. Two years after the introduction of compulsory income management, evidence suggested that in fact there had been no increase in purchases of healthier food and drink and no reduction in tobacco sales. Despite the emphasis placed on children's health in the ongoing Northern Territory emergency response, or NTER, data showed that in the Northern Territory in 2009-2010 only 12.7 per cent of children aged under 15 had a health check that attracted a Medicare reimbursement. There has been only a very small increase in the number of convictions for child sexual abuse in the implementation of the NTER and, with some few exceptions, school attendance at NT remote schools fell in 2009 and 2010. Fewer than 60 per cent of
children enrolled in 2010 were attending school and that has declined from 70 per cent at the beginning of 2009. There was little change in attendance rates at government remote and provincial schools in 2009 to 2010. Dr Bath, the Northern Territory Children's Commissioner, informed the Senate inquiry into this bill:

The safety and wellbeing of children in remote areas and town camps is severely under threat in the Northern Territory and remains so. Their circumstances are perilous, even when compared to the circumstances of Indigenous children in other Australian jurisdictions. There is a mass of data supporting that contention. They have been documented widely. There have been a few improvements.

He then went on to state the following:

Up to 70% of children in some communities are affected by ... inner ear disorder.

Anaemia is present in up to 40 per cent, with an average of around 22 per cent of remote area kids.

At what cost? There is no evidence base to suggest things are improving, yet this heavy-handed and paternalistic approach has cost Australian taxpayers almost $1 billion. Why continue such a flawed policy? As for the Improving School Enrolment and Attendance through Welfare Reform Measure, SEAM, the Australian Greens are very concerned that the government intends to spend over $110 million over four years on a policy that cannot be shown to be effective, when that money could be spent on properly resourcing schools in the Northern Territory and other Indigenous communities and putting in place programs that will actually improve school attendance.

I want to talk now about whether Indigenous communities feel they have been heard in this debate which critically affects their very wellbeing and existence. It is clear that many Indigenous communities are deeply unhappy with the intervention. I would like to put on the record the concerns of the Yolngu Nations Assembly, from north-east Arnhem Land, who have issued the following statement—it is extensive but it is very powerful:

To the Leaders of the Australian Federal and Northern Territory Parliaments:

1. The Yolngu nations reject the Stronger Futures bill (and those associated) and call on the Senate to discard these bills in full. We have clearly informed you that we do not support the legislation.

This dreaded federal government can achieve all its aims through partnership in our communities. They have no need to grant themselves the continued and new powers contained within these Bills.

2. Until the Stronger Futures Bill (and those associated) are thrown out of the Australian federal parliament, the Yolngu Nations call on all traditional owners across the Northern Territory to refuse:

   a) participation in land lease negotiations with the Australian federal government, and
   b) approval for any exploration licences.

3. The traditional owners (TOs) of prescribed community lands have been placed under extreme pressure from the Australian federal government to grant them headpieces over these communities. TOs want independently facilitate negotiations that can result in advancing the interests of both the TOs and the Australian federal government.

4. The Land Councils are increasingly being pressed by the government to act outside their roles and become agencies of government. We want our Land Councils to advocate for our needs and not have their independence curtailed by government funding arrangements and political interference.

The Yolngu Nations call on the Australian federal parliament to ask the Auditor-General for a review of the relationship between the Australian federal government and the Land Councils of the Northern Territory.

5. The Yolngu Nations call on both the Australian federal and Northern Territory governments to end their interventionist policies and agendas, and returned to a mindset of
partnership based on the principles of self-determination.

6. The Yolngu Nations call on the Northern Territory government to reform the structures of local government ... to better reflect Yolngu and First People's government structures which will provide a more locally based and accessible form of local government.

7. The Yolngu Nations call for an end to the Northern Territory governments Working Futures policy. For the sustainable social and economic development of our society, homelands need to be considered equal to communities that were former mission and government settlements.

8. The Yolngu Nations call for an end to the Northern Territory governments Compulsory Teaching in English for the First Four of Hours of Each School Day policy. To be successful we need education with instruction in our Yolngu languages through all levels of schooling.

This statement by the Yolngu Nations Assembly has been supported by numerous civil society groups.

The statement was signed by Reverend Dr Gondarra, who told the Senate inquiry into these bills:

If we want to see Aboriginal people better in education, better in jobs and better in any other area, we need to work together to build better legislation because this particular legislation is not on.

The Australian people should be asked to reject this legislation because it is racist. It is not helping our people. That is why we come before you and you are listening to us because we represent not stakeholders, not a department, not the service providers. We come here to represent people who are struggling, people who feel pain, people who are confused—what is going on?

Madam Chair, we want you to take this message from us. It is eating us like a cancer. We are always going to be, from the fifties until today, 2012, a puppet on a string of somebody else. We are not a free people. We are supposed to be the first people, the first nation, of this country. You should be learning so much from us when we are learning something from you. This is very important for us. We should be able to educate our people to stand and work together to build.

It is abundantly clear that these bills are not supported by key Aboriginal leaders. Why will the government not listen to them?

I would also like to put on the record the appalling consultation process by which this legislation supposedly gained community support. The vast majority of submissions and evidence addressing the consultation process expressed serious concern at how the consultations were carried out and the way community comments and concerns were reflected in the consultation report. The Australian Human Rights Commission summarised this in their submission to the Senate committee inquiry into these bills, stating:

The Commission has previously brought these concerns to the attention of the government in relation to the inadequacy of the consultation process as outlined below:

- the timeframe for consultations was inadequate given the scope and depth of the issues raised in the Stronger Futures Discussion Paper
- significant measures such as income management were not listed for discussion during the Stronger Futures consultation process
- despite the Australian Government's efforts to work with the Aboriginal Interpreter Service ... there was neither sufficient time to translate the paper into the languages of Northern Territory communities nor to provide the Stronger Futures Discussion Paper to the interpreters sufficiently in advance of the consultations.

It was evident from the Senate inquiry that this lack of consultation has led to a lack of understanding among Aboriginal people about what this legislation actually contains. For example, Miss Shaw from the Intervention Rollback Action Group,
speaking about her grandfather's experience, said:

There were no consultations at his nearest community—the only one he has ever known and the one he grew up in. So here he is: an old man who is almost 80—he looks very well for his age—who has lived on the same country his whole life as a caretaker, who is a prominent elder in his community and who is the holder of stories of his country. Yet he does not know anything about the three bills being passed …

In my grandfather's community, for example, how they went about it is that a time and a place were booked for somebody to go out there, but a few days later a phone call was received to say it had been cancelled. The people in my grandfather's community were not consulted about the Stronger Futures. So they do not know. The only consultation that he had came from land council. If people are not going to have their say and their input into the Stronger Futures policy then how are you supposed to work in partnership and have genuine consultation with people? How are you going to find out what people's needs and wants are?

The Maningrida community were particularly critical of the consultation process. Community members commented that meetings were disorganised and rushed; materials were not given in time for people to properly understand them; no-one returned to follow up; and, in one instance, men and women were divided into separate groups for discussion, despite wanting to consult as a group. Mr Morrish, CEO of Bawinanga Aboriginal Corporation, told the committee inquiry:

Just to clarify in relation to the consultation process, I want to bring a couple of points to the committee's attention. The discussion paper on Stronger Futures was actually handed to members of the community minutes—literally minutes—before the minister arrived for that consultation. I am not sure how community members, with low levels of numeracy and literacy in some cases, where English is a third or fourth language, are supposed to digest a 28-page document in a matter of minutes in order to have an informed consultation, and for the results of that consultation to be taken back and considered and used informing the Stronger Futures legislation. Certainly the Stronger Futures legislation report does not reflect in any knowing way what was actually said here. There were a number of clear statements made that certainly have not found their way into that report.

I want to talk a little about what is actually needed. There is overwhelming evidence that, rather than draconian, top-down interventions, governments must learn to develop respectful partnerships with Indigenous people and communities. Trust and respect between government and communities is critical to tackling the issues that face those communities. Solutions need to be developed in partnership with local communities, drawing on local expertise and governance, to develop and implement more effective, local solutions.

The Australian Greens believe that the federal government must re-examine the approach that they are taking in the Northern Territory and, of course, that they now wish to roll out elsewhere. International research and best practice point to the importance of empowerment and local governance in improving outcomes for Indigenous people. The Stronger Futures package, rather than empowering Aboriginal people, undermines their governance and devalues their culture. Until we see a change in approach, until Aboriginal people are empowered to lead their own development, efforts in the NT and elsewhere will not be effective. The Australian Greens recommend that the federal and Northern Territory governments commit to appropriately resource—which includes financial and technical assistance—and prioritise programs that facilitate the development of community governance structures. Such measures enable and empower Aboriginal communities to engage with and control decision making about their
cultural, political, economic and social development goals.

As a Queensland senator I do not want to see compulsory income management rolled out in Logan and Rockhampton, in low-income communities, which this bill will allow. This is racist, bad policy, and rolling it out in non-Indigenous communities as well just makes it bad policy that is applied to everyone.

In conclusion, the Australian Greens oppose the intervention and we likewise oppose the Stronger Futures legislation. There is no substantive evidence to show that the intervention has had a positive effect on the lives of Aboriginal people in the Northern Territory. Rather, we have heard loud and clear from Aboriginal people, their representative organisations and the community sector that the top-down, punitive nature of the intervention has actually undermined and disempowered Aboriginal people and communities. That the intervention has been ineffective should come as no surprise. International research on Indigenous economic development makes it clear that community driven measures are far more successful in improving the lives of people than top-down approaches. The government should abandon Stronger Futures. These bills will not deliver the future we want for Australian communities.

Senator MADIGAN (Victoria) (19:13):
The Stronger Futures in the Northern Territory bills before the Senate this evening are of serious concern to me and to all members of the Democratic Labor Party. Over the past couple of months, I have received a large amount of correspondence from my constituents and from members of the wider community right across Australia with regard to this legislation. They share my concerns about the legislation, not least of which is the concern derived from the fact that this legislation was rushed through the other place without giving members an adequate opportunity to debate it.

I would like to bring the Senate's attention to the fact that there were only nine sitting days between the legislation being brought before the parliament and its third reading, only one of which was occupied with debate. I am also concerned that members failed to properly listen to constituents. The fact that the Community Affairs Legislation Committee released its report on 14 March this year, two weeks after the bill passed the lower house, speaks volumes of the complete disregard the government has had for addressing constituent concerns within the legislation.

Those in Australia who will be affected by this bill deserve to have it debated to its full extent. The government is attempting to offer a haphazard, bandaid solution in response to only some of the community's concerns. As a senator for the Democratic Labor Party, I believe very strongly in the importance of democracy. I think the distribution of power across different tiers of government is very important in addressing the problems within our communities. It may come as a surprise to many in this place and in the other place that problems faced by Australian communities are rarely solved by the long arm of the nation's capital. I believe that this kind of legislation would be much better if it were drafted, consulted and implemented at a community level, not a federal one.

For this place to be prepared to inflict such punitive measures on the communities of the Northern Territory, especially considering the fact that the majority of us are not elected by those whom this legislation will be affecting, is unfair and unjust. I quote the submission by the Public Health Association of Australia, which states:
It is the view of the PHAA that there is never a case for universal, compulsory income management, for moral, ethical, and legal reasons and for reasons of cost (particularly, social and health costs). In addition to undermining autonomy and self-determination, which are pre-requisites for good health and wellbeing, universal compulsory income management violates Australia's human rights commitments and the principles of citizenship.

Instead of imposing penalties from afar we should assist the Northern Territory government in their endeavours to work with local communities to adopt workable and plausible solutions to the problems facing the Aboriginal communities. It has been reported that the total cost of the intervention so far has exceeded $1 billion. The amount of money being spent to solve the problems facing these Australian communities is not the issue; it is the way it is spent that is of concern. If it is to be spent in an effective way, let's take on board the solutions offered by those facing the problems within these communities. The submission of the Darwin Aboriginal Rights Coalition states:

We call on the government to withdraw the bills in their entirety, revisit the many suggestions put forward by Aboriginal people, and open a genuine dialogue with communities—a dialogue that starts from the principles that Aboriginal people have a right to make the fundamental decisions that affect their lives, that solutions must be tailored to individual communities on the basis of their particular circumstances, and that Aboriginal law and culture will be respected and protected.

We know the communities in the Northern Territory want to address the unsatisfactory circumstances affecting them as much as we do. We know through our inquiries that these communities have plans and ideas in place to tackle these problems. It is now up to us to empower these communities to address their circumstances on a much more local level.

It is not right to treat one section of the Australian community in a vastly different way to any other section. Many of the submissions that were lodged with the inquiry were particularly concerned with what appears to be a deliberate removal of the rights of Australian citizens in these remote communities. The submission by the Aboriginal Catholic Ministry summed up the concerns of many others by stating:

This legislation continues to cast Aboriginal people as unable to manage their own affairs. It further removes Aboriginal rights over land and continues to disempower and disenfranchise people through the use of punitive measures connected with alcohol management, income management and school attendance amongst others.

They go on to say:

Top-down intervention in remote communities which are complex and rich in history and culture does not work. This legislation before the house is archaic and against the very principles that the Democratic Labor Party has stood for since it began. For this reason, I will be voting against the bills.
are actually an insult to Labor's history in this area. There was the famous day when former Prime Minister Gough Whitlam met with Aboriginal elders in the Northern Territory, one of them being Vincent Lingiari. It was 1975 and there is that famous photo where they let the red sand run through their hands in a most important ceremony and handover of land. Then, in 1992, we had the historic Redfern speech by former Prime Minister Paul Keating. Again, it was a most historic day. So many people quote that speech to me, and not just in the context of Aboriginal affairs but as a fantastic speech that inspired them to stand up for social justice not just for Aboriginal people but for people across the board. I can clearly understand why Labor members would be proud of it, and many people in Australia would see it as most significant.

In 2008, we had that most moving day when former Prime Minister Kevin Rudd spoke at Sorry Day. I think many of us can remember where we were and how deeply moved we were. I am not saying Labor's own Indigenous history and their response is perfect—far from it—but there is so much to be proud of. But, when we look at this Stronger Futures package, that history really has been trashed. The Stronger Futures package actually continues the intervention. As we know, the intervention was initiated by former Prime Minister John Howard, with the support of his then Indigenous affairs minister, Mr Mal Brough. Unfortunately, and I think sadly, it was continued by the Rudd government and then the Gillard government. The intervention was officially known as the Northern Territory National Emergency Response. It was a package of welfare changes, law enforcement and land takeovers. It was introduced, as I said, by the federal government. It was at a time when there were these very distressing and extraordinary claims of sexual and other types of abuse.

Let's firstly deal with the issue of sexual abuse, because it still comes up in these debates. I do not know anybody who would deny there is a problem with sexual abuse in Aboriginal communities, and I understand that in many areas the rate of abuse is high. However, the government review of the intervention that was released at the end of last year found that the conviction rate stayed steady at about 11 per year. There were not all these arrests and all these results from the intervention. We had the extraordinary situation—and it still shocks me that this occurred in my own country, in my lifetime—of the intervention into Aboriginal communities by the Army. I know they were instructed to go in there by the government—it was government policy—but it was certainly deeply wrong.

The other thing that is relevant to how necessary this intervention was is the Territory government's publication Little children are sacred. Of the report's 97 recommendations, only two were implemented. That clearly shows how problematic the way in which that whole era was conducted. But the important point that I want to make here is that, when that intervention occurred, we were just months out from a federal election and it really looked like the coalition could lose it. That intervention was electorally motivated. Right from the time the intervention was first initiated, the then opposition leader, Mr Kevin Rudd, should have ruled it out. There was no need for Labor to incorporate it into their policy. That they did so and continued it when they were in government is quite disgraceful.
The Northern Territory intervention has eroded local governance and disempowered communities. It has also done nothing to improve the safety and wellbeing of children in the Northern Territory. There is a continuing lack of health and wellbeing support, which is clearly a key issue. And then there are the costs. The Northern Territory intervention costs are climbing above $1 billion. I am sure that many of us, not just the Greens, can only imagine what better outcomes would have been achieved if this money had been spent on properly targeted community directed programs. You have heard the earlier Greens speakers, my colleagues Senator Ludlam and Senator Waters, give great emphasis to this theme of community involvement.

There is another very telling aspect of how this intervention was rolled out, and that is the extraordinary situation whereby the Racial Discrimination Act had to be suspended in order for the intervention legislation to be passed. Obviously, that was deeply shameful. I think many people are aware that the intervention was actually condemned by the United Nations for its racial discrimination against Aboriginal people and their cultures. I remember this was really getting traction. It was starting to penetrate into some of the east coast areas, where obviously this story needed to be emphasised because this was so important to help influence decision makers as more people were understanding the situation. I really do believe that a great effort was made by the Rudd government to remove this criticism, which was continually coming up. So what did we see happen? The Racial Discrimination Act was reinstated, but it was reinstated in a way that I think was quite disgraceful. The Rudd government expanded the scheme to apply to all people in the Northern Territory based on their age and how long they had been in receipt of Centrelink payments. We saw there that the Racial Discrimination Act was reinstated but not in the way that it should have been, because the discrimination was still there, well and truly.

One point before I go on to some more detail about the Stronger Futures bills is to acknowledge what we lost when the intervention came in. There were certainly serious problems in the Northern Territory. However, as happens sometimes in life, when something changes you realise that you have lost a great deal. I am referring here to some of the programs that were in place prior to the intervention. The intervention did result in further dispossession of Aboriginal communities. There was closure of the Community Development Employment Projects. These were run by Aboriginal organisations, often the community council, and it meant that the direction of the development and employment arrangements were guided by Aboriginal priorities. This was really critical. Many of the people whom I knew worked in the Territory at the time often explained to me that many Aboriginal people were able to get employment under this scheme. When it went, one of the main sources of employment, and therefore dignity, livelihood and interaction with one's community, was stripped away. The other thing that was lost with the intervention was the Aboriginal community government councils. I did want to put that on the record.

As I say, I think many of us would have spoken prior to 2007 about the great inadequacies in government policy for Aboriginal communities. But when those were lost to Aboriginal communities, they really were enormously disadvantaged.

We have the three Stronger Futures bills before us. There is enormous criticism of them by Aboriginal communities right across the country. Many supporters and many Aboriginal communities are deeply
concerned about how this legislation will play out. I would like to share with you some comments that I have received. Nicole Watson, writing in *Arena* No. 118, stated:

To say that the Stronger Futures legislation is difficult to comprehend is an understatement.

Together with the Explanatory Memoranda, the three Bills run to over three hundred pages. Even for lawyers, unravelling the legislation is an onerous task because it requires reference to earlier legislation. It beggars belief that the general consultations conducted between June and August could have resulted in such a detailed legislative result.

There is an important point in that last sentence. The consultation that has been undertaken here is really what many people these days call 'tick in a box' consultation. It is not real, it is not meaningful and it is not really gauging people's opinion. It is about allowing the ministers to say that the consultation has been done so that the media releases can be put out.

These three pieces of legislation have been developed without the informed consent of Aboriginal communities. The legislation delivers the government 10 years of control. That is bad enough, but when you think of this framework of 10 years it is quite extraordinary. After meeting many people from the Northern Territory and from the Bankstown area, which is going to be one of the trial areas—and I will speak about that later—I am certainly picking up how these bills are causing distress, uncertainty and anger among many communities. Aboriginal elders, community leaders and Aboriginal organisations clearly have a right to control their own futures. We might have the word 'futures' in this bill, but it is certainly not giving control to Aboriginal communities.

Labor, with the support of the coalition, is pushing for more top-down policy making. We really do need to recognise this. No matter how it is dressed up, that will be the outcome when these three complex pieces of legislation are pushed through to control and determine how so much of Aboriginal life will operate for the next 10 years.

Since the Northern Territory intervention started, in 2007, there have been various developments that highlight the huge inadequacy in the approach the government has come forward with. The incarceration of Aboriginal people has increased by 41 per cent. Attempted suicide and self-harm amongst young Aboriginal people has doubled. Aboriginal life expectancy continues to be the lowest of any indigenous group in the world. These are from the government's review of the intervention. When you look at those basic benchmark figures you can see that the situation for Aboriginal people has deteriorated.

When we consider this legislation there has been no clear justification from the Labor government based on meaningful, evidence based research. The legislation gives the federal government the power to determine that any state and territory is a jurisdiction in which income management may operate. Once the bill has passed, the government will be able to extend income management wherever it determines, without having to pass further legislation.

It is the issue of income management that I want to give attention to. In one suburb of Sydney, where I come from, it has certainly been motivating many people. I have had the opportunity to meet with a number of members of Aboriginal groups in the area as well as various small business people, people from Muslim organisations and various other community organisations. Bankstown is one of five areas that have been identified by the government where trials will be held under the Social Security Legislation Amendment Bill 2011. They are Bankstown, Logan in Queensland, Rockhampton in Queensland,
Playford in South Australia and Shepparton in Victoria. The Bankstown community, although they are doing it tough and they are very distressed about this, are certainly very well organised and are being very effective in how they are getting their voice heard.

On the issue of how this system of income management will work, between 50 to 70 per cent of the income support payments are quarantined as credit on a BasicsCard, which can then be used as an EFTPOS card to buy groceries et cetera from approved stores. There are only certain things that can be bought, only at approved stores, and the total has to be over $5. That is one of the issues that some business people in Bankstown have taken up. They have been concerned they are going to lose business. So, again, you see the degree to which the government is bringing in a policy that just does not work and is certainly a negative for many sections of our community.

The nominated payments, in terms of a BasicsCard, can affect Newstart, youth allowance, parenting payment, sickness benefit and special benefit. People assessed as vulnerable, and that mainly refers to victims of domestic violence, and others, are at risk of having someone else control their money, when it is not in their interest. A Centrelink social worker is the one who will be assessing this vulnerability. Already I can tell you that people who fear they will be targeted are feeling very vulnerable. They are not confident in terms of how these decisions will be made.

I acknowledge that I have seen interviews with some people who say that they welcome having their income managed, but it should not be imposed on people. That is one of the aspects that is so deeply wrong. I have heard some very sad stories of elderly couples in the Northern Territory who are on the pension and have lived together for a long time and have managed their own income. They lose half their income and have a card that they feel discriminates against them and singles them out in their own community in a destructive way.

The Australian Council of Social Service have made some very useful assessments of these developments. They have a real concern about how the research methodology has been undertaken. The government has relied on the reports from the Northern Territory Emergency Response, and they feel that that has not been adequate. They have also identified that even with careful budgeting it will not be possible to live decently on payments such as the $231 per week you get under Newstart allowance. When you have some of that being managed on the BasicsCard it will be even harder. Then there are those who may have drug or alcohol problems. They believe that is not going to solve those problems as people can find their way around a BasicsCard. What the government should be looking at is targeted intensive support to overcome these addictions and assist people who are in that situation.

Something that comes up regularly when debating this issue is the methodology that the government has used. There are some other useful studies that should be considered. A Menzies School of Health Research report using quantitative data found that income management in the Northern Territory had no beneficial effect on tobacco, cigarette, soft drink or fruit and vegetable sales. Probably many of you have seen the minister doing spot visits and then saying how she saw fruit and vegetables being consumed by people and how that shows that the program has been a success. But, as the Menzies School of Health Research has identified, when you look at the quantitative data the story is quite different.
There are considerable problems with how this legislation is playing out. I want to share with you a comment from Shane Duffy, the national chairperson of the National Aboriginal and Torres Strait Islander Legal Services. He said:

The idea that the quarantining of welfare payments can address the root causes of what is most commonly inter-generational disadvantage is simplistic and naïve.

Addressing entrenched social disadvantage requires sustained investment into community-driven initiatives that promote self-determination and autonomy, rather than programs based on control and punishment.

He went on to say:

If passed, this legislation will be yet another missed opportunity for the Government to step away from failed past policies based on control and punishment, and move towards effective, evidence-based policies that empower communities, promote self-determination and embrace the idea of locally developed and owned solutions.

The Australian Greens acknowledge that there are complex problems facing Indigenous communities that require considered and calm responses. The starting point must be consultation with Aboriginal people. Policy determined by cooperation and consultation is what we need. But that has not happened. The intervention and now the Stronger Futures program have established a 21st century form of the discredited Aboriginal Welfare Board. I will give the final word to some of the Aboriginal elders who I have spoken to. They said that they feel like it is the return of parole officers.

**Senator DI NATALE** (Victoria) (19:39):

I have some insight into the communities that are most affected by this legislation in that I was fortunate enough to have spent several years of my professional life in Tennant Creek working at the wonderful Anyinginyi Congress Aboriginal Medical Service, a medical organisation run with an Indigenous health board that was community controlled. There were some wonderful people there doing some wonderful work. I was also fortunate to spend some time working in the medical communities of Eleho Island and the Tiwi Islands. We all acknowledge that there are some difficulties in those communities. There are many complexities that need to be addressed. We need to work very hard to try and do what we can do bridge the gaps in health, education, employment and all the other critical indicators. We need to bridge those gaps to ensure that Indigenous people in this country are afforded the same life expectancy and life opportunities that we all are.

I have some very vivid memories of people who saw me as the result of alcohol fuelled violence, such as women who had been attacked with nulla-nullas. But I also have to say that I have some very warm memories of my time there. I spent time with Indigenous women learning about bush tucker. I took trips in the back of a troop carrier—and I think that I have mentioned this before—and I was sung to by the old Aboriginal women and was told that as a result of that song I would soon be married and have babies. As it turns out, they were right.

I do not deny that there are problems in Indigenous communities. But we also have to acknowledge that those sorts of problems are not limited to Indigenous communities—they are problems that exist right across the country. They sometimes occur out of sight but are certainly not out of mind.

When you are confronted with a package of legislation like this, you have to have some sort of framework or principle for determining how you are going to assess it.
In my view, one of the abiding principles needs to be: what is the view of those people most affected? It is interesting that we are having this debate after we had a very moving debate on the issue of asylum seekers. I asked that question in that debate. It is all very well and good to be acting in what you believe are the best interests of another group within the community. But we need to ask them what they believe is in their best interests. That consultation is incredibly important.

The second thing that we need to be guided by is the evidence. If we are not guided by evidence for policies on health, social issues and education then we do not have much to go by; we are flying blind. On the issue of consultation, something has become very clear to me as a result of looking through some of the reports of the inquiries that have been done in response to this legislation. I pay tribute to Senator Rachel Siewert, who has worked tirelessly on this issue and was a very strong advocate for the Indigenous community, who were not consulted adequately.

The dissenting report of the inquiry looking at the Northern Territory intervention legislation made it very clear that from the very start of the inquiry the consultation process was totally inadequate. The vast majority of submissions to that inquiry indicated that there were very serious concerns about how consultation had been carried out and how comments made during that consultation process were interpreted. There were problems with the scheduling of meetings, with people being unable to attend. There was inadequate notice of some meetings. Meetings did not run long enough to address important issues. Comments were misreported.

Bodies like the Human Rights Commission brought their concerns about the inadequacy of the consultation process to the attention of government. We had those concerns reiterated by the Northern Territory Anti-Discrimination Commission. We had members of the community saying that they were especially critical of the consultation process—that meetings were disorganised and rushed, and materials were not given out in time. For example, Mr Morrish, the CEO of Bawinanga Aboriginal Corporation, said:

In relation to the consultation process, I want to bring a couple of points to the committee's attention. The discussion paper on Stronger Futures was actually handed to members of the community literally minutes before the Minister arrived for that consultation. I am not sure how many community members with low levels of numeracy and literacy, in some cases where English is a third or fourth language—

And I cannot stress that enough: English in many of these communities is their third or fourth language. How are they supposed to digest a 28-page document in a matter of minutes, in order to have an informed consultation and for the results of that consultation to be taken back and used in informing the Stronger Futures legislation?

We have the same sort of message from members of the Babbarra Women's Centre, where again they bemoan the lack of preparation and the lack of time for the community to digest, to think about and to discuss with their families what those policies actually mean. They said:

When the Minister and all her staff came in, it just went crazy. It was just so unorganised and everything branched off and everything was quick. People had not really even had time to consider the correlation between the policy and addressing it with the Minister. They didn't have the time to do that.

I was very fortunate to, only recently, be asked to launch the screening of a wonderful documentary about a project called Stand for Freedom. This initiative has the support of
eminent Australians right around the country—traditional owners, church leaders, former judges, lawyers—and we now have a petition on that website, which over 30,000 citizens have signed and said that they believe that something needs to happen. I was fortunate enough to launch the documentary, where hundreds of people were crammed into cinemas right around the country—in this case it was in my home state of Victoria—and I was presented with this book, *NT Consultations Report 2011: By Quotations.*

At the screening of that documentary it was made very clear that the views of the Indigenous community were not represented in the deliberations by government. This is a book of quotations, taken independently because the people involved in this process did not believe that the views of the community members were in fact being faithfully recorded. So we have, for example, the quote from the Alice Springs public meeting, where we hear someone say:

The determinants of health is more than just housing. There is education, there is jobs. It is not just any job; it is actually having control over your workplace, getting paid a fair wage for a fair day's work. That's really important. The more individual and community control that person has in their life, the better their health.

This is something I have, again, said many times in this chamber: that having a decent job, having control over your work and having access to education and employment are as important as any other health intervention that we could muster. This person goes on to say:

These are all things that the intervention has suspended and dismantled. Issues of land and language and law. These are not talked about in these consultations. And they are really the key things that need to be changed.

That theme came through time and time again:

Until governments do recognise the local governance structures, and allow those structures, the elders and the landowners to control things then things aren't going to get better. I think the answer is recognising sovereignty.

We had more critical feedback on the nature of the intervention: 'It's been a total failure', said one person, going on to say:

Rather than closing the gap, the government's own statistics show the Indigenous imprisonment rates have increased by 35 per cent, putting more people in jail. That's the number one statistic. In a lot of other communities in the Northern Territory attendance rates at school have actually dropped, and in some places suicide and self-harm have increased.

It is very clear, through this consultation report—and I commend it to the Senate—that the Indigenous community, to a large degree, believe the intervention is unnecessary and, more importantly, unsuccessful.

When we move beyond the issue of consultation we then get to this question: what does the evidence actually show us? Backing up what we have just heard in that consultation report, perhaps one of the most damning findings is that in fact things have not improved and, in many cases, they have gone backwards. The ineffectiveness of the intervention in improving the wellbeing of Aboriginal people in the Northern Territory is evident when you look at the *Closing the Gap in the Northern Territory Monitoring Report.* School attendance has declined since 2009. Child hospitalisation rates have increased. We have more incidents of personal harm and suicide. The intervention was supposed to improve lives, but instead things are going backwards.

We cannot ignore the evidence—the evidence is clear. It is clear we have an approach here which, as the report says, undermines and disempowers. What was very clear through the Senate inquiry was
that the intervention caused the erosion of community governance and disempowerment of Aboriginal people. That has been made very clear. It has been made clear in the manner through which federal, state and territory governments engage with Aboriginal communities—the whole nature of the top-down and punitive approach. The parallel reforms of the CDEP Remote Delivery Service, housing, homelands and abolition of community councils are all issues which caused the undermining and disempowerment of people within the community. And what is very clear is that Stronger Futures carries on that tradition rather than departing from it. The government has made no attempt to address these major problems, as outlined in the Senate inquiry. AMSANT said that the Stronger Futures bill:

...in failing to abandon an intervention approach, will further undermine the control and empowerment of individuals and communities and will enhance factors associated with social exclusion and racial targeting.

AMSANT went on to say:

Such adverse outcomes can be expected in relation to, for example, the continuation of compulsory income management, the expansion of powers of the federal, state and territory authorities, continued blanket bans on alcohol and restricted materials.

And a number of other people said at that inquiry that in fact the intervention has been unsuccessful.

I want to take a minute to talk about the role of the intervention in tackling alcohol abuse. It is clear that we, the Greens, are very proactive in supporting measures to try to address the issues associated with alcohol abuse. In fact, in my time in this chamber I have spent many hours discussing the need to improve the way we price alcohol so that we price it according to the harms it causes rather than having the irrational system we have at the moment, which makes no sense to anybody—not least many people in the alcohol industry. We need to look at things like warning labels. But one thing is very clear. In the case of Indigenous communities we need to ensure that any measure that is adopted is owned and controlled by the Indigenous community.

There was one such intervention in Tennant Creek which was incredibly successful. It was an intervention known as 'Thirsty Thursday'. People could not get grog on Thursdays, which was traditionally payday. As a result of that intervention, people had more money to spend on essential grocery items, on feeding their kids, on health care and so on. Thirsty Thursday was very successful because it was led by the Indigenous community; it was driven by the Indigenous community. It was not a top-down approach. Many of the people in the region—Anyninginyi Congress and so on—led the charge to reform the way alcohol was made available on Thursdays. We saw a decline in hospitalisation rates. We saw a decline in the number of people being imprisoned. It was very successful. Unfortunately, one of the biggest opponents of Thirsty Thursday was the publican, who wanted the sale of alcohol to continue right through the week.

The Stronger Future legislation takes that control away from Indigenous communities. It says, 'We know best, and we're going to put a blanket ban on alcohol in your community so that you have no control over the way restrictions are implemented.' Of course we support locally developed alcohol management plans. But there are some real concerns here. Harsher penalties contained in the new legislation have the potential to increase rather than decrease the rate of imprisonment. And we note that there is nothing in this bill that talks about what is absolutely necessary, and that is reforming
the way we price alcohol, such as a floor price or some form of tiered volumetric system. Unless we do that, the alcohol measure indicated in this report will fail.

Dr John Boffa from Alice Springs has been a tireless worker in this area. I pay tribute to Dr Boffa, who is the public health medical officer of the People's Alcohol Action Coalition. He says that it would be preferable to remove the reference to Aboriginal people in the provision: let's not make this about the Indigenous community; let's make this about everybody, and let's ask for an independent audit of the alcohol outlets in town; let's not make this a racial issue. He says he feels that we can amend the process so that any particular outlet that has been deemed to be causing excessive problems for the community, and not for Aboriginal people, can be remedied. It must not be made a racial issue. We know that non-Aboriginal people who are addicted to alcohol are just as likely to gravitate towards the cheapest forms of alcohol as Aboriginal people are. It is a rational decision. Dr Boffa says that there is nothing racially based about the message for alcohol reform that he proposes, but unfortunately that is not the message in the Stronger Futures legislation.

There is more in this bill around food security. Food security is absolutely critical. It is interesting that there were very few submissions to the inquiry, and even less evidence addressed, around store licensing provisions. That is one thing we need to take some very clear action on.

In summary, I—like my colleagues in this place—am very concerned about this piece of legislation. Unfortunately, this legislation cannot be described as anything but a racist piece of legislation because it requires that action to be enforced. Instead, we need to look at other measures. We need to ensure that anything we do is owned and controlled by the Indigenous community. As I said earlier, I was very lucky to work at Anyinginyi Congress, where there was an Aboriginal controlled community health board with some very strong women in charge—women who made sure that people who needed help were helped. We trained Aboriginal health workers, who, again, were empowered to take control not just of their health but of the health of the local community.

We have to move away from this paternalistic notion that we will solve these problems with a top-down approach. The consultation through this process has indicated that in fact the Indigenous community have rejected this approach. They do not believe it is going to work. They have called it a total failure, and the evidence suggests that it has been a total failure, that we are not seeing a decline in the things that need to be addressed in Indigenous communities. We are not seeing a decline in child hospitalisation rates. We are not seeing a decline in personal harm and suicide. In fact, we are seeing an increase. We need to do better, but this is not the way to do it.
personal interest in this matter. I have been fortunate enough in my life to have the opportunity to visit my sister, who has worked on Aboriginal communities and has had a lot of experience both in arts administration and governance, particularly in Northern Territory communities. In the 1980s I had the great fortune to visit both Yuendumu and Oenpelli at different times and to get a sense of the rich Aboriginal culture of the people living in those communities and the incredibly intense connection with the land. It was palpable to me at the time.

The new Stronger Futures legislative package is essentially a re-naming of the Northern Territory intervention. The passage of these laws, which the Australian Greens oppose, will mean that the Northern Territory intervention will potentially be in place for another 15 years. Human rights organisations have on numerous occasions, dating back to 2007, loudly and repeatedly criticised the Northern Territory intervention because it is inconsistent with Australia's international human rights obligations. In 2008, the Human Rights Law Centre expressed concern that the Northern Territory intervention is inconsistent with Indigenous peoples' right to self-determination as it destroys 'the control that communities have over their own lives'. The centre pointed out the aspects of the intervention that have affected the right to self-determination, which have included the top-down policy approach and the lack of real and effective consultation, and that is a theme of the speeches that Greens senators are making today. Other concerns include the disallowing of consideration of customary law, an increase in law enforcement and policing and the imposition of income management. All of these measures continue in some form under the Stronger Futures legislation.

Under Stronger Futures, the government has again failed to properly engage and consult with Aboriginal and Torres Strait Islander people. Instead, it has continued its top-down policy approach that addresses the symptoms of disadvantage through punitive measures. It fails to address the underlying problems of alcoholism, violence, poverty and generational trauma. The bills are also racially discriminatory, as they apply blanket measures to diverse Aboriginal and Torres Strait Islander peoples, as if we can talk about them as one group of people. This latest iteration of the NT intervention continues to undermine the right to self-determination for Aboriginal and Torres Strait Islander people. The right to self-determination is a central principle of the United Nations Declaration on the Rights of Indigenous Peoples, which Australia endorsed in 2009.

Les Malezer, co-chair of the National Congress of Australia's First Peoples, recently spoke about the principle of self-determination and what it means under the Declaration on the Rights of Indigenous Peoples. He said:

… self-determination is, in fact, when we all pull together as peoples operating together collectively as peoples. It's not about everybody refusing to listen to anybody else or being told how to operate by anybody else … the exercise of decision-making is in fact the exercise of self-determination … What it promises is empowerment, it promises us the power to make our own decisions, the power to determine our own future. The power to determine continuity of us as peoples, that our culture that we inherit that we pass it on, that it continues on, it's guaranteed into the future.

By further denying Indigenous Australians the right to self-determination, the Stronger Futures legislation will continue the disempowering and oppressive effect of the Northern Territory intervention. The impact
of this will be devastating and far reaching for Indigenous communities.

In 2008, the Australian Indigenous Doctors Association found that the Northern Territory intervention had created a feeling of 'collective existential despair' that is 'characterised by a widespread sense of helplessness, hopelessness and worthlessness, and experienced throughout entire communities'. The Australian Indigenous Doctors Association indicated that such powerlessness will have profound implications and is likely to result in ongoing, serious negative impacts on health.

The Northern Territory intervention has perpetuated disadvantage in Aboriginal communities and contributed to long-term damage to the health and wellbeing of Aboriginal Australians in the Northern Territory. The punitive nature of the Stronger Futures measures will further undermine and disempower Aboriginal people and communities, which will continue to have serious and far-reaching repercussions on their overall health and wellbeing.

Concerns about the human rights impact of the Northern Territory intervention have also been raised at an international level—another blot on Australia's record. In August 2010, the United Nations Committee on the Elimination of Racial Discrimination released its concluding observations following a review of Australia's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. The committee made over 20 recommendations for concrete action to address racial discrimination, disadvantage and inequality in Australia. One of those recommendations was to reform and remedy the discriminatory impact that the Northern Territory intervention has had on affected Indigenous communities. Last year, the UN High Commissioner on Human Rights, Navi Pillay, criticised the Northern Territory intervention because it failed to recognise—indeed it undermined—the right to self-determination and has resulted in anger, pain and humiliation among Indigenous Australians. Despite the numerous criticisms and concerns regarding the Northern Territory intervention being raised at both a domestic and international level, the government is inexplicably intent on going ahead with Stronger Futures. It is a fundamentally flawed and indeed, I think, an unconscionable approach.

