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SITTING DAYS—2011

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<td>November</td>
<td>1, 2, 3, 7, 8, 9, 10, 21, 22, 23, 24, 28, 29, 30</td>
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FORTY-THIRD PARLIAMENT
FIRST SESSION—FOURTH PERIOD

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

Senate Office holders
President—Senator Hon. John Joseph Hogg
Deputy President and Chair of Committees—Senator Stephen Shane Parry
Temporary Chairs of Committees—Senators Judith Anne Adams, Christopher John Back, Thomas Mark Bishop, Suzanne Kay Boyce, Douglas Niven Cameron, Patricia Margaret Crossin, David Julian Fawcett, Mary Jo Fisher, Helen Evelyn Kroger, Scott Ludlam, Gavin Mark Marshall, Claire Mary Moore, Louise Clare Pratt, Ursula Mary Stephens and Mark Lionel Furner

Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy
Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate—Senator Hon. George Henry Brandis SC
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Mitchell Peter Fifield

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

Printed by authority of the Senate
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<th>Senator</th>
<th>State or Territory</th>
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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 to be filled (vice H. Coonan, resigned 22.8.11), pursuant to section 15 of the Constitution.

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—A Thompson
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<th>Position</th>
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<tr>
<td>Prime Minister</td>
<td>Hon. Julia Gillard MP</td>
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<tr>
<td>Deputy Prime Minister, Treasurer</td>
<td>Hon. Wayne Swan MP</td>
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<tr>
<td>Minister for Regional Australia, Regional Development and Local Government</td>
<td>Hon. Simon Crean MP</td>
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<tr>
<td>Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate</td>
<td>Senator Hon. Chris Evans</td>
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<tr>
<td>Minister for School Education, Early Childhood and Youth</td>
<td>Hon. Peter Garrett AM, MP</td>
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<tr>
<td>Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate</td>
<td>Senator Hon. Stephen Conroy</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Hon. Kevin Rudd MP</td>
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<tr>
<td>Minister for Trade</td>
<td>Hon. Dr Craig Emerson MP</td>
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<tr>
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<td>Hon. Stephen Smith MP</td>
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<td>Hon. Chris Bowen MP</td>
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<tr>
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<td>Hon. Anthony Albanese MP</td>
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<td>Minister for Health and Ageing</td>
<td>Hon. Nicola Roxon MP</td>
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<tr>
<td>Minister for Families, Housing, Community Services and Indigenous Affairs</td>
<td>Hon. Jenny Macklin MP</td>
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<td>Minister for Finance and Deregulation</td>
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<tr>
<td>Minister for Innovation, Industry, Science and Research</td>
<td>Senator Hon. Kim Carr</td>
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<tr>
<td>Attorney-General and Vice President of the Executive Council</td>
<td>Hon. Robert McClelland MP</td>
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<td>Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate</td>
<td>Senator Hon. Joe Ludwig</td>
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<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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<tr>
<td>Minister for Climate Change and Energy Efficiency</td>
<td>Hon. Greg Combet AM, MP</td>
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[The above ministers constitute the cabinet]
# GILLARD MINISTRY—continued

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<th>Minister for the Arts</th>
<th>Hon. Simon Crean MP</th>
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<td>Minister for Social Inclusion</td>
<td>Hon. Tanya Plibersek MP</td>
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<td>Minister for Privacy and Freedom of Information</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Minister for Sport</td>
<td>Hon. Brendan O'Connor MP</td>
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<tr>
<td>Special Minister of State for the Public Service and Integrity</td>
<td>Hon. Gary Gray AO, MP</td>
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<tr>
<td>Assistant Treasurer and Minister for Financial Services and Superannuation</td>
<td>Hon. Bill Shorten MP</td>
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<tr>
<td>Minister for Employment Participation and Childcare</td>
<td>Hon. Kate Ellis MP</td>
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<td>Minister for Indigenous Employment and Economic Development</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Minister for Veterans' Affairs and Minister for Defence Science and Personnel</td>
<td>Hon. Warren Snowdon MP</td>
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<td>Hon. Jason Clare MP</td>
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<td>Minister Assisting the Prime Minister on Mental Health Reform</td>
<td>Hon. Mark Butler MP</td>
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<td>Minister for Human Services</td>
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<td>Cabinet Secretary</td>
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<td>Parliamentary Secretary to the Prime Minister</td>
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<td>Parliamentary Secretary for Infrastructure and Transport and Parliamentary Secretary for Health and Ageing</td>
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<td>Parliamentary Secretary for Disabilities and Carers</td>
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<td>Parliamentary Secretary for Community Services</td>
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<td>Minister Assisting on Deregulation and Public Sector Superannuation</td>
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<td>Hon. Dr Mike Kelly AM, MP</td>
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<td>Senator Hon. Nick Sherry</td>
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<tr>
<td>Parliamentary Secretary for Climate Change and Energy Efficiency</td>
<td>Hon. Mark Dreyfus QC, MP</td>
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SHADOW MINISTRY

Leader of the Opposition Hon. Tony Abbott MP
Deputy Leader of the Opposition and Shadow Minister for Foreign Affairs and Shadow Minister for Trade Hon. Julie Bishop MP
Leader of the Nationals and Shadow Minister for Infrastructure and Transport Hon. Warren Truss MP
Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate and Shadow Attorney-General and Shadow Minister for the Arts Senator Hon. George Brandis SC
Shadow Treasurer Hon. Joe Hockey MP
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House Hon. Christopher Pyne MP
Shadow Minister for Indigenous Affairs and Deputy Leader of the Nationals Senator Hon. Nigel Scullion
Shadow Minister for Regional Development, Local Government and Water and Leader of the Nationals in the Senate Hon. Andrew Robb AO, MP
Shadow Minister for Finance, Deregulation and Debt Reduction and Chairman, Coalition Policy Development Committee Senator Barnaby Joyce
Shadow Minister for Energy and Resources Hon. Ian Macfarlane MP
Shadow Minister for Defence Senator Hon. David Johnston
Shadow Minister for Communications and Broadband Hon. Malcolm Turnbull MP
Shadow Minister for Health and Ageing Hon. Peter Dutton MP
Shadow Minister for Families, Housing and Human Services Hon. Kevin Andrews MP
Shadow Minister for Climate Action, Environment and Heritage Hon. Greg Hunt MP
Shadow Minister for Productivity and Population and Shadow Minister for Immigration and Citizenship Mr Scott Morrison MP
Shadow Minister for Innovation, Industry and Science Mrs Sophie Mirabella MP
Shadow Minister for Agriculture and Food Security Hon. John Cobb MP
Shadow Minister for Small Business, Competition Policy and Consumer Affairs Hon. Bruce Billson MP

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<td>Senator Gary Humphries</td>
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Shadow Parliamentary Secretary for Primary Healthcare
Dr Andrew Southcott MP

Shadow Parliamentary Secretary for Regional Health Services and Indigenous Health
Mr Andrew Laming MP

Shadow Parliamentary Secretary for Supporting Families
Senator Cory Bernardi

Shadow Parliamentary Secretary for the Status of Women
Senator Michaelia Cash

Shadow Parliamentary Secretary for Environment
Senator Simon Birmingham

Shadow Parliamentary Secretary for Citizenship and Settlement
Hon. Teresa Gambaro MP

Shadow Parliamentary Secretary for Immigration
Senator Michaelia Cash

Shadow Parliamentary Secretary for Innovation, Industry, and Science
Senator Hon. Richard Colbeck

Shadow Parliamentary Secretary for Fisheries and Forestry
Senator Hon. Richard Colbeck

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Senator Scott Ryan
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Thursday, 24 November 2011

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

STATEMENT BY THE PRESIDENT
Speaker of the House of Representatives

The PRESIDENT (09:31): I inform the chamber that this morning the Speaker of the House of Representatives indicated to the other place that he would be tendering his resignation as the Speaker of the House of Representatives and that he would be going to see the Governor-General this morning. I noted his very fine comments in respect of me and former President Alan Ferguson, with whom he has worked. I thank him for those comments. I also noted his comments in respect of the cordial relationships he has had with this chamber over his service as the Speaker of the House of Representatives. I wish him and his wife all the best. I understand that he is maintaining his position as a member of the House of Representatives although he no longer will be the Speaker. We wish them the best in the future for their careers.

Honourable senators: Hear, hear!

BILLS

Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:33): I am pleased to be able to speak about our wonderful marine environment yet again. I would like to point out some of the risks that our marine environment has faced since the last time we were talking about the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011. Since August this year, we have had two spills in the North Sea from oil production, at least one from a Shell platform. We have had spills from ConocoPhillips in China. We have had the shipwreck and the oil washing ashore in New Zealand. We have had a spill by Chevron 370 kilometres north-east of the Rio de Janeiro state, which continues to pump oil into the sea. That was caused by Chevron underestimating the pressure in their deep-sea mining. And of course we are still seeing oil wash ashore on the coastline of America from BP’s Deepwater Horizon oil platform. I raise these issues because they highlight the threats to our marine environment.

We were very privileged in Parliament House yesterday to have Sylvia Earle—who is commonly referred to as 'Her Deepness', due to her knowledge of and well-known lifelong commitment to the marine environment—speaking to us upstairs in room 2S2. She reminded us that in fact we are all sea creatures, that we all depend on the marine environment for our life support systems. She reminded us that the marine environment is not a luxury, that it is not something that you add on top of things, that it is our life support system and that we need to value the oceans as a critical element of our life support systems. She told us about a speech she had made to the World Bank, where she had had a picture of a globe on the wall and had pointed to it and said, 'That is our world bank.' She was right. That is what the oceans and our marine environment are.

It is a tragedy that it has taken this long to recognise and start paying attention to the fact that our oceans are vital to our life
support systems. Sylvia Earle pointed out that, although we have made tremendous gains in the last couple of years in our understanding of the marine environment, we have already lost more than we will ever know. She also pointed out that we have 400 dead zones in our coastal areas around the world and that we have only seen five per cent of our marine environment. She pointed out yet again that our oceans are the blue heart of our planet, that we have only protected a minuscule amount of our marine environment and that we need to redress that.

One of the issues that are constantly on the agenda when we are talking about the marine environment is the accusation that we are locking up the oceans. It is a great shame that we have not learnt from the mistakes made in the terrestrial environment. What we have done there is manage to save the bits that have not been developed yet. For the marine environment, we need to take a much more strategic and holistic approach, which is what bioregional planning is about.

Some of the voices raised are trying to convince recreational fishers that they should be fundamentally opposed to the plans to establish a national series of world-class marine sanctuaries because it is bad for recreational fishing. In fact, this is an old-fashioned way of thinking. Marine sanctuaries and recreational fishing should—and must—exist side by side. Unless we have a comprehensive system of marine sanctuaries and marine national parks in place we will not have fisheries in the future. We already know the alarming state of our fish stocks around the planet. We already know that many of our marine species are endangered. Unless we take action now, there is going to be less and less access to fish stocks—not because we have marine sanctuaries in place but because we have overfished our oceans to the point of no return.

We need to have a science based system of marine sanctuaries in place so that we can ensure that Australia's unique oceans are protected. We know that our oceans contain many species that are found nowhere else in the world. Of the species that we now know that are there, 90 per cent are found nowhere else—not only nowhere else in Australia but nowhere else on the planet. We know that the evidence is in that shows that marine sanctuary zones are critical—crucial—in maintaining healthy oceans and fish stocks. This is internationally recognised as best practice. We believe that it is the most appropriate strategy for ensuring that our oceans are protected.

Australians love their oceans. Fishing is a big part of our beach culture. We know that recreational fishing numbers are increasing, with more people fishing more often. I see that evidenced very clearly in my home state of Western Australia. But unfortunately we also know that advanced fish-finding technology and larger boats mean fishers are travelling further and fishing longer in deeper waters. This is not the same as wetting your line off a jetty a few times a year. Fishers can return to the same spot again and again with GPS. In the past, this did not happen.

The annual recreational fishing catch is thought to be around a quarter of the annual commercial take, 45,000 tonnes. For many recreational fisher favourites, the catch is much higher than the commercial catch. There are a lot of species that recreational fishers favour and they catch more of them than commercial fishers do. Recreational fishing is not benign. It impacts on our oceans; it is a fallacy to pretend that recreational fishing has no such impact. Some people say that it is okay because recreational fishers use catch and release. But we know that there are high mortality rates from catch and release. If you catch
four and keep one, with a 60 per cent mortality rate two out of the three fish that you release die. This is the same as if you keep three. There is a lot of research in now that shows the recreational fishing is having an impact.

We also know that marine sanctuaries help generate new fish stocks, so recreational fishing and marine protection can and must go hand in hand. Rather than railing against marine sanctuaries, we believe that—with the right information and better education as to the benefits of marine sanctuaries—recreational fishers should be behind this campaign to protect our oceans. Only by protecting our oceans will recreational fishers have fish available to them in the future. You only have to look at some of the videos that have come from the marine sanctuaries that are already in place to see that they teem with fish. (Time expired)

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (09:42): I rise to speak on the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011. Australia is home to some of the most unique, beautiful and rare ecosystems in the world. Like the stunning diversity of our great continent, with its desolate plains, its rainforests, its mountain peaks and its geological marvels—many of which are in my home state of South Australia—Australian seas are a treasure of great magnitude. Australia has the third largest marine environment of any nation in the world.

Just as precious environments on land are protected in national parks, our oceans contain many iconic, ecologically important and fragile places that also deserve protection. The Great Barrier Reef is a natural wonder. The marine park management that has been put in place protects the amazing diversity of its coral and marine life. It is also very critical to the tourism industry in Queensland. In the southwest of Australia, over 90 per cent of the marine species in our waters are not found anywhere else in the world. The Coral Sea is recognised globally for its diversity and significance.