Instead of the many top-down punitive measures included in the Stronger Futures package, we need holistic, well-designed, targeted and incentive based programs that are—and these are important concepts—community led and community owned. We need programs that are developed in partnership with the very people that they affect—the Aboriginal people—not imposed upon them. Our history is littered with failed programs, endeavours, projects and pilots that have foundered on a basic flawed assumption that decision makers know best, and they have been foisted on those affected, divorced from their knowledge and lived experience. We now know the only way to bring about sustainable and effective development is to ensure that those people who are affected have 'ownership' and are committed to the change. Even the original catalyst for the intervention in 2007, the Little children are sacred report, clearly expressed the need to consult genuinely and in good faith, citing the need for genuine consultation because of the 'sufficient evidence to show that well-resourced programs that are owned and run by the community are more successful than generic, short-term and sometimes inflexible programs imposed on them'.

An example of the kinds of punitive, top-down measures which are almost destined to
fail is the imposition of excessive alcohol bans and penalties embodied in the legislation. This an aspect of the legislation which is likely to widen the yawning justice gap between Aboriginal and non-Aboriginal Australians. At this point I would like to refer to an editorial by Jon Altman and Melinda Hinkson in the June edition of *Arena Magazine*, No. 118, which illustrates the reason this may occur. It states:

On an unsealed road in central Australia one Saturday afternoon in late 2011, a police car flashes its lights and directs the driver of a nondescript sedan to pull over. The driver and his female passenger, a married couple in their mid-twenties, are directed to get out of the car. The police have been called to attend an incident in a nearby town where protracted fighting has been reported over several weeks and have stopped this car out of concern that its occupants might be en route to join the fray. They search the car for weapons, but uncover nothing of interest. The boot of the car is full of firewood which the couple have spent the past hour collecting. On completion of identity checks the police arrest the man for driving with a suspended licence. He is placed in the back of the police van. His wife is warned that if she attempts to drive the car—she does not have a licence—she too will be arrested. The police officers climb into their van and drive off, leaving the woman on her own, at sunset, on a lonely desert road with no supplies and no option but to walk the several kilometres back home as darkness descends.

This tale captures well one of the many paradoxes of the Northern Territory Intervention. Increased police numbers on the ground are often quoted as a key marker of the Intervention’s success. Women and children feel much safer now we are told. It is only when we go to the ground and recall that any relations between Aboriginal people and police in the present are built upon a deeply fraught history that the prospect of increased policing takes on a different inflection. The township this couple calls home has witnessed astonishing levels of arrests, even by local standards, over the past eighteen months. Many are for vehicle related offences. Many others result from another of the Intervention’s measures—the outlawing of customary law, especially the use of payback to settle disputes. When Aboriginal people attempt to use their own customary measures to resolve significant transgressions, police who once turned a blind eye are now legally obliged not to do so.

In submissions made to the Senate Community Affairs Legislation Committee, a number of organisations expressed concern that, if passed, the Stronger Futures legislation will significantly increase the number of Aboriginal people in Northern Territory jails. If so, this will be catastrophic, because Aboriginal people are already grossly overrepresented in the Australian prison system. Eighty per cent of prisoners in the Northern Territory are Aboriginal people. In fact, it has been said that Aboriginal people in Australia are the most highly incarcerated people in the world. Just pause to absorb that piece of information, that the most highly incarcerated people in the world are here in Australia, the nation of which we are proud, a First World liberal democracy. How can that be? The statistics are stark and they are shameful. Although Indigenous Australians account for less than three per cent of the total population they compose 26 per cent of the national prison population. Indigenous adults are 18 times more likely to be imprisoned than non-Indigenous adults. And, most shockingly in my view, detention rates for Indigenous young people aged 10 to 17 are 25 times higher than for non-Indigenous youth.

Instead of adopting policies which seek to enhance community safety by addressing the underlying causes of crime, the government is instead proposing to introduce new laws which could see a person handed a six-month prison sentence for carrying less than 1.35 litres of alcohol into a prescribed area. Such penalties are excessive, unnecessary and have not been proven to deter alcohol abuse.
within Aboriginal communities. This will also likely lead to increased imprisonment of Aboriginal people in the Northern Territory. Yes, alcohol dependence and abuse is a serious problem for some members of Indigenous communities, as it is in non-Indigenous communities, and the Australian Greens support alcohol controls where they have community support. But, rather than increasing penalties, the focus should be on supporting communities to develop alcohol management plans and, importantly, on providing additional resources dedicated to culturally appropriate alcohol counselling and rehabilitation services. It is a health issue, not a justice issue.

At a broader level, the Australian Greens are encouraging governments to reconceptualise the way they think about criminal justice issues. Prisons are not the answer. In April, the Prison Officers Association described conditions in Northern Territory jails as Third World, saying that overcrowding has reached crisis point. In Darwin and Alice Springs, it is said that up to 14 prisoners at a time are being held in 10-metre by five-metre dormitories, with one toilet and one hand basin. Prisons like these are counterproductive. Offenders leave prison, unsurprisingly, less functional than when they went in, more likely to commit future crimes and more likely to commit more serious crimes. Instead, we need to be implementing a long-term strategic approach which will reduce the number of people held in Australian prisons. The savings—because prisons are incredibly expensive—can then be used to reinvest in evidence based services and programs which are proven to effectively address the underlying causes of crime and improve community safety.

We should be reinvesting, spending the money—the hundreds of millions of dollars; $3 billion a year in Australia—on those communities which need it most, those high-stakes communities to which most people, when released from prison, return. This approach, called justice reinvestment, has worked in the United States to reduce crime and strengthen communities, and it can work in Australia too. Justice reinvestment has been championed by the current and former Aboriginal and Torres Strait Islander Social Justice Commissioners, Mick Gooda and Tom Calma, as a part of the solution to Australia’s growing Aboriginal incarceration rate. The Greens support that call—something needs to be done. Importantly, justice reinvestment seeks community level solutions to community level problems. If properly implemented, it provides a real opportunity for community members to have a say about what is causing offending in their communities and what needs to be done to fix it.

Why is this relevant? Because throughout the life of the Northern Territory intervention we have seen significant waste on ineffective measures when far better outcomes could have been delivered through direct investment in communities and organisations on the ground. In recent years the Australian government has indicated a commitment to improving the promotion and protection of the human rights of Aboriginal Australians through the national apology and its support of the United Nations Declaration on the Rights of Indigenous Peoples.

This rhetoric has clearly not been matched by action. The government's commitment to rights has not been implemented in many of the laws, policies or programs affecting Aboriginal people in the Northern Territory and throughout Australia. Instead, the Northern Territory intervention had a deep and profoundly detrimental impact on the rights of Aboriginal Australians in the Northern Territory and has been strongly condemned by domestic and international human rights organisations and advocates.
There is no substantive evidence demonstrating that the intervention has had a positive effect on the lives of Aboriginal people in the Northern Territory, and now the current government is proposing to continue these ineffective and damaging policies for a further 10 to 15 years.

If the government is truly committed to addressing Aboriginal disadvantage, creating safe and healthy communities and fulfilling its obligations under international human rights law, Stronger Futures should be abandoned. Improved health and wellbeing, community safety and education and employment opportunities for Indigenous Australians are best delivered through involvement and empowerment of communities, not the imposition of expensive and unproven policies.

In Justice Kirby's final High Court judgment, which considered the impact of the Northern Territory intervention, he left us with these wise words:

History, and not only ancient history, teaches that there are many dangers in enacting special laws that target people of a particular race and disadvantage their rights to liberty, property and other entitlements by reference to that criterion. The history of Australian law, including earlier decisions of this Court, stands as a warning about how such matters should be decided.

It is time we started to heed these warnings. The consequences of not doing this are too great to ignore. We need a different approach that tackles the underlying causes, not just the symptoms, of Aboriginal disadvantage, poverty, crime and social dislocation. Indigenous individuals and communities must be at the centre of any such approach if it is going to work. They must be integrally involved in decision making and policy and program design. The Northern Territory intervention has not worked. We must not repeat the mistakes of the past. The Stronger Futures bills should be abandoned—our first peoples deserve much, much better.

Senator HANSON-YOUNG (South Australia) (20:18): Along with my Greens colleagues, I wish to speak in opposition to this Stronger Futures legislation which is being rushed through the Senate today. Today has been a pretty big day for us. It has been pretty emotional. It has been quite intense. We have dealt with a number of issues. This morning the government had not even flagged that this legislation would come before the Senate. This morning the government wanted us to deal purely with Mr Oakeshott's bill and the withholding tax legislation. Somehow during the morning the government decided that what it had agreed to previously—not rushing this legislation through the parliament—somehow could now be forgotten. So here we are, 8.30 at night at the end of a very long sitting week, and we are talking about an important piece of legislation that affects some of the most vulnerable people in our country. I guess the government is hoping that this can simply be rushed through and brushed under the carpet, with no-one noticing because there is a big media storm over the asylum seeker issue.

The truth of the matter is that this legislation is simply extending a program, if you can call it that—the intervention introduced by the Howard government—that has failed at every corner. It has been proven to have failed at every stage. The government's own statistics prove what a failure the intervention has been. We have the nice spin of calling this intervention Stronger Futures. We know that is part and parcel of these things. It reminds me of calling Work Choices Work Choices when we all knew it had nothing to do with work choices. The intervention is not about stronger futures; it is about entrenching the weaknesses and the mistakes of the past.
There is no evidence, even in the government's own review and consultations, that the intervention has worked. If the government believed that the intervention was working, therefore justifying its extension for another 10 to 15 years, you would think it would have been promoting good news to justify extending this program. The government would be swamping us, as Malcolm Fraser has put it, with statistics about fewer people in jail, more people in decent housing, improved health, better performances in schools, higher attendance in schools and better health outcomes for children. But, instead, the statistics the government are using to try and justify the extension of this program include a 41 per cent rise in Indigenous imprisonment, lower school attendance, inadequate housing, 38 per cent more children having been removed from their homes by social services and a doubling of self-harm and suicide. Where are the facts? Where is the evidence that the intervention has worked? It does not exist. What does exist is the absolute failure the intervention has been.

I want to go to the issue of consultation. The government keeps talking about the consultation that they ran. The consultation was a sham. They did not listen to what people were saying. They did not involve Indigenous people and local communities in the drafting of this legislation. In fact, this legislation pretty much mirrored the document that they took to the consultations, despite hearing very clearly from the very people this intervention has impacted on for years that it does not work and that they need a new way. There was no standing by the needs of communities, having a basis to policy that is entrenched in human rights and dignity, believing that lifting education standards should be not just talking about but something you deliver on, and ensuring that you look after the health of young Indigenous people—not just talking about it and then trying to pretend that the statistics do not matter in order to justify your own ends.

My colleague Senator Wright pointed out how damning the independent analysis and reviews have been in relation to the intervention. Amnesty International have condemned the intervention and the consultation period used to justify the extension of the intervention. Around the world, not just directly to our government ministers here in Canberra, they have said that Australia does not know how to treat its Indigenous people with the respect, dignity and human rights that they deserve. Rather than listening to expert opinion and listening to the communities who are affected directly by the negative impacts of the intervention, the government has brushed all of that advice away and gone ahead—steamrolled ahead—with keeping a program that is fundamentally flawed and, in fact, is resulting in worse outcomes for Indigenous children and their communities. There has been a 41 per cent increase in imprisonment and a doubling of self-harm and suicide.

The most alarming thing about the government's approach is that, if they are so blinded now by the evidence that stares them in the face, what makes us think they are going to be any more equipped to deal with the realities facing Indigenous people in the Northern Territory any time soon? They have had the opportunity to fix this and they have got the evidence they need, and they have absolutely ignored it. One of the strongest arguments for implementing the intervention in the first place was to deal with the health issues of children, the safety of children and the alarming levels of self-harm and suicide, particularly in relation to young Indigenous kids. The fact that those statistics have doubled since 2007 should have been enough to wake this government
up to the fact that a different approach was needed.

Aboriginal and Torres Strait Islander children have a child mortality rate that is three times that of their non-Aboriginal peers. Aboriginal children aged 10 to 17 are 24 times more likely to be jailed than non-Aboriginal children, and Aboriginal children are almost 10 times more likely to be in out-of-home care. Nothing that the government is proposing in this legislation will fix that. In fact, it is going to make it worse. If the last six years are anything to go by, the statistics will double, because that is what we have seen since the intervention was first introduced.

This legislation will mean that the intervention will be in place for 15 years. They are going to fund some programs for up to 10 years. Why would a government who took such a remarkable and historic step of apologising to our Indigenous people miss the opportunity to put that apology into action when they have all of the evidence they need to fix the problems and to do away with what is such a damaging intervention? The intervention has not worked. I was not here when the intervention was first passed into law but my colleagues Senator Milne, Senator Bob Brown and Senator Siewert were. They all warned in this very place, standing here in a rushed debate, that this would not fix the problems and that we needed proper consultation with Indigenous people about how they could work together to deal with the very serious issues in their communities, particularly when it came to children. That advice and those warnings fell on deaf ears.

A number of people have written on this issue because they were very disappointed that this Labor government was not taking the opportunity to scrap what had been such a flawed program which inflicted so much pain, so much hurt, so much disingenuous support. There was a hope that this government might do something about dealing with these issues, but it has not of course. So many people have written about this. I have already mentioned that former Prime Minister Malcolm Fraser has condemned strongly not just the lack of evidence base for extending this program but the lack of proper consultation that was run.

A number of other people have spoken about this because it is an issue which concerns many Australians, particularly those who believe that our values of a fair go are entrenched in our communities but must be reflected in the laws we pass in this parliament. If they are to mean anything, we need to understand the values of looking after each other, standing up for the most vulnerable, listening to what they need and giving them a fair go.

One commentator and expert in relation to this issue, Nicole Watson, poses a very clear question and I think it is worth us pondering it or at least putting it on the record for this rushed debate:

One day the generosity and patience of Aboriginal people will surely run out. Perhaps the questions that need to be asked should begin with: why do governments go to such lengths to avoid meaningful engagement with Aboriginal people? That question has not been answered in this place. It has been ignored by this government and from the other side as well. When the intervention was first introduced, it was not based on the evidence presented or on the support of the expert advice on how to engage with Indigenous people to tackle these issues. The report often quoted as the reasons and the motivations for the intervention—we all remember it—is the Little children are sacred report. We know the horrific statistics, stories and horror
contained in that report, particularly for our Indigenous children. The report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, which was publicly released in June 2007 and quoted as the motivation for why we had to strip away the rights of Indigenous people and their communities—to make their own decisions, to work with them, to listen to what it was they needed—said that everything the intervention did, the motivations and methods and how they went about it, was exactly what you should not do. So we were warned in 2007 that this is not how to go about it. It was unequivocal in its demand that government abandon imposed solutions in favour of working in partnership with communities.

That very same report was used by the Howard government at the time as the excuse for the intervention. They liked the title; they ignored the content. It said that there was sufficient evidence to show that well-resourced programs that are owned and run by the community are more successful than generic, short-term and sometimes inflexible programs that are simply imposed on communities. Even back in 2007, the Howard government was warned that if you just go in, impose, take away people's rights, threaten them, endanger them and take away their necessities you will have an absolute failure for an outcome when it comes to dealing with issues facing young people, children, prison rates, self-harm and suicide. It was all there in black and white warning the Howard government at the time that that was not how to do it. I do not blame this government for what the Howard government did but I do blame this government for not taking the opportunity to fix past mistakes when the evidence now before us shows that all those warnings were right. Children are no safer in those communities in 2012 than they were in 2007. In fact, they are in more danger, having had restrictions imposed on their safety and their welfare. All of the evidence that the government needed to reverse the mistakes of the past they have ignored.

Then, when they went out to consult with the community, it was an absolute farce. The report that they took to those consultations is virtually the same as that for the intervention itself and for the extension of the intervention through this legislation. They have not learned from the past. They have ignored the statistics: a doubling of the incidence of self-harm and suicide amongst children, a 41 per cent increase in imprisonments and a decreased school attendance rate—which we know was constantly used as the key thing the intervention would fix, but it failed to do so, as all the warnings and advice said it would.

Throughout this debate, the Greens have been very clear that we oppose the further extension of the intervention. We know that, despite the name of this bill, it is not about 'stronger futures'. It is about weakening the future because the government have not learnt from past mistakes and have their heads in the sand. (Time expired)

Senator WHISH-WILSON (Tasmania) (20:38): I rise to give my first speech in this chamber on legislation, the government's Stronger Futures bills. Last night, in my first speech, I mentioned that I grew up in the Kimberley and in the Pilbara. I remember kicking the football around in Karratha as a little boy, in my first football games, with a number of my Aboriginal friends, who I went to primary school with. I also remember climbing over the rock paintings in the Kimberley when we went crabbing as kids. I remember working in the goldmines in Meekatharra and Wiluna with lots of good Aboriginal people. I have respect for their culture, and they are a proud people. I think
part of the reason we are considering this legislation tonight is that many non-Indigenous Australians have not experienced Aboriginal communities. I feel there is a disconnect there.

So I am pleased to join with my Greens colleagues tonight and contribute to their longstanding work on putting forward positive proposals for Aboriginal and Torres Strait Islander communities across this country. I note in particular Senator Rachel Siewert's extraordinarily hard work on Indigenous affairs here in the parliament and on the ground throughout Australia. As has been expressed several times today, we are very disappointed Senator Siewert cannot be here tonight.

Before I discuss the Stronger Futures legislation and the Northern Territory intervention laws that came before it, I want to begin by stating some stark facts that illustrate the health crisis for Australia's Aboriginal and Torres Strait Islander people. Indigenous men and women die up to 17 years earlier than other Australians. Indigenous children die at more than double the rate of non-Indigenous children. Many Indigenous people suffer from chronic diseases which are entirely preventable and have virtually been eliminated in the non-Indigenous population. Almost one in five Indigenous people reported that a member of the family had been sent to jail in the previous 12 months.

The 2004-05 National Aboriginal and Torres Strait Islander Health Survey found that Indigenous adults were twice as likely as non-Indigenous adults to feel high or very high levels of psychological distress. Indigenous people may have higher levels of such distress because they experience more stressors than non-Indigenous people. A social survey in 2008 found that almost eight out of 10 Indigenous people experienced one or more significant stressors in the 12 months before they were interviewed. The sorts of stressors those surveyed reported in interviews included the death of a family member or friend, alcohol or drug related problems, trouble with the police and being a witness to violence.

I turn my comments to the legislation before us. As my fellow senators will be aware, the Greens position on the Stronger Futures legislation is clear. We oppose the Northern Territory emergency response, what became known as the NT intervention, introduced by then Prime Minister John Howard. One of the most astonishing dimensions of the intervention was, of course, that it suspended the hard-won Racial Discrimination Act of 1975 as it related to the intervention and its associated measures. I recall being completely flabbergasted that in the 21st century, albeit under an extremely conservative government, there were moves to repeal racial discrimination laws.

The whole process, and the legislation that ensued, was an insult to Aboriginal people, acting as it did to marginalise them and effectively render them second-class citizens in what is, after all, their own country. Worse, all this was done here in Canberra in the name of being in the best interests of the children, and this is the disconnect that I mentioned earlier. At the time, asking questions about the intervention, let alone opposing it, was to risk the accusation that one did not care about the safety of children. I am proud of the work the Greens did then in asking those hard questions to point out the injustice and ineffectiveness of that emergency response.

Just a few years later, as the intervention wore on in the Territory, a new government was sworn in here in Canberra. I should think few Australians gathered here, in public squares and around television...
unmoved by the apology to the stolen generations that the new Labor government delivered, finally. It was an electric moment, long overdue but entirely heartfelt. That was a big day in this nation's history. I as a farmer also remember feeling optimism that we might get some action on climate change as well, following that election. You could reasonably have imagined that, with the arrival of a Labor government, the Aboriginal communities of the Territory could have expected a different approach to dealing with their social problems—not so. The Rudd government opted to continue most of the worst features of the intervention, rather than go back to the communities on the ground and engage with them to determine a way forward. All that goodwill from the apology ground to a halt. What a lost opportunity.

Here, in 2012, this legislation now before us essentially extends the measures that were established under the intervention. Notwithstanding our opposition to Stronger Futures, my colleague Senator Ludlam will seek to amend this legislation in order to reduce the harm it will cause. Our amendments are consistent with the recommendations the Greens put to the recent Senate inquiry. Our opposition to Stronger Futures is based on the fact that, nearly five years on, there is no substantive evidence that the intervention is achieving real gains on the fundamental outcomes of health that it apparently set out to address. Instead, as Senator Siewert noted in the Australian Greens' dissenting report to the Senate committee that considered the Stronger Futures legislation earlier this year, many Aboriginal people, representative organisations and the community sector more broadly assert that the whole approach that the intervention began—and Stronger Futures would continue—undermines and disempowers Aboriginal people and communities in the Territory. It is at odds with international research that demonstrates that community-driven measures, not a top-down, punitive approach, will help communities make progress on health and economic development outcomes.

Before I speak in more detail on this legislation, I make the point that it is unfortunate that the government should have chosen to schedule discussion on this legislation today. It has been a long day for everyone, and it has especially been a long few days for the Greens. Of course, today, discussion in this chamber, and our thoughts as senators, have been focused on contending with the question of practical and immediate actions for creating safe pathways for refugees seeking asylum on our shores. With mere hours to go before we rise for the winter break, there simply will not be the time tonight to meaningfully contend with this Stronger Futures legislation. It is unseemly that the government should rush this legislation through while the nation is, quite rightly, transfixed on another matter.

Now that this legislation has been put on today's schedule, let me take this opportunity to set out the reasons for the Greens' position on it. Five years on since the intervention, there is enough time and enough evidence based research to tell us whether it is working. So far as the Greens go, there are strong relationships we have with Aboriginal communities, organisations and individuals in the Territory, who can tell us how well, or how poorly, the intervention has served their needs. As we all know, the intervention was announced and swiftly rolled out with no consultation. It was a shock for the affected communities on the ground, and I remember well the scenes of uniformed Army staff stepping off buses into the blazing sun of the Territory—there, as then Prime Minister Howard told us at the time, 'to help'.
Five years on from the intervention, it seems we are repeating the same mistake of not talking to the very people this legislation is supposed to be helping. Though I am new to this chamber I have read some of the submissions made to the Senate Community Affairs Legislation Committee inquiry convened to look at the Stronger Futures legislation earlier in the year, and I note that many submissions made to the committee, and much of the evidence provided to the committee, expressed strong concerns about the inadequacy of the consultation process—how it was carried out, and also how these consultations were then interpreted within the consultation report.

People could not get to the consultation meetings due to the times they were held, and people had little time to even hear that the meetings were on. These meetings did not give enough time for issues to be properly discussed; people attending had their comments misreported; and, as so often occurs within consultation processes with Aboriginal people, many for whom English is a third or fourth language, insufficient interpretation services were provided. Lest anyone in the chamber tonight think that I am cherry-picking submissions to that committee process that align with the long-held views of the Greens, I take this opportunity to relay some of the key issues of concern that the Australian Human Rights Commission chose to highlight in their submission, which I shall read verbatim:

- the timeframe for consultations was inadequate given the scope and depth of the issues raised in the Stronger Futures Discussion Paper
- significant measures such as income management were not listed for discussion during the Stronger Futures consultation process
- despite the Australian Government's efforts to work with the Aboriginal Interpreter Service (AIS), there was neither sufficient time to translate the paper into the languages of Northern Territory communities nor to provide the Stronger Futures Discussion Paper to the interpreters sufficiently in advance of the consultations.

The excellent report, *Listening but not hearing* by Jumbunna Indigenous House of Learning, from the University of Technology, Sydney, from earlier this year does not mince words about where the government is failing to plan and draw up this legislation. The authors declare:

The Government's current policies have failed and they will continue to fail for so long as it continues to determine policies without the direct involvement of Aboriginal people in the decision-making process. As so many have pointed out, until Aboriginal people in the Northern Territory are allowed to gain ownership over their future, Government will fail to improve their overall circumstances and they will remain second class citizens of this country.

This legislation would erode local governance arrangements and disempower communities. The intervention, with its punitive, top-down approach, along with a suite of parallel reforms—such as those in service delivery to remote communities, the abolition of community councils within local government reforms, housing and other matters—all combine to reduce community level involvement in decision-making, towards an ever-more centralised model, This is confirmed within the Australian Human Rights Commission submission to the committee's process for this legislation earlier in the year.

It is for these reasons, and many more besides, that the Greens oppose the Stronger Futures package of legislation. The submission stated:

The feelings of disempowerment affecting these communities are symptomatic of a lack of control over issues directly affecting groups.
One extract from the dissenting report of the Greens really stuck out to me in reading it earlier this week. Our report quotes Dr Gondarra, a Yolngu man from East Anthem Land:

If we want to see Aboriginal people better in education, better in jobs and better in any other area, we need to work together to build better legislation, because this particular legislation is not on. The Australian people should be asked to reject this legislation because it is racist. It is not helping our people. That is why we come before you and you are listening to us because we represent not stakeholders, not a department, not the service providers. We come here to represent people who are struggling, people who feel pain, people who are confused—what is going on?

Madam Chair, we want you to take this message from us. It is eating us like a cancer. We are always going to be, from the fifties until today, 2012, a puppet on a string of somebody else. We are not a free people. We are supposed to be the first people, the first nation, of this country. You should be learning so much from us than we are learning something from you. This is very important for us.

These reports from the ground could not be further from the stated objective of these bills, namely: a stronger future, grounded in a stronger relationship between government and Aboriginal people in the Northern Territory.

We must do better to ensure that the legislation we introduce and pass through this parliament actually achieves stated objectives. This is always true, but never more urgent than when we look at legislation concerned with tackling the great divide in health, education and just about every indicator you would care to mention between Indigenous and non-Indigenous Australians.

Though I know something of the scale of the health challenges that Indigenous people in Australia face through the good work of the Closing the Gap campaign, and other wonderful community initiatives, I was nonetheless astonished to read one Aboriginal child health statistic in particular, provided by Dr Bath, the NT Children's Commissioner to the parliament earlier this year:

- 46.8 per cent of children in the NT have multiple developmental disabilities. If we look at what is called the intervention zone, which is mainly the remote communities and the town camps, it has been estimated that the number rises to 60 per cent.

That is an astonishing figure. When describing the experience of Indigenous children in the areas affected by the intervention, Dr Bath said to the committee:

Their circumstances are perilous, even when compared to the circumstances of Indigenous children in other Australian jurisdictions. There is a mass of data supporting that contention. They have been documented widely.

That figure alone requires us here in the nation's parliament to ensure the measures we enshrine in law in this place are effective. Many from the affected communities on the ground are telling us the intervention is not working. The experts looking at the evidence based research and agencies working in the community sector are telling us the same thing. We must listen to the chorus of voices and ensure that we focus on a different approach.

Much of what I have spoken of so far have been areas of concern about the background leading up to this legislation and the reasons that the Greens oppose it. It is extremely important to note the opportunity costs of legislation such as this. I note that the ongoing cost of the intervention to date totals over $1 billion. Imagine what we could have achieved over the past five years had we genuinely worked with communities to design, develop and implement effective targeted programs. That is why the Greens are focused on listening to communities and working with them to develop effective
measures to tackle alcohol abuse. As an example, we are on the record as supporting locally developed alcohol management plans. I note that some communities are worried about the bureaucratic layers that are being added to these plans. In practical terms, the real world consequences of harsher penalties and blanket bans on alcohol as set out in the Stronger Futures legislation may increase imprisonment rates. The Greens support a different approach, one that is led by the community.

I refer to the submission of the Australian Human Rights Commission to the committee, which said on this issue:

Evidence indicates that interventions imposed without community control or culturally appropriate adaption and which stigmatise alcohol users do not work and can be counterproductive.

The commission goes on to talk about the increase in alcohol related offences that has occurred since the intervention was established and the implication that the intervention may have led to increased rates of imprisonment among Aboriginal and Torres Strait Islander peoples. The NTER evaluation report indicated that there was a clear increase in alcohol related offences. The commission therefore reiterated its standing concerns that the alcohol offences under the NTER and continued by the Stronger Futures legislation may result in increased imprisonment of Aboriginal and Torres Strait Islander peoples.

It strikes me that this is a good example of how better some of that $1 billion could have been spent by recognising alcohol addiction as a health issue and providing additional resources to culturally appropriate alcohol counselling and rehabilitation services. The Northern Territory Australian Aboriginal Justice Agency, who provide free legal advice and support to Aboriginal and Torres Strait Islander people in the top end, said in their submission:

NTAAJA recognise the need to do more to stop the damage caused by alcohol abuse in our communities, but increasing the penalties for alcohol related offences is not the answer. Another lost opportunity in this package of legislation is that the government has chosen not to tackle the changes to the permit system of access to Aboriginal lands that occurred when the intervention was brought in. Although there was never any clear evidence to link abuse of the permit system to instances of child abuse and other matters of disadvantage, the Howard government saw fit to change the permit system that gave public access to certain Aboriginal lands.

The Greens support the plea from many of the communities who have made a submission to the Senate committee for a new approach, one which supports communities to achieve their own independent objectives through proper consultation, local governance and cultural competency. I note in conclusion the comments from Indigenous leader Dr Gondarra—(Time expired)

Senator McKenzie (Victoria) (20:58): In rising to speak to the legislation before us, I would like to make reference to the Greens' repeated comments tonight about it being rushed through. There is no guillotine tonight. Every single member of the Greens party who has wanted to speak on this piece of legislation, other than Senator Siewert, who is not here for other reasons—and I appreciate the work that she does in and the particularly passion she has for this area—has been able to. That is unlike coalition senators who have lined up over the last fortnight to have their say on many pieces of legislation and to put the concerns of their constituencies on the table and to make them part of the debate. The Greens assisted the government in guillotining everyone. So
their complaints are a bit rich, and I would like that on the record. I am going to keep my comments short, not because of a guillotine but because I am conscious of the time. I am impressed to see that the Labor government has finally realised that the coalition's emergency response measures designed to enforce the rule of law, to get kids to school and to create economies in remote communities were real, were targeted and would have worked if only Labor had not wasted four years in inaction. Big problems remain in the Northern Territory five years on from the intervention: school attendance, alcohol related crime and assault, and health related issues. No economic opportunities remain where the coalition left off after the 2007 election. We still require measures such as those proposed by the Gillard government tonight.

I am a member of the Senate Community Affairs Legislation Committee, which conducted an inquiry into this piece of legislation when it was still part of what was called the Stronger Futures legislation, a package that repeals the Northern Territory National Emergency Response Act 2007 and related legislation but retains policy elements from that legislation in eight key areas, including: school attendance and educational achievement, economic development and employment, tackling alcohol abuse, community safety and the protection of children, health, food security, housing and governance.

Unfortunately, the Labor government struggles so often with its legislation and its policy agenda once it gets to the table and gets it through the parliament. There is always a bit of a problem with implementation. The education aspects of this bill were more focused on collecting data than talking to parents about how to get their young people to school. Under Labor, only seven parents were spoken to while education attendance in the Territory under this particular policy remained at 50 per cent. That is unacceptable. We all know what a difference education can make to young Australians—Indigenous or not—and particularly for these communities, as a means of building aspiration and skills. There has been nearly five years of federal investment in the Northern Territory. We should be way past the emergency stage and moving to a stage at which Indigenous people are leading the reforms.

In relation to the detail of the legislation, I am pleased to see that the government has agreed to the opposition's call for the Stronger Futures legislation to clarify the power of the federal minister in relation to the alcohol measures. I also want to mention the coalition's issues with the legislation. They go to something that the Greens mentioned before: concerns that the legislation specifies and is only applicable to Aboriginal people. That is why we have these amendments before us tonight that substitute 'Aboriginal people' with 'the community'. The coalition senators are concerned that excessive alcohol consumption leading to alcohol related harm is not just confined to Aboriginal people but is an issue that affects the whole community. Clause 15 of division five of the Stronger Futures in the Northern Territory Bill 2012 states that alcohol sales must be restricted where harm may be caused to Aboriginal people. This clause ignores the fact that the entire community suffers directly or indirectly from the consequences of alcohol abuse. Coalition senators said that this amendment removes 'any race based reference and stigma and clearly identifies that excessive alcohol consumption and alcohol abuse has community wide consequences and requires a whole of community commitment to ameliorate.' That shows that we have a holistic and a
community led approach to dealing with this particular issue.

I now return to the government's lack of focus on a genuine engagement with families around their children attending education institutions. When we are looking at those who are not empowered, those who are not attending school as we would like them to, it is essential for all Australian children, particularly Indigenous children, that we focus less on the minutiae and more on the relationships, ensuring genuine engagement and building a course for real change and empowerment. This is something education can bring.

Another key area of concern for the coalition is a lack of the right to appeal an income-management referral from the state or territory. The right of appeal is a fundamental right and it is something that we would like to see addressed. Finally, the coalition is concerned that the Stronger Futures bill has no interim targets. How typical it is of this government to bring before us things which will be difficult to evaluate and which will not be assessed so that they are unable to refine what they are doing, where they are going and how to make things better in the future. Assessing the impact and effectiveness of a policy initiative such as this when we are dealing with the issues of child abuse, rape, childhood school attendance, building economic capacity in communities that have been disadvantaged for so long is essential. This particular piece of policy will be reviewed in seven years. We believe that it should be reviewed around the three-year period. Human Rights Council evidence said that three years is enough time to take a look at these measures to see where we can improve them. We would like to see that happen. As we know, implementation under this government will be an issue and so restricting and narrowing the opportunity for ongoing incompetence particularly in a policy area as important as this is important.

It is time the government focused more attention and action on achieving positive change for Northern Territory communities and stopped failing to deliver. I am confident of a stronger future for the Northern Territory and its citizens. There is hope yet in the government's promises and it is our job in the coalition to hold them to account—something I look forward to doing.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (21:07): I rise tonight to speak against the government's Stronger Futures legislation because it will undermine the future for Aboriginal people in Australia and, what is more, the government knows that absolutely. The government knows that Aboriginal people do not want this Stronger Futures legislation. Aboriginal people find it offensive that it is even entitled 'Stronger Futures' because it takes them way back to a time of extreme paternalism and it makes a mockery of the apology to the stolen generation.

People need to think very carefully about what is going on here. People were horrified with the Northern Territory intervention when it was conducted under the former Prime Minister, John Howard. It is shocking to me, after the complete failure of the Northern Territory intervention and the complete lack of evidence for any of the claims that the government is making about successes under the intervention, that we would now see this legislation before us.

I want to address a remark that was made earlier about a suggestion that the legislation is not being rushed through. We have spent the entire day today on the Migration Legislation Amendment (The Bali Process) Bill 2012, talking about the treatment of asylum seekers and how what was being proposed stripped the legislation of any
human rights protections and allowed the government to intercept asylum seekers and send them to any country that had signed the Bali process including Iraq, Iran, Afghanistan and Syria. It was appalling and any suggestion that it was anything other than a political take to try to take the heat off the parliament before the winter break is just an excuse. That is all it was. However, we now have a way to at least address that. The reason this is so shocking is that this is the last day of sitting before the long winter break. We have been debating other measures all day. This legislation was not even supposed to be coming on today. It was not even discussed in the meeting this morning about what would be on the agenda today in the parliament. It turned up here on the Notice Paper at about quarter past one this afternoon. The excuse the government has for bringing in this legislation, against the wishes of Australia's Aboriginal people, is that we have to get it through now because, unless it goes through now, there are programs that will lapse before we come back after the winter break. But that is not true. We have had a look at that, and 18 August is when the programs need to be renewed and this legislation needs to go through by. I raised this matter today with the Prime Minister.

It is appalling to me that we are here tonight with a virtually empty Senate chamber and that the parliament is not engaging on a matter which is of such great significance to Aboriginal people. You cannot imagine anything which has greater significance to them than this legislation. I would like to read you a statement regarding the Stronger Futures bills and Northern Territory policies. This is a statement from an Aboriginal spokesperson in the eastern region. It says:

To our brothers and sisters of eight nations in the Western, Central and East Arnhem Land areas of the Northern Territory: We say to you, we are with you and we will stand with you as one peoples against the Australian federal government’s Stronger Futures Bills and Northern Territory policies.

We call on the federal government to scrap the Stronger Futures laws and return to full consultation, negotiations and agreements with our leaders and custodians in the Eastern Alyawarr Region to discuss a way forward in partnership, and that our peoples be involved at all levels of government in setting policies, programs on health, education, employment and training.

We as the true custodians, landowners and leaders now demand that the federal, state and territory governments must respect all human rights, and recognise and acknowledge our peoples rights as first Australians to make all decisions to determine our own future directions, to work and walk with us towards a better future for our peoples.

- We call for full return of our land rights. We do not want native title in its present form. We did not give our free and prior consent or agree to have this imposed onto our peoples who did not to give our sacred objects in exchange. These objects hold our country, our peoples' nations together.
- Native title does not provide first Indigenous Australian peoples with ownership of the land or the power to stop development by others outside the community lease areas. Under the Native Title legislation our peoples' rights to land can be extinguished and our inheritance extinguished. For example our lands can be taken for mining from which our people receive little or no benefit while the real benefit goes to others and the land is destroyed.
- We call on our people to reject any meetings or discussions with government appointed bureaucrats, or representatives of government agencies on Stronger Futures laws.
- We urge other Indigenous and traditional Aboriginal leaders and custodians to stand strong to fight for our inheritance and rights as first peoples of this country.
We call on International UN bodies to review the Australian federal government’s Stronger Futures laws under the human rights charter. And a full scrutiny be carried out against its human rights obligations.

We advise our people to fully withdraw any support for the Stronger Futures laws until the UN reviews have been carried out.

We seek a public apology from the Federal Government for the way we have been treated and effectively stigmatised as child sexual abusers, drug traffickers, rapists, and murderers under the Northern Territory Emergency Response, which treatment continues today under the Stronger Futures laws. We reject being forced to grant government community leases as a price for the provision of housing and community services such as health and education.

We call on the federal minister to return control of Aboriginal Benefit Account (Mining Royalties) to the peoples of the Northern Territory and to stop using this account to establish and pay for the leasing arrangements on our community lands.

We say no to further mining exploration, and we withdraw support of all new mines.

We fully support our brothers and sisters who are standing strong against the government proposed Muckerty waste dump north of Tennant Creek.

Our people have been made outcast in our own country, under the NTER and the Stronger Future laws to the point where everything has been taken away from our people.

The gap is widening and not closing. I think as a parliament we should be taking that very seriously. I was honoured to be asked to accept and present to this parliament a petition signed by more than 40,000 people—that is why this parliament ought to be seriously engaging in this. This is a big issue. Those people sent in a petition to this effect:

We urge the Parliament of Australia not to pass the Stronger Futures legislation, and conjoined Social Security Legislation Amendment Bill 2011.

We are opposed to the legislation because it extends many of the provisions of the Northern Territory Emergency Response Act 2007 (NTER) and consolidates the top down, punitive approach that is already adversely impacting on the legal and human rights of Indigenous Australians.