Not all of these unique ecosystems are protected. The marine bioregional planning process aims to ensure their longer term survival. We have a responsibility to keep our oceans healthy, resilient and productive for current and future generations. Marine bioregional planning is about improving the way Australia's marine environment is managed. Marine bioregional plans describe the marine environment and conservation values of each marine region, set out broad biodiversity objectives, identify regional priorities and outline strategies and actions to address these priorities. The Commonwealth marine areas are protected as a matter of national environmental significance under the Environment Protection and Biodiversity Conservation Act 1999. The Australian government's objectives for Commonwealth marine areas are as follows: to conserve biodiversity and maintain ecosystem health; to ensure the recovery and protection of threatened species; and, to improve our understanding of biodiversity and ecosystems and the pressures they face. Marine bioregional plans are designed to contribute to these objectives: first, by supporting strategic, consistent and informed decision making under Commonwealth environmental legislation in relation to Commonwealth marine areas; second, by supporting efficient administration of the EPBC Act to promote the conservation and ecologically sustainable use of the marine environment and its resources; and, third, by providing a framework for strategic intervention and investment by government
to meet its policy objectives and statutory responsibilities.

The EPBC Act provides that a bioregional plan may include provisions about all or any of the following: components of biodiversity, their distribution and conservation status; important economic or social values; heritage values of places; objectives relating to biodiversity and other values; priorities, strategies and actions to achieve the objectives; mechanisms for community involvement in implementing the plan; and, measures for monitoring and reviewing the plan.

Better management of the marine environment will be achieved by: providing advice and information to industry, with proponents proposing to undertake activities that will have, or are likely to have, a significant impact on matters of national environmental significance; enabling strategic, consistent and informed decision making in environmental assessments and approvals and in longer term planning by government and industry; targeting environmental programs, conservation measures and other government interventions within a region towards regional priorities, and, focusing investment in research and monitoring to address critical data and knowledge gaps to increase our understanding of ecosystems and human interactions with them and to improve the government's ability to meet its statutory responsibilities and policy priorities.

Marine bioregional plans aim to support all of these components. The plans will increase our understanding of Australia's unique marine environment. This enhanced understanding will improve the way decisions are made under the EPBC Act, particularly in relation to the protection of marine biodiversity and the sustainable use of our oceans and their resources by our marine-based industries. Importantly, marine bioregional plans will contribute towards managing the environmental impacts of human activities by identifying and describing a region's conservation values and priorities for managing those values. This will enable decision makers within government and industry to consider the interactions between proposed activities and conservation values, and the cumulative impacts of activities on the Commonwealth marine environment.

Marine bioregional plans are being developed with input from scientific and other experts, and in consultation with stakeholders. Consultation on marine planning is ongoing and will continue throughout the development process. The government is committed to transparency and accountability and has met with a range of stakeholders including commercial fishers, conservation groups, the tourism industry, state governments, the shipping industry and other users of the marine environment such as divers and recreational and charter fishers. This is in addition to community meetings being held by the department. In the south-west alone consultations have included two information sessions in regional capitals, 10 information sessions in regional centres and 47 targeted meetings, including with individual sectors.

The plans will include a number of key elements that further improve our understanding of the marine environment and support more informed decision making. The key elements are as follows. Conservation values: those elements of the region that are either specifically protected under the EPBC Act, such as species or places, have heritage values for the purposes of the EPBC Act or have been identified through the planning process as key ecological features in the Commonwealth marine environment. Key ecological
features: the parts of the marine ecosystem that are considered to be important for a region's biodiversity or ecosystem function and integrity. Biologically important areas: these are areas where a protected species displays biologically important behaviour, such as breeding, foraging, resting or migration. These areas are those parts of a marine region that are particularly important for the conservation of protected species. Regional pressure analysis: a review of current information on present and emerging pressures, their impact on conservation values, and the effectiveness of mitigation and management arrangements that are in place. Regional priorities: key areas of focus that should inform decision making about marine conservation and planning, as well as industry development and other human activities. Regional advice on environmental assessments and referrals: this will assist people who wish to undertake activities in, or potentially impacting on, the Commonwealth marine environment to better understand and meet their obligations under the EPBC Act. Through the marine bioregional planning process, the Australian government is synthesising and consolidating a range of information to act as a guide in the management of the Commonwealth marine environment. Information resources are being developed to make this knowledge publicly accessible and to inform decision making, both within and outside government. Marine bioregional plans will also provide direction by identifying regional priorities, strategies and actions and provide regional advice on environmental assessments and referrals. Marine bioregional planning is the right thing to do. It is right to protect these beautiful ecosystems and also sustain fish stocks into the future.

This bill, in opposing the principle and substance of marine bioregional planning, clearly illustrates that the opposition has no environmental conscience, no regard for the future of our environment and no idea when it comes to Australia's oceans. Just like with almost every other environmental issue they go near, they have no idea, they are wrong and they should leave it to the experts. It is the right thing to do to aim for substantial conservation outcomes for our unique marine environments whilst we continue to support our important coastal communities and their industries. Therefore, the government opposes this bill.

Senator IAN MACDONALD (Queensland) (09:54): I congratulate Senator Farrell for his speech—well, on reading the Hon. Tony Burke's speech, quite clearly! Senator Farrell is a nice guy, but that was the most uncomfortable 12 minutes he has ever spent in his life, trying to deal with a bill that he clearly has no idea about. Your language and terminology gave you away, I am afraid, Senator Farrell. But good luck, congratulations—you got through it! I hope you never have to be put in that position again. Senator Farrell, contrary to what was in the written speech that you just completely read, in breach of standing orders, can I ask you to tell whoever wrote the speech—Mr Burke, I suspect—that actually we are talking about bioregional planning because of the coalition.

Let me give you a little bit of history, because it is obviously sadly lacking in the Australian Labor Party. The Howard government, under environment minister Robert Hill—whom, incidentally, I had the good fortune to have a beer with just last night—introduced the world's first oceans policy. We were the first nation in the world to actually implement a policy in relation to the vast oceans that surround Australia and for which Australia has responsibility. And as part of that oceans policy the bioregional planning was introduced.
In the early days under the coalition government that planning was introduced for the very best interests of marine conservation, for ensuring that our seas and oceans were well managed and well looked after. But it was done in a cooperative way. At the time I was the Minister for Fisheries, Forestry and Conservation and so I speak from first-hand experience. The first bioregional plan was the south-east Australian bioregional plan. It came up from the environment department, but my department and I, and the constituents I represented as fisheries minister, were uncertain about it. Similarly, those people who use the oceans—the transport people, miners, fishermen, recreational people—all had a view. The original proposal that came up was a bit one-sided. Then there followed, as I recall, up to two years of negotiation. At the end of the day, in relation to the south-east bioregional plan, I think 90 per cent of the people were 90 per cent happy. Not everyone got what they wanted but, in the end, by results through consultations, through discussions and through cooperation, we were able to get the south-east bioregional plan that clearly was the first of its kind. It has been successful. It has achieved all of its goals and outcomes. And it has done that without in any way impacting overly badly on any of the multiple users of the particular area.

When the Howard government left office we had started on the north-east bioregional plan and we had started on bioregional plans across Australia—but, again, moving cautiously, starting the long process of consultation. Regrettably, the Howard government was defeated. Then we had in government a bunch of people who are myopic when it comes to the environment, urged on by the Greens—in this instance the Green involved, I believe, does have a genuine interest in the area, but the Greens and their leadership always want to go that extra step. The department then lost interest. The department suffered from a lack of political leadership and the more rigid elements within the department took over—and we found that these bioregional plans were then being rammed through without any consultation. Time and time again, at estimates, I asked about the plan in the Gulf of Carpentaria—'Oh yes, there's lots of consultation going on' was the response. I spent a bit of time up in the Gulf of Carpentaria, and every time I went there I would say, 'But I've been told at estimates there's consultation going on', and they would say, 'Yes, they had some junior officer fly in from Cairns who landed, went and talked to a local Greens group, got on the plane and went home'—and that was the consultation. The fishermen and particularly the Indigenous people had absolutely no involvement, no respect shown to them, in relation to the bioregional plan for the Gulf of Carpentaria, and that continues today. I was up there just a few weeks ago, and the mayor of Carpentaria shire and the councillors, who happen to be Indigenous, from Mornington Island were telling me that these things were happening off Mornington Island and they did not even know that this regional planning process was going on.

Contrary to what Senator Farrell's speechwriter also said, this bill is about enhancing the protection of the marine park and the bioregional planning process of our oceans. It provides that bioregional plans will become disallowable instruments, which are subject to the Legislative Instruments Act. That is essential because this parliament needs to take control rather than those who would effectively shut everything down. It is very important that parliament takes over, that it takes control, of this bioregional planning process. It cannot be left to the Greens political party or some of the more
radical green groups or some foreign so-called marine environmental group like the Pew foundation.

The Pew environmental group is an American organisation founded, I might say, thanks to the oil wells and oil money of people in good old downtown Louisiana or somewhere in the south of America years ago who obviously wanted to salve their conscience by putting in lots of money to set up this environmental group. But they do not bother about looking after all the environmental ills in the Gulf of Mexico, where perhaps they might have some relevance; instead, they try to tell Australians, who have some of the best managed fisheries and the best managed oceans anywhere in the world, what to do. We do not want those sorts of people to be in charge of this process. What we want is for this parliament to have its say. That is a fairly unusual proposition in this chamber at the present time.

We are a democracy. We think that parliament should rule, but we have had the farce in the last couple of weeks of 10 to 12 bills being passed through this parliament with not a word being said on them—not a word of support, not a word of objection, not a word of accountability. Thanks to the Greens political party and the Australian Labor Party, a dozen bills have passed through this parliament with not a word being spoken on them. We have had perhaps the most complex piece of legislation in the 18 carbon tax bills rammed through this parliament without any proper scrutiny and, again, with many in that package of 18 bills not even being looked at or even being spoken upon, yet we have voted on them—and they have been some of the most complex and far-reaching pieces of legislation we have seen.

As I said, the concept of having parliament rule is a concept that is sadly unknown in this chamber these days. I am so disappointed with the Greens political party. Once upon a time they used to say: 'Isn't it marvellous that parliament can have its say; it should scrutinise everything; it should keep the government accountable.' Nowadays the Greens political party are part of the process of shutting parliament down. I wonder sometimes why any of us bother coming in here. What are we getting paid for? Because in this chamber we are not able to actually debate government legislation.

What this bill does, at least in relation to the bioregional planning process, is bring some parliamentary oversight into the process. Who could argue with that? That is why I congratulate Senator Colbeck and Senator Boswell for the work they have done on this legislation. One of the things that concern us and which I know was a factor in the introduction of this bill is the proposal by the American Pew environmental group to shut down Australia's Coral Sea. It is a bit like the forestry debates of old. They come here and say: 'The Coral Sea is such a pristine area that we need to shut it down. We need to keep everyone out of it.' Yet it sort of belies the argument of why it is such a pristine area. It is a pristine area because Australia has managed the Coral Sea so well since the Second World War.

The Coral Sea has been carefully managed. The amount of commercial fishing in the Coral Sea is infinitesimal. What is there is very well managed by Australia's world-class Australian Fisheries Management Authority. Yet what the Greens, what the Wilderness Society, what other radical green groups and what the Pew foundation want to do is to shut it down. Cleverly, they have got a couple of fishermen to join their bandwagon. Let me tell you about that, Mr Acting Deputy President. I am not defaming
or demeaning any of these fishermen. If I were in their situation, I would probably do the same.

The Pew people went to the fishermen and said: 'Look, you're not making much out of this fishery,' and the fishermen said, 'No, we're not; it is so tightly controlled. It's a good fishery but tightly controlled. It is not terribly profitable. It is a long way away. To get there costs us a lot in fuel.' Fuel under Labor governments is exorbitant. Because of Labor policies and their inability to manage money, fuel is a very expensive item these days. So the Pew people said to these fishermen, 'What if we get the government to give you $5 million for your licences?' The eyes of the fishermen lit up and they thought, 'Gee, this is a superannuation policy we would never have.' So the Pew people got a number of fishermen. I do not blame the fishermen. They were struggling. It is an expensive fishery and Pew have come along and said: 'Why don't you join with us? We'll close it down. We'll get this Labor lot in Canberra—because we practically control them these days—to offer you a few bob and that will be a good superannuation policy for you.' That negates the importance of Australia remaining its own master. It is a bit like 'We will decide what happens with our waters, not some American environmental group'—supported, I might say, by some of the radical green elements in Australia who have already destroyed the very sustainable logging industry in Australia. They are out to destroy what is left of the fishing industry. They tried to destroy the northern beef cattle industry and with this government in power you would not be sure that they would not succeed in that in the not-too-distant future.

This bill puts control back into the parliament and it will allow sensible management of the Coral Sea to continue. I am not sure if all senators are aware of just how important the Coral Sea is to our commercial fishing industry. It is not a big fishery nor a terribly profitable one but it does bring in fresh fish for consumption by Australian consumers. If the Greens and the Labor Party continue, we are going to have to import all of our fish from the fishponds of Vietnam or Thailand being grown in conditions which some say are not very environmentally sustainable. But the fishery, small though it is, does supply fresh fish to the Australian market, and that is good for all of us.

In addition to that and perhaps the bigger aspect is the recreational fishing industry. Most senators would not have any real concept of what is involved. The Coral Sea is not the Great Barrier Reef, as many in these debates would have you believe; it is beyond the Great Barrier Reef. It is pristine water because it has been well managed by Australia but it is beyond the Great Barrier Reef. We are not talking about the Great Barrier Reef here although, as I say, many protagonists of the Labor government's approach would have you believe that it is.

Senator McLucas interjecting—

Senator IAN MACDONALD: I am glad Senator McLucas is here. Senator McLucas sometimes lives in Cairns. She represents that area in the Senate as a senator for Queensland. She will know better than anyone the enormous employment opportunities that are created in the Cairns region—and, dear me, they are desperately needed after the Labor government shut down the shipbuilding industry in Cairns—in what we used to call the marlin bait fishery, the recreational fishermen. People fly in from New York on the overnight plane, land in Cairns, pay $10,000 or $20,000 to get on a boat, with three or four crew, and go out to the Coral Sea, catch some billfish, tag them,
kiss them, record them, send the science data back to Australia's fisheries management people and come back to Cairns, get on the plane and fly back to America or Germany or wherever they come from. It is these people who contribute millions and millions of dollars to the Cairns economy and it is these people who are the most vociferous opponents of the Pew environmental group and their influence on Labor and the Greens in this parliament. They see this industry being destroyed.

It is not just the boats themselves that go out into the Coral Sea, it is all of the support industries: the boating industries, the marine industries, the tackle industries, the bait industry. It is all those young people who form the crew on those boats and who give Cairns that young and vibrant image. I have not taken a survey but I suspect that many of the crew are probably those backpackers from foreign lands who are on work visas here who come out and understand the magnificence of Cairns and North Queensland, northern Australia, and they get these jobs while they are doing it. All of this could be put at risk if the Pew environmental group have their way with the Greens, the radical environment groups and the Labor Party. So it is absolutely essential that this bill be passed so that control of these bioregional planning matters comes back into the parliament of Australia.

I have said that our fisheries are well managed but the 2009 fisheries status report of fisheries done every year shows that 72.3 per cent of Australia's fish stocks are not subject to overfishing and since 2004, an important date, the percentage of healthy fish stocks—that is, those that are not overfished—has increased from 27 per cent to 58 per cent. In this business not many others will praise you so I will do a bit of self-praise and say that as fisheries minister back in those times that was a goal that we had, to increase that not overfished regime from 27 per cent. I am delighted to see that, as a result of many of the initiatives the Howard government put in in those days, that has got up to 58 per cent and, given good marine management, good fisheries management, we can improve on that. It cost Australia a bit of money but we did it and we were happy to do it.

The basic tenet of this bill is that parliament should have oversight on the bioregional planning process. I cannot think what objection those senators from whatever party who believe in the supremacy of parliament would have to this. Let the scientists, let the public servants, let the bureaucrats, let the industry help do what they do, but let parliament have oversight so that if perchance there has been a mistake made people can lobby parliamentarians, who can raise the issue in the chamber. If the bioregional planning is disallowed then it goes back to the drawing board with an instruction to the bureaucrats to come back with something better, something that does have widespread support and something that will enhance Australia's reputation.

As the party that introduced the world's first ocean policy, introduced the bioregional planning process, this is a logical further step from us, and I would certainly urge senators to support this and bring parliament back into the process.

Senator BERNARDI (South Australia) (10:14): It is a great pleasure to follow Senator Ian Macdonald, a man whose knowledge of Australian fisheries and environmental protection measures is, I would say, second in this chamber only to that of Senator Richard Colbeck. Among the very good points that Senator Macdonald made, one that particularly resonated with me was the fact that in this place we often do not recognise the skills and talents of others
in a public fashion, and I want to praise, firstly, Senator Macdonald, for his outstanding contribution in this area over many years as a minister—and indeed as a shadow parliamentary secretary he has maintained his interest, for the people of Australia—and, secondly, Senator Colbeck, whose initiative it was to bring forward the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011.

Outside the specifics of what it addresses, in essence this bill also speaks volumes about the coalition's approach to parliamentary scrutiny. Parliamentary accountability, openness and transparency are hallmarks of the coalition's ethos in government and accordingly, by introducing this bill, Senator Colbeck is saying that we would like the parliament to be able to maintain its voice on how Australia's fisheries and biodiverse zones are managed. That is a very simple proposition. It is a proposition that is put forward by a man who has a commitment to openness and transparency—a Tasmanian senator. I cannot help but contrast the attitude of Senator Colbeck from Tasmania and, perhaps, one of his Tasmanian colleagues, Senator Bob Brown from the Greens party. Senator Bob Brown has this week continued to vote against allowing scrutiny and discussion of bills. It is called the guillotine motion, Mr Acting Deputy President Back; of course, you would be well aware of that. In my time in this place it is unprecedented for bills to be put through with not a word of debate, not a skerrick of discussion, not any examination of things that are important to the Australian people. I think that is outrageous. I think it is wrong. I think it makes a mockery of our democratic system and makes a mockery of this place. It devalues the contribution that every single senator makes in this place. And so I contrast the attitude of the Greens, and the Tasmanian Greens in particular, with the attitude of Senator Richard Colbeck, a great Tasmanian senator with a firm commitment to this area.

I come back to this point: if parliament is not able to enter into a discussion about serious matters, about matters that pertain to an economic area and region that in fact is greater than Australia's total land mass—I am talking about our marine zones—then why are we here? Why are we here if at the stroke of a pen a minister can make any decision that he likes in respect of the economic livelihood or mining—

Senator McEwen: Or she!

Senator BERNARDI: Or she—yes indeed, Senator McEwen. It may be the case that you might get your gig as the environmental minister at some point; but I am not sure about that. Forgive me; I will not be a slave to political correctness, Mr Acting Deputy President, so I will just continue to refer to the generic 'minister'. Why is it that a minister can make these sorts of decisions without any reference to the parliament? Why is it that a minister can impact, affect, devastate, enhance the economic livelihood of so many Australians and the recreational interests of Australians without any reference to this parliament? The flaws in that approach are being highlighted not only by Senator Colbeck and Senator Macdonald but also by Senator Ron Boswell, who is a champion of freedom for people up there in Northern Queensland. So when Senator Colbeck introduced this bill it was not just about the marine parks and biodiversity; it was really about openness and transparency in government. There are occasions of course when ministers will have to have some level of discretion in going about their business, but you can have more confidence in the discretionary decision-making process when there is a substantial track record of goodwill
and experience, I would guess, in making appropriate decisions.  

In respect of fisheries, from my point of view as a proud South Australian I recognise the contribution of our Southern Bluefin Tuna Fishery. Some of my good friends are involved in that industry, and I make no bones about that. I support that industry not only as a great employer in South Australia; it is a great export earner and indeed it provides the financial lifeblood of that fantastic city Port Lincoln, in South Australia. As a regular visitor to Port Lincoln I cannot tell you, Mr Acting Deputy President, how many times the residents of that great place have asked me: 'What are the government doing to the tuna fishery? Why won't they fight for Australian interests, and South Australian interests in particular?'

It is a longstanding discussion. When we were in government and Senator Abetz was the minister, the international tuna association was found to have overfished in a number of countries, and quota reductions and penalties were necessary in order not only to penalise the countries that had done the wrong thing but also to ensure that tuna stocks were sustainable into the future. When we were in government, Senator Abetz went to that meeting and championed the cause of the South Australian tuna industry because they had been doing the right thing by fishing within their quotas, adding value where they possibly could and making sure that they had a sustainable crop that would continue to fuel the growth of the Eyre Peninsula, in part, and Port Lincoln more specifically. I contrast that with when Minister Garrett was charged with the same process. Rather than going there and fighting for Australian interests, Minister Garrett and his crew—no pun intended—just fell over and said, 'Yes, cut our tuna quota by 25 per cent.' They just gave it up like that. Overnight, that devastated the city of Port Lincoln. It put many, many people out of work; it took tens of millions of dollars out of the economy; it disrupted entrepreneurs' balance sheets; it disrupted businesses; and it said to them, 'We cannot plan with any certainty because of the slavish attitude of this government minister.' We know that Minister Garrett has a particular peccadillo in regard to tuna because when he was President of the Australian Conservation Foundation their stated goal was to ban any tuna fishing whatsoever—conventional, harvesting of tuna. This is an extreme approach. It is akin to the approach of that organisation, the People for the Ethical Treatment of Animals, who tried to rename fish 'sea kittens' in order to stop people catching them. It is just bizarre. It is not grounded in reality. But this is the man who was appointed to be the environment minister and was put in charge of the environmental outcomes of our tuna fishery.

Quite frankly, it is very reasonable, given the track record in this area and the genuine concerns that some of us have about the livelihood of many hard-working men and women who are attached to the fishing industry, to ask: why would we want a minister in the government ideologically bound to stopping commercial fishing, to disrupting it? He is ideologically bound because the government is captive to a minority movement, an extreme movement, that does not want to see a sustainable approach of man utilising the god-given resources in a sustainable manner to feed and fuel Australia's future prosperity. That movement is the Greens movement. We know that; we have see it every single day in this place. It is littered with an unrealistic approach in which man is seen as some sort of cancer on the planet, and if we were not here the fish would be free to swim as wild as they possibly can and the animals could grow and prosper.
Quite frankly, Australians need to prosper. Our nation needs to grow and develop. You cannot entrust this sort of heavy-handed lone wolf approach to the livelihoods of individuals to any minister without parliamentary scrutiny, at least not with this government. The essence of Senator Colbeck's bill is that it makes the declaration of marine bioregional plans a disallowable instrument. At the moment these marine bioregional plans are deemed by the act not to be a legislative instrument and thus they are shielded from parliamentary scrutiny.

This bill is not about the government's declaration of marine protected areas. It is about whether the parliament has the right to have its say and do the job we are elected to do. That is all we are asking. We want to be able to do the job that we have been elected to do. Unfortunately, this week we have not been able to do that job because of the intransigence of the government and the Green movement teaming up to stifle debate.

I am a great believer in freedom of speech. Even if I do not like what is being said we should be able to have a battle of the ideas and the arguments. We should be able to have that openly to ventilate them fully, not only in this place but out there in the public discourse. But when a parliament has been effectively shut down, when our legislators have been muzzled, when we are not allowed to make a single contribution—not one of us is allowed to make a single contribution on any bill in this place—it says that we are only a step or two away from tyranny.

They are big words, but we should never forget the freedom of speech, freedom of thought, freedom in general is never more than a generation away. If we start to accept the fact that individuals can ride roughshod over this parliament, that individuals can make determinations about what this parliament can and cannot talk about, and it is followed blindly by members on the other side of this chamber, we start to have a problem.

I notice that Senator Bob Brown chipped in during the debates this week that this was just democracy. Well, it is democracy indeed, and ultimately the judgment will be rendered by the Australian people. I think the Australian people will be most concerned to find out that their elected parliamentarians are not allowed to discuss bills of great importance and interest to them.

In saying that, I accept that there are times when the parliament's time is short, never more so than this year because we have had fewer sitting weeks this year than in previous years. There is always the opportunity to have more sitting weeks. I know my colleagues on this side of the chamber are certainly very happy to come back next week so that we can fully explore the nuances of the government's and the Green's legislative agenda on behalf of our constituents, whom we are here to represent after all, and in particular our states.

For example, with respect to South Australia, one of the marine conservation zones that is being included in this bill runs from Kangaroo Island, just south of Adelaide—a magnificent place, a wonderful place not only for tourism but also a very productive place for the farming and fishing communities there and, indeed, there is a lot of aquaculture going on there as well—right up into the nib of the Nullarbor Plain in Western Australia. That is a massive zone that has an enormous impact on South Australia's wealth and, of course, the migratory habits of a lot of the fish that are captured and harvested, and farmed indeed in Port Lincoln as well.

Another significant point—it was made by Senator Macdonald and I pick up on it—is
the recreational fishing market. I am a recreational angler. I can assure you that the fish are most safe from me catching them; I have not caught too much at all, but I love going fishing. I understand it is a very important industry, not only financially for many retailers, bait shops and people who are involved from that perspective; it is actually important to the welfare and wellbeing of Australians. It is very therapeutic for people to go out and put a line in the water, and hopefully catch themselves a feed. If you can catch a King George whiting or a squid, or something else, you have a fantastic day out and you get to feed your family.

We have already seen the South Australian state government trying to introduce marine zones and exempt recreational fishing. There has been a lot of push-back from the community of course, not least of all those who have bought holiday homes and boats on the coast, who just want to pop out and catch fish in the bay, close to home. There are instances where these zones are going to stop that from happening. What do you think happens to the property prices of a place where you are not allowed to fish or that is not easily accessible in a small boat? These sorts of things devastate local communities and they are done because there is a complete lack of consultation, there is a lack of awareness and there is a lack of interest in regional communities by most of the Labor Party. That is in South Australia. The same, unfortunately, can be said up here in Canberra. Unfortu- nately, the Labor Party's environmental credentials are all about stopping people from doing things rather than allowing people to live harmoniously and sustainably within the environmental agenda that is the agenda of most mainstream Australians.

I think we are all, at heart, environmentalists. We want to protect and defend our natural resources for successive generations. Any parent would say that. They want their children to be able to see the wonders and miracles of nature. We have a vested interest in conserving our environment and in providing opportunities for future generations to enjoy, indeed to profit from and to embrace. But we cannot do that with any confidence when we do not have faith in our government. When you do not have faith in your government and you have a minister that is extremely zealous, and has a longstanding link with some overbearing environmental organisations that seek to ride roughshod, quite frankly, over the rights and responsibilities of mainstream Australians, there is cause for concern. That is why this bill is so important.

This bill will allow every Australian to have a voice through their parliamentary representatives. It will allow us individually to stick up for our constituents, their interests and concerns, and to balance the interests of those who want to, either commercially or privately, partake of the bounty of the sea in a regulated, sensible and sustainable manner. It gives us all a voice to be able to do this and make this country an even better place. But of course, in order to do so, we have to be able to talk about these things.

We are aggrieved, the Australian people are aggrieved, that more and more legislation is being cannonballed through this parliament without any scrutiny whatsoever. We are expected to entrust ministers, in whom most Australians have very little confidence, to make discretionary decisions that could have devastating impacts on communities, on our commercial operations and on individual pleasures and pursuits. In any normal circumstances one might think we could trust our ministers to do that, but these are not normal times. These are not normal times for our parliament and I think
that, unless we maintain the parliamentary voice, our country will be the lesser for it.

Senator FURNER (Queensland) (10:34): I rise this morning also to make a contribution to the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011, which seeks to amend the Environment Protection and Biodiversity Conservation Act 1999. I do so as a proud Queenslander who has lived in that state all of my life. I travelled to the Great Barrier Reef in my early teens, joining those who now amount to some 1.6 million visitors each year, to see the beauty of that marvellous piece of our coast and its biodiversity. I, along with many others, will continue to travel to that area of Queensland to see the particular beauty of our land there.