We sincerely believe that informed and sustained dialogue with Indigenous communities is required on the issue.

We are deeply concerned that the legislation undermines legal rights across a range of areas of law, including administrative law; constitutional law; consumer law; criminal law; discrimination law; privacy law; property law and welfare rights.

We also believe that the policy underlying the legislation is in violation of fundamental principles of international law, such as the right to self-determination.

The policy also reflects the assimilationist and paternalistic views of government towards Aboriginal people from the 1890s to 1960s. Furthermore, the legislation seeks to deal with complex social and economic disadvantage through government regulation and the undermining of individual freedom.

Communities have not given their free, prior and informed consent to the measures proposed within the legislation. Although consultations were held with communities, these were not transcribed, and the consultations were not conducted in accordance with basic social science methodology.

Elders and community representatives have expressed that they are opposed to the legislation, which will further disempower their communities and entrench trauma and poverty.

We draw attention to comments made by Northern Territory elders about the legislation:

‘We do not consent to these bills. We will not support policies that have not been negotiated, or negotiated with all elders of prescribed communities, and we will not support an extension of the Intervention, or Intervention under other names.’ ...
We thank you for your understanding and commitment to achieving lasting positive change for Aboriginal people in the Northern Territory. This bill works against lasting positive change for people in the Northern Territory. How is it possible that this parliament can be pretending that an extension of the Northern Territory intervention is anything other than a return to paternalism and undermining self-determination? It completely undermines self-determination. That was a point made very strongly.

Let me go to the evidence base. The disgraceful thing is that by the government's own measures intervention outcomes show an alarming worsening in many indicators of community and individual health and wellbeing. Unemployment and welfare dependence are escalating. More children are being hospitalised. School attendance remains low. Reported suicide and self-harm rates have doubled since the intervention's introduction in 2007. And yet we have Minister Macklin saying that Stronger Futures is evidence-based. It is not evidence-based. It is not addressing the realities of what has occurred under this intervention policy.

How can we stand here and continue a policy that has led to increased unemployment and welfare dependence, in more children being put into hospitals and in higher suicide and self-harm rates? What are we thinking in this parliament? How can people just sit here and shrug their shoulders on the last evening before we go out for the winter break and just say, 'Well, okay; we'll just let the Greens talk this out and then we'll just vote for it, and away we'll go, and we'll forget about the fact that this undermines forever the self-determination of Aboriginal people?' This takes us right back to where we were years ago, in a paternalistic regime that undermines the capacity of individual Indigenous communities to determine their own future, their own health and wellbeing, and to participate in it.

As I listened to the Aboriginal people who were here for the press conference they told me about the complete failure of the consultation that had gone on. They said that most of the communities did not know what it actually meant. They were not properly consulted, especially a lot of the older people, and they still do not know what is going on. They do not know what these three pieces of legislation actually mean for them. They are being treated as if all that has to happen is that we take this top-down approach, we tell them what we are going to do, we go and do it and we take away any kind of hope they have that they will have control in the longer term over their own destiny. Residents of prescribed communities are becoming extremely dispirited as their local control is wrested away from them and their community institutions and programs are being dismantled in the name of modernisation. If that is not an attempt at assimilation I do not know what is.

On what possible basis can you take away and undermine local community institutions and programs? There are now unprecedented levels of surveillance by government agents. And, rather than the dentists or mental health workers that are desperately needed, it is police, truancy officers, housing construction crews and others who arrive, carrying out their activities under a coordinating government business manager who exercises supreme statutory powers.

But community resistance continues to grow in these communities, and you have to wonder how long Aboriginal people in Australia will put up with it. How long is it going to be before they just say, 'Enough is enough; we will not tolerate this in our communities anymore'? And that is the point to which we are driving people. Instead of
taking a collaborative approach, a bottom-up approach of understanding and supporting Indigenous languages, of assisting people in community to do what they want to do and to use their own economic models and the like, we go in there with an intervention that has failed. I challenge the minister to show—any time, anywhere—where the evidence is to support her contention that the Northern Territory intervention has worked and that Stronger Futures will work any better than that. There is no evidence for it. What there is evidence for is, as I said, a doubling of reported suicide and self-harm rates since 2007, when the Northern Territory intervention was first introduced.

My colleague Senator Siewert has done a huge amount of work on this issue. She wrote a strong dissenting report to the committee's report on the legislation, of course saying that this bill should not be supported. In her dissenting report she quoted the experience of an elderly Aboriginal man with these consultations. I think we should be ashamed when we listen to this:

There were no consultations at his nearest community—the only one he has ever known and the one he grew up in. So here he is: an old man who is almost 80—he looks very well for his age—who has lived on the same country his whole life as a caretaker, who is a prominent elder in his community and who is the holder of stories of his country. Yet he does not know anything about the three bills being passed…In my grandfather's community, for example, how they went about it is that a time and a place were booked for somebody to go out there, but a few days later a phone call was received to say it had been cancelled. The people in my grandfather's community were not consulted about the Stronger Futures. So they do not know. The only consultation that he had came from land council.

I hope it comes home to haunt the minister and the Prime Minister for pursuing this legislation in the way they have on this last day of this Senate sitting, when we could have debated it properly when we came back after the winter recess. It would have been good for people to go out and actually talk to Aboriginal people and have some reflection on the arrogance that is going on here with, once again, a predominantly well-educated, middle class community telling Aboriginal people, the traditional owners of the land, how they will live on their own land. It is a disgraceful piece of legislation.
Senator BOSWELL (Queensland) (21:27): Both sides of parliament, over many, many years tried desperately and put everything they had into improving the lot of our Indigenous people. If money could have solved the problem it would have been solved, because no side of parliament has spared anything to lift Aboriginals out of where they are, which is in communities that are relying basically on passive welfare to exist.

Time and time again we have seen reports, and every report has come out showing that there is no improvement in the welfare of or care of children. In fact, it is going backwards. I have observed this in my time here in parliament. I never want to go back to the stage where the communities were under the charge of religious orders. We have passed that and we never want to go there again. The Baptists had a community, the Lutherans had a community and the Catholics had a community. That has gone. We cannot go there again. We have advanced on that.

I have seen that people who lived in those communities had an education. They could speak English. Since those communities have been removed the standards have fallen. I have seen generations of Aborigines—grandmothers and grandfathers who can read and write and speak English, whose sons and daughters can speak less English and whose grandkids can speak less again. Report after report has come through saying the improvement has been zero; in fact, we are going absolutely nowhere; in fact we are going backwards. What do you do in those circumstances? You have got to try something different. You have got to reach out and say, 'This hasn't been working over the last 50 years. What do we do? We can't continue to go down this path, because we are getting nowhere.' That is the background of the intervention.

The Greens obviously think it is not working and they are quoting Aboriginal people, leaders in their community, saying it is not working. I think you can find other Aboriginal leaders that say, 'It is working. It is improving. The kids are getting better educated. The kids are getting more to eat.' We have to do something. We cannot just keep going the way we have been for the last 50 years where Aboriginal children are only speaking one language in a community that maybe 400, 500 or 600 people can understand. They cannot speak English. They get marooned in the community. They cannot go out because no-one can understand them.

Senator Ludlam—and I do not doubt his or Senator Milne's sincerity for one minute—how can you advance an Aboriginal community when you have them locked in a community that speaks a language that only a minimal number of people can communicate in? They cannot move out of their community. They cannot go and get a job.

I am pleased to say I see a turnaround. I see some great leaders advancing Aboriginal communities. I see these people trying to lift their people out of welfare dependency. I see them trying to get education for their people. I see the mining companies taking their share of responsibility and Rio Tinto saying, 'Twenty five per cent of our employers will be first Australians.' 'Twiggy' Forrest and other mining entrepreneurs are saying that we have a responsibility to get these people
out of their communities and into real, meaningful jobs. I am not talking about $20,000 a year token jobs; I am talking about $70,000, $80,000 or $100,000 jobs where they buddy them up and put a lot of effort into maintaining their commitment. I see the mining community accepting their responsibilities.

I see Bess Price, Noel Pearson, Wayne Bergman and Alison Anderson—they are the new Aboriginal leaders who are saying, 'Let's not be victims any longer. We played the victim game and it's never achieved anything for us. All we have ever achieved is to be on welfare and be dependent on handouts.' These leaders are driving their constituents forward, driving their people forward, urging them on. They are urging them to get an education, to get a job, to go into the mines, to develop their own country and to run cattle, farms and mines. They are doing a great job can and they have to be acknowledged.

I say to Senator Milne with the best will in the world: times have changed. People do not want this anymore. These leaders are leading their people into a new land. If you ever saw that, if you ever wanted to see it, you should have seen it at the last election in Queensland. The Aboriginal community said, 'There's nothing in this. The Green-Labor-Wilderness Society alliance—they want to take our land. They do not want us to develop it. We cannot run farms. We do not want World Heritage across all our land. We want to have our mines.' And what did the Greens, the Wilderness Society, Pew and all those other green groups do? They said, 'We want you to sit there and you can develop a tourist industry.' The Aboriginal community said, 'No, we don't want a tourist industry; we want to develop our land. We don't want wild rivers that block off all our land; we want to do things for ourselves.' It has not worked for 50 years and will not work over the next 50 years, because stupidity is doing the same thing and expecting a different result.

I stood here and applauded when the apology to the stolen generations was given. I applauded when we introduced the welcome to country. I did not object to it. But what I did object to was that, on almost the same day that was introduced, the Aboriginals in the cape had the Wild Rivers Act declared. It was almost on the same day. I could see the irony, the hypocrisy. How could we say that we were sorry and speak the welcome to country every day but take the land they have had for 40,000 years and not let them use it? We tried to put a World Heritage listing on it. That is why the Greens are fighting a losing battle. Those people at Point Price and Wayne Bergman can see that, if they can get the money, they can educate their kids. They can give them an education; they can train them; they can lift them out of this poverty trap, suicide, drunkenness and abuse.

At the last state election, I saw something that I never thought I would see: Aboriginals coming down and campaigning in the seat of Ashgrove. They were standing in front of Woolworths and on the street corners, handing out leaflets saying that the wild rivers legislation would deprive them of their country. They have realised they have a fight on their hands, and the only weapon they have is their vote. They are using their vote to lift themselves out of this poverty trap. They knew they had to win. Their land depended on it. Their birthright depended on it. If they could not stop the wild rivers act, they were going to lose everything. When we saw the vote from Cape York and the Torres Strait come in, which is where most of the First Australians live, it was overwhelmingly in favour of the conservatives. They are sick and tired of being pushed around by the Wilderness Society and the other green
groups, which treat them as if they are ornaments, there to provide a photo opportunity for the non-existent people who might want to watch them and take a picture of some Aboriginal people. I say to the Greens: it is gone; you are fighting yesterday's battle. People want more.

This is the way we have tried to lift people out of their poverty, out of their welfare dependency. Some people say it will not work—the Greens say it will not work. I can find an equal number of Aboriginals who will say it is working. Let me just conclude my remarks by saying that as Australian politicians we had to do something. What were we to do, just sit there and say, 'Let's have a few more reports. Let's throw another couple of billion dollars in and see if we can buy the problem off'? We have tried that for years and it has not worked. That is why I support this intervention. I think it has problems, but I think the problems would be far worse if we did not have anything.

I implore the Labor Party: if you are going to have this particular policy then put your shoulder to the wheel and make it work. Do not just have it there as a picture that says, 'We have it here. No-one is really trying too hard. Let's not get our hands dirty.' If you are going to have it, make it work. Give it all you have and see if we can lift and help the Aboriginal community.

Senator BOYCE (Queensland) (21:40): I wanted to speak very briefly on this report as a member of the Senate Community Affairs Legislation Committee which undertook the inquiry into the Stronger Futures legislation. I would like to start by strongly supporting the sentiments of Senator Boswell's speech. I think it encapsulated the complexities and the very serious issues that all sides of politics have struggled with for many years.

I would also like to make the point that this was the last inquiry that the late Senator Judith Adams was involved in. She was a very, very active participant in the community affairs committee and a great advocate for Aboriginal people throughout Australia but especially in her home state of Western Australia.

I can appreciate the view of the Greens in that Senator Siewert has been one of the strongest advocates for the Indigenous population of Australia that I have seen and a very active participant in this committee. But I would also make the point that what the government is doing to the Greens right now is exactly what has been happening to the opposition all week and over the past term of parliament—simply not getting the chance to properly debate issues.

I would like to just briefly make some points on the inquiry that we held and the legislation. Certainly the point has been made over and over that there was very poor consultation undertaken by FaHCSIA. The committee went to the communities of Ntaria, better known as Hermannsburg, and Maningrida. In both cases, despite explaining what we were doing and why we were there, the local population thought that we as a committee were there not to hear their views about the legislation but to explain to them what the bill was about. We had been told that there had been extensive consultation undertaken both by the minister and her department and by consultants paid by her department. Certainly if that were the case the locals had not noticed.

So the first thing that we recommended is that consultation has to be far more carefully undertaken. We are not talking about a sophisticated inner-city population who understand the purpose of legislation. We are talking about people who need the purpose of legislation, along with the outcomes, explained to them, possibly numerous times over.
I was surprised not long after our report came out that on one day I received 28,000 emails vigorously opposing the Stronger Futures campaign. Clearly any politician pays attention when they get 28,000 emails on a particular issue. One of my more savvy IT staff, however, managed to find out that in fact all these emails—the whole 28,000—had come from one address in Victoria. So what was happening was a straight-out spam campaign to try to convince the politicians involved in this inquiry that the level of concern about the Stronger Futures legislation was far higher than it genuinely was. I acknowledge that there is concern about this legislation, but I suspect in many cases that concern is based more on not understanding the legislation properly, not understanding the intent of the legislation, than it is on the actual policies in the legislation. As a number of speakers have pointed out, you can find as many people who support the intent of that legislation and support it as a follow-on, a logical, sensible follow-on, from the Northern Territory intervention policy of our government. We are attempting to put in place decent living conditions, functional family conditions, in many of the communities where they have not existed.

I noted the Senator Hanson-Young spoke at length about the increased number of cases of self-harm and suicide since the Northern Territory intervention. I found that approach somewhat dishonest. One of the things that has happened as a result of the Northern Territory intervention, and this government's further role into Stronger Futures, is that we are collecting far better statistics. Obviously if you have more police on the ground you find more cases of crime or of concern. Even the Bureau of Statistics itself has been somewhat better funded in this area to collect the figures that we need to know. It was all very well for former Prime Minister Kevin Rudd to spend a not inconsiderable amount of time talking about closing the gap, but the point is that no-one had a clue what that gap actually looked like. The statistics that we had were not sufficient to allow us to look at that.

So to use an increase in self-harm and suicide statistics as suggesting that the intervention has been a failure and that those increases are because of the intervention, I think is patently dishonest. It is a better collection of statistics and a better analysis of statistics that has in the main produced those figures. I would like to leave my comments there. But of course the coalition will in the main support this legislation.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (21:47): First of all, I thank all senators for their contributions to the debate. I have had a bit of a difficult time in the last few hours of listening to this debate. I was actually agreeing with Ron Boswell for part of that speech and I think that is probably only the first or second time that has happened, so it has been a bit disconcerting. I find myself at great odds with some of the contributions from the Greens, which is not as unusual but it is also not common.

These bills form part of the government's next steps in the Northern Territory to tackle the unacceptable levels of disadvantage still experienced by too many Aboriginal people in the Northern Territory. It is about trying to take these steps forward in partnership with Indigenous people, but it continues to recognise the fact—and I think this is where perhaps the government and the Greens differ—that you have to do more than just give people rights. We have learnt that. I am one of the great supporters of the first Native Title Act. I spoke about native title rights and
Indigenous rights in my first speech, an issue which has been very dear to me for a very long time—giving proper recognition to Indigenous people. I was one of those who were very proud when the parliament, through Prime Minister Rudd, made the apology. But over the years I have also come to recognise that you cannot just talk about rights; you have to help Indigenous communities address the symptoms and the manifestation of the social issues confronting them.

When I first became opposition Indigenous affairs spokesman, I had to come to terms with talking about alcohol, family break-up and violence against women. I could not pretend that these things did not occur; I could not pretend that we could only talk about rights. We had to focus on those issues that were destroying families, destroying lives, and we had to help those communities tackle those very serious social problems. I think some of the debate today has reflected that discomfort.

The Greens continue to focus on those well-meaning principles, but seem reluctant to get in and deal with the reality of Indigenous people on the ground. That is not for lack of knowledge. It is a shame Senator Siewert is not here—no-one has put more effort into these issues in the parliament than her, and I recognise her contribution. But I do think the Greens have been misleading tonight on this question of process. Senator Ludlam knows that for weeks I have told him that this bill would be dealt with in this session. Some claims made by the Greens today suggest that they did not know about this bill until this morning—they ought to read the red. Senator Hanson-Young and Senator Milne said this was all a great shock to people. That is not true. Everyone has known for weeks that we would be seeking to get this bill through in this session, because the sunset clause in the current legislation takes effect in the middle of August.

What we did do is agree to defer the legislation until this week in the hope that Senator Siewert would be with us again and able to contribute to the debate. But I also made it very clear that, if she was not, we would continue with the legislation, because of the sunset clause in the current legislation. So, I will not cop some of the claims that have been made by Greens senators today. They are not true. This has been on the Notice Paper and on the red; they knew that it was coming. I remind people that this bill was introduced into the parliament last November, so this supposed unholy rush is actually seven months in process. We have had a full Senate inquiry into the bill, in which Greens senators and others participated. To suggest that somehow this has been rushed or that people did not know it was coming is nonsense.

It is true to say that it has come on at the end of a session and that there has been a lot on this week, but we have always indicated that we would be dealing with it and that we needed to deal with it because of the sunset clause in the existing legislation. It is also the case that the Greens have made it quite clear that they do not want to deal with it. They have been very frank with me that they did not want to deal with this legislation. They have been very frank with me that they did not want to deal with it. They have not had time to prepare for this legislation to come on. I do apologise that Senator Siewert is not here and I think everyone understands the circumstances involved, but the government is faced with the situation that the existing legislation has a sunset clause—it falls over in the middle of August—and we have to deal with this matter now. I want to put that on the record, because I think people
We do think this is important legislation and we have made a real attempt to work with Indigenous people to make sure it is understood and supported. We think this bill is much fairer than the initiative that was taken by the Howard government. It removes a number of the measures that we thought were punitive but seeks to maintain the measures that were strengths in the original legislation and extends some of those provisions. I look forward to the committee debate and hope that we can constructively move through the amendments. The government will be moving a set of amendments, and at the commencement of the committee stage I will table some explanatory memoranda relating to those amendments.

The ACTING DEPUTY PRESIDENT (Senator Fawcett): The question is that the amendment moved by Senator Ludlam on sheet 7226 to the motion that the bills be read a second time be agreed to.

The Senate divided. [21:59]

The President—Senator Hogg)

Ayes.......................8
Noes.......................45
Majority..................37

AYES

Di Natale, R
Ludlam, S (teller)
Rhiannon, L
Whish-Wilson, PS

Hanson-Young, SC
Milne, C
Waters, LJ
Wright, PL

NOES

Abetz, E
Birmingham, SJ
Boswell, RLD
Brown, CL (teller)
Carr, KJ
Colbeck, R
Edwards, S
Evans, C
Bilyk, CL
Bishop, TM
Boyce, SK
Bushby, DC
Carr, RJ
Crossin, P
Eggleston, A
Farrell, D

Fawcett, DJ
Furner, ML
Hogg, JJ
Ludwig, JW
Macdonald, ID
Marshall, GM
McEwen, A
McLucas, J
Nash, F
Payne, MA
Sinodinos, A
Stephens, U
Thistlethwaite, M
Urquhart, AE

Question negatived.

The PRESIDENT (22:02): The question now is that the bills be read a second time.

Question agreed to.

Bills read a second time.

In Committee

Social Security and Other Legislation Amendment Bill 2011

Bill—by leave—taken as a whole.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:03): I table five supplementary explanatory memoranda relating to the government's amendments to be moved to the Social Security Legislation Amendment Bill 2011 and the other bills. The memoranda were circulated in the chamber on 20 and 21 March and on 27 June.

Senator LUDLAM (Western Australia) (22:03): The Greens oppose schedule 1 in the following terms:

(1) Schedule 1, page 3 (line 1) to page 13 (line 4), Schedule TO BE OPPOSED.

This relates to income management. I addressed the basic issue of income management in my speech on the second
reading, but I would just like to make some remarks now on the way through. Just to be clear, this amendment removes the schedule relating to income management entirely. If this amendment fails and it is the chamber's view that income management should remain—it is strongly the Australian Greens view that it should not—I do propose to debate a number of amendments that Senator Siewert thought would be a wise way to go. There are some ways that we could certainly improve the policy. We may get to debate those, but if this first amendment is carried then that will not be necessary. This amendment simply abolishes schedule 1.

We do not support the expansion of income management and we believe that the entirety of schedule 1 should be removed. To date, the bill for the current income management process in the Northern Territory sits at around $450 million, nearly half a billion dollars, in order to provide people, many of them impoverished, with little plastic cards telling them what they can and cannot spend their money on. In an area where basic services in many instances are lacking, we spend nearly half a billion dollars telling people how they can manage their income.

This policy remains one of the most criticised across the Northern Territory. If you travel into the prescribed areas and say to people that you have heard about the intervention and ask them what it is all about, income management generally is in the top three issues that people wish had simply never occurred. The money that is used to income-manage people would produce far better results if it were directed to services and programs based on collaboration, community involvement and partnership.

I notify the chamber that I certainly intend to put this amendment to the vote. I find it extraordinary that it is controversial that just under half a billion dollars would perhaps be better spent on the kinds of services that these communities are crying out for and that the *Little children are sacred* report identified: grassroots services and simple forms of helping communities rebuild themselves. Imagine how far half a billion dollars could go into providing those services. But, no, they have the little plastic cards to tell you what you can and cannot buy.

Claims continue that income management is designed to break the vicious cycle of welfare dependency by ensuring that welfare should not be a destination or a way of life. I acknowledge at the outset—and it seems awfully familiar from the Muckaty debate—that Senator Evans is here in a representational capacity, that this is not his bill, so none of this is intended to be taken personally. But I would like the minister, if he could, to provide us with any evidence whatsoever that income management has been a successful policy that deserves to be continued.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:08): I thank Senator Ludlam for the question. Senator Ludlam, I think I heard during the second reading debate the Greens views on this question of evidence. But we maintain that there are improvements in the Northern Territory in things like infant mortality, reporting of child abuse and reporting of crime. You make the argument that these things show that we are going to have increased incarceration. We say, actually, that this is protecting the community, because crimes are being reported and the laws are being enforced. We think improvements in infant mortality are a good thing. We know that the health checks have
been delivering really important results; a high number of health checks have been completed. There is early identification of things like ear infections. So we think the measures are delivering results. I understand you have a principled position that is in opposition to income management. I have heard Senator Siewert argue this many times; I have argued it with her myself. And I know that senators around the chamber have engaged with these issues over a long period of time. We support the maintenance of the income management program. We seek to make some amendments ourselves which we think will improve that. Fundamentally I understand the Greens do not support the income management system. That is why their amendment seeks to remove it. But the government, and I understand the opposition—but obviously they will speak for themselves—is committed to maintaining and improving the income management system. I listened to the contributions earlier today from Senator Crossin and I have heard Senator Scullion on this issue before. I just remind the Senate that the people who live and work in the territory have a lot of experience with how these programs are delivering real improvements to the lives of Indigenous people in the Northern Territory. Things like humbugging that have been so harmful to so many people are decreasing in incidence and a lot of older people are feeling much better protected as a result of these changes.

I know there is a fundamental difference of opinion on this but we think the income management program is an important part of this package. We have looked to extend that to other parts of Australia to address some of these serious social issues, but we think the evidence is that this income management system is assisting to stabilise the communities, assisting them to function better and to ensure that there is proper nutrition and health access in those communities. I understand that we will disagree on this but the government strongly supports the income management regime. This bill will improve that regime, in our view, but I do not expect that I will convince the Greens of that this evening.

Senator MILNE (Tasmania—Leader of the Australian Greens) (22:12): I note that Senator Evans has just said ‘we think income management will improve things’ and ‘we think it has improved things’ but there is absolutely no evidence cited. I ask Senator Evans whether he is aware that the 2008 Northern Territory Emergency Response Review Board established by the Rudd government to evaluate compulsory income management recommended ‘that compulsory income management be ceased’. Is Senator Evans aware that that recommendation came from the review board established by the Rudd government, and is he aware that the review board's recommendations were based on visits to 31 communities, meetings with representatives of 56 communities, consultation with over 140 organisations, and 222 submissions—and also consultancy work which has not been made public? That constitutes far more than what Senator Evans thinks. What is his view, and why does he reject the Northern Territory review board's advice that income management cease?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:13): I have not seen the report Senator Milne refers to but I have read references to it and I have heard people discuss it. As I say, there is a contest here about these issues, and I accept that, but the government is convinced that the reforms are delivering results. We look at things like the fact that we are seeing reports of more fresh fruit and vegetables being
brought into stores where income management applies—real changes in the nutritional impact on communities. We also know that about 4,100 people in the Northern Territory are on voluntary income management—they have chosen to be on income management. They are voting with their feet; they are saying this is of benefit to them. They are indicating that they value it.

Senator Crossin, a Northern Territory senator with a great deal of experience in this area, referred to her personal experiences talking to people in communities.

I accept that there is a divergence of view on this but the government's experience is that these measures are delivering improved results for some of the basic issues we are trying to address, and we will continue with the income management program and look to refine it as part of the amendments we are introducing in this bill.

Senator MILNE (Tasmania—Leader of the Australian Greens) (22:14): I note, Senator Evans, that you just said there is evidence of improved fruit and vegetable sales and the like. I would like to ask that you take it on notice to provide the evidence you have to support that claim. The Australian Institute of Health and Welfare evaluation of income management notes that what evidence exists, given the lack of quantifiable data, means that government cited evidence should be treated with caution. Are you aware that the research by the Menzies School of Health Research indicates that income quarantining has had no substantial impact on improving Indigenous child welfare and that there has been little change in store spending patterns? That is contrary to what you have just said, Senator Evans, in terms of fruit and vegetables.

According to the Menzies School of Health Research, there has been little change in store spending patterns, which is the only way income management might have been shown to improve or even change child wellbeing. Are you aware that the Menzies study concludes that federal measures associated with income management lack any significant empirical data to support maintenance of the policies? I would like to see the significant empirical data which is contrary to what the Menzies centre is saying, because Menzies is saying that there has been little change in store spending patterns.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:16): I am happy to take that question from the senator on notice. As I said, my briefing indicates that we have seen reporting of more fruit and vegetable consumption in the stores where income management applies, but I will try to get some more detailed information for the senator on those.

Senator CROSSIN (Northern Territory) (22:16): I have a question for the minister. We as a government responded quite comprehensively, I think, to the 2008 review and in fact put legislation through this parliament to change the income management regime so that it is not compulsory. I thank the minister for the number of people who have now voluntarily stayed on income management because they have wanted to. Perhaps the minister could provide for the chamber the difference in numbers between the people who were on income management prior to our changing the legislation and those who are now not income managed because we created a series of criteria that enabled people to either be removed from it or opt out, to be given an exemption. Those numbers might be useful.
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:17): Thank you, Mr Chairman. I have always found that the questions from your side are always much more difficult than the ones from the other side of the parliament! I will try to get that information for the senator and provide it later.

Senator Payne: I'll find you some more questions if you want me to!

Senator CHRIS EVANS: As I said, I always prefer your questions, Senator, because I do not have to answer them seriously!

Senator Payne: Really?

Senator CHRIS EVANS: That was a joke. But when Senator Crossin asks, I am under huge pressure to provide the information. So we are looking for the information for Senator Crossin, and I will provide it as soon as I can locate something that is helpful.

Senator RHIANNON (New South Wales) (22:18): When Senator Ludlam was commenting on some of these developments he made the point that in the Northern Territory at the moment the issue of income management is one of the top three issues raised in many of these communities. I have been working in Bankstown, where there is growing concern about income management being introduced. I would not say it was one of the top three issues at the moment, but it is certainly on the rise, and I am receiving more queries about it. I just want to check something with you. With this bill we are considering here, does the income management also cover the trials, like at Bankstown? Or is that in a later piece of legislation?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:19): I want to be clear. I understand that the trials can proceed without this legislation. The trials will continue. There are some technical amendments that will affect their administration, but the trials can continue independently.

Senator RHIANNON (New South Wales) (22:20): I will raise some of my concerns at this point, because there have been a considerable number of meetings over the last 10 months on the issue of income management in Bankstown in the library. There have been a few protests at some of the neighbourhood centres. People are concerned about the issue of income management and how it is going to impact on low-income people. Some of the businesses have also raised it. There is a large shopping strip there. The Muslim Business Association have raised their concerns because members of their community use a number of smaller shops and they understand that many of their customers could end up on the BasicsCard. My first question needs to be this one: how are you managing the concern that is coming from some business communities about them losing customers because they do not qualify as processors of the BasicsCard?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:21): I thank the senator for her question. I remember having these discussions in estimates when Senator Siewert and others sought that sort of detail from the department. But as I understand it there are local implementation groups that will deal with those sorts of issues. The trials are operating around the country. There is one in Cannington in my own state. These local implementation groups will manage those
sorts of issues. I can organise for you to have a briefing or I can get you the contact details for the Bankstown group if you want to engage with the local implementation group. I do not have any briefing on what is occurring in that particular area, but I can certainly get you some information that will put you in touch with the relevant officers and their operations.

**Senator RHIANNON** (New South Wales) (22:22): Thank you, minister. I would appreciate those details. You could answer the question generally. You must have some guidelines for how many shops and businesses in any one area—for instance, Bankstown or any of these trial areas—can be included in administering the BasicsCard. Can you outline how that works, please?

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:22): As I understand it, there is no distinction between small businesses and big businesses participating in the scheme. It is a question of what they market, if you like. As it is not a particular focus of this bill, I do not have a specific briefing regarding the Bankstown trial. But I can certainly provide the senator with some information on notice and provide her a briefing. Participation is not determined by the size of the business. It is decided on the basis of the businesses marketing relevant goods.

**Senator RHIANNON** (New South Wales) (22:23): I understand that the department is attempting to interact with the local communities so that this can work effectively. But when opposition develops, how do you gauge that?

I would like to share with you the widespread opposition that there is in Bankstown. I will read out a list of 57 organisations who have raised their opposition to income management in Bankstown. It includes: Catholic Care; the Maritime Union of Australia; the New South Wales Nurses Association; Unions New South Wales, the Arab Council Australia Inc.; the Association of Bahrain Al Amin; the Australian Arab Business Network; the Australian Immigrant and Refugee Women's Alliance; the Australian Services Union; the Bankstown Area Multicultural Network; the Bankstown Community Resource Group; the Bankstown Women's Health Centre; the Cabramatta Community Centre; the Combined Pensioners and Superannuants of New South Wales; the Construction, Forestry, Mining and Energy Union New South Wales; the New South Wales Council of Social Services; the Darug Tribal Aboriginal Corporation; the Ethnic Child Care, Family and Community Services Coop; the Ethnic Communities Council of New South Wales; the Finance Sector Union, New South Wales/ACT Branch; the Fairfield Local Aboriginal Access Group; the Federation of Ethnic Communities Council of Australia; the Gandangara Local Aboriginal Land Council; the Granville Multicultural Community Centre; the Greek Orthodox Community of New South Wales; the Greenacre Area Neighbourhood Centre Inc.; the *Green Left Weekly*; the Immigration Advocacy and Services Network; the Inner South-West Community Development Organisation Ltd; the Jumbunna Indigenous House of Learning, Research Unit, UTS; the Lebanese Community Council of New South Wales; the Lebanese Muslim Association; the Metro Migrant Resource Centre; the National Association of Community Legal Centres Inc; the National Tertiary Education Union New South Wales; the Network of Immigrant and Refugee Women of Australia Inc.; the Olive Tree Women's Network; the Pacific Island Women Advocate Support Service; the Presentation Sisters Queensland;
the Public Service Association New South Wales; Reconciliation for Western Sydney; the St Vincent de Paul National Council of Australia; the Sisters of St Joseph South Australia Reconciliation Circle; the Society of Australian Presentation Sisters Justice Group; the South West Community Legal Centre; the Stop the Intervention Collective—

The CHAIRMAN: Senator Rhiannon—

Senator RHIANNON: There are only about 10 to go.

Senator Heffernan: I rise on a point of order. Who are this mob?

The CHAIRMAN: That is not a point of order, Senator Heffernan.

Senator Heffernan: There has been no explanation. I appreciate the long list, but—

The CHAIRMAN: Senator Heffernan, resume your seat. There is no point of order.

Senator RHIANNON: Senator Heffernan, these are organisations that have taken up the issue of income management in Bankstown and are raising their concerns about and their opposition to it occurring. I was reading them in the lead-up to a question to the minister. To continue, the list includes: the Tenants Union of New South Wales; the TRI Community Exchange; the United Muslim Women Association; United Voice; UnitingCare New South Wales and ACT; the Welfare Rights Centre, Sydney; the Western Sydney Community Forum; the Western Sydney Regional Information and Research Service; Woodville Community Services; the Women's Electoral Lobby, New South Wales; and the Working Group for Aboriginal Rights in Canberra.

Minister, you can see that that is a very impressive list. These organisations have come together to raise concerns about income management in Bankstown. It takes a lot of organisation for those groups to become informed about what is happening and for them to come together around a common position. Considering that it is so extensive, how is the government interacting with this opposition? Have there been meetings? Have there been explanations? Have you learnt anything from this level of opposition? Have you made any changes to how you are proceeding with income management?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:28): It is fair to say that I have no briefing on our engagement with Green Left Weekly on the issue, nor many of the other—

Senator Rhiannon: I rise on a point order. That is really out of order, Minister. That is one organisation out of 57. At least you should be respectful of these organisations. That makes things worse.

The CHAIRMAN: Senator Rhiannon, that is a debating point. There is no point of order. The minister has the call.

Senator CHRIS EVANS: I did not mean to arouse such sensitivity. I was just indicating that I was not aware of the engagement with Green Left Weekly nor with some of the South Australian or ACT groups. We have been focused on the recipients and the businesses in Bankstown who are directly impacted by the trial, as we have been focused in Cannington on the people directly impacted by the trial. But I understand that the department has had a series of meetings with interested groups about these issues and has a consultation process. But I am sure that in each of the trial areas the focus has been on groups who are in those areas—not interstate and not more broadly but with those who have a presence in the trial area. We are engaging with the people who are on income management in
those areas and with the community groups who are servicing those people by providing financial advice and other support services and we are engaging with the shops who provide goods. I understand 75 shops or businesses have signed up to participate in income management in the Bankstown area and I think a large percentage of those can already access the BasicsCard through EFTPOS. I think more broadly in New South Wales there are about 1,500 shops that can accept the BasicsCard. There is community engagement with interested groups through the department. But, as I said, the focus is not on those groups; it is on the clients, the people participating in providing access to the BasicsCard and obviously on the groups like the support services, the advice services and the financial services that assist people who are having difficulty making ends meet or surviving on social security payments. So that is where the focus is. As to whether all of the groups Senator Rhiannon read out have engaged with the department on these issues, I am not aware, but I can provide you details on notice of the community engagement processes the department has followed.

Senator LUDLAM (Western Australia) (22:31): If I could just confirm, Minister, that you undertook to take on notice a more detailed response to Senator Rhiannon on that subject? It is not clear what it was that you actually took on notice.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:33): I think the point I was making, which Senator Boyce made quite strongly, I think, is that what the Senate committee inquiry found is that in fact there was increased reporting of crime and increased reporting of child abuse. By putting more police officers and child support workers in, you have increased reporting and your statistics about those things will increase. I never claimed crime had gone down. The briefing I have had is that infant mortality rates have improved and that the health checks and other measures are delivering good results. But Senator Boyce made the point that, by providing more policing, more enforcement and more protection, many of the stats on offending or abuse actually rise as we get better reporting.
Senator LUDLAM (Western Australia) (22:34): I just want to nail this down, because I still think the minister and I are talking past each other. I asked you a question directly about the link between income management and crime and the link between income management and infant mortality. These are the clauses we are debating. We are not trying to knock out the parts of government spending or government programs that have provided more youth workers or, in some instances, more police officers or better reporting. This is about income management. You cannot come in here and say you want to extend, entrench and continue to trial income management without a shred of evidence as to whether it has made any difference.

Minister, I appreciate you need to take advice on this stuff and this is getting down to detail. What is the role of income management in these things that we are proposing have actually helped people? Is there any evidence at all to support the government's legislated intention that income management is playing any kind of productive or positive role at all?

Senator CHRI$ EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:35): Sorry, Senator, I was not trying to draw the direct link between income management and some of those outcomes per se. I was talking about the suite of measures that have been implemented. I am not trying to overstate linkages, but I suppose we would say income management has allowed a sense of settling in the community, with better practices and more security, and that those things will flow on—and are flowing on—into issues such as better nutrition which will feed into the longer term health outcomes. But I do not want to overstate that. We say this is a suite of measures. Some are from the original intervention legislation we have abandoned which we thought to be too harsh and not delivering results. But we think income management is an important part of these measures and, as we have discussed, we are trialling it in other places in Australia, trying to assist in communities where there are really difficult ingrained social issues that income management can assist to address.

Senator EGGLESTON (Western Australia) (22:36): I have a couple of questions about impacts of income management. First, does income management record alcohol purchases?

Senator CHRI$ EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:36): That is an easy question to answer—no. The whole point is that the card does not allow you to purchase alcohol. Therefore there will be no record on purchases of alcohol. The BasicsCard puts a limit on the goods that can be purchased to try and free up a part of income that cannot be dedicated to alcohol.

Senator EGGLESTON (Western Australia) (22:37): That is very important. I was going to ask if there had been demonstrated reduction in alcohol related incidents in areas where the cards were in use, but obviously that kind of question cannot be answered because the statistics might not be available.

Senator CHRI$ EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:37): That is very important. I was going to ask if there had been demonstrated reduction in alcohol related incidents in areas where the cards were in use, but obviously that kind of question cannot be answered because the statistics might not be available.

Senator CHRI$ EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:37): I am advised that the other alcohol restriction measures for the Northern Territory came in around the same time. That statistical evidence not being available means I would not want to make any great claims in that regard. There were a range of other measures regarding alcohol management around the
same time, so one would think that there was less consumption and, therefore, fewer alcohol fuelled incidents, but I cannot provide you with any evidence that links income management with those sorts of outcomes.

Senator EGGLESTON (Western Australia) (22:38): The second issue is: is there any data in the department on the frequency of the need for emergency financial assistance to Indigenous families and other families using income management cards compared to where the cards are not used?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:39): I am not sure if I can help you. The government has increased the level of financial assistance available and is working through NGOs in delivering that assistance. I do not have any data that would give you the sort of thing that you are asking for. I will certainly take it on notice, but as you know the NGOs have been engaged to provide financial assistance and advice and more funding has been made available. But I do not have a briefing on the sort of evidence you are after, so I will take it on notice and see if there is anything that might assist you.