Under the bill before us, the bioregional plans and the proclamation of Commonwealth reserves become legislative instruments and are therefore disallowed. That causes enormous problems for the regions and its communities, and for the workers up in that area around Cairns, right down as far as the Whitsundays. People who have visited the Great Barrier Reef realise it has a substantive area of coverage, ranging from the tip of Cape York right down to just below Gladstone.

In the past, those opposite have actively opposed any marine planning, including activities such as consultation and draft plans being undertaken to deliver the government’s marine plan election commitment. It is a commitment that we proudly put our stamp on. The Labor Party have a strong environmental policy and we believe in the environment. We do not just make tokenistic claims or present tokenistic bills in this chamber that are disingenuous in order to claim that we are environmentalists. We are environmentalists in the Labor Party and this is why we will be opposing this bill.

The Senate Environment and Communications Legislation Committee, which inquired into this bill, recommended that the bill not be passed. The committee indicated that it may reduce transparency in decision making. In fact, in their report they said:

The committee is particularly concerned with the potential financial hardship and uncertainty that the disallowance process may cause affected businesses, communities and other stakeholders.

They went on to say:

The committee considers that the Bill, if passed, would not contribute to a more effective and efficient environmental management process.

At a time when we are just coming off the back of a global financial crisis, and bearing in mind the terrible natural disasters that we have had in North Queensland just this year—Cyclone Yasi and the flooding—we cannot afford to exacerbate issues for businesses, communities and other stakeholders on the coast of North Queensland.

One of the other things that needs to be recognised is that, if passed, the bill would make bioregional plans and marine reserve networks disallowable. If they were disallowed, the consultation process would have to be repeated. Really, this bill is just another example of an opposition who oppose for the sake of opposing, and we have had plenty of that over many months. They do not have a policy, they do not have a position on things like this. This is tokenistic, disingenuous and should not be accepted.

Conversely, however, the Gillard government are working with communities to put in place marine plans and develop marine reserves to protect our precious marine environment for future generations and to ensure sustainable fishing and tourism industries exist. This is hand-in-hand with the Queensland Labor government.
Mason, who is in the chamber, would know this, coming from Queensland. We have a strong environmental commitment to our constituents in the state of Queensland. It is something we are extremely proud of, and we will sustain that position as a state government and also as a federal government. We will make sure that areas like the Great Barrier Reef are protected.

In stark contrast, the Liberal-National coalition is seeking to scare and divide communities up there by spreading misinformation. I have quite often heard speakers opposite indicate the loss of jobs, the loss of fishing opportunities, the loss of businesses. The scaremongering they did in the lead-up to the clean energy bills is common knowledge. It was a case of their leader, Mr Abbott, going into communities and knocking on the doors of any businesses that would allow him access and scaring them, telling them that their businesses would be closed down, their workers shifted overseas and so on. We are not surprised that the scaremongering is continuing. It appears to be the only policy that the opposition have.

The opposition's bill would mean uncertainty for commercial and recreational fishers. It does nothing but create uncertainty for those communities, and that is an area we are extremely concerned about. I am interested, in that regard, in some of the comments made by the previous speakers. I was interested to hear Senator Macdonald indicate that the laws put in place under John Howard were put in place in the:

... best interests of marine conservation, for ensuring that our seas and oceans were well managed and well looked after.

I have not heard a greater hypocritical comment in my life than that statement. I say that on the back of what is happening in Queensland now. We have a situation up there, which you are probably unfamiliar with, Mr Acting Deputy President Back, where the opposition leader is not in the Legislative Assembly. He has not been elected by the people of Queensland; however, he is the opposition leader. I am referring to Campbell Newman. He has indicated already that he is going to wind back particular environmental laws that have protected certain areas of the environment in Cape York. I am referring specifically to wild rivers. In fact, they are going to wind back laws on four of the rivers that are listed in the cape: the Wenlock, the Stewart, the Archer and the Lockhart rivers. I have been up in that area on many occasions and seen the beautiful, pristine areas of the Wenlock. I have actually caught a barramundi in that river. It demonstrates the hypocrisy of those opposite when they come in here and claim that the Howard government legislation was in the interests of ensuring seas and oceans are well managed, yet those in the LNP in Queensland are prepared to wind back legislation that has been put in by the state Labor government. It is great legislation, it is there to protect those beautiful rivers, and the LNP leader up there, Mr Newman, wants to wind it back so that mining will be allowed on those rivers. I am genuinely concerned about what that will do to the likes of the Wenlock River.

In mentioning the Wenlock River, can I say that this is where the hypocrisy really hits home. Everyone knows Steve Irwin in this place—a lot of people around the world know Steve. When Steve passed away, as an acknowledgement of his commitment to the environment—Steve was a true conservationist—John Howard, as the Prime Minister at that time, presented him with the opportunity to have a piece of land, about 130 hectares, on the edge of the Wenlock River and taking in the Wenlock River. Mr Acting Deputy President, I would love to take you there one day. You would
understand the importance of this and you would understand the hypocrisy of those opposite in saying, 'We are environmentalists.' Maybe John Howard was an environmentalist; I do not know. He was one person whose policies I despised. In fact, the manner in which he dealt with workers and Work Choices was the catalyst for my decision to enter politics. But he may have had a bone of conservationism or environmentalism in him because he gave that land to the Irwins in recognition of the great work that Steve had done. I spoke to Terri Irwin recently about this and she is just horrified that we will lose beautiful, pristine rivers like the Wenlock River. In fact, she has been quoted in the press as saying:

Considering that a child dies every 20 seconds... from drinking polluted water, I think it's absolutely ridiculous to be considering anything other than supporting wild rivers.

An environmentalist like Terri Irwin has come out and said that, yet you have the likes of Campbell Newman wanting to destroy the Wenlock River by allowing mining on that river and on four other rivers up on the cape.

I enjoyed Senator Bernardi's comment about having no fear of catching any fish. I have had that same issue at times, but the cape is one of those areas where—and I am sure Senator Scullion will concur with these comments—there are places you can go where you are guaranteed a good catch of fish. When I was up there earlier this year, I had the opportunity to go out around Weipa and I caught a bagful of fish—not to take home but to release. We only kept one fish and that was the only barramundi we caught.

This is what we are about as a Labor government. We are about protecting certain areas to make sure the opportunity exists for our children and grandchildren to throw a line in the water and catch a fish—generally to release them, because that is what true environmentalists and fishers are about up there. They understand the importance of their children having an opportunity to fish and that that is something we need to preserve for future generations. I do understand where Senator Bernardi was coming from, but there needs to be protection when we are doing these sorts of things and certainly this bill does not allow that.

I have had the great opportunity to be involved with the Reef and Rainforest Research Centre in Cairns. Several years ago they took me out onto the reef and they expressed their concerns about damage being done to the reef, they expressed concerns about issues associated with the environment and they expressed concerns about what was happening with land management. But farmers in the region, as a result of consultation, have been taking a responsible approach and have been considering the way they conduct their agriculture and their land use in those areas. That is, to some degree, lessening the impact on the reef. But on that visit I was quite alarmed to see certain parts of the reef suffering from bleaching. I have been to reefs in other parts of the world where all you see is white coral—it is dead. I would hate to see us end up in a situation where that is what we present to the 1.6 million visitors who travel to the reef each year.

Given that we are talking about the reef, I should record a few things about it. It is certainly an international tourist icon. An amazing number of people travel there, not only from our country but from throughout the world, just to see this amazing living reef. It is 2,900 unconnected coral reefs and, when you fly from the cape down to Cairns in a light aircraft, you can see this amazing structure. It is one of those structures you can see from the moon, I think. It stretches over 2,000 kilometres from the south of Papua
New Guinea to Bundaberg. So it is a broad expanse of reef. There are also about 900 islands within the Great Barrier Reef. You see them, surrounded by all the different colours of the reef, as you fly down from the cape.

The reef is largely made up of complex and diverse coral reef systems, but it is also home to over 1,500 species of fish, 400 species of coral and many rare and endangered species in addition to that. It also supports the largest dugong populations in the world and it is an important breeding and feeding ground for whales and dolphins as well. Six of the world's seven species of marine turtle can be found there.

Complementing the reef's natural wonders is a rich cultural heritage. For thousands of years, this unique marine environment has been central to the social, economic and spiritual life of nearby coastal Aboriginal and Torres Strait Islander peoples, many of whom I met with in my visits up around Cairns. I enjoyed the Dreamtime stories they told about this beautiful part of the world.

This amazing part of our state of Queensland makes a major contribution to tourism. As I indicated, there are 1.6 million visitors per year and the marine tourism industry generates $1 billion per annum for the local and Australian economies. That number of 1.6 million visitors has remained relatively consistent since the 1990s, demonstrating that people continue to want to travel there and see part of the reef and, no doubt, other parts of the hinterland around the back of the reef. People realise it is an important tourism area. Of the 1.6 million visitors, about 85 per cent visit the marine park. So not only do they go there to visit the wetlands, the rainforests up in the Daintree, the lakes at the back of Mareeba or the other activities around that area but 85 per cent of them go to visit the marine park in the area offshore from Cairns out to the Whitsundays, the marine park making up about 10 per cent of that larger area. There are approximately 730 tourist operators and 1,500 vessels and aircraft permitted to operate in the Great Barrier Reef Marine Park. About 60 per cent of these operators are actively undertaking tourism operations in the marine park. So you can see that the reef is sustaining lives and the operation of businesses up there. We are concerned that, should this bill be passed, that will all be jeopardised by the issues I have identified. We cannot afford to allow businesses—when we are off the back of the global financial crisis and the floods and cyclones in North Queensland recently—to be affected by the likes of this particular bill. The Gillard government are committed to working with communities and we will continue to do that to establish a system of representative marine reserves. Our marine environment is under long-term pressure from climate change and increasing industry activity. Fortunately a couple of weeks ago we passed clean energy bills to deal with this issue. Those opposite, of course, never supported that legislation. They voted against it several years ago and this time—a surprise to no-one—they voted against it again. I find it a bit rich having to listen to those opposite claiming they are environmentalists. Never, in their entire lives, have they shown a bone of environmentalism.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Back): Order! Allow Senator Furner to continue his remarks.

Senator FURNER: To hit the nail on the head, the Leader of the Liberal Party, Mr Abbott, has referred to the environment as 'absolute crap'—disgraceful words, which I would not use. Irregardless of what I think of the environment, I would not use those words in public. Those words are on the
public record now and that is the opposition's position. That is what they stand for. That is why we will not be supporting this bill. (Time expired)

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (10:54): I am quite surprised. I have a great deal of respect for Senator Furner but perhaps he has been speaking on the wrong bill. The Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011 simply gives the parliament the capacity to consider something. That is all it does, like very many regulations. The bill simply allows us to look at bioregional plans to ensure they do not have unintended consequences. Those on the other side recently have not been caught up in the usual thematic—that the Senate should scrutinise things carefully, have a debate and then vote. The new word is 'truncate'. 'Let's just stack this down to about two seconds' is the thematic the government are following. I would hope that the Greens are not going to vote against this legislation. And we have more of the same from those opposite, 'We couldn't possibly have any more scrutiny.'

Senator Furner was incredible in his contribution when he said that in bringing a regulation to this place somehow it is going to affect the Great Barrier Reef. He spoke with great passion about what a wonderful thing it is. Who could possibly deny that? Allowing something to be disallowable in this place certainly is not going to be doing that. He talked about the global financial crisis—that jumped in—and about the Queensland floods. Having a disallowable instrument is a really powerful thing. It is up there with an act of God.

He also talked about the consultation having to be repeated. Imagine consulting once and probably getting it wrong. So you bring legislation to this place to get checked and: 'Oh, no! Shock, horror! Don't tell me that we now have to consult again.' That would be horrific. Senator Furner is genuinely a lovely bloke but he certainly drew the short straw here. He said this is going to create uncertainty among recreational and commercial fishers. Recreational and commercial fishers out there need to really worry because the Senate is going to have an opportunity to scrutinise this particular piece of legislation! This is a fair dinkum short straw.

Then he goes on to talk about a great Queenslander, a fantastic Queenslander, who is really going to take the bat to the Labor Party in the oncoming election, a very thoughtful and insightful man, Mr Campbell Newman. He decried Campbell Newman because Campbell Newman is someone who understands this process. He decried the fact that Campbell Newman stood up for the Aboriginal people of Cape York and supported the wild rivers legislation, which allows only one thing—that through the decency of asking and consulting with Aboriginal people, we seek their written consent to put park-like provisions over their land. If we get their consent, then we can move to do that—quite a decent thing. But Senator Furner says that that is a terrible thing for Campbell Newman to be doing. That is absolute rubbish.

I remind Senator Furner, when he talks so carefully about the Wenlock River and the Steve Irwin Wildlife Reserve, and in the same breath decries John Howard, that it was in fact John Howard who gifted that reserve in memory of Steve Irwin. It was our government who created the park. He also said briefly that this bill will not allow protection. He talked about researchers in boats being concerned about the reef—I am not really sure what that was about. And we have to be careful because, if this is legislation passes, we are going to have
increased bleaching of corals. You are drawing a long bow, Senator Furner. I feel sorry that you have been asked to defend the indefensible in this place.

This is a very good and important piece of legislation. It does one simple thing: it says that, if a marine bioregional plan is declared, it should come before parliament, as do literally thousands of disallowable regulations every day. As a disallowable instrument, it has to sit on a table for a period of time so that people can have a look at it, and there is a potential to disallow that instrument. It is a normal thing. There are some really good and important reasons why this should be disallowable. I follow this very closely in my life, as many would know. I am very proud to be part of a government that introduced its oceans policy—the first comprehensive policy that looked at further levels of protection for our oceans and our biosphere. It was an exciting time. If you read our policy, it was all about excitement: what we were going to do, how we were going to measure it, what sort of research we were going to do and how we were going to control the impacts. It was a very exciting time. Sadly, after the creation of a number of marine protected areas, once the current Labor government took power—porridge fingers! Everything it touched has turned to porridge.

Our alternative policy would immediately put on hold that bioregional planning process to allow for its restructure. We would provide a fair and balanced displaced effort policy. We would base marine protected areas on science. We would establish sensible and balanced marine park boundaries and develop management plans in consultation with industry. But if we had that plan we would want to make it disallowable. Everybody gets something wrong now and again and we might not have thought of something, but this place has the resources and the people to focus on that completely. We have committees, and that is what this place does very well.