Senator LUDLAM (Western Australia) (22:40): I have a couple more issues before moving on to the next amendment. On my various travels through the Territory I have been told anecdotally by mates who live in the prescribed areas that you can go into a shopping centre, particularly some of the ones where a fair number people from remote communities are travelling in and out—and they have to go a fair way to use this damn piece of plastic, because they cannot use them in their own communities—and there will be a queue in the shop where the blackfellas are lining up and a queue where the whitefellas are lining up, and they call it apartheid. I have not seen this personally and I do not know whether it still occurs, so this is a genuine attempt to ascertain whether it is still occurring.

I understand that the government has taken some measures to preclude or prevent this kind of thing from happening, although I am not sure how you would do it. Some people living in prescribed areas are forced to use these cards to obtain the basic necessities of life and some are not. When you get to some of these little shopping centres, some of them a great distance from where people live, you will be standing in the queue, you will be shamed and you will be handing over your little government card with the government telling you what you can and cannot buy. Then, over here at the other till, the people are just going through spending their money. I do not know the degree to which that is the case. This is from friends who have told me that this is their experience of it. Is the government aware whether that is the case, whether these people are making it up, and what steps have been taken to prevent that kind of thing from happening? Senator Crossin is welcome to jump in, too, as this is her neck of the woods.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:42): I am advised that that is not right and that all community stores accept the card and there is no question of separate queues. I am sure Senator Crossin will be better informed than me in terms of this discussion, so I would encourage her to make a contribution. But my advice is that it is not right. Senator Crossin probably has a better firsthand feel for the claims. If those claims have been made broadly I suspect she would have heard of them.
**Senator CROSSIN** (Northern Territory) (22:42): One of the advantages of this package of legislation is that we will no longer have such things as prescribed communities. With respect to your question, Senator Ludlam, that may well have been the case when this was first introduced, four-plus years ago, and people were getting used to the system. Large supermarkets like Coles or Woolworths were also getting used to the system. People were not used to having a particular set of their Centrelink money budgeted. We have to be clear here: there is no reduction in the amount of money you get every fortnight; it is just given to you by the government in a different way. People may go shopping with $300 on the BasicsCard and $300 in cash and be unaware of how much you could buy for $300, as you might. When you fill your trolley up you may find you had put more in your trolley than you had on your card. So there was a lot of re-education and we then introduced a whole series of money management programs for people. Also, there are now points of query where you can look at what balance you have on your BasicsCard.

I do not find that those are problems anymore in the Northern Territory because for the last 18 months now Indigenous and non-Indigenous people in the Territory have had a BasicsCard, if they fit into a certain category of people receiving Centrelink benefits. There are no such queues and there have not been for about four years now. Indigenous and non-Indigenous people get a card. We find more particularly that only certain shops have those cards, because those cards are meant for basic supplies, for food, for clothing, for educational purposes and for toys. They are not meant for a whole range of other goods. They are not meant for alcohol, for cigarettes or for cameras. They are not meant for a whole range of things, but I have found that, if we have discovered that there are certain shops that ought to get a BasicsCard, the representation I have made to the minister's office has been met pretty sympathetically. It has been a trial and error to begin with, but I think in most places it is now operating fairly smoothly.

**Senator WRIGHT** (South Australia) (22:45): I have a question to the minister about the degree of flexibility and choice that is available using the BasicsCard. Senator Crossin touched on this. My understanding is that there is a limited range of shops where the cards can be used. Is the minister aware whether it is possible to use the cards in opportunity or charity shops? People on low incomes are often quite adept at being frugal and making ends meet by buying things at a lower rate, including clothing. My experience in having mixed with some Indigenous people who have visited my family in the suburbs of Melbourne is that they absolutely loved going to charity shops where they could buy clothes at a lower price. I am interested in what flexibility is available on the BasicsCard.

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:46): The answer is 'yes', Senator. Some people suggest that I do my clothes shopping there! There is a range of those sorts of establishments where one can use the card, and quite a broader range than that. Senator Crossin explained to you that there had been other shops where things were brought into the system as we gained experience. So those shops are certainly available and there is quite a wide range of other shops. Those people understand that the system is designed to allow people to purchase normally but to try to restrict access to things like alcohol, which would deny children and other members of the family access to the basics of life because of the predominance of
expenditure on alcohol and cigarettes. But the normal day-to-day needs of a family are what the BasicsCard is supposed to be used for. There is a wide range of shops where the card can be used.

Senator MILNE (Tasmania—Leader of the Australian Greens) (22:47): I go to the issue of exemptions from income management. I understand that this is essentially a punitive system and, as has been said, the income management policies in Stronger Futures are likely to spread fear among parents about sanctions—which include loss of income—especially as it is often unknown what constitutes good and bad parenting. I ask the minister: who assesses applications for exemptions from income management on the ground of good parenting? What is the definition of good parenting that is applied by whichever officers determine whether or not good parenting is taking place and therefore decides that someone is eligible for an exemption?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:48): Firstly, this legislation does not deal with exemptions. There are no changes in this legislation. I understand there is interest in the issue and that we are travelling widely, but this is not the subject of the bill. However, the answer is Centrelink and, as I understand it, the good parenting guidance includes things like child immunisation, school attendance and health checks. Those basic measures are used by Centrelink. As I say, there is nothing in the legislation that seeks to address any changes to the exemption regime.

Senator MILNE (Tasmania—Leader of the Australian Greens) (22:49): Surely there ought to be some sort of assessment of whether this exemption regime actually works. From what I can understand from the data, the March 2011 data showed that, of the 2,130 people granted exemptions from income management, 75 per cent were non-Indigenous. What that would mean is that only four per cent of the entire population on quarantined payments in the Northern Territory accounted for three-quarters of all exemptions granted. So how is it that Centrelink has determined that the non-Indigenous four per cent have three-quarters of all the exemptions granted?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:50): I do not have any detailed briefing on this issue because, as I say, it is not subject to the bill. This is a wide-ranging discussion that is not contained in the bill. But I understand—if the officers are accurate—that those statistics came in very soon after the system was introduced, and we think that there have been developments. I will see if there are any more up-to-date statistics available. I do not think that we have any to hand, but I will see if there is anything we can help you with.

I understand that those statistics were produced about six months after the system started. The exemptions regime is administered by Centrelink, but there is nothing in the bill which seeks to address the exemptions regime. You say that there ought to be, and that is obviously a question for you if you want to move an amendment; but it is not subject to the bill or to tonight's debate.

Senator LUDLAM (Western Australia) (22:51): I am not going to detain us for too much longer. We have been at this first amendment on the first sheet of the first bill for just under an hour now, but I have a couple of remarks that I want to address. My
reason for spelling out the amount of time that we have dwelt there is that in all of that time, with well-meaning questions from across the chamber, the minister and his advisers have been unable to present the Senate with a single piece of evidence that income management works. I think that is extraordinary. If it is not here, and let us assume that if it was in the possession of the advisers who have come across from the minister's office it would already have been turned over to the Senate, I ask the minister to take on notice whether he can provide for us anything at all; not about the broad stuff—not about health care, child care, youth-care workers, police or well-meaning stuff dropped out of helicopters onto people's communities—just income management. If there is anything at all which you can provide us with which shows that income management is working and therefore should be consolidated, extended and entrenched, I would greatly appreciate it.

There is not a great deal of dignity in having control of your day-to-day finances micromanaged by Centrelink. I want senators to visualise, just for a second before this question is put, that you come in here in the morning and have in your pocket a little BasicsCard which controls exactly how much you get to spend on certain things and which is issued by some people in Bidyadanga, up on the north-west coast, whom you have never met. How humiliating and how weird would you find it? That is what we are effectively doing to communities scattered across the continent which most of us could not even name or find on maps. It is absolutely shameful. We have made the point repeatedly about evidence—whether this is evidence based policy or faith based policy or policy based on something else. What we are really after is some evidence that it works, and I do not feel that that is too much to ask.

I have a couple more quick quotes. Ms Cox from Jumbunna Indigenous House of Learning said:

My conclusions were that the studies and statistics available showed no valid or reliable evidence of measurable benefits of income management to individuals or communities.

Aboriginal Peak Organisations Northern Territory made similar comments. They said:

It is disappointing that the government is seeking to expand the operation of income management without a clear evidence base that demonstrates its success in achieving its objective of protecting vulnerable women and children and encouraging socially responsible behaviours amongst welfare recipients.

I invite the minister to address these comments with provision of anything at all which could help the chamber make its mind up, but I disclose at this point that my mind is made up. If you had evidence, I presume you would have presented it by now. I commend the first amendment on sheet 7229 to the chamber.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:54): I did indicate earlier that I would get some information for the senator which might meet some of the queries he had. I will just make two points. Four thousand people have voluntarily decided to access the BasicsCard. They clearly then are not humiliated, as they have done it voluntarily. You may be worried about humiliation; I think you ought to be worried about poverty, child abuse, social dislocation, alcoholism and foetal alcohol syndrome, as I know you are. But you have to balance your preciousness about humiliation, which is not matched by the 4,000 people who did it, and the serious social issues occurring in these communities. You can meet with Green Left Weekly and other groups in Sydney and discuss broad
policy and philosophical objectives but in the end you have to get down to saying, 'What can we do to help these communities that are suffering some of the worst social conditions in the world in the middle of one of the most prosperous economies in the world?' This is a genuine attempt to come to terms and to assist people to deal with those issues. You have a philosophical opposition to that, but we have taken a different view.

Senator Ludlam interjecting—
Senator Milne interjecting—

The TEMPORARY CHAIRMAN (Senator Moore): I remind senators that shouting questions across the chamber is not appropriate.

Senator CHRIS EVANS: To be honest, I am more inclined to listen to the Northern Territory representatives in the House of Representatives and the Senate about these issues than I am the Greens. I do not doubt your motives, but Senator Crossin moves in these communities all the time. I am much more inclined to take her advice on these issues and the practicalities. Senator Milne, I am not sure what visibility you get from Tasmania on these issues, but I would rather follow the advice Senator Crossin gives me about the practicalities of these measures on the ground. While I am interested in the views of the many groups that Senator Rhiannon read to me, the reality is that we are trying to engage and build support in these communities for measures that make a difference to people's lives and that allow the children of those communities to have some sort of fair start in life. I think that is something we ought to focus on. As I say, while Senator Ludlam might want to focus on what he thinks is humiliating, we know at least 4,000 people have volunteered to use the scheme because they find it a protection against some of the pressures on them in their communities.

Senator LUDLAM (Western Australia) (22:57): I am afraid those comments cannot go unanswered. I was proposing that we move on, but the minister has managed to get completely under my skin. Some of those responses, with respect, were really pretty cheap. In the migration debate, as in this one, we managed to get through most of the day without accusing each other of not caring about the issues. Minister, I asked you for evidence and you fired back at me a bunch of stuff about philosophy and ideology and Green Left Weekly. To be quite frank, evidence would have been better. If you can show us that this measure helps the issues that I believe everybody in this chamber cares about—the things that you reeled off—then I will go and vote on the other side. But you have not been able to show us anything.

I would like to put one specific question that has come through from some people outside the building that I am relieved to remind myself does still exist. It is that research has been commissioned by the minister on income management from a number of academic organisations—unfortunately, they do not say who they are—in the NT. Has that report been received by the minister and will it be made publicly available?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:59): I am not used to doing bills on Facebook or whatever it is we are doing, but I am advised that if it is the report that we think you are referring to then we have not received it.

Senator LUDLAM (Western Australia) (22:59): So then the question naturally follows: you commissioned the research, which is a very good thing to have done, so why are we debating this amendment in its absence? What was the point of doing it?
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (22:59): I made this point at the start. This is a continuation of the income management scheme. There are a couple of very minor technical amendments to it. This is your amendment opposing the continuation of income management. We are not proposing substantial changes to income management in this bill.

Senator PAYNE (New South Wales) (23:00): For the record, the coalition also opposes this amendment.

Senator WRIGHT (South Australia) (23:00): I want to respond to what the minister was saying. The minister suggests that people who are opposed to the income management scheme as it is at the moment are imagining that it is humiliating for the people who are subject to it. In fact, the information upon which I am operating is the reflections and the information I am getting from the people who are subject to it. So it is not a matter of imagining it. People are telling us that they feel humiliated from having to be part of the scheme, because they do not have any agency or power in it. So the suggestion that some people are taking it up voluntarily is a totally different argument, because, of course, as soon as someone chooses to do something voluntarily, the power balance changes totally.

Certainly there may be people who find it useful, but the fact that someone is imposing this lack of decision-making opportunities on someone else—causing them to live their life in a way that they do not necessarily feel is appropriate, making it so that they have to act in that way and so that their children and the people around them see them being affected in that way—goes to the root of the criticism of this whole program. It is about disempowering people, which does not enable them to act from a position of strength and self-determination and essentially brings about the very kinds of responses and effects that you say you are trying to avoid.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:01): I just make the point that I accept what Senator Wright says, and I do not wish to demean the fact that certain people have different views and different experiences about it, but it is the case, as I understand it, that people can make an application to get off income management. Those that cannot are those who are there as a result of child protection measures, but other people can move off it after assessment. We are trying to get that balance right. Changes have been made, as Senator Crossin mentioned, to make the system work better, but we are of the view that there is a cohort of people and communities that will benefit from this income management regime. I accept that Greens senators do not agree with that, but this bill merely seeks to make some very small amendments to the existing regime.

Senator LUDLAM (Western Australia) (23:02): I have been promising for some time that I will ask for the question to be put; however, I wonder whether the minister could provide us with some data, or point to where it is held, regarding the number of applications for exemption from income management—the number of people who have attempted to apply and the number of people who have been allowed to do so. I do not expect you to have that to hand, but if you could provide that at some stage that would be good.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education,
Skills, Science and Research and Leader of the Government in the Senate) (23:03): I think you will find that it was provided at Senate estimates. So I think we will be able to locate it for you amongst that information.

The CHAIRMAN: The question is that schedule 1 stand as printed.

The Committee divided. [23:07]

(The Chairman—Senator Parry)

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

AYES
Abetz, E
Bilyk, CL
Boyce, SK
Brandis, GH
Brown, CL
Cameron, DN
Carr, RJ
Crossin, P
Edwards, S
Eggleston, A
Evans, C
Farrell, D
Fawcett, DJ
Fifield, MP
Furner, ML
Gallacher, AM
Hogg, JJ
Kroger, H
Ludwig, JW
McEwen, A (teller)
McLucas, J
Moore, CM
Payne, MA
Singh, LM
Stephens, U
Thistlethwaite, M
Urquhart, AE

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

Question agreed to.

Senator LUDLAM (Western Australia) (23:10): by leave—The Greens oppose schedule 1 in the following terms:

(2) Schedule 1, Part 1, page 3 (line 2) to page 9 (line 16), Part TO BE OPPOSED.
I am glad to have so much support on this side of the house now! Senators who have been elsewhere in the building may not be aware that our proposal to oppose the whole schedule has been defeated, so we will look to address some of the more serious concerns we have around this policy. Senators will be aware that I am moving this amendment again on behalf of Senator Siewert, who is not able to be here. In her usual constructive fashion, she has proposed two courses of action.

Senator Siewert's approach has been, for reasons I think we have been fairly explicit about describing, that that schedule should in fact have been knocked out of the bill. In the absence of the chamber moving that way, Senator Siewert has proposed a number of amendments which finetune and improve the way that income management, if it is to be perpetuated, will occur. These amendments remove state and federal referrals, which govern who can be placed on income management. It should be pretty well known by now that the Australian Greens strongly oppose the continuation of compulsory income management in the Territory, its expansion to five communities in other states and the broadening of referral powers to state and territory authorities enabling the expansion of income management across Australia.

We probably do not need to dwell. I am not proposing to call a division on this, but I would commend this amendment to the Senate as the first of three amendments that I will move in sequence that are essentially about finetuning, conditioning and improving the way that income management occurs, having set fairly squarely on the record the fact that we do not believe that people should be subjected to this kind of treatment at all.
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:12): The government's amendments will give greater flexibility to the operation of income management, so we do not support the propositions by the Greens. It is pretty much about the supporting people at risk measure, which will allow referrals from recognised state and territory authorities determined by the minister on a similar basis to referrals under the current child protection measure, which will ensure income management will assist those people most likely to benefit. It does not broaden the scope of income management as, under the existing legislation, the minister can, by a legislative instrument, apply existing income management measures across all of Australia.

To support the Stronger Futures in the Northern Territory alcohol measures, this bill will enable people referred by the Northern Territory government's Alcohol and Other Drugs Tribunal to be placed on this new measure of income management, thus reducing the proportion of income available for alcohol. As Senator Ludlam made clear, the Greens intent is to exclude any of the state or territory bodies being able to refer. That is a fundamentally different approach to ours. We think there is a place for referrals from those sorts of bodies, such as the Northern Territory's Alcohol and Other Drugs Tribunal. Therefore, we will not be supporting the Greens amendment.

Senator PAYNE (New South Wales) (23:14): With the appeal process that will be added to the bill through the government's amendments, which we will support, we agree with the process of state and territory referrals, so we also oppose this amendment.

The CHAIRMAN: The question is that part 1 of schedule 1 stand as printed.
Question agreed to.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:14): by leave—I move government amendments (1) and (2) on sheet BM283 together:

(1) Schedule 1, item 6, page 4 (line 4), before "The", insert "(1)".

(2) Schedule 1, item 6, page 4 (after line 10), at the end of section 123TGAA, add:

Functions, powers or duties of officers or employees

The amendment to schedule 1 item 6 of the Social Security Legislation Amendment Bill will place requirements on the type of state and territory authorities that would be able to give a notice to place a person on income management, including, as Senator Payne indicated, that they have the appropriate review processes. This means that the type of state or territory authority that can refer a person for income management must have powers or duties in relation to the care, protection, welfare or safety of adults, children or families.

The amendment means that these authorities will need to have appropriate processes for reviewing any decisions for referral of a person for income management. It addresses a recommendation of the Senate Community Affairs Legislation Committee majority report on the bills. The committee recommended that the government amend the bill to require that only agencies that have in place the internal and external review and appeal processes be approved by the minister to make income management referrals. So, effectively, the amendment is picking up the recommendations of the majority report from the Senate Community Affairs Legislation Committee.
Senator LUDLAM (Western Australia) (23:16): I wish to speak briefly on these. The Australian Greens will not oppose these amendments and we do not propose to call a division. I have received my first piece of feedback from Senator Siewert tonight, but it is probably best that I do not repeat it in the chamber for fear of being thrown out. She has taken issue with the minister, who on a couple of occasions has made it sound—and I do not want to paraphrase you here, Minister, so jump up if I get this wrong—like it is not a major expansion of the scope of income management. It is kind of 'steady as she goes', and Senator Siewert would like remotely to take issue with that contention. She has provided us with some notes on the government's amendment, but to call them lukewarm would probably overstate the case. We will not be opposing these amendments.

Senator PAYNE (New South Wales) (23:17): Amendments (1) and (2) place greater control and certainty around the state and territories and their officials that the minister may authorise as agencies that may place a client onto income management. We had been concerned that there was a lack of oversight of those agencies and that it was necessary to ensure that a potential referral agency had an appropriate professional relationship with a client in order to base such a referral. We were also concerned that any state or territory agency should have an appeals process that was comparable with those of Australian government agencies, given that amendment (2) specifies the review process or mechanism that must be in place before the minister may make a determination to include the relevant agency or body as a recognised authority under the act. The coalition is supporting the amendments.

Question agreed to.
such extreme conditionality as quarantining 70 per cent to 100 per cent of a person's social security income potentially breaches human rights obligations. I look forward to the minister apologising for what is clearly a drafting oversight, because surely this could not have made its way into the bill intentionally.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:20): I know that when Senator Ludlam resorts to irony he is getting tired. I send my regards to Senator Siewert and indicate that we send her our best wishes. I am glad she is not here, because should would be hammering me a lot harder than Senator Ludlam is.

Senator Ludlam interjecting—

Senator CHRIS EVANS: No, I just mean she is very good at it. She knows her stuff very well.

Senator Payne: Tell him it was a compliment.

Senator CHRIS EVANS: Yes, it was a compliment to Rachel. Senator Ludlam can take it any way he wants. The bill sets the default deductible proportion at 70 per cent when a state or territory body refers someone for income management—the deductible portion is the amount that is subject to income management. As Senator Ludlam said, he is seeking to move that to 50 per cent. The government has not supported that amendment. It is not unreasonable to expect that people would direct 70 per cent of their income support payments towards meeting priority needs such as food, clothing and shelter. It is also, I think, reasonable to restrict people on income management to spending no more than 30 per cent of their Centrelink income on alcohol, tobacco, pornography or gambling. The bill allows the minister to specify a different deductible proportion by legislative instrument, depending on the particular state or territory authority that is authorised to make referrals. I suppose the key point is that this level has been set for the existing child protection measure of income management, so it is at the higher, 70 per cent, mark. It was thought that, given that the referral would be for those referred from the alcohol and drugs tribunal, it was appropriate for it to be at that higher level, as is consistent with existing child protection measures. The government will not be supporting the Greens amendments.

Question negatived.

Senator LUDLAM (Western Australia) (23:22): The Australian Greens oppose schedule 2 in the following terms:

(6) Schedule 2, page 14 (line 1) to page 23 (line 20), Schedule TO BE OPPOSED.

We are proposing to remove the schedule in the legislation relating to the school enrolment attendance through welfare reform measure. Again, this is an issue that I addressed briefly in my second reading remarks. The discussion on school attendance received a great deal of media attention with regard to the intervention—everybody wants to see kids in school when school is in session. The consultation report used a large number of quotes strongly emphasising the role of parental responsibility in getting kids to school. On reading the report quickly it would seem that there is a widely held belief in communities that parents are sorely and entirely to blame for poor school attendance. However, the number of people holding these opinions is never really quantified, so, in reality, there is no indication of how many people expressed this concern and how many contrary views were expressed.

In asking communities what the government could do to encourage school
attendance, a specific reference to linking attendance with welfare payments was made. Subsequently, many responses to this issue directly commented on the idea of linking income support to school attendance. It is interesting to note, however, that almost nowhere in the report was this solution offered to deal with the issue of poor attendance. It appears that the government was very keen to focus the conversation towards this outcome, which is at odds with the existing evidence of the effectiveness of such an approach. In essence, it is a kind of prejudging of the outcome: no matter what it was that you were hearing, the government had already, in effect, made up its mind as to the kind of approach that it wanted to administer.

In Senate estimates it was confirmed that the impact of the government's school enrolment attendance through welfare reform measure, which I will refer to as SEAM from here on, is unquantifiable: the results are mixed at best and it cannot be linked to educational outcomes. So I will pause here before continuing my remarks and we will begin with the previous set of amendments. Can the minister provide the chamber with any evidence of any kind—peer reviewed, anecdotal, written, unwritten, handed in on bits of bark—that quarantining income or welfare payments pending children's attendance at school actually improves the kinds of outcomes that I understand everybody in here is seeking to achieve?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:25): I am informed that the 2010 evaluation report you refer to is the source of the amendments we are making in the bill, which, by picking up the evaluation report findings, therefore seeks to improve SEAM. Responding in this way will ensure a closer alignment with the Northern Territory's Every Child, Every Day strategy and reinforce the effort to get kids to school. We think these measures will support the broader objectives for the program.

I am also advised that the 2010 evaluation report shows for students involved in the measure a greater increase in school attendance than for their counterparts not involved in the measure and that student attendance improved by more than five per cent, from 74 per cent to 79.9 per cent, in the Northern Territory and by more than four per cent in Queensland following referral to the Department of Human Services under SEAM. As I understand it, that evidence was given to the Senate committee inquiry and is available. The key point to make is that the measures we are seeking to introduce through the bill arise out of that evaluation report. It is our response, together with the Northern Territory Department of Education and Training, to improve the measure and more closely align it with their programs. If you like, it is what you have been asking for—an evidence led legislation response.

Senator LUDLAM (Western Australia) (23:27): There is quite limited information available that indicates positive outcomes have been achieved in some instances when SEAM led to people becoming engaged with Centrelink and when they were assisted through a case management process. Our contention is that this can be achieved and provided without cutting off income support and threatening people with complete impoverishment. The report includes some strong suggestions from community members about the causes and the potential solution for factors that contribute to poor school attendance but the government seems reluctant to act on this advice.

I do not mean to take the minister the wrong way, but the sense that has come through from people who have taken a look
at the report and compared it with what the government eventually did is that we seem to have zeroed in on this punitive proposal for cutting off people's income support and not taken a look at a heap of very interesting and, to my mind, vastly more creative proposals that came out of the same piece of work. Bullying, poor housing, a lack of parental education and worries that kids would lose their culture were some of the elements identified as contributing to poor attendance. Some of those reasons you could kind of understand. Kids are being sent off to school but they are coming back saying: 'I don't understand what they are saying. I can't hear what's being said. The language is wrong. Why can't I learn some of this stuff in my own language?' Some of these things do not fall back to poor parenting. There are entirely legitimate reasons why a kid might simply prefer not to find themselves in that environment and, if we are going to engage and contend with that, we need other ways to do that than just telling parents that their income support is to be cut off.

So solutions that were raised and have been tried—there is some evidence around the effectiveness of these—include support and mentoring of parents, greater involvement of elders at schools, incorporation of Aboriginal culture into school and bilingual education. None of those, I would hope, sound particularly controversial. Evidence heard during the Senate inquiry was also fairly clear—SEAM is not working and there is not enough evidence to support its expansion across the Territory. The inquiry revealed that there were numerous community-supported and quite effective measures that have a better prospect of improving school attendance. Everybody here is on the same page in terms of outcome, but in this instance we disagree very strongly on the method. Evaluations of comparable programs internationally are mixed, but the literature tends to suggest that well-designed, targeted and incentive-based programs work significantly better than punitive sanctions-based programs.

Some of the potential negative impacts we have seen were outlined by Mr Jones, who is the General Secretary of the Uniting Church in Australia Northern Synod. He said:

It may be noted that school attendance rates in the Northern Territory have continued to decline overall, and the SEAM trial schools evaluation has reported the failure of the SEAM measure. This negative step will only further alienate parents and decrease the levels of support within communities. We request that this aspect be deleted from the SEAM legislation.

Again, as Senator Siewert proposed for the measures we were contemplating a short while ago, if this amendment fails we will propose a number of amendments that finetune SEAM. As the committee would be aware, Senator Siewert has approached this bill in a constructive spirit that, if the amendments to knock these schedules out do not succeed, then we will do our best to improve and reform the measures.

Another area of concern raised during the inquiry was the inability of SEAM, even if it did manage to get kids to school, to address barriers to learning. What is the point of sitting there if you cannot hear what is being taught? Dr Bath, the NT Children's Commissioner, noticed that nearly 47 per cent of children in the NT have multiple development vulnerabilities, as measured by the Australian Early Development Index. That figure compares to a national average of just under 12 per cent. There are entire classrooms of kids who are well off the chart in terms the early development index. Cutting the parent support payments is not going to fix that—it is not going to help that.

If we look at the intervention's own data, it is estimated that up to 60 per cent of kids have multiple developmental vulnerabilities.
Children with these vulnerabilities are going to require special assistance or enriched programs to deal with those areas of vulnerability. The minister, if he chooses, can go into some details about how we are doing that, but I would also be keen to hear how cutting off income support is helping kids who find themselves in those circumstances. I suspect it is not even worth asking for evidence, because anybody with a basic measure of commonsense would think, 'Well, cutting off payments to parents who are already being income-managed with these little plastic cards is not going to help kids in those circumstances'.

Neither Senator Siewert nor I would claim that this is easy. It is hard, it is complex and no set of dot points or bumper-sticker slogans will solve this for us. But reaching for punitive measures as the first tool in the box is so wrong. I do not think that any of the measures that I have just listed would necessarily be effective by themselves, and the AEDI data would probably support that contention. Why do we force kids to school if they are not able to sit on a chair and pay attention to the teacher or hear what is going on?

Evidence put before the Senate inquiry points to the effectiveness of holistic, long-term, well-designed, targeted and incentive-based programs that are community-led and community-owned. Those sorts of things are going to need to survive changes of government; they are going to need to survive the whims and the fads that wash through this place about how we can help people a long way away from us. We are absolutely ready to help achieve that kind of policy stability. We have to get the initial settings right and that means putting the tools into the hands of the people who are on the front line. The inclusion of conferences and school attendance plans in the bill are steps in the right direction, but we believe they should go much further in order to have a positive, long-term impact on school attendance.

Throughout the inquiry numerous examples of effective measures were provided, often based on independent research or community consultation. For example, the St Vincent de Paul Society noted that numerous proactive solutions to improving attendance were provided by communities during the Stronger Futures consultations. It is very disappointing that these suggestions were not then incorporated into the bills and that we come out the other end of a process, with which people engaged in good faith, with nothing other than a stick to beat parents with. We could have done a lot better.

I have a huge list of suggestions from communities whose views were sought and who gave their time to put their views to the government—things like using local elders to teach culture in schools or incorporating local language and culture in schools that kids can relate to rather than a culture that might be quite alien to them. Senator Whish-Wilson reminded us before that for some of these kids and some of these parents, English is a third or fourth language. I do not know how many senators can speak three or four languages—I certainly cannot. It is going to be really tough to come into a classroom effectively speaking a language alien to what you have grown up with at home.

A heap of good proposals were put on the table—homework centres where parents can help out and bring families back together, rather than the tradition that we have grown up with where we kick the kids out of home to school, perhaps to a completely different city, and then bring them back again from time to time; footy programs, linking excursions and incentives to attendance; full-time parent-liaison officers—but they were
set aside in favour of a proposal to take money off people. I have a long list here I can table if the government is interested.

Other positive measures that were put forward in submissions included cultural appropriateness of the school setting, including the involvement of Aboriginal teaching personnel, parents and community members in all aspects of the schooling process from initial planning to implementation and delivery of programs; and recognising the importance of Indigenous discourse.

I presume that the minister is very familiar with many of these measures, which came through the consultations—I am sure the advisers in the box would be very familiar with them—and I ask the minister if he could provide us with an understanding of why none of them appear to have been taken up. The only thing that has come through in this bill is a proposal to pull people's welfare support payments.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:36): The first thing to say is that that is a very misleading argument. The argument put by the senator goes: 'The only thing you are doing is punishing people by taking away their welfare payments, and there are all these other problems.' The reality is there is a whole range of measures designed to deal holistically with the challenges faced with schooling and school attendance in the Northern Territory, and one of the measures, which is used as a last resort in the process, is the suspension of income support payments.

The senator acknowledges that the evaluation report has provided the basis for what is in the bill. He seeks to create the sense that somehow the only thing we are doing is an income support payment penalty, when in fact the measures in the bill seek to provide and expand a range of other supports and measures. To say, 'Oh well, the kids might have some hearing issues'—quite frankly, that is what the health checks are about. And, no, we do not seek to solve that problem through SEAM. That is why it is a coordinated, holistic approach to try and address these issues. So we plead guilty if the accusation is that we are not trying to deal with the hearing issues of schoolchildren in the Northern Territory through SEAM. That is why we have such an extensive investment in the health checks and the treatment of issues that are identified.

The measures in this bill expand the support to parents and schools and seek to provide additional support. One of the key issues or initiatives is the parenting conference, which is designed to support parents in understanding the problem—why the child perhaps is not attending in the way that they should—and to work with the school, the parents, Aboriginal liaison officers and others to improve school attendance. This measure seeks to expand the supports and services available and to address the attendance issues. It also seeks to work much more closely with the Northern Territory education department, and particularly to enable local tailoring and ensure closer alignment with the Northern Territory Every Child, Every Day strategy.

I think it is unfair to try and paint this legislation as only providing a response which is focused on removal of income support payments. That is a last resort. The evaluation report picks up the need for more resources, more measures to support families and parents, to try and lift school attendance. We all accept, I think, that school attendance is key to improving the educational outcomes and opportunities for young
Indigenous children. SEAM has been designed to try and help address that issue. We have also provided huge investment into the schools, into teacher training and into all the other measures that we think can help lift performance in education in the Northern Territory and give those kids a better opportunity. It is quite unfair, and wrong, to pretend that the income support measure is all that is occurring, that it is at the centre of what is occurring—rather, it is there as a last resort, as a tool that is available to authorities to try to change the culture and the terrible school attendance statistics. This bill adds a whole range of measures that will better support parents by trying to make sure we can lift attendance at school of their children.

Senator MILNE (Tasmania—Leader of the Australian Greens) (23:40): The Senate report stated:

Information provided during the inquiry supports the conclusion that SEAM has not significantly improved school attendance rates in the trial sites, and witnesses expressed serious concern that it was being extended across the NT.

Therefore, I ask the minister to cite the figures that show that SEAM has significantly improved school attendance. Can he cite the statistics to demonstrate that is the case?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:41): Perhaps Senator Milne was not paying attention, as I did that about 10 minutes ago when I quoted figures from the evaluation report. I understand that they were presented to the committee as well.

Senator MILNE (Tasmania—Leader of the Australian Greens) (23:41): When was the expansion of SEAM announced, and was it before the final evaluation of the 2010 model was completed?

Senator CHRLDAM (Western Australia) (23:42): I want to quickly test some figures on the minister. Based on the statistics in the most recent Closing the Gap report, we had a 62.3 per cent attendance rate just before the intervention was initiated and 57.5 per cent in 2011. Does the minister accept that those are the figures, and does he accept that that is a drop and that it would not be a particularly ringing endorsement of SEAM if that is the case?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:43): I cannot necessarily respond to stats thrown at me without a piece of paper or exact titles of documentation et cetera, but as I understand it the overall statistics reflect the whole of the Northern Territory but the trial sites saw an improvement in the statistics. They are two different things—the overall versus the six trial sites. I understand the statistics given in the question are for both. I cannot say I have checked the statistics Senator Ludlam has given to me, but I understand that the outcome in the trial sites is better than overall.

Senator Ludlam: You are saying the outcome for children in the trial sites was better than across the Territory?

Senator CHRIS EVANS: Yes. As I indicated before, the outcome for the SEAM children is better than the overall outcome.
Senator MILNE (Tasmania—Leader of the Australian Greens) (23:44): That is an interesting statement, because Mr Jones, the General Secretary of the Uniting Church in Australia Northern Synod, said to the committee:

It may be noted that school attendance rates in the Northern Territory have continued to decline overall, and the SEAM trial schools evaluation has also reported failure of the SEAM measure. This negative step will only further alienate parents and decrease the level of support within communities. We request that this aspect be deleted from the SEAM legislation.

So I ask the minister: is Mr Jones, the General Secretary of the Uniting Church Northern Synod, wrong when he says that the SEAM trial schools evaluation has also reported failure of the SEAM measure?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:45): Yes, he is wrong.

Senator MILNE (Tasmania—Leader of the Australian Greens) (23:45): What is the basis of your saying he is wrong? What are the figures, then, in relation to the so-called improvements?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:45): I did read them out 10 minutes ago in answer to your last question, Senator. I will read them out a second time, but I do not intend to read them out three or four times. It seems to me that people have to pay attention. I do not want to be difficult. I am happy for people to have an intensive committee stage, but I do not think it is reasonable that the Senate has to go over the same ground twice.

As I indicated to you, the evidence that is contained in the evaluation report of 2010 supports the effectiveness of SEAM in increasing parental responsibility in school attendance. The report found that students involved in the measure showed a greater increase in school attendance rates than their counterparts not involved in the measure and that student attendance improved by more than five per cent, from 74.4 to 79 per cent, in the Northern Territory and by more than four per cent, from 84.7 per cent to 88.7 per cent, in Queensland following referral to the Department of Human Services under SEAM. So the claims you quote do not sit comfortably with the evidence provided in the evaluation report. That is why I say I cannot support the claims made by the gentleman you quote.

Senator MILNE (Tasmania—Leader of the Australian Greens) (23:46): The figures you just read out are comparing the SEAM schools with the Territory overall, not the schools prior to the intervention and after SEAM. We will go to the specifics in questions on notice.

Senator LUDLAM (Western Australia) (23:47): I made a couple of remarks on this on my way through, and I know Senator Rachel Siewert has given a great deal of attention to the issue of the higher rates of hearing loss amongst Indigenous kids, some of whom are obviously being caught by this particular proposal. The hearing loss obviously needs to be addressed not just as a health issue but as an educational issue. If you are not able to hear what is going on in the classroom then not only are you not going to learn very much but you are much less likely to want to attend. I understand that the evaluation report indicated that the families with kids with hearing loss faced additional barriers, which obviously made it harder for them to keep their kids in school. At that point the incentive, or the disincentive, around withdrawal of income support becomes profoundly unhelpful. If
your kid is not able to hear what is going on in the classroom, that is not a sign of poor parenting; it is a sign that the hearing needs to be fixed. So I wonder whether the minister can indicate the degree to which those sorts of factors are taken into account when choosing whether or not to withdraw somebody's welfare payment.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (23:48): I would make the point that I made in an earlier response to the senator's inquiries. You cannot see everything through the prism of the income management measure in SEAM. As part of the measures adopted by the government there are an extra 200 teachers going into the schools. Part of the requirements for those teachers is training in issues such as identification of hearing loss and how to manage teaching in those circumstances. It has nothing to do with income management. It is part of a broader approach to try to address the educational needs of those children in the Northern Territory. So yes, we have health checks. But we also have 200 extra teachers going into the schools who will actually be required as part of that, as I understand it, to have training in dealing with kids with hearing loss and other special needs as part of the broader response, not linked to income management under SEAM but part of the broader approach. As I indicated, SEAM and management are a small part of a much broader activity and investment.

Senator LUDLAM (Western Australia) (23:49): I do not think we need to dwell on this too much longer, although perhaps Senator Crossin wants to make a contribution before we close out this part of the debate. Again, I suspect that the minister and some of the others who have made contributions in this part of the debate are talking past each other. We are trying to tease out the degree to which the punitive aspects of this broad range of measures, which everybody agrees—and we have read some of them into the record tonight, such as withdrawing people's welfare payments or making them cart little plastic cards around in order to be able to buy the basic necessities of life—are contributing to the overall goals here. It is not really our job to analyse the stuff that is working; we are trying to pull out the controversial stuff. Nobody in here is going to critique the fact that you put another—

Senator Chris Evans: You focus purely on the stuff you don't like.

Senator LUDLAM: Well, I will not waste—

Senator Chris Evans: You aren't focusing on any of the other measures.

Senator LUDLAM: I congratulate—

The CHAIRMAN: Order! To the chair, Minister, and to the chair, Senator Ludlam.

Senator LUDLAM: I will leave it to the minister to put out the press statement that you put 200 teachers into the schools; that is fantastic. I do not think it is our job to come in here at this hour and congratulate you on all the great stuff that is going on, but it is great that it is. We are trying to tease out the degree to which there is evidence that threatening to withdraw people's welfare payments contributes to getting their kids to school. I would not have thought it was that difficult a concept. I suspect that, again, we are going to have to agree to disagree. I do not know if other senators want to make contributions, but I am happy to move these amendments now and then move on through some of the others that Senator Siewert has prepared.

Senator CROSSIN (Northern Territory) (23:51): I am really conscious of the time,
but I do think it is very important that we get to the bottom of this. There has been a school attendance and enrolment model introduced in the United States, and people who may have been following the academic research and the evaluation of that will know that the research showed that, where SEAM is introduced and implemented, if it is not backed up by a comprehensive plan through an education department and through education of parents, it will not work. It did not work in the United States, as the evidence shows. I think Larissa Behrendt from Jumbunna first highlighted that research and brought it to our attention.