There are two important points. The first is that as we have moved to marine protected areas there has been a primacy of the Department of Sustainability, Environment, Water, Population and Communities over all other matters. Whilst I know a lot of people in the department are wonderful people—Conall O'Connell and I have blued for years but he is a great bloke and a very wise man—it seems that over time that primacy means the view of the department is the only thing we take into consideration. A bioregional plan put by the environment minister will come in here and that will be it. What we have said in our policy is that all marine protected areas will be signed up by both the minister responsible for fisheries and the minister responsible for the environment. It is a far more comprehensive and sophisticated approach, as one would expect from the coalition.

One of the most important elements is to make sure there are no unintended consequences. When you put a marine protected area out there one of the things people very much need to understand is that we call it a bioregion. We have talked about fish, about corals, about dugongs and about whales, but let me remind everyone that you cannot make a whale turned left. You cannot make a piece of coral grow over there. You cannot say to a dugong, 'Don't swim over here,' because a line on a map does absolutely nothing to affect those things. A line on a map affects only the behaviour and activities of people. It is the people whom we are seeking to benefit, because that is what this place does, and we benefit people by putting in protected areas in the right way and in the right places. We need to ensure that the impact of putting in a marine
protected area is a proper impact and has been done for proper reasons.

This is where we must look at the motive. In this country we have, without a doubt, world-standard fisheries, and as a past chairman of the International Coalition of Fisheries Association I say that with some authority. One of the things we know to look out for in our environment is the further politicisation of fisheries management. For example, in New South Wales there was a commitment by the then Premier Bob Carr with the Greens, for Green preferences in New South Wales, that up to 50 per cent of the inshore areas would be locked up and preferences would be swapped. It was a wonderful idea. Of course, they did not think about the notion of displaced effort. Imagine if we closed 50 per cent of the Senate: all of the senators on the other side would have to come and sit here, and there is not much room. You will wear out the cushions on this side exactly twice as fast as normal. By rolling out closures across 50 per cent of New South Wales you have, in one fell swoop, increased the fishing effort in New South Wales by 50 per cent. How can you say that is helping the environment? It is absolute nonsense, but it has happened.

Things like this bioregional plan should be brought to this place so we can ensure that those unintended consequences of displaced effort do not happen. This legislation was not drawn up to protect the environment. It was done for a self-serving Labor government in New South Wales who did not care about the environment or the communities—they just cared about themselves. We have seen a lot of that. I have seen a lot of that in my time and in this government. This place needs to be positioned to ensure that the motive for providing marine protected areas is a pure motive based on science. Labor are not going to vote for our legislation, because they want to say, 'I want to be able to trade the environment off politically.' We do not, and our legislation says we do not. We want to put it before all of parliament.

There is another element of displaced effort which is a very technical management issue. Whenever we create a bioregion, bioregional plans invariably deal with use, so there are different rules about the sorts of things you can do in different places. In some places a certain sort of gear effort cannot be used, you cannot trawl in certain areas or do certain sorts of fishing, and some areas are completely protected. We know now, in fisheries management and with the use of marine protected areas globally, the most important thing is that, if when you do something you have an impact that closes half of it, you have to have a policy in place that ensures you do not have a negative impact on the environment. You need a displaced effort policy, and there might be a whole suite of things. If we were a commercial industry we would buy out 50 per cent of it. But there is no point in buying out 50 per cent if today you make a declaration to close an area and everybody comes over and doubles the use in that area and then you think about buying out a few fishermen over the years. On the first day that closure is made we are having a negative net impact on the environment. And so when the bioregional plan comes to this place, we will have an opportunity to ask, 'Before this comes into effect, have you already mitigated the changes to the use of those areas? Have you put in an effective displacement policy?' We can look at those policies and say, 'Fine. They have put those measures in.' We will be able to say, because it is consistent with coalition policy, that we will not declare an area before we have made the effort, dealing with the best interests of the environment and fisheries.
I am not only talking about the best interests of the environment and fisheries. It is also in the best interests of the communities, families and businesses that all rely on it, whether it is through tourism, visitation, support industries, commercial fishing or recreational fishing—in fact, all of those businesses that Senator Furner indicated earlier. I am surprised at Senator Furner's sudden embracing of the environment. He has claimed that they are true environmentalists on the other side. If they are, as they claim to be, true environmentalists then they should support this legislation. But, sadly, I suspect they will not.

You have to look for the motive. Why under such obvious, well-known, well-researched processes would they say, 'No, we do not want that level of scrutiny'? It is because those on the other side quite clearly have an agenda to ensure they can continue to trade away the environment against their political self-interest. They have done this in New South Wales. They have done this in North Queensland by trading away the interests and future of Aboriginal people against what is now on the public record as a preference deal with the Greens. They have put their own interests above the interests of both the environment and our first Australians. They should stand condemned. Even better, they should support this legislation.

Senator BACK (Western Australia) (11:09): Madam Deputy President, I thank you for the opportunity to contribute to this debate and to support the motion of my colleague Senator Colbeck. It is the fact, of course, that the Environmental Protection and Biodiversity Conservation Act was an initiative of the coalition government under then Prime Minister Howard, introduced by then Minister Robert Hill. It is the fact that the environment minister has the sole power to approve, in this case, the adoption of bioregional plans. It is the contention of the coalition, led by Senator Colbeck, that this amendment for it to become a disallowable instrument should be made to provide far greater parliamentary sovereignty and to allow both houses of parliament the right to debate the merits of any new protected areas in the marine environment.

This is a week in which we have almost seen the death of democracy, particularly in this chamber. So it probably would not resonate well with the Labor Party and Greens to have a process by which there would be a disallowable instrument introduced in the event of the minister's failure to consult prior to being given the opportunity to approve new bioregional plans.

There is not a person in Australia who does not favour the best protection of our marine and terrestrial environments. This is best evidenced in the fishing world. If you think of fishing, be it recreational or commercial, it tends to be intergenerational for many families over many years. Whether it is commercial fishing in which the grandchild is on the cray boat with their father and grandfather, or mother and grandmother, or recreational fishing, which we have heard evidence of from all of the speakers here, fishing is one of those delightful processes in Australia where generations combine over time continually.

We have heard from fishermen like Senator Bernardi and Senator Furner. Whilst I have been quite interested in fishing, I have the distinction of having only ever once caught one fish in my life and that was on an occasion when the hook was baited by others and in fact I went to sleep and somebody had to wake me up to tell me that there was a pink snapper on the end of the line! So I am certainly not one who has challenged the fish stocks around the Australian coastline. But what I can say is that there is a deep and
ongoing concern by people, be they recreational or commercial fishers, to ensure the long-term viability and survival of fish stocks and other organisms in the marine environment. So I will not stand here and listen to carping and criticism by anybody about the interests and concerns of the coalition when it comes to this area.

Remember again that this legislation, as indicated by my colleague Senator Macdonald, is a world first and best practice. That particular act of parliament has become the benchmark around the world. Let us not forget in all of this conversation that is going on that Australia protects more of its marine reserves around its coastline than any other country in the world, so we have no occasion to be ashamed of our track record.

But what this is all about is the method by which this minister, Minister Burke, has gone about this process. I happen to be one person who has been a victim of the unwillingness and inability of Minister Burke to actually consult. In December last year I was consulting with recreational and commercial fishing groups on the concerns they had and the lack of information they had about the proposals to lock up areas of the marine environment around Western Australia. I was aware that the minister and his staff were going to engage in a consultation process here in Canberra. I made a direct approach to the minister's office through one of the interest groups asking, 'Could I come to Canberra to participate in that consultation and advice process?' The answer to a Western Australian senator was, 'No, you can't come.' So when I read some of these quotations—which I will read out in a few moments time—from Minister Burke about this outpouring of consultation, I know that it is absolute, utter, patent nonsense. That was not only my experience. I will also allude to witnesses at inquiries who, unfortunately, shared my experience. For seven years, from 1988 to 1995, I had the privilege of being the Chief Executive Officer of the Rottnest Island Authority. Rottnest Island is some 20 kilometres off the Western Australian coast and is probably the focus of offshore recreational activities such as fishing, diving and other aquatic activities along Western Australia's southern coast. Much reference has been made to the so-called Perth shelf. It is known universally as the Rottnest Shelf, and it would be fair to say that the vast majority of young children who fished probably started their fishing careers by throwing a line off the Rottnest jetty or over the side of a boat in that area. We made enormous advances in the time I was at the island in protecting both the terrestrial and the marine environments, for which we were awarded the first environmental tourism award in this country.

I do speak with some conviction and some knowledge, and I can simply say this from bitter experience—if you want to change the behaviour of a group of people in relation particularly to protecting an environment such as the marine environment you must undertake a number of processes. First, you must understand before you draft your plans that what you do has to be based on science. If it is not, your eventual proposal will be seen to be hollow. Secondly, you must be prepared to consult with—which does not equate to talking at—affected stakeholders. The whole process of consultation should suggest that you are willing to listen to the views of others and amend your own draft plans as a result of consultation. I can assure you that when we failed to do that it came back to bite us and those proposals failed.

I will give an example of where the consultation process works. Because of what is known as the Leeuwin Current, which comes down the Western Australian coastline, the waters around Rottnest Island...
in the winter months are three to four
degrees Celsius warmer than the waters
along the mainland, only 20 kilometres to the
east. The result is that Rottnest has a greater
number of tropical fish species in the winter
months than there are along the mainland
coast. The most southerly growth in the
Southern Hemisphere of a coral called
pocillopora exists in a beautiful bay at Parker
Point on Rottnest Island. People were
throwing anchors over the side into this coral
area so that they could go snorkelling off
their dinghies—there are beautiful pink
corals and of course the fish those corals
attract. These corals were being unwittingly
destroyed.

I sat down with stakeholders and with my
management team and marine and other
environmental people and I said we would
put a string of floats across the area so that
the reef could be protected. Everybody
laughed their heads off and said the first
person past would cut the floats and the idea
would fail. We consulted with the boat
owners who used that bay and convinced
them of the reason we were doing it. They
became the owners of that bay and convinced
them of the reason we were doing it. They
became the owners of that protected area,
and when I left the island seven years later
there had not been one instance of vandalism
in the area. The message for Minister Burke
is simply that you must take the people with
you. There must be sound reasons for
protecting an area. If you give ownership to
the affected people, they will become the
most powerful weapon.

Inherent in everything at Rottnest Island
was that we were beholden to the Rottnest
Island Authority Act. I reported directly to
both a board and through the minister to
parliament but, most importantly, it was the
parliament that had the opportunity to
oversee the activities of our management of
the island. This is the very point that Senator
Colbeck is attempting to make with his
bill—we should give to both houses of this
parliament the opportunity to examine and if
need be disallow, so causing the minister to
go back and do the work that he must do in
these critically important areas. We learnt a
lot and they were lessons well learnt. If you
fail to take the community with you, if you
fail to convince the community of the good
of an activity because it is based on ideology
and not based on good policy, it will fail.
This is the evidence we have seen, unfort-
unately, with this minister's refusal to consult
and to take action based on the science. A
recent media release from Mr Burke on the
proposed marine plan stated:

The Gillard Government is working with
communities to establish a marine reserves
network to support a sustainable future for our
marine environment and ensure our oceans stay
healthy and productive.

The release quoted Minister Burke as saying:

Through our initial consultation in the
development of these draft plans, where possible,
we have avoided having an impact on local jobs
or people who love to fish.

Those words sound fine, and if they had been
followed through we probably would not
need the bill being proposed by Senator
Colbeck. This marine plan is inherently
directed at Western Australia. When it was
first announced in May this year the Minister
for Fisheries in Western Australia, Mr
Moore, came out immediately with a media
release in which he encouraged the com-
munity to engage with the federal govern-
ment on the key issues of environmental
significance, in this case to the south-west
bioregion, and he encouraged people within
the community to make submissions. He said
in May:

Although I have not yet had the opportunity to
study the documents in detail, I remain hopeful
that the Commonwealth has taken a balanced and
pragmatic approach to proposed marine reserves
which minimises the social and economic impact
on stakeholders such as the fishing sector.
If this man is the Minister for Fisheries in the state with the greatest marine reserve around the Australian nation, why is it that Minister Burke personally and/or his senior staff had not already consulted with Minister Moore? Nevertheless, the WA Department of Fisheries, under the direction of that minister, did proceed to put in a submission. Regrettably, despite this 'consultation process' that has gone on, I will refer again to Mr Moore, who said in a media statement on 19 October, just five weeks ago:

We are still yet to receive any information about the points raised and about the process going forward. This leaves the State Government and WA community uncertain and concerned about the future access to our most precious waters and aquatic resources.

What right has Minister Burke to run roughshod over the state of Western Australia and its fisheries minister? Incidentally, the proposed zones include the western rock lobster fishery, which has been regarded as a world benchmark for many years.

Senator Siewert: What's happening to it now?

Senator BACK: Thank you, very much, Senator Siewert; I was hoping that interjection would be made. As you and I both know, as soon as the drop in crayfish numbers was raised Mr Moore acted without hesitation, in the face of enormous criticism, to introduce quotas so that he could get on top of that issue. Are they on top of it? I do not know. But you and I both know, Senator Siewert, that has been—through you Madam Acting Deputy President Boyce, I apologise—an exceedingly well-managed fishery over many years and that the minister acted on the scientific advice of advisers, industry and others in making his decisions. I have no doubt that he will review its performance over time. He will review those outcomes and, if need be, make further changes. That is all we want from Minister Burke. Because he has failed to deliver it, it is essential that these actions come back to this parliament, to both houses of parliament, so that they can be reviewed. I will quote again, if I may, from Mr Moore's statement:

Western Australia's fisheries are well managed and regarded as some of the best managed in the world and as such, I do not see the need for the extensive network of 'no take' zones proposed by the Commonwealth.

Ideology replacing good policy and replacing science: it is regrettable. Mr Moore went on to say:

The Federal Government is always saying we should pursue evidence-based policy. In this case, it is just drawing lines on a map without any real regard for environmental outcomes or the long-term impacts on the Western Australian and broader Australian communities and businesses.

That is the circumstance in which we find ourselves.

Minister Burke has assured the parliament and the community that he has participated in a widespread consultation process as part of his bioregional planning process. Let me quote from just a couple of those who have made submissions to inquiries regarding this and put to the test whether my experience of last December, when I was refused the opportunity for a briefing from Minister Burke's staff, has been shared by others. Dr Ken Coghill, a former Speaker of the Victorian parliament said:

My clear perspective is that it is absolutely important to effective parliamentary democracy that the parliament have the opportunity to scrutinise and, if appropriate, disallow any action taken by the executive.

Let us hear from the Abalone Industry Association of South Australia, which said in its submission to the inquiry:

It is a real slap in the face to the good work done by our Government Fisheries Managers and Industry.
That is presumably the South Australia government—

We are very uncomfortable with the fact that the final decision of adopting the bioregional plans rests with the Minister for Environment only. We would prefer to have a far more rigorous and robust process through the parliament that doesn’t have the potential to be clouded by extreme green views.

A Mr Cameron Talbot also made a submission, in which he said:

I’m concerned that lobby groups like PEW, WWF and AMCS seem to get access to Ministers and control of what happens.

They certainly did far better than I did when I made my approach to the minister. Mr Talbot went on to say:

The Department does not consult us or simply ignores what we have to say. I feel that democracy has been lost and further more my faith in the Labour party has gone with it.

He goes on to speak about the fact that many fishermen and fisherwomen are Labor Party members and about how disappointed they are. I could go on and on about this process. I ask the question of those who would say that they are not supporting this motion by Senator Colbeck: what do they fear? We are elected senators of the Australian parliament sent by our states and territories to this place, and those in the other house are elected by their electorates to come here, to make laws. When there are circumstances in which legislation as it is currently formulated is deficient or incorrect it is up to us to correct it. There is no difficulty with the process of introducing disallowance legislation. It simply means, as we see in other instances, that it requires that the minister be diligent and that he and his staff, and those of the departments who are backing them up, do what they say they are doing. We have seen in this case that, demonstrably, there has not been the consultation and there has not been the science. There also has not been the rigorous approach in the areas to which we on this side of the chamber have drawn attention—that is, the functions and obligations of the Minister for Sustainability, Environment, Water, Population and Communities.

One of the wonderful things about this whole topic is that our capacity to come up with scientific validation is improving all the time. Senator Siewert and I are both well aware of work done at the University of Western Australia and other institutions, which enables them to monitor in real time fish stocks: numbers, ages, sizes et cetera. Let us use this data; let us develop plans; let us take the community with us and then let us review it over time. There are areas and times when we do have to stop fishing, be it commercial or recreational. For example, because of a breeding cycle or in response to the population size, density, pressure and age of the fish species concerned. But let us do it based on the science. Let us have the confidence in ourselves to feed this information back to the community. Let us not be so arrogant that we are not prepared to change our policies or our plans so that over time we can actually achieve what we all want to achieve: a sustainable marine bioregion and a sustainable terrestrial environment in this country.

Senator BIRMINGHAM (South Australia) (11:29): It is good to follow Senator Back, who is very knowledgeable in these areas and has highlighted particularly some of the local concerns about the impact of the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011 and of the Environment Protection and Biodiversity Conservation Act, which Senator Colbeck is seeking to amend on the local fishing industry.
We are often faced with choices—we are always faced with choices in this place—as to whether we empower the parliament or whether we empower the executive. At its heart, Senator Colbeck's bill is one about empowering the parliament; it is one about ensuring that the parliament has the final say in important decisions. That is the right thing for us to seek to do because this bill, at its heart, seeks to ensure that important decisions about marine activities and bioregional planning activities come back to this parliament so that this parliament has a say rather than all the say and all the power being left purely in the hands of the minister of the day. For that I commend Senator Colbeck for wanting to open this process up to a greater level of transparency, a greater level of accountability and to ensuring that the parliament—the peoples' houses: the House of Representatives and the Senate—is the institution that should have the final say when it comes to this marine bioregional planning process.

Senator Colbeck's bill will reinstate parliamentary scrutiny of an area of just over seven million square kilometres of Commonwealth waters. This is a vast area of waterways, and it does demonstrate the absolute significance of the bill and the significance of ensuring that we have the parliamentary scrutiny that I have just discussed. At present these waters are undergoing assessment by the government through the marine bioregional planning process with the ultimate aim of creating marine parks. This is a process that is being applied to waters from the state or territory boundary of approximately three nautical miles out to, as I understand it, 200 nautical miles out—the outer reaches of the Australian exclusive economic zone. It is proposed that the waters around Australia be sanctioned or divided into five bioregional zones. The current government is developing bioregional plans for four of these areas.

As Senator Colbeck highlighted in his second reading speech on this legislation, the first cab off the rank with respect to the draft plans is the south-west bioregion, which takes in 1.3 million square kilometres of water from the eastern tip of Kangaroo Island in my home state of South Australia, right around to the waters off Shark Bay, halfway up the coast of Senator Back's home state of Western Australia. For the two of us there are very real and very immediate local impacts as a result of this planning process. The north-west bioregion encompasses the remaining Commonwealth waters off the Western Australian coast—just over one million square kilometres from Kalbarri to the border with the Northern Territory. The north bioregion covers 715 square kilometres of coast across the Northern Territory, including the Gulf of Carpentaria, the Arafura Sea and the Timor Sea. The east bioregion covers 2.4 million square kilometres and also includes the airspace and the seabed below. It does not include, however, waters within the boundary of the Great Barrier Reef Marine Park, which are already extensively protected through very specific legislation, as you Madam Acting Deputy President, would well know and appreciate.

Within these four marine bioregional zones the government has designated 23 areas for further assessment. It is highly likely, as I understand it, that these areas of further assessment will later have designated within them areas of sanctuary zones, recreation-only zones and special purpose zones. These zones will be closed to all but a few activities. They are areas where commercial and recreational fishing will be excluded and areas where particular types of gear and fishing practice will be restricted. That will have a profound impact on the
activities within those particular areas. The marine bioregional zones and the subsequent declaration of marine protected areas within them are being brought forward under the Environment Protection and Biodiversity Conservation Act, which is the act that Senator Colbeck's bill seeks to amend today.

Currently, the Minister for Sustainability, Environment, Water, Population and Communities has the sole authority to sign off on the boundaries of these sanctuary zones and by association would be signing off on the limitations that are imposed on the activities which will be allowed to take place within them. This gives the minister quite exclusive power at the end of this process to have the final say. Senator Colbeck's bill, which we are debating today, seeks to return that power over these zones, over the operation of these sanctuaries and over the limitation of activities within these sanctuaries from the exclusive pen of the minister—from the exclusive judgment of the minister—to the will of parliament. It seeks to do so by making the bioregional plans disallowable instruments. As all members of this place would appreciate, making them disallowable instruments removes the absolute nature of the power from the minister. The minister would still have a say in the planning process. It would be the minister who would still approve the instrument. It would be the minister who would bring the instrument to the parliament and table it. But as a disallowable instrument it gives the parliament at least the opportunity to have a say if the minister and the processes supporting the minister have got it wrong in any way, shape or form. That is very important. It is very important that should the minister, his agencies or those involved in this bioregional planning process err and present plans that are unacceptable, this place or the other place have the opportunity to say, 'This is wrong and we will disallow it.' There is nothing in this legislation for the government, the crossbenchers or anyone else to be terribly afraid of—nothing at all. All it does is empower the parliament through this process. If you are afraid of the changes in this legislation, then it means for some reason you are afraid of the parliament, afraid of the judgment of the Senate or afraid of the judgment of the House of Representatives. I fear from time to time the judgment of governments. I fear from time to time the judgment of ministers. I acknowledge that from time to time the parliament approves and does things that I wish it did not, but I certainly do not fear the judgment of the parliament or of either house of the parliament. I think under our system they should enjoy supremacy of judgment, and this bill returns supremacy of judgment to its rightful place, to the two houses of parliament.

This bill will give the parliament the opportunity to have a say on those occasions that dictate it to be necessary. As we in this place all appreciate, those occasions are extraordinarily rare. There are many countless areas of disallowable instruments that are made by governments and it is exceptionally rare that the parliament exercises its authority to disallow them. But this bill provides for the exceptional circumstance, and in this place on this issue it makes sense for those exceptional circumstances to equally be provided for. The bill provides for greater parliamentary sovereignty, as I say, and would allow both houses the right, if they so wished, to have a say on whether any new marine park declaration should happen and to consider each one on its individual merits and the merits of the arguments associated with it.

The bill is not about whether the government's declaration of marine park areas goes ahead but whether the parliament
has the right to have a say, to represent the millions of people who put us here, to represent the South Australians who put me here. They have interests in the protection of our marine areas and in fisheries activities both commercial and recreational within our marine areas off the coastline of South Australia, just as Senator Back highlighted those many industries and interests equally concerned about the coastline of his home state of Western Australia.

The coalition has a proud history in this space. We have a proud history as the original authors of the Environment Protection and Biodiversity Conservation Act. It was a massive reform to the way the environment is protected in this country and it was a piece of legislation that the Howard government should rightly be proud of. I am confident former South Australian senator and former leader of my party in this place, Senator Robert Hill, is proud from his time as environment minister of his authorship of that act and his stewardship of it through the parliament.

So we have a proud record that stretches way back. It was the Howard government that in 1998 secured agreement with state governments to commit to establishing a national representative system of marine protected areas. The Howard government did not rest on its laurels there but made further international commitments to establish such a representative network by 2012 at the World Summit on Sustainable Development held in 2002. Of course, it was the Howard government that in 2005-06 initiated the investigation and subsequent implementation of the south-east marine reserves network.

You may recall, Mr Deputy President, that at the beginning of my remarks—well, you probably wouldn't because you were not in the chair at that time, but the chamber may recall that at the beginning of my remarks—

**Senator Payne:** I do.

**Senator BIRMINGHAM:** Senator Payne does. That is nice to hear. Somebody is listening out there! At the beginning of my remarks I said there are five bioregional areas and I outlined four of them that are under consideration at present. The fifth is the south-east marine reserves network. It is one where the implementation was conducted under the Howard government. In fact, it was conducted and implemented by Senator Colbeck, the author of this bill before us today. Senator Colbeck, as the then Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, was right there at the coalface working on the development and implementation of the south-east marine reserves network. So nobody in this place, I suspect, has a better appreciation of these issues and of this process than Senator Colbeck, who has been following this issue and working on it. He was intensely involved in it in government for such a long period of time.

Senator Colbeck highlighted his experience in the development of that south-east marine reserves network during his time in government in his second reading speech on this legislation. He highlighted the very thorough process of investigating and subsequently implementing that marine reserves network. In doing so there was extensive and open consultation with each and every stakeholder who felt they had a claim or a vested interest in this process. Senator Colbeck highlighted that the overwhelming success following the consultation with stakeholders on the draft proposal allowed the government to make around 20 changes to boundaries and zoning that act for the protection of marine species in that space. Senator Colbeck said that the result was a network that is both larger and more representative of the region than the original proposal and has far less impact on
the fishing industry. It sounds like, as
Senator Colbeck described it, a win-win
outcome—an outcome that provided for a
network of zones that protect marine species
covering an area larger than was originally
proposed but that does so with minimal
impact on the fishing industry. That shows
how these processes can be managed, can be
undertaken and can be done in a sensible
way, but it takes sensible people like Senator
Colbeck to be able to do it and implement it.
Unfortunately, since the change of govern-
ment, we have not seen a level of consul-
tation, cooperation and engagement with all
stakeholders that has allowed this process to
be shepherded through for the remaining
four proposed marine bioregional areas.
Instead we have seen, as is so often the case
under this government, failure to give
stakeholders effective input and to ensure
that stakeholders have confidence in the
outcomes of the process that is being
undertaken. It is this loss of confidence, this
loss of stakeholder engagement and this loss
of faith at the grassroots level that require
these changes and necessitate bringing this
bill here today.

People will rightly say, ‘Why didn't the
Howard government provide for this final
parliamentary oversight of these marine
bioregional plans?’ Perhaps the Howard
government just had too much faith in the
capacity of ministers of the day to exercise
that power responsibly and sensibly and
come up with sensible, sound outcomes at
the end. Sadly, the Howard government had
that faith but that faith has been proven, with
the change of government and the change of
ministerial personnel responsible for the
administration of these schemes, to have
been misplaced. Unfortunately, that requires
us to look and say that perhaps the minister
of the day cannot be trusted with open
slather. Perhaps we erred way back when the
EPBC Act and these processes were first put
in place. And perhaps it is better to return the
ultimate say to the parliament so that, when
you have a bad minister who undertakes bad
processes and delivers a bad outcome, the
parliament can at least still do something
about it. That, of course, is the nub of what
this legislation is all about.

There have been real concerns that both
the Rudd and Gillard governments have not
engaged in appropriate levels of consultation
with local communities and have not
engaged in appropriate consultation with
those commercial fisheries affected, nor have
they engaged in appropriate levels of
conversation or engagement with the marine
recreational fishing interests. Equally, even
some environmental groups have highlighted
to Senator Colbeck that they have felt left
out by the federal government when it comes
to genuine consultation.

As I highlighted before, the South-east
Commonwealth Marine Reserve Network,
the one implemented by the Howard
government, the one that Senator Colbeck
had the direct engagement and involvement
in, was a successful process that achieved
bigger areas of protection than initially
foreshadowed but still left sustainability and
viability for the commercial fishing industry
and for the recreational fishing industry. I do
want to say, Mr Deputy President—and I
know this is something that you in particular
would appreciate—that all too often, when
people talk about recreational fishing, there
is a belief that it is just somebody dangling a
line and it is of little consequence. But it is
not of little consequence.

Senator Edwards: Hear, hear!