When the SEAM trial started in the Northern Territory, in those six schools, it did not have a whole lot of that backup or support, even though school attendance in some of those schools actually increased and improved. The evaluation was done in Australia. What is not in this legislation but on the website of the Northern Territory's Department of Education and Training is their strategy called Every Child, Every Day. It is a comprehensive strategy that goes through the number of school attendance plans they have had—over 400, I think, across the Territory—and goes into the number of children that have started to come back to school as a result of that. In two years, they have referred something like 37, out of that 400, for further help and assistance.

So the initial statistics are showing that there have been many improvements with our assistance, with the additional 200 teachers, with the support that we have given schools through the BER and the School Pride program. A lot of schools have actually implemented loop systems in classrooms for kids with hearing difficulties, and there are now dedicated attendance officers in the Northern Territory. I think they have put six in the Territory, one in each regional centre, and they agree it is not enough and they are planning to do more. There are schools where teachers are working with parents, where parents are told about what school is about and why kids should get there.

I have taught in the Territory, and I have taught out bush, and I can tell you that the reason kids do not come to school is not because they cannot hear. The kids who cannot hear usually come to school, despite their hearing defect. They need to come every day so we can do something about it and tie them into the health centre services and get them checked—get them to see the specialists they require and get their hearing improved. Usually, kids do not come to school because it was too noisy in the home the night before due to too much drinking, or they do not have breakfast or they do not have shoes or their clothes are not clean. They are really basic, very simple reasons. If you know Indigenous people, you know how proud they are as a culture; and, if one of those wheels falls off, they are too ashamed to go to school. This program works with social workers, school liaison officers and Aboriginal liaison officers to work with those parents.

So Senator Evans is right: we would prefer that at the end of the day the income management regime under SEAM were not implemented. But I sit down with people— and I am talking about senior people in communities—and talk to them under a tree, on the beach, at their council meetings outside the store or wherever and say to them: 'What do we do? At the end of the day, what should we do to get these kids coming to school?' Nine times out of 10 the old, senior men in the community say to me, 'Take their Centrelink off them; take their payments off them.' I say, 'That's a bit harsh—100 per cent of them?' They say, 'Yes, we've got to get these kids educated.'
This is not 100 per cent of income; in fact, people who will be affected by SEAM will not have all of their income taken off them. That is another of the myths being propagated. But you have to understand that this program has been put in place in consultation with senior Indigenous people. They are elders; they are grandparents; they are people who are looking after their grandkids predominantly because their families are dysfunctional. They want a very strong partnership between them and the two governments. I have seen the Northern Territory education department develop their model, and it is substantially better than it was three years ago. This is a good start. Let us put this in place, and let us see in five years time whether it has had any effect now that we have beefed up and strengthened this part of the legislation.

Friday, 29 June 2012

The CHAIRMAN: The question is that schedule 2 stand as printed.

The committee divided. [00:01]

(The Chairman—Senator Parry)

Ayes…………………41
Noes…………………8
Majority………………33

AYES
Abetz, E
Bishop, TM
Brown, CL
Carr, KJ
Cash, MC
Edwards, S
Evans, C
Fawcett, DJ
Fifield, MP
Gallacher, AM
Hogg, JJ
Ludwig, JW
Marshall, GM
McKenzie, B
Moore, CM
Parry, S
Polley, H
Smith, D

Bilyk, CL
Boyce, SK
Cameron, DN
Carr, RJ
Crossin, P
Eggleston, A
Farrell, D
Fierravanti-Wells, C
Furner, ML
Heffernan, W
Kroger, H
Lundy, KA
McEwen, A (teller)
McLucas, J
Nash, F
Payne, MA
Singh, LM
Stephens, U

Thistlethwaite, M
Urquhart, AE

NOES
Di Natale, R
Ludlam, S (teller)
Rhiannon, L
Whish-Wilson, PS

Hanson-Young, SC
Milne, C
Waters, LJ
Wright, PL

Question agreed to.

The CHAIRMAN (00:04): While senators are moving to their seats, can we say happy birthday to Senator Bishop—the clock has just ticked over midnight. Senator Ludlam, do you wish to move Australian Greens amendments on sheet 7229?

Senator LUDLAM (Western Australia) (00:04): I am getting requests that I do not do so but I am going to. I move amendment (7) on sheet 7229 without delay and commend this wonderful amendment to the chamber:

(7) Schedule 2, item 8, page 15 (after line 5), after paragraph (aa), insert:

(ab)a person who is a member of the school’s Council, Board or other governing body;

Question negatived.

Senator LUDLAM (Western Australia) (00:05): by leave—I move amendments (8) to (10) and (22) on sheet 7229:

(8) Schedule 2, item 11, page 15 (line 18), before “This Division”, insert "(1)".

(9) Schedule 2, item 11, page 15 (line 24), at the end of paragraph 124NA(b), add "having regard to guidelines made under subsection (2)".

(10) Schedule 2, item 11, page 15 (after line 24), at the end of section 124NA, add:

(2) The Secretary must, by legislative instrument, determine guidelines for the purposes of subsection (1).

(3) The guidelines:
(a) may make different provision in relation to schools in different areas; and

(b) must provide for relevant cultural practices and obligations to be taken into account for the purposes of subsection

(22) Schedule 2, item 18, page 23 (line 14), omit "124NA(b)", substitute "124NA(1)(b)".

As with the first batch of amendments, Senator Siewert proposed an amendment which would simply remove the income management, or the withdrawal of welfare payment provisions, from the bill. I think Senator Siewert probably figured that that amendment would fail. I will briefly describe the amendments. These amendments basically relate to whether or not attendance is satisfactory. In the event that the scheme goes ahead, some important measures are needed to improve the operation of the measures, which, as I have indicated, we do not support, such as creating the requirement for guidelines for determining when attendance is satisfactory, including the consideration of relevant cultural practices and obligations. So these amendments reflect evidence given during the Senate committee inquiry, which heard that cultural practices and obligations were often not taken into account when considering school absences. To not consider cultural practices alienates Aboriginal children and their families and refuses recognition of Aboriginal culture, which is contrary to the UN Declaration of the Rights of Indigenous Peoples.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:08): We do not support the amendments. We are a bit old-fashioned on the Labor side of politics. We think kids should go to school and they should go to school every day. These measures are designed to make sure that that happens to give those kids the best opportunity to make their way in life. So we do not think setting a lower threshold is appropriate. We support the scheme to try and change that sort of culture to make sure the culture is one which says kids ought to go to school and they ought to be supported to go to school every day.

Senator MILNE (Tasmania—Leader of the Australian Greens) (00:08): Thank you, Minister, for that response in saying that your view is an old-fashioned view that children should go to school every day. But we are also talking about cultural appropriateness here. The government has cut funding for maintenance of Indigenous languages and cultural context in schools. So, if it is not taught in the schools that they attend, how are Aboriginal students able to enhance their cultural experience in the absence of language teaching in their own language?

Senator CROSSIN (Northern Territory) (00:09): I think we need to be really clear about what happens in the Northern Territory in schools. The concern about school attendance kicks in if there have been five days of nonattendance without any notable absence. But let me be really clear about this: a notable absence can include, and does include, cultural reasons, either for initiation purposes or for funeral purposes, and it is quite well accepted that children will and must attend those ceremonies because of their culture and that some children will be more involved than others. Cultural reasons are acceptable for not attending school, so let us be really clear about that.

The second thing I know applies in most schools. There may well be a funeral ceremony happening and, as we know—well, as we ought to know—with Indigenous people a funeral ceremony can take six to eight weeks to occur and it is pretty common for schools to say, where kids are involved in ceremony for the first couple of weeks when
it is not the important end of the funeral process: 'Get them to come to school for the morning at least. Let's try getting them to come to school for half a day.' I know there are schools in Arnhem Land that are trying that strategy. Then the kids can be away for the whole day in the last couple of weeks in the important part of the funeral ceremony. So in the Northern Territory there are many different things happening and many different trials and different variations happening that absolutely capture the child's cultural requirements, and being away for cultural purposes is one reason. In fact, I think such a reason is even on the attendance sheets that are notified weekly and monthly to the head office in Darwin, so you can actually be away for ceremonial purposes and you get the big tick.

The other thing that I want to say, while I am standing on my feet, is to get this absolutely and perfectly clear—and I see that Senator Milne is not here but I hope she is listening: the federal government had absolutely nothing to do with the abolition and the change to bilingual education in the Northern Territory. It was not driven by this government. It was a policy decision of the Northern Territory government, and implemented by the Northern Territory government, that schools should have at least four hours of English a day and they should be in the morning. We have talk about concerned Australians and people being against the intervention and about people lobbying us. People talk about Stronger Futures seeing the end of bilingual education, so the intervention saw the end of bilingual education. It did not. Neither federal government had anything to do with the abolition or the change to bilingual education in the Northern Territory, and I want to get that absolutely clear and absolutely on the record. That was absolutely a decision of the Northern Territory government implemented by the Northern Territory government. From memory, I think when Minister Gillard was the minister for education she was at Batchelor college one day and she was asked whether or not she supported that policy decision. This was her response: 'What we want to see is children finish year 12 competent in English literacy and numeracy. The path they take is up to the state and territory governments to determine.' So let us be really clear about this: Stronger Futures and this legislation have nothing to do with the change in bilingual education in the Northern Territory.

Question negatived.

**Senator LUDLAM** (Western Australia) (00:13): by leave—I move Australian Greens amendments (11) to (18) on sheet 7229 revised:

(11) Schedule 2, item 11, page 15 (line 26), before "The Secretary", insert "(1)".

(12) Schedule 2, item 11, page 16 (line 3), omit "is required", substitute "may be required".

(13) Schedule 2, item 11, page 16 (line 7), at the end of section 124NB, add:

; (e) the consequences under this Division of not complying with a requirement to enter into such a school attendance plan.

(14) Schedule 2, item 11, page 16 (after line 7), at the end of section 124NB, add:

(2) The schooling requirement person may be accompanied at the conference by no more than 2 other persons chosen by the person, and those persons are entitled to be heard at the conference.

(15) Schedule 2, item 11, page 16 (line 12), at the end of subsection 124NC(1), add "at the conference".

(16) Schedule 2, item 11, page 16 (line 16), after "plan", insert "at the conference, ".

(17) Schedule 2, item 11, page 16 (line 21), omit paragraph 124NC(3)(b).

(18) Schedule 2, item 11, page 16 (lines 24 and 25), omit subsection 124NC(4).
These amendments are very simple. They are designed to improve the conference process to make families aware of the consequences of not following attendance plans and to ensure that they are supported throughout the process. I spoke earlier in my contribution—about the first amendment, in which we opposed schedule 2—about the ways in which this is likely to work better if parents are fully aware, if they are consulted and if they are brought into the picture as to what will happen if attendance plans are not followed. Doing that with them, so sitting down with them and taking the time to make sure that that conference process is properly consultative, is likely, in our view, to bring out the other factors, the confounding factors, that are likely to be preventing kids from getting to school. So the amendments are fairly simple and I commend them to the chamber.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:14): The government does not support the amendments. As I indicated to the chamber earlier, there is a range of measures associated with this legislation to provide more support for parents and a capacity to work with them to identify with them their particular issues that might be impacting on a child's attendance at school and liaison with various people who can assist. But we do not believe this overall amendment is useful. It is already the case that people can bring support people to the conference. The reality is there will be some cases when a parent does not attend the conference and suspension of payments may be the only way to ensure that parents are engaging with the school about their kid's attendance. We do not think the amendment is necessary and it may in fact prevent us taking the measures that will be required to ensure we get a more responsive approach to the need for children to attend school.

Senator LUDLAM (Western Australia) (00:16): I wonder whether or not the minister might be aware that these particular recommendations were proposed after a great deal of consideration by the committee that inquired into this bill. Obviously recommendations of a parliamentary legislation committee are not mandatory but they do tend to be pretty well thought through by the senators who attended the hearings and took the evidence. I wonder whether the minister might like to confirm why in this instance the government has a different view.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:16): My briefing from one of the members of the committee is that they did not go to this level of detail. I am not saying you are wrong but the advice given to me by a very reliable source is that the claim you made may not be totally accurate. It certainly was not reflected, as I understand it, in the majority report. Be that as it may, the government's attitude is that the overall amendment ought not to be supported. We can probably sort out by reference to the records and the memory of the senators who said what to whom and what was recommended. My advice is that it was not recommended necessarily with that sort of detail from the committee. In any event, we do not think it improves the bill.

Senator LUDLAM (Western Australia) (00:17): To correct the record, my understanding, as you have indicated, was faulty. I am not someone who served on the committee although I am in intimate contact with someone who was. This evidence was in fact tendered to the committee and it came through strongly in the work of the
committee. But the minister is quite correct. It did not end up making its way into majority recommendation.

Senator Chris Evans: So you verballed the committee!

Senator LUDLAM: I was not verballing. I am correcting the record now. In our view, it should have made its way into a recommendation, but it clearly did not. I commend the amendments to the chamber nonetheless.

Question negatived.

Senator LUDLAM (Western Australia) (00:18): By leave—I move Greens amendments (19) to (21) on sheet 7229 revised together:

(19) Schedule 2, item 11, page 16 (line 27), after "be", insert "in writing and".

(20) Schedule 2, item 11, page 17 (after line 5), at the end of section 124NC, add:

Notifier to consider individual circumstances

(8) In determining requirements for the purposes of subsection (7), the notifier must consider the individual circumstances of the schooling requirement person and the one or more children covered by the plan.

Requirements of plan to be explained

(9) The notifier must not require a schooling requirement person to enter into a school attendance plan unless the notifier is satisfied that:

(a) the requirements of the plan have been explained to the person in the person’s first language; and

(b) the person understands the requirements of the plan.

(21) Schedule 2, item 11, page 17 (line 14), omit "124NB(a)" substitute "124NB(1)(a)".

We are, by way of these amendments, seeking to create requirements for an attendance plan that does three essential things: firstly, that the individual circumstances of the family be considered; secondly, that the attendance plan be created with parents or the guardians responsible for the child at the conference, not beforehand; and thirdly, that the plan be explained properly in the first language of the parents. These are reasonably basic considerations that should be required in the making of attendance plans given that breaching these plans can have such extraordinarily serious consequences for the families concerned.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:18): I do not think there is any disagreement about the intent to make sure that the parent is able to understand the information being given to them. We are not supporting the amendment because my advice is that interpreters will be made available when needed. We are not seeking to commit to a suggestion that they must be there and must be able to speak to the parent in their first language if that parent is in fact fluent in English. It is policy that people can be available to provide interpreting but we do not intend to mandate it given that on many occasions it may not be necessary. Question negatived.

Bill, as amended, agreed to.

Senator LUDLAM (Western Australia) (00:20): by leave—I would like the Greens’ opposition to that bill to be recorded.

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2012

Bill—by leave—taken as a whole.

Senator LUDLAM (Western Australia) (00:20): by leave—I move Greens amendments (1), (5), (6) and (11) to (15) on sheet 7221 revised together:

(1) Clause 3, page 3 (lines 1 and 2), omit "(which are particular areas of the Northern Territory that are prescribed by
the rules (see section 27))", substitute "(see section 27)"

(5) Clause 5, page 5 (lines 4 and 5), omit the definition of alcohol protected area, substitute:

alcohol protected area: see subsections 27(1) and (2).

(6) Clause 6, page 8 (lines 6 to 8), omit "(which are particular areas of the Northern Territory that are prescribed by the rules (see section 27))", substitute "(see section 27)"

(11) Clause 17, page 24 (line 26), at the end of subclause (1), add "before the end of the period of 30 days starting on the day the application is made"

(12) Clause 17, page 24 (line 27), omit "Note", substitute "Note 1"

(13) Clause 17, page 24 (after line 28), at the end of subclause (1), add:

Note 2: The 30 day period is extended by the number of days in any submission period that applies under section 18 in relation to the application: see subsection 18(5).

(14) Clause 18, page 26 (after line 16), at the end of the clause, add:

(5) The period of 30 days referred to in subsection 17(1) is extended in relation to the application by the number of days in the submission period.

(15) Clause 27, page 31 (line 2) to page 33 (line 19), omit the clause, substitute:

Areas that are alcohol protected areas

(1) An area in the Northern Territory is an alcohol protected area if, immediately before the commencement of this section:

(a) the area was a prescribed area under section 4 of the repealed Northern Territory National Emergency Response Act 2007; and

(b) there was not a determination in force in relation to the area under paragraph 19(1)(b) of that Act.

Ceasing to be an alcohol protected area

(2) However, an area in the Northern Territory ceases to be an alcohol protected area when the earliest of the following events occurs:

(a) the Minister approves an alcohol management plan under subsection 17(1) that covers the area (whether or not the plan also covers other areas);

(b) the area is prescribed by the rules for the purposes of this paragraph;

(c) the period of 3 years starting on the commencement of this section ends and the area is not prescribed by the rules for the purposes of this paragraph.

(3) A rule may only be made for the purposes of paragraph (2)(c) if the Minister is satisfied that a majority of the people ordinarily resident in the area to which the rule relates support the making of the rule.

(4) The Minister must make a rule revoking a rule made for the purposes of paragraph (2)(c) in relation to an area if the Minister is no longer satisfied as mentioned in subsection (3) in relation to the area.

When rules may be made

(5) A rule may be made for the purposes of paragraph (2)(b) or (c), or subsection (4):

(a) on the Minister's own initiative; or

(b) following a request made to the Minister by, or on behalf of, a person who is ordinarily resident in the area to which the rule relates; or

(c) following approval of an alcohol management plan relating to the area under subsection 17(1).

Community consultation

(6) Before making a rule for the purposes of paragraph (2)(b) or (c), or subsection (4), in relation to an area, the Minister must ensure that:

(a) information setting out:
(i) the proposal to make the rule; and
(ii) an explanation, in summary form, of the consequences of the making of the rule;

has been made available in the area; and

(b) people living in the area have been given a reasonable opportunity to make submissions to the Minister about:

(i) the proposal to make the rule; and

(ii) the consequences of the making of the rule; and

(iii) their circumstances, concerns and views, so far as they relate to the proposal.

(7) Subsection (6) does not apply if the rule is proposed to be made following the approval of an alcohol management plan.

Criteria for making rules

(8) In making a rule for the purposes of paragraph (2)(b) or (c), or subsection (4), in relation to an area, the Minister must have regard to the following matters:

(a) the object of this Part (see section 7);

(b) the wellbeing of people living in the area;

(c) whether there is reason to believe that people living in the area have been the victims of alcohol-related harm;

(d) the extent to which people living in the area have expressed their concerns about being at risk of alcohol-related harm;

(e) the extent to which people living in the area have expressed the view that their wellbeing will be improved if this Part applies in relation to the area;

(f) whether there is an alcohol management plan that covers the area or part of the area (whether or not the plan is approved under Division 6);

(g) any submissions of the kind referred to in paragraph (6)(b);

(h) any other matter that the Minister considers relevant.

Effect of area ceasing to be an alcohol protected area

(9) If an area ceases to be an alcohol protected area under subsection (2), then:

(a) the area can never again become an alcohol protected area after that cessation; and

(b) this Part continues to apply in relation to that area, after that cessation, in relation to things done, or omitted to be done, before that cessation.

These amendments relate, as the running sheet indicates, to alcohol protected areas and, in particular, alcohol management plans. The amendments put in place a recommendation that alcohol protected areas, or APAs, should be phased out in favour of alcohol management plans where the community wants them. I did foreshadow that I would bring these amendments to the chamber in my contribution to the second reading debate. The amendments state that APAs will expire within three years, or before that time if one of two things happens: either (a) the minister approves an AMP, an alcohol management plan, or (b) the minister makes a decision that the area no longer needs to be an APA.

In making this decision, the minister must be satisfied that people living in the area support the decision that he or she is making. There is a consultation process for this outlined in our amendments. The amendments also provide that the minister must consider a host of factors in making this decision, including the object, the wellbeing of the people in the area, the incidence or the risk of alcohol related harm, any submissions that might have been made.
and any other matters that are relevant that should be taken into consideration.

We move these amendments because we believe that blanket bans on alcohol such as those imposed by the intervention and its successor, whatever it ends up being called, are not the most effective way of tackling alcohol abuse, particularly as the necessary supports such as adequate access to rehabilitation services may not have been provided. We share the concern of the Australian Human Rights Commission, which states:

… the Commission is concerned that the Consequential and Transitional Provisions Bill automatically transitions prescribed areas under the 2007 NTER into ‘alcohol protected areas’. Existing licences and permits are also transitioned. Accordingly, the Consequential and Transitional Provisions Bill will continue to impose alcohol restrictions on communities previously determined to be ‘prescribed areas’ without the need for the proposed consultation processes to be complied with.

That is a fairly serious criticism from a fairly serious institution. The Australian Greens support measures to address alcohol abuse, obviously, but such measures must be developed in partnership with the community. If there is a single theme that runs through the amendments that we have proposed to this suite of bills this evening, it is handing the tools back to the community and not trying to run the show from Canberra. So you will note a theme that runs through these amendments is that not necessarily just of partnership but of empowerment and allowing these communities to make their own decisions. This is a very important instance of where we are proposing to do that.

We are concerned that the measures contained in the Stronger Futures legislation do not adequately address alcohol abuse and may indeed have unintended consequences. We support the emphasis on locally developed alcohol management plans described in the bill, but we share community concerns about the increased layers of bureaucracy involved in developing them. The legislation automatically transitions prescribed areas into alcohol protected areas and it imposes alcohol restrictions without consultation. That is not acceptable, particularly if we do not have any evidence as to their effectiveness. I suspect that is where this debate will end up as well—with the inability of the government, as advised by the minister's advisers, to provide any kind of peer reviewed material or anything at all that can point to the effectiveness of the way that these bans have been implemented. As Aboriginal Peak Organisations Northern Territory explain:

- Until communities are in a position to own a decision to ban alcohol, they will find ways to circumvent it.
- The continuation of blanket bans ('alcohol protected areas') perpetuates the status quo, which has resulted in a drift to unsafe drinking areas and to townships.

I think on all sides of this chamber we probably know the different forms that the undermining of these bans can take. This is supported by the submission of the Australian Human Rights Commission to the inquiry. They put to the committee that:

… evidence indicates that interventions imposed without community control or culturally appropriate adaptation and which stigmatised alcohol users do not work and can be counterproductive.

For measures to be effective, they must be developed and implemented in partnership with Aboriginal people.

The Australian Greens support alcohol controls where they have community support. The focus of the approach should be on phasing out alcohol bans and supporting
communities to develop alcohol management plans. We have saved the government the trouble of drafting amendments to give that concept effect by providing these amendments which I strongly commend to the chamber.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:26): The organisation of these amendments and the way they have been taken together has managed to totally bamboozle me. So, if I am on the wrong subject matter, someone can draw my attention to it. But I think we are trying to deal with the alcohol protected area issues in one go. I think that is right.

I indicate to the Senate that, under the old architecture, we had prescribed communities where there were restrictions on alcohol. We are moving to a new regime where we are describing these areas as 'alcohol protected areas'. It is a new concept. It provides for blanket restrictions, but it also provides for management plans which will allow people within the architecture to start to develop local and tailored plans for alcohol management given minimum standards in their areas. So we are moving to a new regime which seeks to empower people to have more control over that and over what occurs in their communities. As I say, the concept has been called 'alcohol protected areas'.

I am informed that the Greens amendments would effectively dismantle the definition and the operation of alcohol protected areas, so we cannot support them. We know that many Indigenous communities want to keep these restrictions in place. But we do want to empower them through the management plans to move on from the blanket restrictions to a methodology that allows communities to tailor responses under this new architecture of alcohol protected areas. I am advised that the Greens amendments cannot be supported because of impacts on the definition.

We do not think that the Greens amendment, which requires a minister to approve alcohol management plans within 30 days of receiving a plan of approval, can be supported. With a partnership approach, we think it can be expected that most alcohol management plans will be able to be signed off by the minister in a reasonably short time. However, there needs to be scope for the minister to consider AMPs closely and to resolve issues when they arise. So we do not think that a fixed 30-day time frame is appropriate.

As I say, we have concerns about how the Greens amendments would impact on the operation of the architecture of the alcohol protected areas and, therefore, we will not be supporting the amendments. We think that this will allow us to move to a new system which will provide protection for communities from the influence of alcohol but also empower them, through the management plans, to take control of the process in their communities given the provision of minimum standards.

Question negatived.

Senator PAYNE (New South Wales) (00:29): by leave—I move opposition amendments (1), (3) and (4) on revised sheet 7215, standing in Senator Scullion's name:

(1) Clause 3, page 3 (line 12), omit “Aboriginal people”, substitute “the community”.

(3) Clause 6, page 8 (line 26), omit “Aboriginal people”, substitute “the community”.

(4) Clause 15, page 22 (line 7), omit “Aboriginal people”, substitute “the community”.

The Stronger Futures in the Northern Territory legislation contains just three measures designed to address disadvantage in remote Northern Territory Aboriginal
communities. The first of those measures, tackling alcohol abuse, is without doubt a critical issue dealing with chronic alcohol abuse and the resultant violence and health problems that, if not resolved, mean there will be no chance of ever reaching any of the Closing the Gap targets. Alcohol abuse is not just an issue, though, that affects or impacts Aboriginal people. It affects entire communities. In this bill there is a section that gives the minister the power to recommend that an independent assessor be appointed to review the operations of and potential consequences surrounding a particular liquor outlet, and there has been significant opposition from some quarters on this measure. Unfortunately, through what has not been a satisfactory consultation process, the government has not really explained what that means. In reality, again it is nothing new.

The power to appoint an independent assessor is an existing power available to the Northern Territory minister through the Northern Territory Liquor Act. This remains the case. The federal minister can request the Northern Territory minister to exercise their power to appoint an assessor in cases of concern. This also is the case now. There is nothing new in any of this, except that through bringing this existing provision to the attention of the Northern Territory government perhaps they might actually do their job in this area and ensure that all licence conditions are suitable and workable for a licensee. The coalition proposes that a request for an assessor not just be made on the basis of race but on the basis of harm to a community. Licensees need certainty of alcohol laws in order to operate and invest in their business. Continual tinkering around the edges serves no one. If there are problems or perceived problems surrounding particular venues, they should be assessed and resolved. The community, reasonably, expect nothing less. I hope the chamber will bear with me in view of the fact that I am assisting Senator Scullion in his absence tonight, and on behalf of Senator Scullion I commend the amendments to the Senate.

The TEMPORARY CHAIRMAN: I think everyone is representing everyone here this evening with this bill.

Senator LUDLAM (Western Australia) (00:32): I understand Senator Scullion is on his way to Borroloola, so we are all representing people who are elsewhere this evening. It might surprise the chamber to note that the Australian Greens will be supporting these amendments and therefore withdrawing our own I understand almost identical set of amendments that follows on the running sheet.

Under this bill a licensed premise can be investigated if the minister believes that the sale or consumption of liquor is causing substantial alcohol-related harm to Aboriginal people. Our question, as Senator Payne just outlined, is why should this apply to Aboriginal people only? Surely a premise should be investigated not only if it is causing harm to Aboriginal people but also if it is causing harm to non-Aboriginal people. That is why we are supporting this amendment. If the coalition had not brought it forward, we would have been moving and voting for our own amendment to change the reference from 'substantial alcohol-related harm to Aboriginal people' to 'substantial alcohol-related harm to the community'.

Dr Boffa, the Public Health Medical Officer of People's Action Alcohol Coalition, noted during his evidence to the Senate inquiry:

… it would be preferable to remove the reference to Aboriginal people in the provision that gives the Commonwealth the powers to intervene and ask for an independent audit on particular alcohol outlets. It is not a racial issue. I think that could be amended to read that where any particular
outlet is deemed to be causing excessive problems for 'the community', and not for 'Aboriginal people' ... In the Northern Territory, non-Aboriginal people drink at twice the level of other Australians and have much higher rates of alcohol related problems. Non-Aboriginal people who are addicted to alcohol are just as likely to gravitate towards the cheapest forms of alcohol as Aboriginal people are. There is nothing racially based about the message we are proposing and we do not think the bill should single out Aboriginal people in that way, although we do support very much the intent behind giving the Commonwealth minister the powers to order an independent review ...

So, while investigating harmful retailers is important, it is not what will end the damage caused by alcohol in the Northern Territory. What is really needed is supply reduction measures. I will briefly note a submission to the Senate inquiry from the People's Alcohol Action Coalition. They said:

... unless excessive alcohol consumption in the NT is addressed through supply reduction, other measures that the Australian (and the NT) Government may put in place in order to improve the situation of Aboriginal people will not be as effective as they might.

... the most effective supply reduction measures which the Commonwealth can and should take to reduce alcohol consumption in the NT are:

(i) a minimum floor price on take-away alcohol at the price of full strength beer ($1.20 per standard drink); and

(ii) a take-away alcohol-free day preferably tied to a set welfare benefits payment day, but in any event to have one day a week on which take-away alcohol is not sold.

We put up a second reading amendment which did not pass the chamber, but I am pleased to note that the forthcoming amendments probably will. Quite clearly, we are removing unnecessary discrimination. Perhaps it was not the government's intention, but it is there in black and white. Clearly, other parts of our community have problems with alcohol, so we do not understand why the government chose to specify that harm must be caused to Aboriginal people only. It could be seen to be evidence of the view of alcohol related harm as a problem affecting only Aboriginal people. It is a highly discriminatory view. That is why we move this amendment. Effectively, it is to make racist and discriminatory legislation slightly less awful. I thank Senator Scullion, on his travels, for bringing these amendments to the chamber and indicate our strong support.

The TEMPORARY CHAIRMAN: Thank you, Senator Ludlam. Before I call the minister, just to clarify: you withdrew the amendment and then you indicated that that is why you are moving these amendments, but you are supporting the opposition amendments. I clarify that for the Hansard record.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:36): The eloquence of Senators Payne and Ludlam only confirms the government's intention to support the amendments.

The TEMPORARY CHAIRMAN: The question is that opposition amendments (1), (3) and (4) on sheet 7253, revised, be agreed to.

Question agreed to.

Senator PAYNE (New South Wales) (00:37): by leave—I move amendments (2), (5), (6) and (7) on sheet 7215 revised, standing in Senator Scullion's name, together:

(2) Clause 3, page 4 (line 14), omit “7 years”, substitute “3 years”.

(5) Clause 111, page 95 (line 6), omit “7 years”, substitute “3 years”.

(6) Clause 117, page 97 (line 27), omit “7 years”, substitute “3 years”.

CHAMBER
(7) Clause 117, page 98 (line 3), omit “8 years”, substitute “4 years”.

As stated repeatedly during this debate, and many others which have preceded it in this place, reducing excessive alcohol consumption and the effects of alcohol abuse are fundamental in closing any gaps or eradicating effects of disadvantage. The opposition welcomes the government's long-term commitment to assist Aboriginal people and their communities and to address disadvantage and disconnect. We do welcome the commitment, but, as I mentioned both in my remarks and previously this evening, we do question the process.

It has been made very clear that there is not a single provision in these bills that is not already a pre-existing power of the Northern Territory liquor minister, as contained in the Northern Territory Liquor Act or its supporting regulations. If alcohol abuse is such a problem because the Northern Territory government is simply unable or unwilling to enforce its own laws, then it should not take long to expose that and deliver change, if the federal government is able to enforce the law on its behalf. Conversely, if the federal minister rigidly enforces the existing laws and there is no change, why would you continue to do the same thing over and over for seven years unless you apparently have the same deluded view as the Northern Territory government and expect things to work magically?

The government's proposal to lock into a 10-year plan and to only have a close look at how it is proceeding after seven years is in our view inadequate. Seven years is more than two full terms of parliament. Spending two terms of parliament taking over the enforcement of the existing Northern Territory law before you even review or propose changes is not the sort of leadership that we think is necessary on this matter. We recommend that a review be conducted into these measures after three years, with a report into the review tabled no later than four years after assent. If it works, keep it. If it is failing then change it. We do not believe that we should be waiting seven years to make that assessment. On behalf of Senator Scullion, I commend the amendments to the chamber.

Senator LUDLAM (Western Australia) (00:39): There has apparently been an outbreak of harmony in the chamber, and the Greens will indicate support for this batch of amendments as well. I wish to remove Greens amendments (3), (16), (18) and (19) from sheet 7221, which is the next item in the running order.

The CHAIRMAN: Thank you, Senator Ludlam; they are so withdrawn.

Senator LUDLAM: Not only do the government intend to continue an ineffective, racist and damaging policy for another 10 years but, as Senator Payne indicated, as drafted this bill indicates they are happy to wait seven years before it is reviewed. We have had some fairly robust debates this evening—obviously, not as robust as if Senator Siewert were here herself to serve it up about the evidentiary underpinnings—

Senator Chris Evans: I'm scared of her; I'm not scared of you.

Senator LUDLAM: I am going to remember that, Senator Evans, forever.

Senator Chris Evans interjecting—

Senator LUDLAM: I get that; I understand that. We will fix that—there is time to fix that. The total absence of evidence underpinning this policy goes to, if we cannot compel the government to provide evidence tonight on the passage of the bill, the least that we can do is bring forward the reviewing periods. Where is the evidence
that the continuation of this ineffective and misguided approach is going to help if we consolidate and entrench it? To date there has been no such evidence that the measures of the intervention have been effective. Again, narrowing down specifically to the clauses that we have been dealing with tonight and setting aside the other issues which obviously have strong community support, the evidence simply is not there of the coercive impacts of this policy.

Evidence indicates a top-down approach will not be effective and is actually undermining what the government says it is trying to achieve: Aboriginal people having stronger futures—the title of the bill—and taking control of their lives.

The Australian Human Rights Commission put the following view that there is an:

… extensive body of research and evidence that shows Aboriginal community governance is a key factor for the sustainable development of Aboriginal communities.

…… …

This is supported by research from the Harvard Project on American Indian Economic Development, which demonstrates that when Indigenous communities:

make their own decisions about what development approaches to take, they consistently out-perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision.

This evidence stands in stark contrast to the policies of this government and not only do they intend to enforce these policies on Aboriginal people for another 10 years but they wish to do so without a review, just flying blind for another seven years.

This is a top-down, paternalistic and punitive set of measures from the outset which has meant that its ability to improve the lives of Aboriginal people in the Territory was extremely limited. Evidence of that can be found in the summary provided by Dr Bath, the NT Children’s Commissioner—someone who should know a fair bit about the issues that we have been canvassing this evening—of ongoing child welfare issues in the Territory. That summary states:

The ineffectiveness of the Intervention in improving the wellbeing of Aboriginal people in the NT is also evident when looking at the Closing the Gap in the Northern Territory Monitoring Report. The report details how school attendance has declined since 2009, that child hospitalisation rates have increased and confirmed incidences of personal harm and suicide have more than doubled since 2007 …

These are scary statistics put on the public record and put to the committee by someone whose job it is to know these things. It went on:

The Intervention was supposed to improve the lives of Aboriginal people but it has further disempowered them and has wasted resources. These resources could have been used to develop programs that were better targeted and were developed in partnership with Aboriginal people.

The Greens oppose a continuation of the intervention—and I hope I have made that pretty clear tonight. If we are not successful in preventing this legislation from passing, we can at least make sure that it is reviewed as soon as possible. The amendments that I have withdrawn are identical to those that Senator Scullion has proposed through Senator Payne, and I am pleased to support an amendment that will at least bring forward a degree of evidence so that the people debating this bill or its future reforms at a quarter to one in the morning, those of us who are still there, maybe hopefully will have a solid evidence base on which to make our judgment calls. I join Senator Payne in commending these amendments to the chamber.
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:44): At the risk of making a habit of this, the government will also support the amendment. I do not rise to the bait of Senator Ludlam, who uses words like 'racist', 'punitive' and 'coercive', in supporting the measures. Obviously I do not agree with his interpretation, but the government has been clear from the outset that it is prepared to continually review and amend its approach to ensure that it is delivering the best possible outcomes for Aboriginal people in the Northern Territory, particularly through the special measures. So we are happy to support the amendment to bring forward the scheduled review period.

Question agreed to.

Senator LUDLAM (Western Australia) (00:45): by leave—I move Australian Greens amendments (4), (17) and (20) on sheet 7221 together:

(4) Clause 3, page 4 (line 15), omit "10 years", substitute "5 years".

(17) Clause 111, page 95 (line 8), omit "10 years", substitute "5 years".

(20) Clause 118, page 98 (line 9), omit "10 years", substitute "5 years".

These amendments are quite important. They effectively relate to the sunset clauses in the bill by changing the sunsetting from 10 to five years. I have made it abundantly evident that we strongly oppose the passing of this package of legislation. It is nothing more than an extension of the Northern Territory intervention, which is widely opposed and despised by the people who are subject to it. The extension as drafted will mean that the intervention will ostensibly be in place for 15 years. We oppose the continuation of the ineffective and expensive approach of the intervention. To date, there has been no evidence that the measures of the intervention have actually been effective.

I want to briefly highlight the issue of consultation. This was particularly evident at Hermannsburg when the Senate committee visited. While there, it became very clear that there was very little knowledge about the contents of the legislation amongst community members attending the hearing. This is extremely troubling considering that the government undertook consultations in that area. So, even in the areas where the government actually made the effort—went out, put the word out and tried to explain to people—when the Senate committee visited it appeared that people had no idea what the bill was about.

These problems were completely ignored in the Stronger Futures consultation report. Submissions and evidence received during the inquiry outlined the following criticisms of the report: it was not reflective of community's view, the way that the information was statistically analysed was unsound and the information gathered did not inform the government's approach or the drafting of the bill. So consultation occurred; it is just that the government do not appear to have actually listened to what people told them. In her submission to the Senate inquiry, Ms Cox from Jumbunna Indigenous House of Learning clearly outlines problems with the analysis of data that was taken by O'Brien Rich. She said:

I have taught research methods for probably about 20 years in varying guises. You cannot have a system where you have got a whole lot of people recording things, probably in a fairly haphazard manner, particularly under what might be called a 'tier one'—which are many hundreds of things—where you have got a GBM or somebody who is writing some notes while having a bit of a chat to somebody and then you suddenly collect all of those notes, plus the notes from the tier two things, which also seem to be fairly chaotic and done in varying ways. And you
hand them to somebody and you say, 'Analysis this.'

Ms Cox also comments on the impartiality of staff who were recording outcomes from the consultation. She says:

My concern is that these assertions—from the O'Brien Rich report—make it clear that any credibility at all relates to the quality of the recording of views given, which is nowhere validated. Or even made public! The research consultants make it clear that they can at best state their products as reflecting … records of what went on.

She goes on to talk about the lack of objectivity of FaHCSIA note takers and their 'presumed limited formal research skills'.

The House of Learning, based out of the University of Technology, Sydney, did quite a comprehensive analysis of the consultation and stated that it did not comply with Australia's obligations to meaningfully consult with Aboriginal and Torres Strait Islander peoples. This is the evidence base upon which the government then bases their reform and can come in here and say, 'This is what people told us.' I think you could admit, in fact, that the evidence base is highly suspect for these reasons, among others. The process was deficient because, they say, it did not involve the affected Aboriginal people in the design or implementation of the process; it relied on materials that were dense and complex and were not translated into relevant Aboriginal languages—and it is not the first time we have heard that matter raised; it was conducted in very general terms without reference to specific proposals or potential initiatives; it was decidedly partisan; it covered so many themes and asked so many questions that in-depth discussion was not possible—and on and on and on it goes.