Senator BIRMINGHAM: It is a
massive industry, as Senator Edwards
indicates—a massive industry that supports
many, many jobs and many, many small
businesses in particular throughout Australia.
It is not just an activity that brings families
together but an industry in and of itself that supports significant economic activity and significant jobs throughout Australia. That is what is at risk if we get this wrong. If the government gets it wrong, what is at risk is effective environmental protection as well as lasting opportunities for our commercial fishing industry and our recreational fishing industry.

So we urge the government and the crossbenchers to take out some insurance. If a bad process results in a bad outcome, put it back in the hands of the parliament. Bring it back to the parliament, accept this bill, allow these plans to become disallowable instruments and allow the people's representatives in this place and the other place to have the final say on these important planning processes. I commend the bill to the house.

Senator EDWARDS (South Australia) (11:49): I rise to speak on the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011. Let me say from the outset that the coalition support a balanced approach to marine conservation. I noted in Senator Furner's earlier address on this issue that he referred to the Howard government and wrongly tried to accuse it of some kind of lack of commitment there—but the reason we have this bill before us is to try and rectify some of this current government's failings on this issue. I also applaud Senator Colbeck's work on this originally in the time of the Howard government. Here he is, still overseeing the fishes of Australia in a solid way, in a way which makes sense, in a reasoned and thoroughly commendable approach to preserving this industry and ensuring that it has a future in this country.

Let us firstly have a look at what a recent report from ABARES says about Australia's fish stocks. According to the ABARES Fishery status reports 2010, of the 96 fish stocks assessed, 71 are not subject to overfishing, which means that they are being harvested at an appropriate level. The report also found that 56 of the 96 stocks are also not overfished, meaning that the number of fish, or biomass, is adequate to sustain the stock in the long term. The balance of all the fish stocks not mentioned, the vulnerable, are the very reason that the Howard government and Senator Colbeck embarked on this conservation policy in the first place in the Howard era. So let us lose some of the hysteria being peddled about this debate.

Why is it an important bill? It is important because it will reinstate parliamentary scrutiny to millions of square kilometres of Commonwealth waters. Currently these tracts of oceans are undergoing assessment by the Gillard Labor government through the marine bioregional planning process, with the ultimate aim of creating marine parks. This process is being applied to waters from the state or territory boundary of approximately three nautical miles out to 200 nautical miles, the outer reaches of the Exclusive Economic Zone.

Australia, a land girt by sea, has had its ocean moat divided into five bioregional zones and the current government is developing bioregional plans for four of those areas. There will be areas closed to all but a few activities, areas where commercial and recreational fishing will be excluded and the areas where particular types of gear and fishing practice will be constrained. The marine bioregional zones and the subsequent declaration—

The PRESIDENT: Order! The time allotted for this debate has expired.

PETITIONS

The Clerk: Petitions have been lodged for presentation as follows:
South East Equestrian Club
To the Honourable President and members of the Senate in Parliament assembled:

The petition of the undersigned shows: The South East Equestrian Club (SEEC), which represents a large community of horse riders and owners, draws to the attention of the Senate the actions of the Department of Finance and Deregulation which have ordered without consultation or prior notice that the Club is to vacate land the Club has been using for 20 years.

Your petitioners ask that the Senate establish a Senate Inquiry into the past and current practices of correct and proper administration of assets held and managed by the Department of Finance and Deregulation and the impacts of these practices on community organisations.

by Senator Heffernan (from 132 citizens).

NOTICES Presentation
Senator BOB BROWN: To move:

That the Senate—

(a) congratulates the Parliament of Papua New Guinea for passing, by an overwhelming majority, the constitutional amendment to create 22 reserved seats for women in its national parliament;

(b) recognises the leadership and hard work of the women of Papua New Guinea, who have been advocating for this reform for many years;

(c) acknowledges that the next step is enabling legislation that will create the 22 new reserved seats for each province; and

(d) looks forward to seeing the reforms finalised in time to allow women candidates to stand for these seats in the 2012 national election.

Senator BOB BROWN: To move:

That the Senate—

(a) notes the recent admission of Palestine as the 195th member of the United Nations Educational, Scientific and Cultural Organization [UNESCO]; and

(b) calls on the Government to help facilitate, as best it can, the nomination from Palestine for a number of cultural sites, including the Church of the Nativity in Bethlehem, to be classified as a World Heritage site.

Senator BILYK: To move:

That the Joint Select Committee on Cyber Safety be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 8 February 2012, from 4 pm to 6 pm.

Senator DI NATALE: To move:

That the following matter be referred to the Community Affairs References Committee for inquiry and report by 30 June 2012:

A review of the Fifth Community Pharmacy Agreement between the Commonwealth of Australia and the Pharmacy Guild of Australia under the National Health Act 1953, with particular reference to:

(a) pharmacy remuneration and value for taxpayer funds;

(b) the effective provision of professional and patient services;

(c) the effectiveness of governance arrangements;

(d) the Community Service Obligation;

(e) the Pharmacy Location Rules;

(f) the Community Pharmacy Agreement (CPA) processes involving a single entity, the Pharmacy Guild of Australia:

(i) being granted the status as the sole organisation representing registered pharmacists,

(ii) negotiating the CPA with the Commonwealth,

(iii) overseeing the operation of the CPA, through the two-party Agreement Consultative Committee (ACC),

(iv) approving allocation and expenditure of funds under the CPA, through the two-party ACC, and

(v) negotiating pharmacy location and ownership rules;

(g) potential conflicts of interest between the provision of ethical and professional pharmacy services and the commercial interests of pharmacy owners; and
(h) other matters related to the role played by pharmacists in the health system.

**Senator MADIGAN:** To move:

That the following bill be introduced: A Bill for an Act to amend the *Fair Work Act 2009*, and for related purposes, *Fair Work Amendment (Arbitration) Bill 2012*.

**Senator MADIGAN:** To move:

That the following bill be introduced: A Bill for an Act to provide for parliamentary approval of certain binding international agreements, and for related purposes, *Treaties (Parliamentary Approval) Bill 2012*.

**Postponement**

The following items of business were postponed:

- Business of the Senate notice of motion no. 4 standing in the name of Senator Wright for today, proposing the disallowance of the Health Insurance (Allied Health Services) Amendment Determination 2011 (No. 2), postponed till 8 February 2012.
- General business notice of motion no. 438 standing in the name of Senator Siewert for today, relating to the North West Slope Trawl Fishery, postponed till 8 February 2012.
- General business notice of motion no. 442 standing in the name of Senator Siewert for today, proposing the introduction of the Fisheries Management Amendment (North West Slope Fishery Partial Closure) Bill 2011, postponed till 28 February 2012.

**BILLS**

- **Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011**
- **Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011**
- **Higher Education Support Amendment (VET FEE-HELP and Other Measures) Bill 2011**

**First Reading**

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (11:55): I present the bills and move:

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

Question agreed to.

Bills read a first time.

**Senator LUDWIG:** I table the explanatory memorandums relating to the bills and 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—*

**Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011**

The Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011 amends the Broadcasting Services Act 1992 to ease the regulatory burden on regional commercial radio broadcasters which has arisen as a result of the operation of provisions introduced in the former government's 2006 media reforms.

This bill makes changes to the regulatory arrangements for regional commercial radio licensees to reduce their overall regulatory requirements while ensuring they continue to provide local content for regional audiences.

It also provides appropriate exemptions for remote area, racing service licensees and the small number of licensees operating outside the broadcasting services bands, and revises provisions relating to certain types of changes of control of a licence known as a 'trigger event', including to allow improvements to business practices and reduce unintended consequences.
The changes also ensure compliance with Australia's obligations for radio local content under the Australia United States Free Trade Agreement by integrating the current separate requirements for Australian music and regional local content.

Regional commercial radio localism requirements

The Broadcasting Services Amendment (Media Ownership) Act 2006 introduced a range of new obligations for regional commercial radio licensees relating to levels of local content, minimum service standards for local news and information, local presence requirements and changes of control known as 'trigger events'.

**Broadly speaking, there are two separate obligations.**

First, there are provisions that apply to all regional commercial radio licensees requiring them to provide minimum amounts of 'material of local significance'. The Australian Communications and Media Authority has defined 'material of local significance' in the Broadcasting Services (Additional Regional Commercial Radio Licence Condition—Material of Local Significance) Notice 19 December 2007 as material that is hosted in, produced in, or relates to a regional commercial radio licensee's licence area.

The minimum amount of material of local significance required to be broadcast by each regional commercial radio licensee differs. Most licensees must provide three hours on each of the five business days of each week, while lesser amounts apply for smaller broadcasters and racing radio.

Second, there are a series of additional and overlapping requirements that are imposed after certain changes of ownership—known as trigger events. The trigger event related provisions were introduced to guarantee minimum levels of local news and information, and ensure that changes in ownership did not result in high levels of syndicated content on regional commercial radio.

Following a trigger event, a licensee must in perpetuity meet minimum standards for local news and information, submit to the ACMA local content plans and annual compliance reports, and maintain a defined level of local presence (which includes staffing levels, and use of studios and other production facilities).

The commercial radio industry, Productivity Commission and the ACMA have all expressed concern with the inflexibility of the current legislation, noting that these regulatory requirements for regional commercial radio licensees are affecting the operation and viability of regional radio services.

These concerns were also borne out by respondents to the review of localism requirements which was undertaken in 2010. In some submissions licensees even said they had not employed extra staff for regional radio stations nor made additional investments in capital equipment because of the requirements.

Of particular concern is that once a broadcaster is subject to a trigger event, under the current legislation they are forever locked into maintaining the levels of local staffing and use of studios and facilities that existed prior to the trigger event—regardless of changed business or economic circumstances, changed audience demand, or technological developments.

With many regional commercial radio licensees already struggling to maintain profitability, these onerous requirements—as well as the administrative reporting burden associated with them—significantly reduce the ability of licensees to adapt their business to deal with new or changed market conditions.

The ACMA reports that 90 broadcasting licences have been affected by trigger events since the provision was introduced on 4 April 2007.

**Providing flexibility and consistency while maintaining local content**

The changes proposed by this bill will provide greater flexibility for regional commercial radio licensees in meeting their obligations to ensure minimum amounts of locally relevant content is available to regional audiences.

The bill takes into account the limited on-air staff available in some regional areas and the difficulty obtaining short-term replacements for staff on leave. The current requirement to comply with the local content and minimum service standard for news and information for 52 weeks
of the year fails to take into account industry working arrangements such as the entitlement of some employees such as journalists to six weeks' annual leave and radio announcers to more than four weeks' leave in exchange for working Sundays and public holidays. While not all employees receive six weeks' annual leave, reducing the compliance period by five weeks will assist the industry while maintaining local content for audiences.

The bill also provides those regional commercial radio operators affected by a trigger event with flexibility in the local presence and reporting requirements after a 24-month period. As mentioned earlier, the current legislation maintains these limitations in perpetuity and limits the ability of licence holders to adapt to changed business or economic circumstances.

The operation of this 24 month 'sunset period' on the local presence and reporting requirements will be considered as part of the statutory review of the provisions undertaken every three years. A transitional provision will cap the obligation to 24 months from the commencement date of the legislation for licensees affected by a past trigger event.

Licensees affected by a trigger event will still be required to provide local news and information and emergency warnings, ensuring that localism is still provided to regional audiences.

The government also recognises that the current legislation is not well suited to some categories of regional commercial radio licence holders, particularly those: operating in remote areas; providing predominantly racing services; or operating outside the broadcasting services bands (referred to as section 40 licence holders).

The wide geographic area covered by some licensees or the highly specialised nature of their content makes compliance with the current legislation particularly burdensome and this bill exempts these operators from the operation of the local content provisions. It also ensures consistent treatment of these categories of licence holders with respect to exemption from the application of the trigger event provisions. These changes will only affect a small number of licences and have a minimal impact.

The bill also provides a tighter definition of the circumstances in which a trigger event takes place, so as to:

- reflect consistency with media control principles outlined in Schedule 1 of the Broadcasting Services Act; and
- allow for some specific situations to be exempted from the definition of a trigger event. For example, certain types of internal corporate restructures, transactions between close family members where there is no sale of shares and in other limited circumstances.

The ACMA will be given discretion to determine the extent to which the trigger event provisions apply so as to avoid or reduce unintended consequences from events which are not initiated by licence holders (including involuntary administration, bankruptcy and court orders).

Finally, the bill includes amendments which ensure consistency with our international obligations under the Australia–United States Free Trade Agreement. While these amendments place a limit on the overall level of local content (inclusive of Australian music) that the government can require regional broadcasters to provide, it does not reduce the flexibility of regional commercial radio operators to voluntarily provide more local content than that limit.

### Conclusion

This bill eases the regulatory burden on regional commercial radio broadcasters which has arisen as a result of the operation of provisions introduced in the former government's 2006 media reforms. It provides greater flexibility to the regional radio industry while maintaining the government's commitment to local content for regional audiences.
most vulnerable workers, and in particular outworkers.

The textile, clothing and footwear (TCF) manufacturing industries cover all stages of production of TCF products, from the processing of raw materials through to the production of final goods. Clothing and footwear manufacture, in particular, are labour intensive with limited scope for mechanisation of significant parts of these processes. This has led to the use of outworkers for much of this work.

A number of reviews over the past 15 years have raised concerns about the situation of outworkers in the TCF industry.

Most recently, a report by the Brotherhood of St Laurence in 2007 found that outworkers experience poor working conditions and are frequently underpaid, sometimes as little as two or three dollars per hour.

These reviews have found, and the Government accepts, that outworkers in the TCF industry suffer from unique vulnerabilities as a result of their engagement or employment in non-business premises. These vulnerabilities are made worse by the fact that outworkers are often migrants with poor English language skills, a lack of knowledge about the Australian legal system and low levels of union membership.

The Fair Work Act already contains a number of important protections for TCF outworkers—including scope for awards to include targeted 'outworker' terms, and enhanced right of entry arrangements. Additional entitlements and protections for outworkers are contained in the Textile, Clothing, Footwear and Associated Industries Award.