The Australian Greens cannot allow a policy to continue for 15 years when it is based on insufficient consultation and is biased in favour of predetermined outcomes. The poor quality of consultation undermines any claim that these initiatives can be classed as special measures under the RDA. As such, while we welcome the commitment of resources for a further 10 years, subjecting people to a discriminatory, ineffective and damaging policy for the next 15 years is totally unacceptable and we do not support a 10-year sunset clause as we believe it is far too long. I would be greatly encouraged by an indication from the coalition, in the spirit of the last half hour or so, that they will also be supporting these amendments. I commend the amendments to the chamber.

Senator PAYNE (New South Wales) (00:50): I am not sure that I can provide Senator Ludlam with all the assurance that he is looking for. We do have some sympathy with the proposition of a five-year sunset clause, but also believe that a long-term commitment to ending disconnect and disadvantage, backed up by long-term funding, is vital. By constantly monitoring and reviewing the measures as proposed at three years, we believe we will ensure in a more effective way that the measures remain valid and effective over the long term, as is necessary. The coalition does not support the Australian Greens amendments—I am sorry, Senator Ludlam.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (00:51): I understand the point Senator Ludlam makes, but we fall on the side of stressing the long-term commitment required. This is as 10-year strategy. It is a key part of the approach. It is also a reflection of the financial commitment the government has made of $3.4 billion in extra services to support the legislation.
We are sending the signal this is a serious long-term commitment. We are very appreciative of the bipartisan support in this regard. This again sends the message that that commitment will continue, whoever forms government, and that that financial support will continue to be provided. It is also important, in the context of the Closing the Gap effort, that we constantly structure the effort around the commitment to a long-term strategy; we know things will not turn around in very short periods of time. We need constancy of effort, constancy of policy approach and constancy of investment in a long-term commitment. That is why the government supports maintaining a 10-year strategy and therefore will not be supporting the Greens amendments.

The CHAIRMAN: The question is that Australian Greens amendments (4), (17) and (20) on sheet 7221 revised be agreed to.

The committee divided. [00:57]

(The Chairman—Senator Parry)

Ayes.........8
Noes............41
Majority........33

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

NOES
Abetz, E  Bilyk, CL
Bishop, TM  Boyce, SK
Brown, CL  Bushby, DC
Cameron, DN  Carr, KJ
Carr, RJ  Cash, MC
Crossin, P  Edwards, S
Evans, C  Farrell, D
Faulkner, J  Fawcett, DJ
Fierravanti-Wells, C  Fifield, MP
Furner, ML  Gallacher, AM
Heffernan, W  Hogg, JJ
Ludwig, JW  Lundy, KA
Marshall, GM  McEwen, A

Question negatived.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:00): I move government amendment (1) on sheet BW237:

(1) Page 4 (after line 22), after clause 4, insert:

4A The Racial Discrimination Act is not affected

This Act does not affect the operation of the Racial Discrimination Act 1975.

The government has moved this amendment to make an express provision about the application of the Racial Discrimination Act to part 10 of the Classification (Publications, Films and Computer Games) Act, as amended by the Stronger Futures in the Northern Territory Bill. This is really to provide reassurance and clarity for those who are concerned about the issue. The government believes that it was not absolutely necessary, but we want to make sure that people understand our commitment to Aboriginal people, that nothing in part 10 would suspend or limit the application of the Racial Discrimination Act, including the right of a person to seek redress under the act.

I understand that the Human Rights Commission had sought some assurance about this matter and have looked at a 'notwithstanding' type clause to be inserted. The government's amendment is consistent
with that request by the Australian Human Rights Commission and makes it absolutely clear that everything will be consistent with the Racial Discrimination Act. I encourage the chamber to support the amendment.

Senator LUDLAM (Western Australia) (01:02): The suspension of the Racial Discrimination Act under the NT intervention legislation was actually one of its most disturbing aspects and the one that attracted the most criticism. The Greens have been vocal in our opposition to the suspension of basic human rights in the Northern Territory. My colleague Senator Siewert introduced a private senator's bill to reintroduce the RDA into the intervention based on the recommendation of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

We continue to believe that the approach by the current government does not meet our human rights obligations under the RDA. The government is seemingly attempting to rely on the measures in this bill being special measures for the purposes of the RDA. However, in law, to meet the criteria of special measures legislation must provide a benefit, it must have the sole purpose of securing the advancement of a group so that they can enjoy human rights equally with others, it must be necessary for the group to achieve that purpose, and it must stop once that purpose has been achieved. It is also necessary for consultation to have occurred and for consent of the groups to have been sought and obtained. As former Aboriginal and Torres Strait Islander Commissioner Tom Calma has written:

Measures taken with neither consultation nor consent cannot meaningfully be said to be for the ‘advancement’ of a group of people, as is required by the legal definition of ‘special measures’.

If these measures are intended to be for the advancement of people, there seem to be a lot of very unhappy people who do not approve of being advanced in these particular ways.

As you have heard from my colleagues and me this evening, serious concerns about the level and quality of consultations with the Northern Territory Aboriginal communities have been raised by many. Furthermore, as has been made abundantly clear from statements of opposition mentioned in this debate, and brought before the Senate inquiry, and brought before the public's attention in recent days—and I am sure by email and phone call to all senators in this place—the measures in this bill do not have the consent of the affected communities and, quite frankly, if they did we would not be here.

I indicate that the Greens appreciate the intent behind the amendment and that we will be supporting it. We appreciate that the government has sought to clarify it. Before we propose that the question be put, I will seek some clarification: is it the government's intention that the Racial Discrimination Act applies in full to the act, subsequent to this amendment being passed?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:04): I wish there were something tricky in the question: yes. I thought that was the point I made. I just want to be clear, but I think the answer to your question is yes.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:04): Given the concern that we pointed out about the legality of the special measure and that to secure adequate advancement of the beneficiaries there has to be proper consultation as a requirement of determining this advancement—as the Human Rights Commission has noted—it clearly cannot be
seen to be meeting the requirements of a special measure. Has the government obtained any legal opinion as to whether the government is now going to be open to legal action by affected people and communities because this does not meet the criteria for special measures? Since the sole purpose of securing the advancement of a group is that it can enjoy human rights which are equal with others, and given that the intervention and now this so-called stronger futures legislation does not do that, I am interested to know whether you have had a legal eye cast over it for any vulnerabilities to legal action.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:06): My advice is that our legal advice is: yes, it is a special measure—we have had legal advice to that effect—and also that everything would be challengeable under the Racial Discrimination Act, as it applies. So people could mount a challenge if they had concerns. But yes: our advice is that it is a special measure.

Senator PAYNE (New South Wales) (01:06): I understand that Senator Scullion has engaged in consultations with the Human Rights Commission and has had an indication that it is comfortable with the drafting of this amendment as it stands and that the amendment should alleviate any concerns in that regard.

Question agreed to.

Senator WRIGHT (South Australia) (01:07): by leave—I move Australian Greens amendments (8) and (9) on sheet 7221 revised:

(8) Clause 8, page 11 (lines 9 and 10), omit the penalty, substitute:

Maximum penalty:

(c) 10 penalty units for a first offence; or

(d) 20 penalty units for a second or subsequent offence.

(9) Clause 8, page 12 (lines 28 and 29), omit the penalty, substitute:

Maximum penalty:

(c) 10 penalty units for a first offence; or

(d) 20 penalty units for a second or subsequent offence.

This legislation increases penalties for the possession, consumption and supply of alcohol. Increasing penalties for more minor offences is always a concern to the Greens. In particular, we are concerned that this legislation makes possession of amounts under 1.35 litres an offence which could attract a penalty of up to six months imprisonment. Aboriginal Peak Organisations Northern Territory—APO NT—is an alliance comprising the Central Land Council, the Northern Land Council, North Australian Aboriginal Justice Agency, Central Australian Legal Aid Service and the Aboriginal Medical Services Alliance Northern Territory. The alliance was created to provide a more effective response to key issues of joint interest and concern affecting Aboriginal people in the Northern Territory, including through advocating practical policy solutions to government. This important organisation noted in its submission to the inquiry by the Senate Community Affairs Legislation Committee into these bills:

The NT already has amongst the harshest penalties in Australia for bringing alcohol into remote Aboriginal communities … A punitive response has not worked and there is no evidence that an additionally punitive response is what is needed.

This was supported by numerous submissions and evidence given at the inquiry—for example, Mr Hunyor, Principal Legal Officer with the North Australian Aboriginal Justice Agency, NAAJA, asked:
… where is the evidence that it is going to make any difference to increase penalties? I think one of the issues we need to look at every time an increase in penalty and an increase in imprisonment is imposed is: what is the opportunity cost if realistically that is going to mean sending more people to jail?

This concern is supported by the Australian Human Rights Commission, which said:

The NTER Evaluation Report indicated there was a clear increase in alcohol-related offences, including offences that were created by the NTER measures. The Commission therefore reiterates its standing concerns that the alcohol offences under the NTER continued by the Stronger Futures Bill may result in increased imprisonment of Aboriginal and Torres Strait Islander peoples.

Infringement notices provide a viable alternative to harsh penalties. We support the government amendments to this effect.

What is actually needed, rather than increasingly punitive measures, is more resources dedicated to culturally appropriate alcohol counselling and rehabilitation. Ms Rosas from NAAJA highlighted the inappropriate emphasis on penalties rather than rehabilitation:

NAAJA recognise the need to do more to stop the damage caused by alcohol abuse in our communities, but increasing the penalties for alcohol related offences is not the answer. Aboriginal people already make up 80 per cent of the jail population in the NT. Locking more people up is not going to fix our problems and banning alcohol has not solved the problem. The alcohol bans have pushed drinkers further from their communities into very unsafe situations. We need to treat the disease. There is no professional counselling … we need rehabilitation centres. We need culturally relevant programs and services and we need more education in the schools to teach the younger generation the dangers of drinking and drug use. Governments need to work with elders to take ownership and responsibility of alcohol management plans and be part of the solution.

The Australian Greens oppose the simplistic solution of increasing penalties for offences relating to less than 1.35 litres. It is unclear that punitive approaches are effective, and they will likely lead to increased imprisonment of Aboriginal people in the Northern Territory. This will be catastrophic. As such, these amendments reduce the number of penalty points and remove imprisonment for offences under 1.35 litres. I commend them to the chamber.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:11): I indicate that we will not be supporting the Greens amendments. Effectively they significantly reduce the penalties for alcohol offences. That is not a position the government support, nor do we think it sends the right messages. We think that alcohol misuse is a very serious problem in remote communities. It is a major cause of violence, and communities have asked for assistance to try to address the really serious problems that result from the abuse of alcohol in those communities. We think strong penalties for those who do not respect the restrictions are one part of the help that those communities need.

I do accept that there has been some lack of clarity around a number of measures, and the next set of amendments from the government will seek to deal with some of those. We think those amendments will provide a better balance between offences for small amounts of liquor and more serious liquor offences. They will also seek to make clear that infringement notices can be issued for minor offences. We seek to address some of the issues the senator raised, but we will not be supporting the Greens amendments. But we hope, if we can get support for our subsequent amendments, there will be greater clarity about what the government
intended and seeks to reinforce, which is, as I say, a better balance between offences for small amounts of liquor and more serious offences, and the capability for use of infringement notices for minor offences. But we will not be supporting the Greens amendments, which significantly reduce the penalties for alcohol offences.

Senator WRIGHT (South Australia) (01:13): Given the lateness of the hour, I do not necessarily expect the answer to this question now. I accept that this is a serious issue and that communities want assistance, which were your words, in dealing with alcohol dependence and abuse. But I would be interested if the minister could tell me what evidence there is that more punitive consequences for alcohol use are actually effective in preventing the problem. I would be happy for that to be taken on notice, given the lateness of the hour, if that is appropriate.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:15): Minister, you said that communities have sought help in dealing with alcohol abuse—I have no doubt that this the case—but did any of the communities asked for these higher penalties? Is that something that came from Aboriginal communities themselves and Aboriginal leadership, or is it something that was determined by the government or the bureaucracy? If so, how many Aboriginal communities asked for higher penalties of the kind that you are introducing?

Senator HEFFERNAN (New South Wales) (01:15): So you need a calculator there to work out what you have in the boot of the car? In some of the communities I have been to people sleep all day and drink all night, and the kids go.
penalties themselves are bringing things into line with the existing Northern Territory penalty regime. There are communities who have been very desperate for support in trying to deal with the grog runners. That is the purpose of these provisions. The penalty is designed to match the existing Northern Territory penalty. That is why we have set the penalties at those rates.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:17): I take it from the minister's answer that the communities did not actually ask for the increased penalties; it was a decision of the government to bring the penalties in line with Northern Territory penalties. That being the case—and I have no doubt that communities are asking for assistance with the grog runners, as you say—what evidence is there that the penalties that you are suggesting will go anywhere near dealing with that issue? And where is there any evidence at all that increasing penalties in the general way you have suggested is going to address that specific problem? What evidence is there that that is the case?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:18): There are a couple of responses to that. First of all, as I understand it, the existing legislation providing for lower penalties than the Northern Territory penalties actually had the effect of overriding the Northern Territory penalties; it undermined their regime by providing an overriding provision which had a lower penalty. So that is clearly not administratively very good and sends the wrong signal. So the idea was to bring those in line with the Northern Territory penalty regime. I understand it was specifically requested by the Northern Territory Police as part of their measures to deal with grog running.

Question negatived.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:19): by leave—I move government amendments (1) to (3) on sheet BW232:

1. Clause 8, page 13 (line 31), before "alcohol", insert "ethyl".
2. Clause 8, page 14 (line 3), omit "alcohol", substitute "liquor".
3. Clause 8, page 14 (line 5), omit "alcohol", substitute "liquor".

These amendments will clarify the meaning of 'alcohol' and allow infringement notices to be issued for possession and supply liquor offences involving small amounts of alcohol. They make it clear that infringement notices can be issued for possession and supply liquor offences involving the aforementioned 1,350 millilitres of alcohol or less. These amendments address a recommendation of the Senate Community Affairs Legislation Committee majority report. I hope that, unlike Senator Ludlam, I am not verballing them, but I am told that this was one of their recommendations. They recommended also that the bill be amended to allow infringement notices to be issued in relation to minor offences and to make clear that the infringement notices may be issued relating to possession and supply liquor offences. There was some support for these measures from the community affairs committee to provide greater clarity, and it really ties in with the debate that we have just had. We think that these amendments will benefit the legislation and benefit the management of those offences.

Senator LUDLAM (Western Australia) (01:21): I indicate Australian Greens support. These are sensible amendments which have been brought forward as a result of the evidence given to the Senate inquiry.
They are minor improvements to a terrible bill, so I guess we would be silly to oppose them. I am happy to commend them to the chamber.

The CHAIRMAN: The question is that government amendments (1) to (3) on sheet BW232 be agreed to.

Question agreed to.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:21): I move government amendment (4) on sheet BW232:

(4) Clause 11, page 16 (lines 14 to 20), omit the clause, substitute:

11 Modification of the NT Liquor Regulations

The NT Liquor Regulations apply, while this Act is in effect, as if:

(a) the following offences against the NT Liquor Act were police infringement offences for the purposes of those Regulations:

(i) an offence against subsection 75B(1);

(ii) an offence against subsection 75C(1) if the quantity of the ethyl alcohol involved in the commission of the offence is 1,350 ml or less;

(iii) an offence against subsection 75F(1);

and

(b) the reference to section 75(1) of the NT Liquor Act in Part 1 of Schedule 2 to those Regulations included a reference to subsections 75B(1), 75C(1) and 75F(1) of that Act.

Note 1: Section 8 of this Act includes sections 75B, 75C and 75F into the NT Liquor Act.

Note 2: This Act ceases to have effect at the end of 10 years after commencement: see section 118.

This is part of the same set of amendments; it just inserts it into another part of the bill. I do not need to speak to it.

Senator LUDLAM (Western Australia) (01:22): Mr Chairman, you will be aware that the Australian Greens propose to move an amendment to this one. We have already at some length debated the issue of a sunset clause, and we were seeking to essentially make it consistent with a set of amendments which have already comprehensively and unfortunately failed. So I withdraw our amendment to the government amendment (4) and indicate that we will support the government's amendment.

The CHAIRMAN: The question is that government amendment (4) on sheet BW232 be agreed to.

Question agreed to.

Senator LUDLAM (Western Australia) (01:22): by leave—I move Australian Greens items (7) and (1) to (6) on sheet 7230:

(1) Clause 3, page 4 (after line 10), insert:

Part 4A—Consultation

Part 4A is about consultation with Aboriginal people in the Northern Territory to enable them to effectively engage in matters affecting them under this Act.

Part 4A requires the Minister to make rules prescribing consultation requirements that must be complied with in making a decision or legislative instrument under this Act that is likely to affect Aboriginal people living in one or more areas in the Northern Territory.

(2) Clause 4, page 4 (lines 19 to 22), omit the clause, substitute:

4 Objects of this Act

The objects of this Act are:

(a) to support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy; and

(b) to enable Aboriginal people in the Northern Territory to effectively engage in matters affecting them under this Act.

(3) Clause 27, page 32 (lines 22 and 23), omit subclause (8).

(4) Clause 34, page 41 (lines 9 and 10), omit subclause (9).

(5) Clause 35, page 43 (lines 9 and 10), omit subclause (5).
Clause 41, page 50 (lines 12 and 13), omit subclause (3).

Page 94 (after line 15), after Part 4, insert:

Part 4A—Consultation
Division 1—Introduction

This Part is about consultation with Aboriginal people in the Northern Territory to enable them to effectively engage in matters affecting them under this Act.

It requires the Minister to make rules prescribing consultation requirements that must be complied with in making a decision or legislative instrument under this Act that is likely to affect Aboriginal people living in one or more areas in the Northern Territory. Those rules must be consistent with principles set out in this Part.

Consultation requirements under this Part apply in addition to any other consultation requirements under this Act.

Division 2—Consultation

The Minister must make rules prescribing consultation requirements to be complied with in making a decision or legislative instrument under this Act (other than a rule under this section) that is likely to affect Aboriginal people living in one or more areas in the Northern Territory.

Before making a rule for the purposes of subsection (1), the Minister must:

(a) have regard to the object of this Act in paragraph 4(b); and

(b) be satisfied that the rule is consistent with the consultation principles set out in section 110C.

A consultation requirement prescribed for the purposes of subsection (1) applies in addition to any other requirement relating to consultation that applies in relation to the making of the relevant decision or legislative instrument.

Rules made for the purposes of subsection (1) may prescribe different requirements in relation to:

(a) different decisions and legislative instruments; and

(b) different areas.

This section sets out the consultation principles for the purposes of paragraph 110B(2)(b).

Obtaining consent or agreement

The object of consultation must be to obtain the consent or agreement of the Aboriginal people likely to be affected by the proposed decision or legislative instrument, not simply to outline what is proposed.

Using feedback

Consultation is a two-way process, which includes listening to the Aboriginal people likely to be affected by the proposed decision or legislative instrument, and using this feedback to influence and develop the decision or instrument.

Consensus negotiations

Consultation processes must be products of, and build, consensus. Consultations must be in the nature of negotiations and the Aboriginal people being consulted must not be pressured into making a decision.

Adequate time

Consultations must begin early, be ongoing (if necessary), and have adequate timeframes built into them.

Assistance to participate

The Aboriginal people likely to be affected by the proposed decision or legislative instrument must have access to financial, technical and other assistance to enable them to participate in the consultation process.

Coordination across agencies

Consultations that involve a number of Commonwealth, State and Territory agencies must be coordinated across those agencies.

Reaching people in places most convenient for them

Consultation processes must reach the Aboriginal people likely to be affected by the proposed decision or legislative instrument, and must be held in the location that is most convenient for, and chosen by, those people.

Respecting protocols
(9) Consultation processes must respect the protocols, including the representative and decision-making structures, followed by the Aboriginal people likely to be affected by the proposed decision or legislative instrument.

Information to be given

(10) Information about the proposed decision or legislative instrument, and its potential impact, must be provided to the Aboriginal people likely to be affected by it, being information that is:

(a) full and accurate; and

(b) clear, accessible, easy to understand and otherwise in accordance with plain language principles; and

(c) in the language of the people being consulted (if necessary).

The amendments insert substantive consultation requirements into the bill. We have heard a great deal tonight about consultation and allowing communities to take ownership—and, indeed, about allowing them potentially to be empowered by some of the ideas that come out of this building. In response to the abysmal consultation process carried out in the context of Stronger Futures in the Northern Territory and the NTER, the Senate Community Affairs Legislation Committee inquiry into Stronger Futures was told in no uncertain terms that the consultation process taken by the government was completely inadequate. Criticism was made of the way that the consultations were conducted and of the interpretation of the outcomes of this process and the subsequent reports. Criticisms included: meetings being scheduled at times that people could not attend; inadequate notice given; not enough time given to discuss the issues when people did get there; comments misreported; no follow-up materials; not translated into language, and so on. Those were the local criticisms.

In counterpoint, the Australian Human Rights Commission said:

The Commission has previously brought these concerns to the attention of the government in relation to the inadequacy of the consultation process as outlined below:

- the timeframe for consultations was inadequate given the scope and depth of the issues raised in the Stronger Futures Discussion Paper

- significant measures such as income management were not listed for discussion during the Stronger Futures consultation process

- despite the Australian Government’s efforts to work with the Aboriginal Interpreter Service (AIS), there was neither sufficient time to translate the paper into the languages of Northern Territory communities nor to provide the Stronger Futures Discussion Paper to the interpreters sufficiently in advance of the consultations.

Just imagine what would happen if the government bowled up into some suburb, consulting on a particular development, and the consultation paper was written in Swahili. Then, the government having already made its mind up as to what it wanted to find from the consultation, took away their paper in Swahili and did what they were intending to do all along and then wondered why people were a bit narky when the foregone conclusion was eventually announced in whatever language. These concerns were also reiterated by the NT Anti-Discrimination Commissioner, who was somewhat scathing. Many Aboriginal Territorians impacted by the intervention have told me of their disappointment with federal consultations. There were concerns that only a few were spoken to, that the duration of visits was too short and that some Aboriginal Territorians could not participate because of language, dialect or hearing impairments. These are all pretty familiar issues that I am canvassing here. In fact, we are probably getting sick of hearing about them, but they are pervasive when they come to the issue of consultation with Aboriginal
people about these coercive reforms which impact their lives directly.

This amendment provides for the engagement of Aboriginal people in effective participation in the consultation process around matters that directly affect them. The minister would be required to develop consultation rules based on principles derived from the guidelines presented to the Senate committee by the Australian Human Rights Council. We intend to inform the development of good policies, rather than be twisted to suit predetermined outcomes. This consultation process around Stronger Futures was limited to a six-week period and that was early warning that things were headed in the wrong direction.

Poor consultation is the starting point which disempowers Aboriginal people. We believe—and we have outlined in these amendments that we are putting to the chamber tonight—that we can do better, that this is not rocket science. This is stuff that in some instances we can point to. We are able to do this well. We believe that something must be done to ensure that future consultations are not as brutally disempowering as the last round and the one before that and that they cannot get twisted. We have seen some instances tonight—and I suspect the minister will dispute this—where the government has already made up its mind by the time it rolls into communities in brand-new four-wheel-drives, consults, ticks a few boxes, sits under a tree, does the best that it can, does what it intended to do all along. We have seen these sorts of things happen over and over again.

We believe these amendments which are put forward in a spirit of constructive criticism of the bill would go a long way towards achieving the aim of effective and genuine authentic consultation with the people most directly affected. I am delighted to commend this last batch of Australian Greens amendments to this bill.

Senator CROSSIN (Northern Territory) (01:27): I did not make any comments about the consultation process in my second reading speech because I wanted to concentrate on other more important aspects of this. I do want to place on record though that I am disappointed that Senator Scullion is not here tonight to join us, particularly since he is the shadow minister for Indigenous affairs and we are talking about his constituents. I am not entirely sure that going to Borroloola for the show is where I would put my priorities.

Let us go back to the consultations. I think if you have a look at what occurred over the last couple of months in terms of just this package of legislation, you would probably see that, as with any process, there were good pockets of consultation and not so good pockets of consultation. I do want to say though that I have never seen an Indigenous affairs minister get out and about to the extent that Minister Macklin did during this time. She did not go to all of the communities. None of us could have done that. There are 73 of them and six regional towns. But I think she went to at least about eight communities. That is more than I think I have seen an Indigenous affairs minister do for a very, very long time. I did hear, for example, that Maningrida people were pretty upset that the men and women were separated for consultations. When I got out to Maningrida the women said to me that that was what they had asked for and that is properly what you would do as well if you were going to conduct consultations properly. But I did hear that the communities were brought together so they could all have a bit of a discussion with the minister about it.
I go back to what I said at the beginning of my second reading speech. That is that we had an intervention introduced into this parliament five years ago with absolutely no consultation. It was implemented within 48 hours and it hit the ground running. People across the Territory had no idea what had hit them. But we have actually had legislation in place for five years that we have said we would change. We said that when it came to the end of its time we would talk to Indigenous people about whether we would or would not replace it and, if we were to replace it, about what they would want to see in it. We have had review after review. People have had three or four years to think about what they want the future of the Northern Territory to look like. I have had many discussions with people about what they want in and what they do not want in. They do not want to see government business managers in the legislation again. They want that role totally changed, but that is there. They do not want to see blue-and-silver signs. They want to put their own signs up, but that is there.

Tonight we have concentrated a lot on what some people perceive Indigenous people do not want, but there is an awful lot in this bill that Indigenous people do want. Do you know what? They are women. The majority of them are women, and the trend is the same in our society. It is usually the women whose voices we do not hear. It is usually those women who do not get down to Melbourne or Sydney, do not travel and do not have computers. But when we actually sit down with them, what do they say to us? They have said: 'Keep going with the alcohol management stuff, Trish; that's what we want to see. And try and get my kids to school.' If you look at this legislation, that is where the emphasis has been.

I have a view, with Senator Ludlam and Senator Siewert, that the restrictions you are trying to put in this legislation are too confined. I do not think we have got consultation with Indigenous people right. I am not sure anybody has. I am not sure that even the National Congress of Australia's First Peoples has got it right. I am not sure even Reconciliation Australia or ANSTaR have got it right. What I do know is that the land councils seem to get it right, however they have it in their structure and however they go about it. I asked a couple of people involved in the land councils how it is they seem to get their consultations pretty well right. It is because they use anthropologists in their consultations. They know how to consult and how to consult those people.

I am not entirely convinced that the model you are putting into this legislation is right. I think that there is vast room for improvement. There is no doubt that there is room for improvement, and we could do it all over again if we had the chance. Would we do it differently? Maybe we would in some places, maybe we would not. We have to look at whether or not we even subcontract the land councils to do the next round of consultations or somehow involve the skills they have and the way in which they consult people. I think the constrictions and confines you have put in this clause are not the way to go.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:32): I appreciate the remarks from Senator Crossin, but the provisions that the Greens have put forward in this amendment are actually derived from the consultation guidelines presented to the Senate committee by the Australian Human Rights Council. We did not dream them up by ourselves; they came from the Human Rights Council. I note that the criticisms that were made in that evidence were, as Senator Ludlam has said, meeting schedules that people could not attend, inadequate notice, comments misreported, no follow-up and
materials not translated into local language. So I ask the minister in particular: does he concede that the Northern Territory Anti-Discrimination Commissioner was correct when he pointed out, in regard to consultation, problems with the process? He said:

... as the commissioner in the Northern Territory I have been told by many Aboriginal Territorians impacted by the Commonwealth intervention of their disappointment at federal consultations. In particular there were concerns that only a few were spoken to, that the duration of visits was too short and that some Aboriginal Territorians could not participate because of language, dialect or hearing impairments.

Do you accept the Northern Territory Anti-Discrimination Commissioner's criticism of the consultation?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:33): I think it is fair to say that we do not accept those criticisms. I understand that the commissioner you refer to was invited to all of the consultations. I am not sure that he got to many, but he was invited—as were the Human Rights Commission and a range of other people. We tried to be as open as possible and encouraged people with an interest to attend those consultations.

The key point to make is that, in any democratic process, people will want to discuss the adequacy or otherwise of the process. We have the same when we do Senate committee hearings—we get told that we have not been to enough places, we have not stayed long enough et cetera. There is always going to be that sort of debate. I make the broad point that this government has engaged in three rounds of consultations with Indigenous people in the Northern Territory on these issues as we have worked our way through the reform process. This last round was focused on these particular amendments to the legislation. We have had three rounds of consultation as we have developed policy over the last four years in government. There has been serious engagement with Indigenous communities on all these issues over an extended period. We cannot accept the Greens' amendments, because we think they confuse consultation with a much stronger concept of consent before being able to take any policy or regulatory action.

We think it is important that people consult, but in the end the government has to determine a policy and take actions in accordance with those policies. We think, as Senator Crossin said, that the Greens' amendments seek to place too much constraint on the capacity of the government to implement policies, but we are committed to the consultation process. As I say, there have been three rounds of consultations in the Northern Territory on matters relating to the intervention and the review of that. It is the case that not only did the minister engage but we also went to great lengths to ensure that any of the other interested parties, such as the human rights commissioner or the Northern Territory anti-discrimination commissioner, were invited to participate and to be present at those consultations.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:36): I ask the minister: does the government believe that free, prior and informed consent ought to be a fundamental principle of any consultation, particularly before the imposition of any legislative provisions on Indigenous communities? Do you further agree that, if you do not allow those provisions of free, prior and informed consent, you are undermining the rights of people in Indigenous communities?
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:37): I think that there is a difference between consent and consultation. We are referring to consultations with Indigenous people in the Northern Territory, while you are talking about a concept of consent before government takes policy decisions. Are you suggesting that we have to obtain consent before passing a bill? I think that there is a confusion about the two concepts. We are not saying that we have sought consent in that stronger form; we have sought to consult with people before bringing legislation before the parliament. In the end it is the parliament that makes that decision.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:38): The whole point of consultation is that communities should be well enough informed so that they can make a judgment before they consent to certain measures. Yes, parliament makes laws that govern the country; but, when you go to issues of Indigenous rights and the right to self-determination, you are effectively saying that communities have not been properly consulted—that the principle of free, prior and informed consent has been set aside and that this parliament is going to legislate to impose upon Indigenous communities a set of governance rules which are going to dominate them for the next 10 years against their free, prior and informed consent.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:39): I am not sure I have much to add, Mr Chairman. I think we are confusing two concepts. I know that there is a debate in international law about the phraseology that the senator uses and the acceptance of what it means, but the government is not making claims beyond that we sought to consult with the communities—to have a consultation process—before presenting a bill to the parliament, where the parliament makes the decision. We have put it no higher than that.

The CHAIRMAN: The question is that Australian Greens amendments (7) and (1) to (6) on sheet 7230 be agreed to.

Question negatived.

Bill, as amended, agreed to.

Senator LUDLAM (Western Australia) (01:40): by leave—Mr Chairman, as we did with the previous bill, we will not call a vote at this stage, but could you please record the Greens' opposition to the bill.

Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011

Bill—by leave—taken as a whole.

Senator LUDLAM (Western Australia) (01:40): I withdraw amendment (1) on sheet 7772, for similar reasons as the last one that I withdrew. This was consequential on an amendment for which I thought I put up a compelling set of arguments, but regrettably the earlier amendments were lost. So there is not much point re-litigating—

Senator Chris Evans: Try it again!

Senator LUDLAM: Indeed! If it were earlier in the night, I might try my luck. I withdraw that amendment.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:41): I move government amendment (1) on sheet BW233:

(1) Schedule 2, item 4, page 11 (line 18), omit "and at the Land Council's expense".

This is in relation to community land areas. The bill seeks to introduce a function for
land councils to provide legal or administrative assistance to community living area landowners in relation to dealings in land, if requested to do so. We are moving an amendment to remove the words 'and at the land council's expense' from the relevant provision to clarify that, while the assistance will not be at the cost of the landowner, the land council is able to recoup these costs. I think it is a fairly minor amendment and I would appreciate the support of the Senate.

Senator LUDLAM (Western Australia) (01:42): For the benefit of the minister: the Greens will support this government amendment.

The CHAIRMAN: The question is that government amendment (1) on sheet BW233 be agreed to.

Question agreed to.

Senator LUDLAM (Western Australia) (01:43): by leave—I move Greens amendments (2) to (6) on sheet 7222 together:

(2) Schedule 2, page 12 (after line 7), after item 8, insert:

8A Subsections 70(2BA) to (2BD)
Repeal the subsections.

(3) Schedule 2, page 12 (after line 30), after item 10, insert:

10A Subsections 70(2D) and (2E)
Repeal the subsections.

(4) Schedule 2, items 13 to 18, page 13 (lines 2 to 13), omit the items, substitute:

13 Sections 70A to 70H
Repeal the sections.

(5) Schedule 2, page 13 (after line 17), after item 20, insert:

20A Paragraph 73(1)(ba)
Repeal the paragraph.

20B Section 74AA
Repeal the section.

(6) Schedule 2, page 13 (after line 19), at the end of the Schedule, add:

22 Schedule 7
Repeal the Schedule.

These amendments repeal elements of the changes to the permit system put in place by the Howard government's Northern Territory intervention and kept in place by the Rudd and Gillard governments. These amendments are based on the 2008 bill proposed by the government to restore aspects of the permit system that they never went ahead with, so it is with a sense of irony that we are putting forward these amendments for the chamber's consideration tonight.

During the committee inquiry, many Aboriginal people expressed dismay that they were not in control of who had access to their land. These amendments attempt to address that by removing some of the NTER laws which impacted on the permit system. These include removing ministerial authority to grant people access to land, removing the ability to gain access to land with the permission of the occupier rather than the owner and removing a list of seven grounds on which you can enter Aboriginal land.

It is extremely disappointing to the Greens that these bills do not address changes made to the permit system as part of the intervention. Clearly, at some stage, the government had a will to move ahead with these reforms. When the intervention legislation was introduced to parliament in 2007, the former government went to great lengths to imply a relationship between the permit system and child sexual abuse in Aboriginal communities without presenting either any concrete evidence linking the permit system to cases of child abuse or any other aspects of Aboriginal disadvantage. Neither did they put forward a logical argument on how the permit system might facilitate child abuse. They did not
demonstrate either correlation or causation. I think that was one of the nastiest instances of the logic not merely being lazy but being offensive and deeply insulting to Aboriginal people.

The Greens believe that Aboriginal people should have the power to regulate access to their land. We share the concerns of the Aboriginal Peak Organisations NT. The permit system has been an important part of respecting the rights of Aboriginal people and their communities. This government, in keeping shameful Howard-era restrictions on the permit system, is again demonstrating contempt for Aboriginal people and their communities. We urge the government to support these amendments, which reflect their own amendments from 2008. I commend these amendments to the chamber.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:45): The government has made a decision not to support these amendments relating to the reinstatement of the permit system. We understand Senator Ludlam has a long history in these matters. The government is recognising that there would not be support in the lower house for these measures. I might make the point that the majority of Indigenous land in the north and east still requires permits. The legislation did provide that permits not be required in townships, but I understand that they are still required for use on roads unless it is declared otherwise. Apparently there has been no declaration in relation to the roads, so effectively the permit system is largely still in place. Government employees and contractors will continue to have access to Aboriginal land for work duties without need of a permit, but the government encourages people wishing to access Aboriginal land to continue to contact the relevant land council before visiting.

As I say, we think the majority of Indigenous land is still subject to the permit system. We accept the Greens argument that that did not apply to townships. It is not really part of this legislation. At the moment the government will not be supporting these amendments.

Senator MILNE (Tasmania—Leader of the Australian Greens) (01:47): I can understand that the government says we have a difference of opinion, but these reforms have been canvassed for a very long time. Let us go back to this issue of self-determination for Aboriginal people. You are not going to get successful outcomes in Aboriginal communities unless you give Aboriginal communities the opportunity to determine who they want to come on to their land through their permit system. They had a permit system. The Northern Territory has now sought to impose other rules about permit systems. What we are trying to do is go back and actually empower Aboriginal people to control their own communities in the way that they choose. That goes to the heart of the issue that I mentioned in my speech during the second reading debate. If we are going to respect Indigenous communities, if we are going to empower them to take control of their own future and not be forced to conform to something that somebody else thought up somewhere else or the Northern Territory government thought up and decided to impose on them, why wouldn't we give them back control in the way that they had with their permit system that suited their own arrangements? It is about local governance. Why wouldn't you respect what Aboriginal communities want in terms of their own permit systems? Why wouldn't you proceed with these reforms?
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:49): I thought I made clear that effectively the government's policy position has not changed. We support the permit system. We recognise that it applies on the majority of Indigenous land. I explained that in practice there have not been declarations in relation to roads leading into townships, but we acknowledged that the townships were not covered by the permit system. We have taken the view that in this legislation we are not seeking to make a change in that regard. It is in part a judgment about what is possible in this parliament. We have not changed our policy position. We are not seeking through this bill to make any change in relation to the permit system. I understand the senator's point, but the government have made a judgment not to support these amendments in the bill.

Question negatived.


(1) Schedule 3, page 14 (after line 15), after item 3, insert:

3A After section 99

Insert:

99A The Racial Discrimination Act is not affected

This Part does not affect the operation of the Racial Discrimination Act 1975.

Can I just indicate that this is the Racial Discrimination Act provision that we debated and that the Senate supported unanimously. It is inserted into this third bill as well. I do not think I need to speak any further to it.

Question agreed to.

Senator WRIGHT (South Australia) (01:50): I move Australian Greens amendment (7) on sheet 7222:

(7) Schedule 4, items 1 to 9, page 21 (line 4) to page 24 (line 10), omit the items, substitute:

1 Subsection 15AB(1)

Repeal the subsection, substitute:

(1) In determining whether to grant bail to a person charged with, or convicted of, an offence against a law of the Commonwealth, or in determining conditions to which bail granted to such a person should be subject, a bail authority must take into consideration the potential impact of granting bail on:

(a) any person against whom the offence is, or was, alleged to have been committed; and

(b) any witness, or potential witness, in proceedings relating to the alleged offence, or offence.

2 Subsection 15AB(2)

Omit "subparagraph (1)(a)(i) or (ii)", substitute "paragraph (1)(a) or (b)".

3 Subsection 15AB(3)

Repeal the subsection.

4 Subsections 16A(2A) and (2B)

Repeal the subsections.

5 Application of amendments

(1) The amendments made by items 1, 2 and 3 of this Schedule apply to a proceeding relating to bail that:

(a) is initiated on or after commencement; and

(b) is not an appeal against a decision of a bail authority that was made before commencement.

(2) The amendment made by item 4 of this Schedule applies to a proceeding relating to sentencing that:

(a) is initiated on or after commencement; and

(b) is not an appeal against a sentence that was imposed before commencement.

The government's bill seeks to extend the Commonwealth prohibition of consideration
of customary law in bail and sentencing to the Northern Territory, except in heritage related crime where customary law can be considered. This Greens amendment replaces the whole of the government's current schedule with a new schedule. The amended schedule removes existing laws which prohibit consideration of customary law in bail and sentencing in relation to Commonwealth offences and prevents the extension of this prohibition to Northern Territory offences. The result of this amendment is that the prohibition on consideration of customary law in bail and sentencing would be entirely removed. Judges would be allowed to consider customary law federally and in the Northern Territory.

The Australian Greens support the provisions which will allow consideration of cultural practices and customary practices in bail or sentencing decisions for offences relating to cultural heritage. However, we believe the legislation does not go far enough. The existing provisions, implemented as part of the Northern Territory intervention, remove the discretion of judges to consider Aboriginal customary law and cultural practices and, as such, are deeply discriminatory and contribute to already climbing rates of incarceration and essentially undermine Aboriginal culture.

Numerous submissions and evidence have pointed to the inherent inequality in prohibiting judges from considering Aboriginal culture, when the dominant culture is being considered all the time in our courts. Representatives from the Northern Australian Aboriginal Justice Agency commented on this in their evidence before the community affairs inquiry:

There is an American academic, Patricia Williams she is a black woman who describes the majoritarian privilege of not noticing one's self. That is the danger with this sort of law, that we, being white fellows, do not recognise our culture and our custom as we think that is the status quo. When it is Aboriginal people it is custom and culture and it is excluded. That is why at the core of this law there is something that really should trouble us.

That sentiment is supported by evidence from the Central Australian Aboriginal Legal Aid Service:

We strongly oppose the exclusion of cultural practice and customary law from bail and sentencing considerations ... Basically, our position is that this puts Aboriginal people into a different position for sentencing and bail purposes than any other member of the population when they come before the courts. It is a discriminatory practice that needs to be abolished. The argument that this gives better protection to Aboriginal women and children is a fallacious argument and in some instances people will be worse off because of this particular provision. Our strong position is that that section of the bill should be deleted.

Chief Justice Riley, of the Supreme Court of the Northern Territory, has also commented on the negative impact of the law. He said:

... the court is not entitled to consider why an offender has offended and pass an appropriate sentence. The court is required to ignore the actual circumstances of the offending." This "means that the court must sentence in partial factual vacuum ... Aboriginal offenders do not enjoy the same rights as offenders from other sections of the community. It seems to me this is a backwards step.

It is well known that the Northern Territory has the highest imprisonment rates in the country and this rate is on the rise. In 2010-11 the Northern Territory had the highest proportionate and percentage increase in prison numbers throughout Australia. Removing judicial discretion to consider mitigating factors in bail and sentencing will do nothing to address this serious issue. As APO Northern Territory noted:

A system that inhibits the discretion of the court and the power of the experienced and qualified
decision maker to consider and weigh up all relevant facts, can only contribute to this alarming and increasing imprisonment rate.

Finally, prohibiting the consideration of customary law sends a clear message to Aboriginal people that their culture does not matter. This is a serious dismissal and stands in stark contrast to international law and best practice, which shows the vital role culture plays in improving outcomes for indigenous people.

Ms Rosas, Director of NAAJA, commented on this issue:

For Aboriginal people before the courts, the law still excludes our customary law and culture from bail and sentencing. This says to our people that our customs and culture do not count or that they are part of the problem. This is insulting and offensive to us as Aboriginal people. The law says to the courts that they cannot apply the ordinary principles for setting their sentences. The courts cannot take into account all relevant factors when sentencing Aboriginal people. This is unfair and unjust. These provisions must be scrapped. Instead, government should be working with elders to take responsibility for offending in their communities.

This was a sentiment that was echoed by the Aboriginal Peak Organisations Northern Territory. The emphasis on culture that is often observed in government consultations with Aboriginal people must be recognised. Aboriginal customary law and practice has the potential to be used as a means of empowering Aboriginal people to take responsibility for offending within their own communities. Its exclusion sends the wrong message, that Aboriginal culture and customs are not valued, and is in direct conflict with the expressions of Aboriginal people that culture must be strengthened. These provisions, taken from the intervention legislation and slightly softened, are counterproductive to the government's own aims of improving the wellbeing of Aboriginal people in the Northern Territory and building a stronger future. They undermine Aboriginal culture and are clearly discriminatory.

What is really interesting to me is an article I have seen, written in 2006, which was a commentary on the way these matters were incorporated into the original intervention legislation. It describes Minister Brough as using 'a shocking level of violence' as the basis for saying customary law should be abolished altogether and immediately. This article decries that decision and says: 'Over the last 30 years customary law has been the subject of careful consideration by Commonwealth, Western Australian, Northern Territory and New South Wales law reform commissions. Some of these reports have been acted upon, others not. That work should not be swept away in a frenzy of rhetoric or media attention unless close scrutiny shows us that the current system is causing problems.

The article goes on to say: 'Customary law is now taken into account in all sorts of civil matters. For some people it can lessen the sense of disenfranchisement and can be a valuable step towards reconciliation. Yet the greatest public misunderstanding is in the criminal area, so let's be clear: customary law is not an excuse or defence to violent crimes. Customary law can only be taken into account in mitigation of sentence.' That is the Greens argument exactly.

The article continues: 'The age of the accused, their cultural background and any traditional punishment can all have an effect on the sentence ordered by the court.' The writer of this article goes on to say: 'To lawyers, of course, this is not an unusual concept. The age, background, religion, contrition et cetera are always taken into account and argued in mitigation for any defendant convicted of any crime. The conviction and sentence are always separate.'
The factors that caused a crime or go to explain the defendant's conduct in any way will always be considered. Should this right be denied to Indigenous people when it applies to everyone else? That would not be fair.'

Interestingly enough, it was actually the current Attorney-General, Minister Nicola Roxon, the shadow Attorney-General at the time, who wrote that interesting article. Isn't it sad how views change over time? There is still time for her to realise the mistake that has been made, though, in this legislative drafting. I urge the Senate to support our amendment to provide appropriate discretion to the court to consider customary law.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (01:59): In response to Senator Wright, I suspect her grasp of the legal issues are far better than mine—and I suspect Senator Payne is in the same boat. I will do my best to explain why the government is not prepared to support the amendment. It is essentially because it would have the effect of repealing the prohibition on considering customary law in bail and sentencing. That was a measure that we see as consistent with the Council of Australian Government's agreement following the 2006 Indigenous summit on violence and child abuse in Indigenous communities where there was concern that customary law arguments were being used to undermine or argue that crimes should be treated less seriously.

The view was taken that, while customary law, cultural practice, ought to be able to be considered in a court hearing, when it came to the question of bail and sentencing, customary law should not be used in a way that might undermine the seriousness of the issue before the court. What we have sought to do is continue that approach and reject the Greens amendment. That is not to say though that people before the courts cannot raise their cultural issues—for instance, the example given to me is that it does not prevent an Indigenous person arguing that they ought to be given bail in order to attend a funeral; that it does not stop people introducing cultural issues into evidence or argument before the court. But the prohibition is on it being considered in terms of a consideration of bail and sentencing because, as I say, the debate in Australia around that time was about concern that the seriousness of things like abduction of women et cetera was being defended on the basis of customary practice and that the seriousness of an offence was being undermined. As a result of that sort of debate, this provision came into being. The government thinks it is an appropriate provision, so we will not support the Green amendment.

I want to make the point that this bill seeks to improve the legislation in recognising the consequences for offence provisions that protect cultural heritage, including sacred sites and heritage objects. I understand there has been some litigation where this became an issue and this is an extra measure designed to assist in that regard, but we cannot accept the Green amendment.

I make the point also that we reject the claims that it is discriminatory. Courts can interpret what is regarded as cultural practice, and so it would apply to people of different faiths and cultures more broadly, so I do not see it as being a discriminatory measure at all. Those are the reasons why the government cannot support the Green amendment.
The CHAIRMAN: The question is that Australian Greens amendment (7) on sheet 7222 be agreed to.

The committee divided. [02:08]

(The Chairman—Senator Parry)

Ayes................. 8
Noes............... 42
Majority............. 34

AYES

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

NOES

Abetz, E                  Bilyk, CL
Bishop, TM                Boswell, RLD
Boyce, SK                 Brown, CL
Bushby, DC                Cameron, DN
Carr, KJ                  Carr, RJ
Crossin, P                Edwards, S
Eggleston, A              Evans, C
Farrell, D                Fawcett, DJ
Fierravanti-Wells, C      Fifield, MP
Furner, ML                Gallacher, AM
Hogg, JJ                  Joyce, B
Kroger, H (teller)        Ludwig, JW
Lundy, KA                 Marshall, GM
McEwen, A                 McKenzie, B
McLucas, J                Moore, CM
Nash, F                   Parry, S
Payne, MA                 Polley, H
Singh, LM                 Smith, D
Stephens, U               Sterle, G
Thistlethwaite, M         Thorp, LE
Urquhart, AE              Williams, JR

Question negatived.

Senator LUDLAM (Western Australia) (02:10): I seek leave now—and I understand this has been discussed with the whips—to table a document that many contributors to this debate, I suspect from all sides, have either flicked through or quoted from during the course of this long, contested but very interesting debate. It is the issue of Arena magazine, No. 118, that deals directly with the intervention. I invite all senators before we commit it to the permanent record downstairs to take a look at some of the very heartfelt and well-researched material in it.

Leave granted.

The CHAIRMAN: The question is that these bills, as amended, be agreed to.

Question agreed to.

Bills reported with amendments; report adopted.

Third Reading

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (02:12): I move:

That these bills be now read a third time.

The Senate divided. [02:13]

(The President—Senator Hogg)

Ayes ................ 43
Noes ................  9
Majority ............ 34

AYES

Abetz, E                  Bilyk, CL
Bishop, TM                Boswell, RLD
Boyce, SK                 Brown, CL
Bushby, DC                Cameron, DN
Carr, KJ                  Carr, RJ
Crossin, P                Edwards, S
Eggleston, A              Evans, C
Farrell, D                Fawcett, DJ
Fierravanti-Wells, C      Fifield, MP
Furner, ML                Gallacher, AM
Hogg, JJ                  Joyce, B
Kroger, H                 Ludwig, JW
Lundy, KA                 Macdonald, ID
McEwen, A (teller)        McEwen, A (teller)
McLucas, J                McLucas, J
Nash, F                   Nash, F
Payne, MA                 Payne, MA
Singh, LM                 Singh, LM
Stephens, U               Stephens, U
Thistlethwaite, M         Thistlethwaite, M
Urquhart, AE              Urquhart, AE
Thursday, 28 June 2012

Question agreed to.
Bills read a third time.

PETITIONS

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

Israel
To the Honourable President and members of the Senate in Parliament assembled:
The petition of the undersigned shows:
That the Israeli Civil Administration has distributed maps of locations/areas in Susiya, near Hebron in the Occupied Palestinian Territories, whereby 51 structures are included indicating that demolition will occur. If demolition happens, not only will more than 160 people be displaced and made homeless, but buildings funded through aid programmes, including a shelter to be used as a clinic funded by Action Aid Australia, may be demolished.

Your petitioners ask that the Senate:
Bring to the attention of the foreign minister the need to make urgent representations to Israel's Ambassador in Australia regarding the need to lift these demolition orders and end the inhumane practice of demolishing homes and community infrastructure in the Occupied Palestinian Territories while continuing the "unhelpful" and "counter-productive" expansion of Israeli settlements which are regarded illegal by the international community.

by Senator Rhiannon (from 75 citizens).

Petition received.

COMMITTEES

Selection of Bills Committee
Report

Senator McEWEN (South Australia—Government Whip in the Senate) (02:16): I present the eighth report for 2012 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 8 OF 2012

The committee met in private session on Wednesday, 27 June 2012 at 7.39 pm.
The committee resolved to recommend—
That—
the provisions of the Customs Amendment (Smuggled Tobacco) Bill 2012 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 14 August 2012 (see appendix 1 for a statement of reasons for referral);
the provisions of the Military Court of Australia Bill 2012 and the provisions of the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee and the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 14 August 2012 (see appendices 2 and 3 for statements of reasons for referral); and

The committee considered a proposal to refer the Tax Laws Amendment (Managed Investment Trust Withholding Tax) Bill 2012 to the Economics Legislation Committee, but was unable to reach agreement on whether the bills should be referred (see appendix 4 for a statement of reasons for referral);

The committee resolved to recommend—that the following bills not be referred to committees:
Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012
Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012
Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012
Customs Tariff Amendment (2012 Measures No. 1) Bill 2012
Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012
Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012
Maritime Legislation Amendment Bill 2012
Statute Stocktake ( Appropriations) Bill (No. 1) 2012
Tax Laws Amendment (Investment Manager Regime) Bill 2012
Transport Safety Investigation Amendment Bill 2012
Veterans’ Affairs Legislation Amendment Bill 2012

The committee considered the Financial Framework Legislation Amendment Bill (No. 3) 2012 and, noting that the bill had passed the Senate on 27 June 2012, resolved to recommend that the bill not be referred to a committee.

The committee recommends accordingly.

The committee deferred consideration of the following bills to its next meeting:
Fisheries Legislation Amendment Bill (No. 1) 2012
Protecting Children from Junk Food Advertising (Broadcasting and Telecommunications Amendment) Bill 2011
Special Broadcasting Service Amendment (Natural Program Breaks and Disruptive Advertising) Bill 2012.

(Apple McEwen)
Chair
28 June 2012

Appendix 1

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Customs Amendment (Smuggled Tobacco) Bill 2012

Reasons for referral/principal issues for consideration:
To ensure the new proposed criminal offences are given proper examination

Possible submissions or evidence from:
Australian Customs and Border Protection Command Attorney-General’s Department
Australian Federal Police
Tobacco companies

Committee to which bill is to be referred:
Senate Legal and Constitutional Affairs Committee

Possible hearing date(s):
July 2012

Possible reporting date:
14 August 2012

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

Appendix 2

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Military Court of Australia Bill 2012
Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012

Reasons for referral/principal issues for consideration:
The Senate Foreign Affairs, Defence and Trade Committee has extensive knowledge, background and history on the military justice debate; former Defence Minister Hill tasked the Committee with regular six-monthly reviews on the implementation of the Government’s response
to the Committee's 2005 review into the Military Justice system. Given that experience, and the fact that the new model is so different from that it replaces, it would be prudent to have the Bills considered by that Committee.

The Bills were introduced into the House by the Attorney General and legislate for the creation of a new court. In this respect they fall within the purview of the Senate Legal and Constitutional Affairs Committee, which may be able to consider those aspects of the Bill more thoroughly.

Possible submissions or evidence from:
Department of Defence
Committees to which bill is to be referred:
Senate Foreign Affairs, Defence and Trade Legislation Committee Senate Legal and Constitutional Affairs Legislation Committee

Possible hearing date(s):
Possible reporting date:
14 August 2012
(signed)
Senator McEwen
Whip/Selection of Bills Committee member

Appendix 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Military Court of Australia Bill 2012; and
Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012

Reasons for referral/principal issues for consideration:
Compatibility with Chapter III of the Constitution;
Appropriate composition of courts;
Trial by jury provisions;
Eligibility of reserve force judges to sit as members of the Court.

Possible submissions or evidence from:
Representatives of the Australian Defence Forces Returned and Services League of Australia
Department of Defence
Attorney-General's Department

Committee to which bill is to be referred:
Legal and Constitutional Affairs

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

Possible reporting date:
To be determined by committee
(signed)
Senator Fifield
Whip/Selection of Bills Committee member

Appendix 4
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Tax Laws Amendment (Managed Investment Trust Withholding Tax) 2012

Reasons for referral/principal issues for consideration:
Doubling of Tax
Impact on investment in Australia
Sovereign risk issues
Impact on long-term infrastructure investment and other investment

Possible submissions or evidence from:
Treasury and ATO
Property Council of Australia
Financial Services Council
Private Fund Managers
Infrastructure Partnerships Australia CFMEU and ETU
Tax Institute
Professional Accounting Bodies
National Tourism Alliance
Tourism Accommodation Association

Committee to which bill is to be referred:
Economics
Possible hearing date(s):
July 2012
Possible reporting date:
14 August 2012
(signed)
Senator Fifield
Whip/Selection of Bills Committee member

NOTICES

Presentation

Senator Rhiannon to move:
That the Senate—
(a) notes that:
(i) family planning is key to achieving all Millennium Development Goals, especially Goal 5 which seeks to reduce maternal mortality by three-quarters and is the least likely goal to be achieved,
(ii) maternal mortality is a leading cause of death and illness for all women worldwide, with pregnancy the biggest killer of girls aged 15 to 19,
(iii) over 200 million married women and hundreds of millions more single and adolescent women still cannot access contraception and reproductive health services, fundamental human rights which can prevent 99 per cent of maternal deaths, and
(iv) on 11 July 2012, the United Kingdom Government and the Bill & Melinda Gates Foundation host the global Family Planning Summit in London, which aims to reduce maternal deaths by 200 000 per year and to prevent 1 million infant deaths by 2020; and
(b) calls on the Government to:
(i) increase aid funding for family planning, with a special emphasis on investing in comprehensive rights-based approaches that eradicate social and cultural barriers, in the 2012-13 budget and beyond, and
(ii) support the work of the International Consortium of Sexual and Reproductive Health Rights, comprised of CARE Australia, Marie Stopes International Australia, the Burnet Institute, the International Women's Development Agency, and Plan International Australia, and other initiatives that enable women to claim their right to decide if and when to have children.

Senator McEwen to move:
That the Senate—
(a) notes that in 2012 Australia is commemorating the 70th anniversary of the War in the Pacific and acknowledging the contribution of our service personnel to the defence of Australia during that period of World War II at events and memorial services in Australia and elsewhere in the Pacific region;
(b) notes that:
(i) the 2/27th Battalion AIF was formed at Woodside in South Australia in May 1940 and disbanded in March 1946,
(ii) the 2/27th Battalion AIF fought in all the major World War II campaigns in which Australia was engaged and was awarded honours for the following battles: North Africa, Syria, The Litani, Sidon, Adloun, Damour, South West Pacific, Kokoda Track, Efogi-Menari, Buna-Gona, Gona, Ramu Valley, Shaggy Ridge, Balikpapan and Borneo,
(iii) during the campaign in New Guinea in 1942 the Battalion suffered heavy casualties during the battle at Brigade Hill on 8 September and at Gona in November and December, and
(iv) the Battalion continued fighting in New Guinea and was serving in Balikpapan, Borneo, when the war ended in August 1945;
(b) acknowledges the invaluable contribution of the 2/27th Battalion AIF throughout World War II;
(c) expresses its appreciation to the surviving members of the 2/27th Battalion AIF who served with courage and distinction in the Pacific War and other campaigns in World War II; and
(d) thanks all those who served in Australia's defence forces during World War II.

Senators Moore and Boyce to move:
That the Senate—
(a) notes:
(i) the Australian Government's commitment to provide $50 million in support of global polio eradication efforts over 4 years, and
(ii) the recent declaration by the 65th World Health Assembly that the completion of polio eradication is a programmatic emergency for global public health, indicating that if polio is not successfully eradicated very soon, the consequences will be catastrophic;

(b) recognises that in February 2012, India was removed from the list of countries where polio remains endemic, proving that eradication strategies are effective when they are fully implemented and that polio can be eradicated anywhere – there has not been a single reported case of polio in India since January 2011;

(c) notes that the Global Polio Eradication Initiative currently faces a funding shortfall of US$945 million for the full implementation of its 2012-13 Emergency Action Plan, especially targeting Afghanistan, Pakistan and Nigeria and that immunisation campaigns have had to be cancelled or scaled back in 33 countries in Africa and Asia to make up for this shortfall, leaving more children vulnerable to the disease and increasing the risk of the international spread of polio; and

(d) encourages the Australian Government to support efforts to deliver a polio-free world and to encourage other countries to do likewise at the 67th session of the United Nations General Assembly.

Postponement

The following items of business were postponed:

Business of the Senate notice of motion No. 1 standing in the name of the Leader of the Australian Greens (Senator Milne) for today, proposing a reference to the Economics References Committee, postponed till 14 August 2012.

General business notice of motion No. 673 standing in the name of Senator Ludlam for today, relating to Mr Julian Assange, postponed till 15 August 2012.

General business notice of motion No. 781 standing in the name of Senator Hanson-Young for today, proposing the introduction of the Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012, postponed till 14 August 2012.

General business notice of motion No. 828 standing in the name of Senator Ryan for today, relating to standards of ministerial ethics, postponed till 14 August 2012.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (02:18): by leave—I move:

That general business notice of motion No. 825 standing in his name for today, relating to a review of the Fair Work Act, be postponed till 14 August 2012.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Reference

Senator RHIANNON (New South Wales) (02:19): I move:

That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 31 December 2012:

The administration, management and objectives of Australia's overseas development programs in Afghanistan in the context of the 'Transition Decade', including:

(a) an evaluation of Australia's bilateral aid program to date in Afghanistan;

(b) an evaluation of the interaction and effectiveness of Australia's bilateral aid, multilateral aid, the Afghanistan Reconstruction Trust Fund and other Australian government departments delivering aid;

(c) the means to most effectively address the Millennium Development Goals in Afghanistan;

(d) how to guarantee the safety of all workers involved in the delivery of Australian aid programs in Afghanistan; and

(e) any other related matters.

Question agreed to.
BILLS

Broadcasting Services Amendment (Public Interest Test) Bill 2012

First Reading

Senator LUDLAM (Western Australia) (02:20): I move:
That the following bill be introduced: A bill for an Act to amend the Broadcasting Services Act 1992 and for related purposes.

Question agreed to.

Senator LUDLAM: I present the bill and move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator LUDLAM (Western Australia) (02:20): I move:
That this bill be now read a second time.

Senator LUDLAM: I table an explanatory memorandum relating to the bill and seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

The Broadcasting Services Amendment (Public Interest Test) Bill 2012 will create a new Part 5A in the Broadcasting Services Act 1992 for a public interest test applying to changes in control of nationally significant media enterprises.

Australia has the most concentrated media ownership in the Western world. A strong democracy requires independent and diverse media and who controls the media is a matter of national interest. Between them, News Limited and Fairfax Media dominate the news landscape, with only one metropolitan newspaper not owned by either. The Australian Greens believe the current concentration of media ownership is corrosive of the fabric of Australian democracy.

There have been numerous inquiries and reviews in recent decades into media ownership. The concept of a public interest test in relation to control of significant media interests is not a new idea but one that that now must be acted upon in the national interest.

The purpose of a public interest test is not to eliminate bias in media. Bias is normal. Bias is expected, and in a diverse media ecosystem, an untidy tangle of contested biases are a sign of good health. Bias is only a problem when concentration of ownership contracts to the extent it has in Australia today. A tiny handful of media groups own and control most media outlets in Australia, and while Australians may be getting our news and opinion on a much wider range of devices and platforms, existing interests are moving swiftly to entrench their incumbency into the converged world. The Bill is an important response to our current situation.

As recommended by the Convergence Review, the Bill will apply to media operations of "national significance". These entities will be defined as organisations that hold television and radio broadcast licences, including subscription services, or own newspapers, as already defined in the Broadcasting Services Act, that have:

- control over the media content they deliver;
- an Australian audience of at least 500 000 per month; and
- a minimum revenue of $50 million per year derived from supplying media content in Australia.

The Convergence Review indicates such a definition would capture the 15 largest established media organisations in Australia, including New Limited, Fairfax, the commercial television and radio broadcasters, and Foxtel.

The public interest test will apply where a person becomes in a position to exercise control of a media operation of national significance on or after 28 June 2012, that is today.

Whether a person becomes in a position to exercise control of a media operation will be determined under the current definition of control in Schedule 1 in the Broadcasting Services Act 1992 including that control is deemed when a person has a 15% interest in a media company.
The public interest test will also be triggered if a person with at least a 10% stake in a media company is appointed to the Board and in the event of a takeover bid under Chapter 6 of the Corporations Act 2001.

In the absence of a new communications regulator as recommended by the Convergence Review, under the Bill the Australian Communications and Media Authority will be responsible for applying the public interest test.

A person who becomes in a position to exercise control of a media operation of national significance will be responsible for informing ACMA. The matters to be taken into account by ACMA in applying the test include:

- whether the person's position to exercise control will diminish the diversity of unique owners providing general content services as well as news and commentary at a national level;
- whether the person's position to exercise control will diminish the range of content services at a national level;
- whether the person's position to exercise control will represent a significant risk that the media operation will not comply with its obligations;
- the likely impact on editorial independence for the media operation;
- the likely impact on free expression of opinion; and
- the likely impact on the fair and accurate presentation of news.

These matters include those recommended by the Convergence Review and matters recommended by the ACCC in their submission to the Productivity Commission inquiry into media ownership in 1999. These matters will cover situations where a person seeks to control a media organisation of national significance to pursue his or her other commercial interests.

The cross media ownership laws will continue as they currently are until broader reform is implemented. The ACCC will also continue its role in relation to anti-competitive mergers and acquisitions.

The Bill will provide for ACMA to publish guidelines on the application of the public interest test. The Broadcasting Services Act 1992 already provides for ACMA to fulfil its function in an open and transparent manner including providing for the making of submissions and the possibility of public hearings. Decisions of ACMA in relation to the public interest test will be reviewable by the courts.

I commend this bill to the Senate.

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

Leave granted; debate adjourned.

MOTIONS

Australian Broadcasting Corporation

Senator LUDLAM (Western Australia) (02:21): I, and also on behalf of Senator Singh, move:

That the Senate—

(a) notes:

(i) the online presence of the Australian Broadcasting Corporation (ABC) provides important competition in news and current affairs content, and

(ii) the ABC is accountable to its Charter, its board and the Parliament;

(b) rejects any suggestion that the ABC should not be competing in the online environment; and

(c) supports unequivocally the right of the ABC to provide a strong online presence.

Question agreed to.

Wind Farms

Senator MADIGAN (Victoria) (02:21): I, and also on behalf of Senator Back, move:

That the Senate—

(a) notes that:

(i) Saturday, 23 June 2012, marked the anniversary of the tabling of the final report by the Community Affairs References Committee, The social and economic impact of rural wind farms,
(ii) this report made seven recommendations, including recommendations calling for studies on the effects of wind farms on human health,

(iii) on 7 February 2012, the Senate passed a motion calling on the Government to immediately act on the seven recommendations of the report,

(iv) 12 months after the tabling of the report, and more than 4 months since the Senate called on the Government to immediately act on the recommendations, the Government has failed to respond to the Senate's call, and

(v) Mr Lane Crockett, board member of the Clean Energy Council and General Manager of Pacific Hydro, one of the leading wind farm corporations in Australia, has called on the Government to launch a national review into the health effects of all forms of power generation, including wind power; and

(b) orders that there be laid on the table by the Minister representing the Minister for Health, no later than noon on Tuesday, 14 August 2012, information detailing the actions being taken by the Government to act on the recommendations calling for studies on the effects of wind farms on human health.

The PRESIDENT: The question is that the motion moved by Senator Madigan and Senator Back be agreed to.

The Senate divided. [02:26]

(The President—Senator Hogg)

Ayes.................29
Noes..................34
Majority.............5

AYES

Ronaldson, M
Sinodinos, A
Williams, JR

AYES

Bilyk, CL
Brown, CL
Carr, KJ
Crossin, P
Evans, C
Faulkner, J
Gallacher, AM
Hogg, JJ
Ludwig, JW
Marshall, GM
McLucas, J
Moore, CM
Rhiannon, L
Stephens, U
Thistlethwaite, M
Urquhart, AE
Whish-Wilson, PS

NOES

Bilyk, CL
Brown, CL
Carr, KJ
Di Natale, R
Evans, C
Fawcett, DJ
Fierravanti-Wells, C
Furner, ML
Hanson-Young, SC
Humphries, G
Joyce, B
Kroger, H (teller)
Ludlam, S
Lundy, KA
McEwen, A (teller)
Milne, C
Polley, H
Singh, LM
Sterle, G
Thorpe, LE
Waters, LJ
Whish-Wilson, PS

PAIRS

Back, CJ
Brandis, GH
Bishop, TM
Carr, RJ
Carr, RJ
Cameron, DN
Deng, C
Di Natale, R
Farrell, D
Furner, ML
Hanson-Young, SC
Humphries, G
Joyce, B
Kroger, H (teller)
McEwen, A (teller)
Milne, C
Polley, H
Singh, LM
Sterle, G
Thorpe, LE
Waters, LJ
Whish-Wilson, PS

Question negatived.

Carbon Pricing: Royal Society for the Prevention of Cruelty to Animals

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (02:29): I move:

That the Senate—

(a) notes that:

(i) Australian charities, including the Royal Society for the Prevention of Cruelty to Animals (RSPCA) face significantly higher electricity and other costs as a result of the Government's carbon tax,

(ii) the RSPCA faces up to $180 000 in increased costs because of the carbon tax and that the Chief Executive Officer of its Australian
Capital Territory branch, Mr Linke, has stated that services to help animals could be cut, and

(iii) the Government’s Low Carbon Communities program will be of no assistance to thousands of charitable organisations across the nation facing carbon tax-related cost increases; and

(b) condemns the Government for imposing major extra cost burdens on charitable organisations like the RSPCA, forcing them to cut services, including to save helpless and injured animals.

Question negatived.

BILLS

Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012

First Reading

Senator MADIGAN (Victoria) (02:30): I, and also on behalf of Senator Xenophon, move:

That the following bill be introduced: A Bill for an Act to amend the Renewable Energy (Electricity) Act 2000, and for related purposes.

Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012.

Question agreed to.

Senator MADIGAN (Victoria) (02:30): I present the bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator MADIGAN (Victoria) (02:31): I move:

That this bill be now read a second time.

I table an explanatory memorandum relating to the bill and seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

I am very pleased to introduce this Bill in both my name, and that of Senator Nick Xenophon, who cannot be here today. This Bill is being introduced in the hope of resolving a problem, a serious problem that has spread across this country for a number of years.

This Bill seeks to give powers to the Clean Energy Regulator to ensure that accredited powers stations, that are wind farms, do not create excessive noise. Among other things, the Bill adds a definition of ‘creates excessive noise’ and ‘wind farm’ into the Renewable Energy (Electricity) Act 2000.

Everyone in this place is fully aware that on 23 June 2011, just over 12 months ago, the Senate Community Affairs References Committee tabled its report into the social and economic effects of rural wind farms. In its report, the Committee made 7 recommendations. Those recommendations were, to put it bluntly, extremely limited but at least they made some mention of the concern about the effects of wind turbines on human health and recommended studies be undertaken to resolve the matter. To date nothing has been done. If it had been done, this legislation may not have been necessary.

For several years before I took my place as a Senator last July, I had been receiving repeated reports of people in distress due to the ever growing number of wind turbines that were spreading across the farmland of Victoria. People suffering illnesses they had never had before, stress, high blood pressure, serious sleep disorders and deprivation. I was also becoming aware that we had a new form of refugee in our midst, the ‘wind farm refugee’.

These people, these wind farm refugees, have been forced to leave properties they and their families had lived on for generations. Driven off by a situation over which they had no control. These were people whose daily lives involved hard work, difficult conditions and adversity. These were rural people and farmers; the type of Australians who have faced drought, fires, floods and all the other disasters known to the generations of country people who have come before them.
These people, these iconic Australians were suddenly being forced to flee the properties that held not only their memories and their lives but hold the bones of their ancestors. What could do that, except the direst of circumstances?

These people are not political activists; they are not radicals or zealots. They do not chain themselves to buildings or machinery; they do not attack others and they do not seek the end of renewable energy. They are the typical average Australian who hates making a fuss, who doesn’t readily get involved in political issues but is always there for family and community. These people want to live their lives, bring up their families and generally remain in the background.

In every case I have come across these people, those in distress because they have been driven off their land and those in even greater distress because they have nowhere else to go and can get no respite from their sufferings. In every case they have all stated their support for renewable energies, including wind farms. Like almost all Australians they believe that to use clean, safe, efficient and cost effective alternative technologies is something we should strive for but in doing so we should not pursue the clean aspects at the cost of safety or health.

We all know the stories of illnesses caused by asbestos, lead, mercury and other physical substances. We have all seen and heard, even experienced issues such as repetitive strain injuries, post traumatic stress disorders and numerous other conditions we could all name. In virtually every one of those cases those who originally suffered these problems were ridiculed, called ‘nutters’ or ‘whingers’, or simply had their conditions fobbed off as "it's all in your mind".

Now these people across Australia, not just in one or two places but in dozens of places, are suffering identical symptom and we are again told, 'nutters', 'whingers' and again we hear that "it's all in their minds". That is to be expected from the Wind Industry itself, which obviously would not want to accept that its industry could be the cause of a major health issue. It is also the type of thing I and others have come to expect from the Clean Energy Council, which is simply an advocate group for the Wind Industry. It is the argument being espoused by numerous blogs sites that dedicate themselves to the end of coal and the expansion of wind power.

But while it is to be expected from these groups, what is extremely disappointing is that it also comes from members of various State governments and the Federal governments, whether ALP or Coalition.

Where are the health studies that have been called for? We need genuine independent health studies incorporating experts from all related fields, including acousticians, neuro-specialists, stress experts, experts in sleep disorders; in fact experts in any of the areas that repeated disorders have been reported. These studies need to be conducted by eminent Australian specialists under Australian conditions using an approved methodology.

These are human beings who are suffering, Australian citizens and our constituents. They are not asking for anything that any other human being does not deserve as a basic human right. They want to live in safe and healthy conditions and it is the duty of their elected representatives to ensure that is what they get.

This Bill will hopefully go some of the way to alleviating the sufferings of some of these people and allow some to return to their homes. It may not solve all the issues but it is a start and should be put in place as soon as possible.

If the Wind Industry is as confident that there are no health issues as they keep telling me, then I would have thought they would be falling over themselves to have these studies done. They could then get on with building their industry and gathering their Renewable Energy certificates. Unfortunately I see plenty of advertising coming out about how wonderful wind farms are, how safe, how clean etc…; I see articles and letters in the paper, often by the same people, heaping praise on the wind industry and scorn on any that claim to be suffering.

Neither I nor Senator Xenophon can bring about these studies; that is up to the Government. But what we can do is to have legislation put in place to ensure that power stations deriving some or all of their power from wind must comply with acceptable standards and must openly disclose the
data that is necessary to ensure these health issues do not occur.

I will speak more about these issues at a later date, as I am sure will Senator Xenophon. I am encouraged by the support this issue has received from several members and senators and am confident that something can be done soon to alleviate the problems of those already suffering and to ensure we do not see any expansion in the number of wind farm refugees.

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

Leave granted; debate adjourned.

MOTIONS

Human Rights

Senator WRIGHT (South Australia) (02:31): I move:

That the Senate—

(a) notes that:

(i) in September 2011, the Government released a public discussion paper seeking community views on the consolidation of Commonwealth anti-discrimination laws, and

(ii) approximately 270 submissions were received;

(b) recognises that the Government has committed to introducing new protections against discrimination on the basis of sexual orientation and gender identity; and

(c) calls on the Government to introduce, as a matter of priority, legislation that ensures Commonwealth anti-discrimination laws are consistent with Australia’s international human rights obligations.

Question agreed to.

South Sudan

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (02:32): I move:

That the Senate—

(a) notes the Speaker of the Southern Sudan Legislative Assembly, the Right Honourable James Wani Igga, announced the Declaration of Independence Act for South Sudan on 9 July 2011; and

(b) congratulates the world’s newest state, the Republic of South Sudan, on its 1st anniversary on 9 July 2012.

Question agreed to.

DOCUMENTS

Queensland Government

Order for the Production of Documents

Senator WATERS (Queensland) (02:33): I move:

That there be laid on the table by the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, no later than 14 August 2012, any documents, including correspondence, created since 1 January 2009 in the possession or control of the Minister, his office, or the department, regarding:

(a) the adequacy of relevant Queensland Government departments’ administration of their responsibilities under the current or former assessment bilateral agreement established under the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act); or

(b) the capacity and likelihood of relevant Queensland Government departments to effectively administer the EPBC Act if an approvals bilateral agreement were to be entered into under the EPBC Act.

Question negatived.

COMMITTEES

Publications Committee

Report

Senator McEWEN (South Australia—Government Whip in the Senate) (02:33): On behalf of the Chair of the Publications Committee, I present the 17th report of the Publications Committee.

Ordered that the report be adopted.
BUDGET

Consideration by Estimates Committees

Senator McEWEN (South Australia—Government Whip in the Senate) (02:34): I present additional information received by committees relating to estimates.

*The list read as follows—*

- Community Affairs Legislation Committee
- Economics Legislation Committee
- Education, Employment and Workplace Relations Legislation Committee
- Environment and Communications Legislation Committee
- Finance and Public Administration Legislation Committee
- Foreign Affairs, Defence and Trade Legislation Committee
- Legal and Constitutional Affairs Legislation Committee
- Rural and Regional Affairs and Transport Legislation Committee

Senator McKENZIE (Victoria) (02:34):

I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Foreign Affairs, Defence and Trade Joint Committee

Report


Ordered that the report be printed.

Senators' Interests Committee

Documents

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (02:34): On behalf of Senator Bernardi, I present the register of senators' interests incorporating statements of registrable interests and notifications of interests of senators lodged between 1 December 2011 to 26 June 2012.

MINISTERIAL STATEMENTS

National Road Safety Strategy

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (02:35): I present a ministerial statement relating to the progress of the National Road Safety Strategy.

DOCUMENTS

Tabling

The PRESIDENT: I present the following documents:

- Further response to the report of the Joint Committee on Publications on the development of a digital repository and electronic distribution of the Parliamentary Papers Series
- Register of Senate senior executive officers’ interests incorporating alterations of registrable interests lodged between 1 December 2011 and 26 June 2012
- Response to resolution of the Senate – Assistant Treasurer (Mr Bradbury) – Proposed productivity commission inquiry into child care funding (agreed to 9 May 2012)
- Report to the Senate on government responses outstanding to parliamentary committee reports
- Auditor-General – Report no. 55 of 2011-12 – Performance audit – Administration of the
In respect of the response to government responses outstanding and the Presiding Officers' response, I ask that the documents be incorporated in Hansard. The documents read as follows—

PRESIDENT'S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS

AS AT 28 JUNE 2012

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the incoming government. The Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The government affirmed this commitment in June 1996 to respond to relevant parliamentary committee reports within three months of presentation. The current government indicated on 26 June and 4 December 2008 that it is committed to providing timely responses to parliamentary committee reports.

Although, on 29 September 2010, the House agreed to a resolution which places a six month response time on House and joint committee reports tabled in the House, the Senate has not agreed to a similar resolution. Therefore, this list is prepared on the basis of a three month reporting requirement for Senate and joint committee reports tabled in the Senate.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Privileges, Procedure, Publications, Regulations and Ordinances, Scrutiny of Bills, Selection of Bills and Senators' Interests. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within six months of the tabling of a report. The committee monitors the provision of such responses.
An entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Senate committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

**A guide to the legend used in the 'Date response presented/made to the Senate' column**

* See document tabled in the Senate on 27 June 2012, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 25 November 2011 for Government interim/final response.

** Report contains administrative recommendation – any response to those recommendations is to be provided to the JCPAA committee in the form of an executive minute.

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1 See House of Representatives Hansard, 26 June 2008, p6131 and 4 December 2008, p1263, and Journals of the Senate, 4 December 2008, p1447

2 See House of Representatives Votes and Proceedings, 29 September 2010, p44

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<th>Response made within specified period (3 months)</th>
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<td>1.3.12 (tabled HoR 27.2.12)</td>
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<td>Disability impairment tables: Provisions of Schedule 3 of the Social Security and Other Legislation Amendment Bill 2011</td>
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<td>The design and implementation of a mandatory pre-commitment system for electronic gaming machines—First report</td>
<td>10.5.11 (presented 6.5.11)</td>
<td>10.5.12 (presented 4.5.12)</td>
<td>No</td>
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<tr>
<td>Interactive and online gambling and gambling advertising—Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011—Second report</td>
<td>7.2.12 (presented 8.12.11, tabled HoR 13.2.12)</td>
<td>21.6.12</td>
<td>No</td>
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<tr>
<td>Intelligence and Security (Joint Statutory)</td>
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<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
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<td>Review of the re-listing of Ansar al-Islam, Islamic Movement of Uzbekistan, Jaish-e-Mohammad and Lashkar-e-Jhangvi</td>
<td>18.6.12 (tabled 28.5.12)</td>
<td>Not required</td>
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<tr>
<td>Review of administration and expenditure: No. 9—Australian intelligence agencies</td>
<td>19.6.12 (tabled 18.6.12)</td>
<td>Not required</td>
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<tr>
<td><strong>Law Enforcement (Joint Statutory)</strong></td>
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<tr>
<td>Examination of the annual report of the Australian Crime Commission 2009-10</td>
<td>24.8.11 (tabled 22.8.11)</td>
<td>10.5.12 (interim response 28.2.12 HoR)</td>
<td>No</td>
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<tr>
<td>Inquiry into Commonwealth unexplained wealth legislation and arrangements</td>
<td>10.5.12 (tabled 19.3.12)</td>
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<td>Time not expired</td>
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<tr>
<td>Examination of the 2010-11 annual reports of the Australian Crime Commission and the Australian Federal Police</td>
<td>10.5.12</td>
<td>-</td>
<td>Time not expired</td>
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<tr>
<td><strong>Legal and Constitutional Affairs Legislation</strong></td>
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<tr>
<td>Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010 [Provisions]</td>
<td>9.2.11 (presented 26.11.10)</td>
<td>*(final)</td>
<td>No</td>
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<tr>
<td>Provisions of Schedule 4 of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010</td>
<td>9.2.11</td>
<td>*(final)</td>
<td>No</td>
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<td>Sex and Age Discrimination Legislation Amendment Bill 2010 [Provisions]</td>
<td>1.3.11</td>
<td>*(final)</td>
<td>No</td>
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<tr>
<td>Crimes Legislation Amendment Bill (No. 2) 2011</td>
<td>23.8.11</td>
<td>*(final)</td>
<td>No</td>
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<tr>
<td>Deterring People Smuggling Bill 2011</td>
<td>21.11.11</td>
<td>*(interim)</td>
<td>No</td>
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<td>Crimes Amendment (Fairness for Minors) Bill 2011</td>
<td>10.5.12 (presented 4.4.12)</td>
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<td>Time not expired</td>
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<tr>
<td>Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012</td>
<td>10.5.12 (presented 4.4.12)</td>
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<tr>
<td>Legal and Constitutional Affairs Legislation (continued)</td>
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<td>Assisting Victims of Overseas Terrorism Bill 2012—Social Security Amendment</td>
<td>10.5.12</td>
<td>-</td>
<td>Time not expired</td>
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<tr>
<td>(Supporting Australian Victims of Terrorism Overseas) Bill 2011 [Provisions]</td>
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<tr>
<td>Legal and Constitutional Affairs References</td>
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<tr>
<td>The road to a republic</td>
<td>16.11.04 (presented 31.8.04)</td>
<td>*(interim)</td>
<td>No</td>
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<td>Review of government compensation payments</td>
<td>9.2.11 (presented 6.12.10)</td>
<td>7.2.12 (presented 29.11.11)</td>
<td>No</td>
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<tr>
<td>Donor conception practices in Australia</td>
<td>10.2.11</td>
<td>*(interim)</td>
<td>No</td>
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<td>A balancing Act: provisions of the Water Act 2007</td>
<td>14.6.11 (presented 10.6.11)</td>
<td>10.5.12 (presented 27.3.12)</td>
<td>No</td>
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<tr>
<td>Review of the National Classification Scheme: achieving the right balance</td>
<td>23.6.11</td>
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<td>No</td>
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<tr>
<td>Australia's arrangement with Malaysia in relation to asylum seekers</td>
<td>11.10.11</td>
<td>18.6.12 (presented 13.6.12)</td>
<td>No</td>
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<tr>
<td>International parental child abduction to and from Australia</td>
<td>31.10.11</td>
<td>10.5.12 (presented 30.3.12)</td>
<td>No</td>
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<td>Prospective marriage visa program</td>
<td>26.6.12</td>
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<td>Time not expired</td>
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<tr>
<td>Men's Health (Senate Select) Report</td>
<td>15.6.09 (presented 29.5.09)</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
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<tr>
<td>Migration (Joint Standing)</td>
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<tr>
<td>Immigration detention in Australia—A new beginning—Criteria for release from detention—First report of the inquiry into immigration detention</td>
<td>2.12.08 (tabled HoR 1.12.08)</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
<td>Migration (Joint Standing) (continued)</td>
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<tr>
<td>Immigration detention in Australia—Facilities, services and transparency—Third report of the inquiry into immigration detention</td>
<td>18.8.09 *(interim)</td>
<td>No</td>
<td></td>
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<tr>
<td>Enabling Australia—Inquiry into the migration treatment of disability</td>
<td>22.6.10 (tabled HoR 21.6.10)</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
<td>National Broadband Network (Joint Standing)</td>
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<tr>
<td>Review of the rollout of the National Broadband Network—First report</td>
<td>12.9.11 (presented 31.8.11)</td>
<td>13.3.12 (tabled HoR 1.3.12)</td>
<td>No</td>
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<tr>
<td>Review of the rollout of the National Broadband Network—Second report</td>
<td>25.11.11 (tabled HoR 24.11.11)</td>
<td>10.5.12 (presented 16.4.12)</td>
<td>No</td>
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<tr>
<td>Review of the rollout of the National Broadband Network—Third report</td>
<td>25.6.12 -</td>
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<td>Time not expired</td>
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<tr>
<td>National Broadband Network (Senate Select)</td>
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<tr>
<td>Another fork in the road to national broadband—Second interim report</td>
<td>12.5.09 *(interim)</td>
<td>No</td>
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<tr>
<td>Third report</td>
<td>26.11.09 *(interim)</td>
<td>No</td>
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<td>Fourth interim report</td>
<td>15.6.10 *(interim)</td>
<td>No</td>
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<td>Committee and title of report</td>
<td>Date report tabled</td>
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<td>Final report</td>
<td>17.6.10</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
<td>National Capital and External Territories (Joint Standing)</td>
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<tr>
<td>Etched in stone? Inquiry into the administration of the National Memorials Ordinance 1928</td>
<td>25.11.11 (tabled HoR 23.11.11)</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
<td>Public Accounts and Audit Committee (Joint Statutory)</td>
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<tr>
<td>Report 417—Review of Auditor-General's reports tabled between February and September 2009</td>
<td>24.6.10 (tabled HoR 22.6.10)</td>
<td>**(recommendations 2, 8, 9, 10 and 13), *(interim) **</td>
<td>No</td>
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<tr>
<td>Report 418—Review of Auditor-General's reports Nos 4 to 38 2009-10</td>
<td>9.2.11 (presented HoR 22.12.10)</td>
<td>**</td>
<td>No</td>
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<tr>
<td>Public Accounts and Audit Committee (Joint Statutory) (continued)</td>
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<tr>
<td>Report 422—Review of the 2009-10 Defence Materiel Organisation major projects report</td>
<td>11.5.11</td>
<td>**</td>
<td>No</td>
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<tr>
<td>Report 423—Review of Auditor-General's reports Nos 39 2009-10 to 15 2010-11</td>
<td>5.7.11 (tabled HoR 4.7.11)</td>
<td>*(recommendations 2, 3 and 4), *(interim) **</td>
<td>No</td>
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<tr>
<td>Report 424—Eighth biannual hearing with the Commissioner of Taxation</td>
<td>5.7.11 (tabled HoR 4.7.11)</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
<td>Report 426—Ninth biannual hearing with the Commissioner of Taxation</td>
<td>25.11.11 (tabled HoR 23.11.11)</td>
<td>**</td>
<td>No</td>
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<tr>
<td>Report 427—Inquiry into national funding agreements</td>
<td>7.2.12 (tabled HoR 24.11.11)</td>
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<td>No</td>
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<tr>
<td>Report 428—Review of Auditor-General's reports Nos 16-46 2010-11</td>
<td>7.2.12 (tabled HoR 24.11.11)</td>
<td>**</td>
<td>No</td>
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<tr>
<td>Report 429—Review of the 2010-11 Defence Materiel Organisation major projects report</td>
<td>18.6.12 (tabled HoR 21.5.12)</td>
<td>-</td>
<td>Time not expired</td>
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<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
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<td>Report 430—Review of Auditor-General’s reports Nos 47 (2010-11) to 9 (2011-12) and reports Nos 10 to 23 (2011-12)</td>
<td>18.6.12 (tabled HoR 21.5.12)</td>
<td>-</td>
<td>Time not expired</td>
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<tr>
<td>Report 4/2011—Referrals made May to June 2011—Proposed fit-out of new leased premises for the Human Services portfolio at Greenway, Australian Capital Territory—Proposed fit-out of new leased premises for the Australian Taxation Office at the site known as 55 Elizabeth Street, Brisbane, Queensland—Proposed contamination remediation works, former fire training area, RAAF Base Williams, Point Cook, Victoria—Proposed Specific Nutritional Capability Project for Defence Science and Technology Organisation at Scottsdale, Tasmania</td>
<td>23.8.11 *(final)</td>
<td>No</td>
<td></td>
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<tr>
<td>Public works on Christmas Island</td>
<td>31.10.11 *(interim)</td>
<td>No</td>
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<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
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<td>Regional and Remote Indigenous Communities (Senate Select)</td>
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<tr>
<td>Final report 2010</td>
<td>28.9.10 (presented 24.9.10)</td>
<td>*(interim)</td>
<td>No</td>
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<td>Rural Affairs and Transport Legislation</td>
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<tr>
<td>Airports Amendment Bill 2010 [Provisions]</td>
<td>18.11.10</td>
<td>13.3.12</td>
<td>No</td>
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<td>Exposure draft and explanatory memorandum of the Illegal Logging Prohibition Bill 2011</td>
<td>23.6.11</td>
<td>7.2.12 (presented 25.11.11)</td>
<td>No</td>
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<td>Rural Affairs and Transport References</td>
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<td>Management of the Murray Darling Basin—The impact of mining coal seam gas on the management of the Murray-Darling Basin—Interim report</td>
<td>7.2.12 (presented 30.11.11)</td>
<td></td>
<td>No</td>
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<td>Biosecurity and quarantine arrangements—The management of the removal of the fee rebate for AQIS export certification functions—Interim report</td>
<td>7.2.12 (presented 12.12.11)</td>
<td></td>
<td>No</td>
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<tr>
<td>Rural and Regional Affairs and Transport Legislation Committee</td>
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<tr>
<td>Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011—Qantas Sale Amendment (Still Call Australia Home) Bill 2011</td>
<td>22.3.12</td>
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<td>No</td>
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<tr>
<td>Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]</td>
<td>18.6.12 (presented 30.5.12)</td>
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<td>Time not expired</td>
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<td>Rural and Regional Affairs and Transport Legislation Committee (continued)</td>
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<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
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<td>Rural and Regional Affairs and Transport References</td>
<td>16.6.05</td>
<td>21.6.12</td>
<td>No</td>
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<tr>
<td>Iraqi wheat debt— repayments for wheat growers</td>
<td>11.8.09 (presented 25.6.09)</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Implications for long-term sustainable management of the Murray Darling Basin system—Final report</td>
<td>20.8.09</td>
<td>27.6.12</td>
<td>No</td>
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<tr>
<td>Investment of Commonwealth and State funds in public passenger transport infrastructure and services</td>
<td>2.2.10 (presented 18.12.09)</td>
<td>13.3.12</td>
<td>No</td>
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<td>Rural and regional access to secondary and tertiary education opportunities</td>
<td>18.3.10</td>
<td>*(interim)</td>
<td>No</td>
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<tr>
<td>The possible impacts and consequences for public health, trade and agriculture of the Government's decision to relax import restrictions on beef—First report</td>
<td>23.6.10</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>The possible impacts and consequences for public health, trade and agriculture of the Government's decision to relax import restrictions on beef—Final report</td>
<td>10.5.12 (presented 10.4.12)</td>
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<td>Time not expired</td>
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<tr>
<td>Australia's biosecurity and quarantine arrangements—Final report</td>
<td>10.5.12 (presented 16.4.12)</td>
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<td>Time not expired</td>
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<td>Operational issues in export grain networks</td>
<td>7.2.07</td>
<td>18.6.12</td>
<td>No</td>
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<tr>
<td>Rural and Regional Affairs and Transport Standing</td>
<td>4.7.11 (presented 29.6.11)</td>
<td>13.3.12</td>
<td>No</td>
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<tr>
<td>Scrutiny of New Taxes (Senate Select)</td>
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</table>
The committee examined the feasibility of developing an electronic Parliamentary Papers Series.

The Parliamentary Papers Series (PPS) is ‘a comprehensive collection of information that documents public policy formulation and administration of government since Federation.’ It includes all the documents of a substantial nature that have been tabled in either or both the Senate and the House of Representatives, such as parliamentary committee reports but also documents provided by the executive. Although the PPS includes papers prepared by and for the

### Inquiry into the development of a digital repository and electronic distribution of the Parliamentary Papers Series

**Further response of the Presiding Officers to the report of the Joint Committee on Publications**

**Introduction**

On 24 June 2010 the Joint Committee on Publications tabled its report on its *Inquiry into the development of a digital repository and electronic distribution of the Parliamentary Papers Series.*
executive, it is administered by the Departments of the Senate and the House of Representatives.

The committee made seven recommendations. All relate to the responsibilities of the Parliament. The Presiding Officers are pleased to provide a further response to those recommendations, following the government response to recommendation 5 (tabled on 15 September 2011) and the preparation of a business case.

**Recommendation 1**
The committee recommends that an electronic PPS be developed and implemented.

Agreed. The Presiding Officers agree that a basic electronic PPS be developed as soon as practical. In accordance with the business case, an easy to use web interface will follow and two additional stages investigated subsequently. The initial stage will result in access to the tabled documents through the APH website and will be ongoing from the date the series is implemented. The additional stages to be further investigated include digital access to other tabled papers and the back capturing of the documents which form the PPS to date.

**Recommendation 2**
The committee recommends that the parliamentary departments undertake a business case to examine issues relating to the maintenance of electronic records and long-term archival requirements that would be required in developing an electronic PPS.

The recommendation has been implemented.

**Recommendation 3**
The committee recommends that the parliamentary departments develop a digital repository for the PPS based in the Parliament.

Agreed. The Presiding Officers note that while the digital repository is to be based in the Parliament, the responsibility for providing the information in a timely manner resides with the author agencies. The Presiding Officers note the AGIMO requirement for departments and agencies to ensure that the on-line versions of documents tables in Parliament are identical to those that are posted on their websites. This existing requirement provides surety of the content of the documents to be included in the ePPS.

**Recommendation 4**
The committee recommends that a business case, referred to in recommendation 2, also include:

- The scope for other tabled documents not in the PPS to be made available through the repository; and
- The costs placed on the parliamentary departments to provide the repository.

The recommendation was implemented in the preparation of the business case.

**Recommendation 5**
The committee recommends that author departments and agencies be required to provide electronic copies of documents at the same time print copies are provided for tabling in the Parliament.

The Presiding Officers will ensure that electronic copies of documents prepared by either chamber department or the Department of Parliamentary Services, including parliamentary committees, are provided for inclusion in the ePPS.

It is noted that the government response to this recommendation indicates that the electronic documents will not be provided prior to tabling.

**Recommendation 6**
The committee recommends that a digital repository for the PPS be in production and accessible to users by early 2011, to coincide with the start of the 2011 PPS.

This recommendation could not be met.

**Recommendation 7**
The committee recommends that the chamber departments administer a digital repository for the PPS.

Agreed. The Presiding Officers support the administration of the digital repository for the ePPS by the Department of the Senate and the Department of the House of Representatives.

The Presiding Officers note that the parliamentary departments have jointly considered the most cost effective means to introduce the new format and that it will use IT
services supported by the Department of Parliamentary Services.

1 Parliamentary Joint Committee on Publications (2010), Inquiry into the development of a digital repository and electronic distribution of the Parliamentary Papers Series, p. 3. PP No. 160/2010

Also, I congratulate the Clerk and the former Clerk on their effort.

Tabling

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (02:37): I table the following documents relating to special purpose flights expenditure on entitlements and overseas study travel reports:

- Schedule of special purpose flights paid by the Department of Defence for the period 1 July to 31 December 2011
- Parliamentarians' overseas study travel reports for the period 1 July to 31 December 2011
- Former parliamentarians' expenditure on entitlements paid by the Department of Finance and Deregulation for the period 1 July to 31 December 2011
- Parliamentarians' expenditure on entitlements paid by the Department of Finance and Deregulation for the period 1 July to 31 December 2011

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

Details of the documents also appear at the end of today’s Hansard.
Bills read a first time.

Second Reading

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (02:39): I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

CORPORATIONS LEGISLATION AMENDMENT (FINANCIAL REPORTING PANEL) BILL 2012

Today I introduce a bill that will close the Financial Reporting Panel because of lower than expected referral rates. In 2006, the panel was established to resolve contested issues between the Australian Securities and Investments Commission, ASIC, and reporting entities over the application of accounting standards to financial reports. The panel was designed to represent a less expensive model of resolving these disputes and allow matters to be heard by persons with particular expertise.

The establishment of the panel formed part of wider reforms to improve the operation of the market by promoting transparency and accountability. However, only five cases have been referred to the panel since its establishment in 2006, and none has been referred since August 2010. One of these cases was resolved before the matter was heard by the panel. Under these circumstances, the costs of maintaining and reporting on the panel simply cannot be justified, while it would become increasingly difficult to find high-quality members for the panel, which would reduce its effectiveness as an arbitrator and a deterrent.

It is important to note that the panel's finding were not intended to be legally binding on either ASIC or the company. Companies have always had recourse to the courts where there is disagreement with ASIC over the application of accounting standards to financial reports.

Companies will continue to be able to challenge the application of accounting standards to financial reports through the system after the passage of this bill. To give companies greater certainty, I note that the bill contains a transitional provision to allow courts and tribunals to continue to have regard to any past report by the panel despite its closure.

Finally, I can inform the House that the appropriate approval of the Ministerial Council for Corporations has been obtained as required under the corporation’s agreement.

SOCIAL SECURITY LEGISLATION AMENDMENT (FAIR INCENTIVES TO WORK) BILL 2012

The Social Security Legislation Amendment (Fair Incentives to Work) Bill will give effect to further reforms to Parenting Payment and build upon the changes this Parliament passed on 9 May 2012 to make the system fairer for all recipients of Parenting Payment.

The bill will also introduce two other amendments; one relating to the Liquid Assets Waiting Period announced as part of the 2012-13 Budget and another change relating to the Income Maintenance Period.

The reforms to Parenting Payment are an extension of the broader reforms already introduced as part of the Building Australia’s Future Workforce package announced in 2011. These important changes to income support payments for parents continue this Government’s focus on providing greater incentives and opportunities, particularly for single parents, to re-engage in the workforce and share in the benefits that work brings.

The removal of grandfathering arrangements will provide greater equity and consistency in the Parenting Payment eligibility rules by ensuring that all parents are assessed the same, regardless of when they first claimed income support.

The changes to Parenting Payment will encourage parents with school age children to re-enter the workforce sooner and to ensure a fair and consistent set of Parenting Payment eligibility rules.
Under this Government there have been better participation outcomes for individuals who have not been grandfathered under the Howard Government's parenting payment single policy of 2006.

In practical terms the evidence tells us that while grandfathered parenting payment recipients do better than most job seekers principle carer parents on Newstart do even better.

The Social Security and Other Legislation (Income Support and Other Measures) Bill 2012 was passed by Parliament on 9 May 2012 and introduced changes to the existing transitional arrangements for Parenting Payment recipients. These changes reduced the age of eligibility of the youngest child from 16 years to 12 years.

The current transitional arrangements are available to Parenting Payment recipients who have been continually receiving payments prior to 1 July 2006.

Since 1 July 2011, children born to or coming into the care of parents who have been receiving Parenting Payment since before July 2006 have not extended these parents’ eligibility for payment.

This bill will continue the reforms to Parenting Payment so that from 1 January 2013, transitional arrangements will be removed for these parents and they will in the future cease to qualify for Parenting Payment when their youngest eligible child turns 6 (partnered parents) or 8 (single parents) years of age, the same as other Parenting Payment recipients.

This removes the inequity and inconsistency that currently exists for Parenting Payment recipients by ensuring that all parents are assessed the same, regardless of when they first claimed income support.

To ensure that individuals and families, particularly those affected by the Parenting Payment changes, are not disadvantaged when transitioning to new payment arrangements, the Government has already made amendments to the Social Security Act 1991, to reform the income test that applies to single principal carer parents on Newstart Allowance.

The introduction of a more generous income test, from 1 January 2013, allows these parents to earn over $400 more per fortnight before they lose eligibility for payment.

This provides stronger incentives for parents to undertake paid work by allowing parents to retain more of their income support as their employment income rises.

In recognition that these parents are likely to have spent significant periods on income support and out of the workforce, the Government is also providing additional support for these parents to ease their transition back into the workforce.

As well as additional training places and community based support for single parents announced under the Building Australia’s Future Workforce package, the Government has provided additional funding in the 2012-13 Budget for professional career advisory services for single parents through employment service providers.

This will assist single parents to improve their skills and also plan effectively for a transition into the workforce when they move off Parenting Payment.

Also as part of the changes, single parents who are studying an approved course and are receiving the Pensioner Education Supplement when they transfer from Parenting Payment to Newstart Allowance or Youth Allowance (other) will remain eligible for the Pensioner Education Supplement until they complete the course they are studying.

Additionally, the Government is providing additional funding to support increased demand and better target the Jobs, Education and Training Child Care Fee Assistance Program.

This will assist parents on eligible income support payments, predominantly sole parents, to enhance their skills by undertaking work, study or job search activities to enable them to enter or re-enter the workforce, without the cost of child care being a barrier.

The Government believes that together these changes provide parents with the right balance of support and incentives to make the most of the employment opportunities available, to find meaningful work and provide themselves and their families with a better future.
Unemployment is not something Australian workers plan for and reducing a person's modest savings before they can access income support means it is harder for them to restructure their budget and handle the bills they have already accrued.

This bill amends the Liquid Assets Waiting Period to allow newly unemployed Australians and new students to hold onto more of their savings and better adjust to their new circumstances. This bill doubles the amount of cash or other liquid assets an unemployed person or student may hold without having to wait to start receiving income support.

From 1 July 2013, the maximum reserve amount for a person who is single will be doubled from $2500 to $5000 and for a person who is partnered or has a dependent child will be doubled from $5000 to $10 000. These new maximum reserve amounts will reduce waiting times by up to five weeks for unemployed Australians and students with modest savings or liquid assets.

A previous temporary doubling of the Liquid Assets Waiting Period threshold, which was included as an element of the 2009 Jobs and Training Compact response to the Global Recession, ceased on 31 March 2011. The Government is now in a position where it can afford to reinstate these thresholds permanently.

This bill also introduces a technical amendment to the definition of termination payment for the purposes of the Income Maintenance Period. This will clarify the long standing policy that any payments made to an employee in respect of the termination of their employment are included in determining the income maintenance period.

The Income Maintenance Period ensures that people who receive a lump-sum termination payment use that payment to support themselves for a period before turning to the social security system for assistance. The inclusion of the new provision will clarify the definition by including other types of payment connected with the termination of the person's employment. This will ensure that people are treated the same under the Act, regardless of the type of termination payment they receive.

The changes in this bill form an important part of the income support reforms announced in the 2012-13 Budget. These reforms will support more Australians when they are going through tough times and encourage more Australians to participate in and share in the benefits of paid work. The changes will result in fairer and more consistent treatment of income support recipients.

Ordered that further consideration of the second reading of these bills be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

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

BUSINESS

Days and Hours of Meeting

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (02:40): I move:

That the Senate, at its rising, adjourn till Tuesday, 14 August 2012, 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.

Leave of Absence

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (02:40):

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.

ADJOURNMENT

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and
Forestry and Minister Assisting on Queensland Floods Recovery) (02:41): I move:

That the Senate do now adjourn.

Senator Mary Jo Fisher

Senator BIRMINGHAM (South Australia) (02:41): I rise to speak in this adjournment debate about a very dear colleague of ours, Senator Mary Jo Fisher. This is the last sitting day that Mary Jo will be a member of this place. That is very sad for all of us and, of course, very sad for Mary Jo herself. Although this has been a somewhat unusual day, I think Mary Jo would appreciate the slightly extraordinary nature of the fact that we are here, at nearly a quarter to three in the morning, considering her contribution to this place. I for one did not want to let her career finish without it being marked here. Although she is not here to give a valedictory herself, I know that all of her colleagues have her in their thoughts.

Mary Jo entered this place on 6 June 2007, just about one month after I came into this place. We have been senators for the same state of South Australia since that time and have had offices next to each other. I have spent probably more time on committees with Mary Jo than I have with just about any other senator. I am proud to call Mary Jo a friend; but more importantly, Mary Jo in this place has been, I think, an exemplary legislator, a wonderful senator and someone who has taken all her duties with great seriousness. Amongst that seriousness she has also shown a wonderful zest for life, a wonderful passion and commitment and a great sense of humour.

This is the type of night that Mary Jo would have revelled in. She would have revelled in the legislative debate taking place in the chamber, the fact that there was this intricate toing and froing about the detail of legislation. She would have also revelled in the fact that there was great camaraderie happening outside of the chamber among colleagues catching up ahead of a parliamentary recess. These were the moments that she was certainly at her best and these will be the types of nights that the Senate will miss her the most.

We know now that Mary Jo in her contribution during her five years—an all too short period of time as a senator in this place—is all the more remarkable for the challenges that she had to battle while she was here. There have been the health challenges that we are all now aware of and latterly other challenges, some of which have been more unfairly placed upon her in that time. But that never stopped Mary Jo as a senator passionately pursuing on the floor of this chamber amendments that she cared about, arguing the most intricate details of legislation and having the capacity to get into that nitty-gritty that so many of us perhaps cannot quite get into. But she would get there and dig down and ferret through. Her committee work pursued her passions and—as she would acknowledge—broadened her knowledge into other areas as well. She came here with a very deep background in workplace relations policy and workplace relations law. MJ, as we all know and love her, pursued those workplace relations issues throughout her career. All senators will remember and, outside of this place, the President of Fair Work Australia will remember her dogged pursuit of that office to ensure that it appeared at Senate estimates when she had the opportunity to make them do so.

Outside of the workplace relations portfolio, Mary Jo served with me on the National Broadband Network inquiry and she served with other valued colleagues, like Senator Heffernan and Senator Colbeck, on the food processing sector inquiries. She pursued her passions in legal and
constitutional affairs with colleagues like Senator Brandis. On the environment and communications committee she served with colleagues opposite, like Senator McEwen. Mary Jo worked as a member, as a chair and as a deputy chair. I know some of the key issues that we have pursued from a coalition perspective in that committee on big policy matters like the National Broadband Network or the home insulation debacle have come to dog this government. Many of the things that were uncovered would perhaps not have been uncovered without the dogged pursuit, the diligence and the hard work that Mary Jo applied to those issues.

Mary Jo never forgot where she came from. She was a farm girl from Western Australia. She was always proud of that fact. I saw Mary Jo at the funeral of Senator Judith Adams. I was picked up with Mary Jo from the local airport by MJ's mum, who was, as she rightly should be, remarkably proud of her daughter's career and who saw the celebration of the life of Senator Adams as recognition not just of where Senator Adams had come from but also of where MJ had come from, the same part of the wheat belt of WA. MJ never forgot the issues she cared about and especially the people she cared about—the people from the country and the people she represented in South Australia. She was always ready to stand up for them and their issues.

As I said, she also has this wonderful zest for life. You could hear her coming down the corridor a mile away. I could sometimes hear her through the wall when she was having a good time in the office next door. I could hear the laughter, jokes, noise and the willingness to have a good go. She got herself into a little bit of trouble around the place occasionally. Senator Kroger would well remember the incident of the mobile phone one question time. The wrong phone was collected and the wrong password was entered enough times that the phone was wiped. Senator Kroger came to forgive MJ's little accident there. When MJ had her issues with her bunions, everyone around this place came to appreciate MJ wearing differently coloured crocs into the chamber. They did not always match the rest of the outfit, but they were a wonderful addition to MJ's fashion style, which was always noted wherever she went and certainly added far more colour to this chamber, Mr President, than perhaps you or I could ever hope or wish—or that anyone would wish us—to do.

Senator McKenzie and I recall that while in more recent estimates hearings we would tick off the number of Tim Tams that we would eat during those late night hearings, MJ would be just as inclined to tick off the number of little nut parcels that she would manage to consume during a hearing. Her diet is unusual. She managed to knock off yoghurt tubs full of salad wherever she went. She made sure that she came well equipped with her own produce to sustain her through any type of event. She was very much the BYO guest when it came to having her around for a meal in this place.

Mary Jo has been well supported through her journey here. She has been supported of course by her staff, Julie, Sonia and Bronte and others who have worked for MJ in that time; by her family—her mum and dad whom she was and remains very close to and whom she has been back to Perth to care for and who I know have been doing a lot to care for her; and by her wonderful husband John, whom all of us on this side, and I hope around the chamber, value as someone who is a wonderful parliamentary partner and who I know is doing so much to help MJ at this time and through the difficulties she has recently faced.

She came to this chamber and, in her first speech, said that she would do what she
could to preserve the good and progressive aspects of current community initiatives—the types of rural communities I spoke of before. She hoped that she would be a politician whose words did not necessarily have to sound that good but whose policies would sound good and do good. I think MJ's policies always sought to do good and we can say she made an outstanding contribution to this place in an all too short period of time. I for one am proud to have called her a colleague and I am proud still to call her a friend. I know that all members in this place would wish her and John all the very best for their future.

Honourable senators: Hear, hear!

Senator Mary Jo Fisher

Senator McEWEN (South Australia—Government Whip in the Senate) (02:51): On behalf of government senators, I would like to acknowledge Senator Birmingham’s contribution tonight on Senator Mary Jo Fisher. Mary Jo and I go back a long, long way and I too will miss her very much from this place. While of course we had numerous arguments about policy and politics, she was a fine senator and a fine representative of her state of South Australia.

I think Senator Birmingham has covered pretty much everything we know and came to admire and love about Mary Jo. He neglected to mention the Sunday night flights up from Adelaide where Mary Jo never failed to entertain the whole plane. We will miss her from that as well.

On behalf of government senators, we wish her well and a speedy recovery from her illness. We acknowledge the contribution that John makes to her life. He is also a good friend of some of us, and it is always nice to see them out and about in Adelaide as a couple at functions and events. I hope we see them again soon.

Senate adjourned at 02:52 (Friday) until Tuesday, 14 August 2012 at 12:30.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

28 June 2012

Documents

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

Aged Care Act—

Aged Care (Residential Care Subsidy – Amount of Basic Daily Fee Supplement) Determination 2012 (No. 1) [F2012L01348].

User Rights Amendment Principles 2012 (No. 2) [F2012L01346].

Anti-Money Laundering and Counter-Terrorism Financing Act—Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No. 3) [F2012L01352].

Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Act—Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Determination 2012 (No. 3) [F2012L01336].

Carbon Farming (Carbon Farming Initiative) Act—Carbon Farming (Quantifying Carbon Sequestration by Permanent Environmental Plantings of Native Species Using the CFI Reforestation Modelling Tool) Methodology Determination 2012 [F2012L01340].

Civil Aviation Act—

Civil Aviation Regulations—Instruments Nos CASA—

196/12—Direction – number of cabin attendants [F2012L01369].

201/12—Direction – number of cabin attendants (Tiger Airways) [F2012L01360].
Civil Aviation Safety Regulations—Instrument No. 12/1654—Approval – Alternative Means of Compliance (AMOC) – FAA AD 2011-12-10 [F2012L01368].


Taxation Determination TD 2012/14.

Taxation Ruling (old series)—Notice of Withdrawal—IT 2262.


TR 2012/3 and TR 2012/4.

Corporations Act—ASIC Class Orders—[CO 12/750] [F2012L01333].

[CO 12/766] [F2012L01331].

[CO 12/794] [F2012L01345].

Education Services for Overseas Students Act—Education Services for Overseas Students (Designated Authority) Determination 2012 (No. 1) [F2012L01370].

Family Law Act—Family Law (Superannuation) Regulations—Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2012 (No. 1) [F2012L01367].


Food Standards Australia New Zealand Act—Australia New Zealand Food Standards Code—Standards—

1.4.2 – Maximum Residue Limits Amendment Instrument No. APVMA 6, 2012 [F2012L01344].

2.9.5 – Food for Special Medical Purposes [F2012L01347].

Food Standards (Proposal P242 – Food for Special Medical Purposes – Consequential) Variation [F2012L01341].

Food Standards (Proposal P1007 – Primary Production & Processing Requirements for Raw Milk Products) Variation [F2012L01339].


Medical Indemnity Act—Premium Support Scheme Amendment 2012 [F2012L01366].

Migration Act—

Migration Agents Regulations—Instrument IMMI 12/035—Prescribed courses and exams for applicants for registration as a migration agent [F2012L01343].

Migration Regulations—Instrument IMMI 12/054—Evidence of further funds and living costs [F2012L01350].

National Health Act—Instrument No. PB 40 of 2012—National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2012 (No. 5) [F2012L01332].

Navigation Act—Marine Order No. 6 of 2012—Marine Order 47, issue 3 (Mobile Offshore Drilling Units) [F2012L01330].


Social Security Act—

Social Security (Parenting payment participation requirements – classes of persons)
(DEEWR) Amendment Specification 2012 (No. 1) [F2012L01359].

Social Security (Special Disability Trust – Discretionary Spending) (FaHCSIA) Determination 2012 [F2012L01349].

Social Security (Administration) Act—

Social Security (Administration) (Declared income management areas) Determination 2012 [F2012L01371].

Social Security (Administration) (Penalty Amount) (DEEWR) Determination 2012 (No. 1) [F2012L01338].

Social Security (Administration) (Penalty Amount) (FaHCSIA) Determination 2012 (No. 1) [F2012L01335].

Taxation Administration Act 1953—Lodgment of statements by first home saver account providers for the year ended 30 June 2012 in accordance with the Taxation Administration Act 1953 [F2012L01362].


Veterans’ Entitlements Act—Statements of Principles concerning—

Endometriosis No. 41 of 2012 [F2012L01355].

Endometriosis No. 42 of 2012 [F2012L01356].

Malignant Neoplasm of the Cervix No. 39 of 2012 [F2012L01353].

Malignant Neoplasm of the Cervix No. 40 of 2012 [F2012L01354].

Pes Planus No. 45 of 2012 [F2012L01361].

Pes Planus No. 46 of 2012 [F2012L01364].

Porphyria Cutanea Tarda No. 43 of 2012 [F2012L01357].

Porphyria Cutanea Tarda No. 44 of 2012 [F2012L01358].
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Climate Change
(Question No, 1834)

Senator Johnston asked the Minister for Foreign Affairs, upon notice, on 9 May 2012:

(1) How many staff currently work on issues related to climate change in the department, broken down by Australian Public Service (APS) and Senior Executive Service (SES) classification.

(2) What is the 2011-12 budget allocation for the Climate Change and Environment Section within the department.

(3) How many staff currently work in the United Nations Security Council task force, broken down by APS and SES classification.

Senator Bob Carr: The answer to the honourable senator's question is as follows:

(1) On a “full-time equivalent” (FTE) basis, based on the estimated proportion of staff time devoted to work on climate change issues, there were 5.2 FTE employees across the department in Canberra that regularly spent a significant and quantifiable proportion of their time on climate change issues, as at 31 March 2012. The breakdown by classification is as follows:

<table>
<thead>
<tr>
<th>Classification</th>
<th>FTE as at 31 March 2012</th>
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<tbody>
<tr>
<td>APS 4</td>
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<tr>
<td>EL 1</td>
<td>2.4</td>
</tr>
<tr>
<td>EL 2</td>
<td>1.05</td>
</tr>
<tr>
<td>SES</td>
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</tr>
<tr>
<td>Total</td>
<td>5.2</td>
</tr>
</tbody>
</table>

This estimate does not include DFAT staff overseas who work on climate change issues from time to time.

(2) The Department allocates budgets at the divisional level. There is no specific budget allocated to the Climate Change and Environment Section (CCE).

(3) On a “full-time equivalent” (FTE) basis, which takes account of part-time employees, UN Security Council Taskforce had 9.27 FTE employees as at 31 March 2012. The breakdown by classification is as follows:

<table>
<thead>
<tr>
<th>Classification</th>
<th>FTE as at 31 March 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Graduate APS</td>
<td>1</td>
</tr>
<tr>
<td>APS 5</td>
<td>2</td>
</tr>
<tr>
<td>APS 6</td>
<td>0.6</td>
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<td>EL 2</td>
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<tr>
<td>SES</td>
<td>1.82</td>
</tr>
<tr>
<td>Total</td>
<td>9.27</td>
</tr>
</tbody>
</table>
Sustainability, Environment, Water, Population and Communities
(Question No. 1854)

Senator Milne asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, on 18 May 2012:

1. What is the timeframe and expected delivery date for the National Plan for Clean Air.
2. When will the PM2.5 Cape Grim Baseline Air Pollution Station be reinstated and resume monitoring.
3. Can PM10 and PM2.5 baseline air quality readings be taken at Cape Grim using the same frequency and standard, so as to match the National Environment Protection Measure for Ambient Air Quality standard.
4. Can the results of the Cape Grim monitoring station be made available to the public via the internet, including through the provision of real-time data.

Senator Conroy: The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator's question:

1. The National Plan for Clean Air has to be submitted to the Council of Australian Governments by the end of 2014.
2. Cape Grim is currently monitoring PM2.5 and will continue to do so as part of its aerosol program.
3. PM10 and PM2.5 baseline air quality readings can be taken at Cape Grim using the same frequency and standard to match the National Environmental Protection Measurement but would require additional investment and a separate monitoring system to do so. The aerosol component of the program at Cape Grim has been carefully designed to investigate the chemistry of aerosol in the remote marine background atmosphere and this program has amassed a 30 year record. Aerosol sampling under the National Environment Protection Measure for Ambient Air Quality standard is designed to produce information on the concentrations of particles that moderate populations are exposed to hence is designed for near-realtime monitoring and much higher concentrations than recorded at Cape Grim. The population at Cape Grim is very low so under the National Environment Protection Measure PM10 and PM2.5 observations would not be required at Cape Grim.
4. General meteorological data from the Cape Grim Baseline Air Pollution Station are available in real-time on the Bureau's external web site. Other measurements at the Cape Grim station are not suitable for real-time display as achieving the required accuracy for monitoring background concentrations involve complex measurement processes with post collection analysis. Other sampling is done using filters and flasks that may be analysed months after sampling. However, as part of the outputs of the Cape Grim Science Program jointly managed by the Bureau and CSIRO, time series of data for key atmospheric constituents measured at the Cape Grim station are regularly updated and available on the CSIRO web site at: http://www.csiro.au/greenhouse-gases/. Data summaries from all components of the Cape Grim program are published every two years in the Baseline Atmospheric Program series of reports.