Most states also have legislation that provides protection to TCF outworkers. However, there are differences in the approach that they take. For example:

- in New South Wales, Queensland and Tasmania legislation deems contract outworkers to be employees, while more limited deeming applies in Victoria and South Australia
- there is a mandatory code of practice in place in New South Wales, Queensland and South Australia.

There is no relevant legislation in Western Australia.

In other words, although most jurisdictions have recognised that special measures for outworkers are required, there has not been a uniform approach, meaning that outworkers do not have the same level of protection in all jurisdictions.

Where outworkers are entitled to fair minimum conditions, they can have difficulty accessing them. Even the Fair Work Ombudsman faces difficulties in identifying and assisting outworkers because outwork is, by definition, not performed in traditional workplaces and it can be difficult to identify for whom work is being performed.

The government recognises the disadvantaged position of outworkers in the TCF sector and that they require specific regulatory protection in order to control the exploitative conditions under which they are employed.

That is why the government is committed to harmonising those arrangements to ensure all TCF outworkers are employed under secure, safe and fair systems of work.

The government's intention is to achieve this by implementing nationally consistent rights to legal redress and protection that are of no lesser standard than currently apply in state laws and regulations, and the federal TCF award.

This Bill implements that commitment by:

- ending the artificial distinction by deeming contract outworkers in the TCF industry to be employees, by extending the operation of most provisions of the FW Act;
- providing an effective mechanism to enable TCF outworkers to recover unpaid amounts up the supply chain;
- addressing a limitation that currently exists in relation to right of entry into premises in the TCF industry operating under 'sweatshop' conditions; and allowing for a TCF outworker code to be issued.
In relation to the extension of specific right of entry rules to premises in the TCF industry operating under 'sweatshop' conditions, there will be an exception for the principal place of business of a person with appropriate accreditation. In such cases, the standard right of entry rules will continue to apply.

The existing power of Fair Work Australia to include outlier terms in awards will not be limited. Additional protection for outlier terms will be provided by ensuring that these important industry wide standards cannot be undercut by use of flexibility terms in enterprise agreements.

These changes will promote fairness and ensure a consistent approach to the workplace entitlements and protections for a class of workers that are widely recognised as being uniquely vulnerable to exploitation.

**Extending the operation of the Fair Work Act**

The bill extends the operation of most aspects of the Fair Work Act to TCF contract outworkers.

This ensures that outworkers in the TCF industry have the same terms and conditions, as well as other rights and entitlements, as other workers regardless of their status as employees or contractors. This approach is consistent with the approach that has been taken in many states.

Under the changes proposed in this Bill, the person who directly engages a TCF contract outworker will be treated as their employer.

The objective of these amendments—clearly stated in the bill—is to ensure that contract outworkers are taken to have the same rights and responsibilities as employees in the same position.

The bill recognises that there may be instances where technical modifications or clarifications are required and allows regulations to be made to ensure the effective application of particular provisions to contract outworkers. However, the Bill makes clear that such regulations can only be made to ensure the effectiveness of, and not to undercut, the extension of the Act to contract outworkers.

**Recovery of unpaid amounts**

The bill provides a mechanism to enable outworkers to recover unpaid amounts up the supply chain.

The Productivity Commission's *Review of TCF Assistance* (2003) reported findings that outworkers are often not paid for the work they do and that, because the supply chain consists of numerous subcontractors, outworkers may often find it difficult to pursue any unpaid monies or entitlements.

Provision for the recovery of unpaid amounts up the supply chain is a feature of outlier protection legislation in Victoria, New South Wales, Queensland and South Australia, and recognises the fact that TCF outworkers are engaged at the end of a sometimes long supply chain.

Under the changes proposed in this Bill, an outworker who has taken reasonable steps to seek payment from the person who is liable to pay them, may recover an unpaid amount from another entity in the supply chain for whom work is done indirectly. This does not include retailers who sell goods produced by, or of a kind often produced by, outworkers, where the retailer does not have a right to supervise or otherwise control the performance of the work.

The amounts that may be recovered under these provisions include not only wages or commission but also other amounts owing in relation to particular work, such as superannuation.

Where an indirectly responsible entity pays an unpaid amount, they will be able to recover the payment from the person who was responsible for the payment, plus interest, or offset it against other amounts that they are owed.

These arrangements are designed to supplement existing arrangements. The Bill therefore makes clear that these new provisions do not limit any action that an outworker might otherwise have in relation to unpaid money, including remedies available under state law.

**Code of Practice**

The bill allows an outwork code of practice to be issued dealing with standards of conduct and practice in the TCF industry.
The code may impose reporting or other requirements on employers or other persons engaged in the TCF industry to enhance the transparency of supply chains that result in outwork being performed.

An outwork code will enable arrangements for the performance of TCF work through the supply chain to be monitored. Provision for a code will assist in ensuring that no economic advantage can be gained by avoidance of responsibility for workers' entitlements.

The amendments will enable the best aspects of state codes to be incorporated into a federal code, or compliance with these standards to be taken to amount to compliance with the federal code, where appropriate. However, the long standing arrangements in the federal award cannot be undercut.

**Right of entry**

The Fair Work Act already recognises the importance of right of entry to workplaces in securing fair working arrangements, and provides enhanced entry rights in relation to outworkers.

This bill seeks to extend that protection further, and enable effective monitoring of not only outworker arrangements but also other exploitative practices in the industry, and in particular sweatshops.

At present, entry to such premises generally requires 24 hours notice of intention to enter. The nature of sweatshop operations, and the ease with which they can relocate, means that there is a risk that the current requirements operate to undermine the effectiveness of entry rights. The existing capacity to seek Fair Work Australia approval to enter without notice on a case by case basis is not a practical alternative in this industry.

The bill will extend specific right of entry rules that apply to suspected breaches affecting outworkers (which allow entry without 24 hours notice) to the industry more generally, with an exception for the principal place of business of a person with appropriate ethical standards accreditation.

This recognises that poor practices in the TCF industry are not confined to work conducted in peoples’ homes, but also take place in conventional workplaces operating under sweatshop conditions.

The government believes that strong action on this issue is required, as reports continue of people working in sweatshops in the TCF industry.

For example, in November 2011 a Channel 9 film crew accompanied a union official to a Melbourne TCF sweatshop and found squalid working conditions.

In July 2011 the *Sunday Herald Sun* reported on sweatshops and outworkers producing school uniforms for Victorian families for as little as $7 an hour – less than half the award rate.

Enhanced right of entry will assist in stamping out these exploitative practices.

In making these changes the government does not suggest that all, or even most, premises in the industry operate as sweatshops.

For this reason, the new enhanced entry rights will not apply to the principal place of business of a person with an appropriate accreditation. In such cases, the standard right of entry rules will continue to apply.

Linking right of entry to accreditation is intended to increase the level of scrutiny given to supply chains and improve standards in those corners of the TCF industry that do not currently operate appropriately, for the benefit of both workers and businesses in the industry.

**Impact of the changes**

These changes will go a long way to ensuring that vulnerable workers in the TCF industry receive fair and decent working conditions and are paid the minimum entitlements they are due.

These changes will make it easier for the Fair Work Ombudsman to identify businesses that engage outworkers and investigate and enforce breaches of the Fair Work Act and TCF Award.

These changes will improve the ability of the relevant union to enter and identify sweatshops and assist employees working in unacceptable conditions.

The government recognises that some businesses in the TCF industry may be concerned about these changes.
If a business already complies with the outworker provisions in the TCF award and relevant state legislation, then these amendments should have limited impact.

Only those that flout existing laws—by exploiting outworkers, by forcing employees to work in sweatshop conditions, and by taking advantage of the vulnerable position of migrant workers—should be concerned.

The amendments will make it easier for outworkers to receive their minimum entitlements and will ensure compliance with the relevant provisions at all levels of the supply chain. By improving compliance with the existing provisions across the board and by introducing consistent provisions for outworkers, large retailers and clothing brands will have additional assurance that the garments they sell have been manufactured in an ethical way.

In the consultation on the bill the union has raised issues over the unintended effect of some of the provisions.

In particular the government is consulting with the relevant union to streamline the evidential processes relating to recovery of unpaid amounts up the supply chain, to reflect the difficulties that outworkers with poor English language skills may face and the complex nature of TCF supply chains.

The government is also considering what changes need to be made to ensure the greatest possible reach of the deeming provisions so that no outworker is inadvertently beyond their reach by operation of the corporate veil.

These changes will be reflected in amendments which the government will introduce during the passage of this bill early in 2012.

The government is committed to ensuring that these provisions operate to provide the protections intended.

Conclusion

This bill reflects the government's commitment to implement nationally consistent protections for vulnerable workers in the TCF industry.

This bill reflects the future of the sector where consumers are confident that goods are produced ethically, with workers receiving fair wages and decent conditions.

... ... ...

HIGHER EDUCATION SUPPORT AMENDMENT (VET FEE-HELP AND OTHER MEASURES) BILL 2011

The bill will introduce a number of measures that will strengthen and streamline the Higher Education Support Act 2003 resulting in more effective and efficient administration of the Australian Government's student income-contingent loan programs in the higher education and vocational education and training sectors, namely, FEE-HELP and VET FEE-HELP.

The bill provides for the use and disclosure of information by Commonwealth officers gained through the administration of FEE-HELP and VET FEE-HELP for certain purposes including to the newly established national regulators in the higher education and vocational education and training sectors, namely the Australian Skills Quality Authority and the Tertiary Education Quality Standards Agency operating under the National Vocational Education and Training Regulator Act 2011 and the Tertiary Education Quality and Standards Agency Act 2011 respectively. This will support consistent decision-making across Commonwealth regulatory frameworks.

The bill will also improve the Commonwealth's ability to manage risk to the administration of public monies and better protect students in the vocational education and training sector by strengthening the compliance provisions for approved VET providers. As provider approvals are issued in perpetuity, the bill makes it explicit that an approved VET provider must notify the minister of events that affect its ability to comply with the requirements to continue to maintain its approved provider status.

Further, the bill includes a transparent provision to make it clear that the secretary may vary or revoke a determination that an advance payment is to be made to a VET provider if the secretary is aware that the provider may not comply with the requirements under the act or may not be financially viable. In deciding to vary or revoke, matters with which the secretary may
take into consideration have been provided for, such as the nature of non-compliance, the provider's history of compliance and the impact of the provider's non-compliance on its ability to deliver quality education and training.

The bill will also improve the administrative arrangements for application times for higher education providers and VET providers. This amendment will clarify that the minister's authority to decide an application for approval exists beyond the time periods specified under the act.

And lastly, the bill provides for clearer, simpler and improved administrative arrangements for the assessment of an individual's Higher Education Loan Program debt. In doing so, the Bill enables improved congruity between the Higher Education Support Act 2003 and taxation legislation.

Debate adjourned.

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

COMMITTEES

Foreign Affairs, Defence and Trade
References Committee

Reference

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (11:56): At the request of Senator Eggleston, I move:

That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 1 November 2012:

The importance of the Indian Ocean rim for Australia’s foreign, trade and defence policy, with particular reference to:

(a) trade and tourism opportunities for Australia, including the role of free trade agreements;

(b) Australian mineral exports, including competition and synergies in the region;

(c) strategic developments in the Indian Ocean, including growing naval influences and defence postures and their implications for Australia and the region more generally;

(d) the Indian Ocean Rim Association and any other relevant bodies and their future directions; and

(e) other relevant matters

Question agreed to.

NOTICES

Withdrawal

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11:57): I withdraw general business notice of motion No. 600 standing in my name.

PARLIAMENTARY ZONE

Approval of Works

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (11:58): At the request of Senator Feeney, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, relating to landscape works and the installation of a concrete bench at the High Court of Australia.

Senator IAN MACDONALD (Queensland) (11:58): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator IAN MACDONALD: This motion deals with the installation of a concrete bench outside the High Court of Australia. That in itself is uncontroversial but it does bring to the attention of the Senate the need for the parliament to have some say on what happens within the Parliamentary Zone. Mr President, I use this opportunity to alert you the fact that there have been concerns around the halls of this building—the Senate side of the building—for what seems to have been some months. Can someone indicate
why it is that whatever work that is required to be done is not able to be done. There are some parts of this building that seem to be falling into disrepair. I wonder what the reason is, whether it is a lack of money, that we have these barricades around the corridors near windows with notices saying that there is something wrong with the windows and needs to be fixed.

The PRESIDENT: Senator Macdonald, I hear your question. I do not know the answer myself. I will seek to get an answer for you and get someone to communicate that to you.

Question agreed to.

BUSINESS

Senate Temporary Orders

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (11:59): I move:

That the temporary orders of the Senate relating to the consideration of private senators’ bills and modified rules for question time, continue to operate as temporary orders until 30 June 2012.

Question agreed to.

COMMITTEES

Rural Affairs and Transport Legislation Committee Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (12:00): At the request of Senator Sterle, I move:

That the Rural Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 24 November 2011, from 4.30 pm, to take evidence for the committee’s inquiries into the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 and the Qantas Sale Amendment (Still Call Australia Home) Bill 2011.

Question agreed to.

Electoral Matters Committee Reporting Date

Senator McEWEN (South Australia—Government Whip in the Senate) (12:00): At the request of Senator Carol Brown, I move:

That the time for the presentation of the report of the Joint Standing Committee on Electoral Matters on the funding of political parties and election campaigns be extended to 12 December 2011.

Question agreed to.

BILLS

Government Investment Funds Amendment (Ethical Investments) Bill 2011

First Reading

Senator DI NATALE (Victoria) (12:00): I, and also on behalf of Senator Ludlam, move:

That the following bill be introduced:


Question agreed to.

Senator DI NATALE: 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 DI NATALE (Victoria) (12:02): I table an explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted.
The speech read as follows—

The Government Investment Funds Amendment (Ethical Investments) Bill 2011 creates a requirement for the Future Fund and nation building funds to make their investments according to a set of ethical investment guidelines.

The Future Fund was created in 2006 with the passage of the Future Fund Act. The fund was set up to cover the government's unfunded superannuation liabilities. In 2008, the Nation-building Funds Act established three more investment funds: The Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund. As of the 30 September this year, the Future Fund had $73 billion under management. The other funds collectively have over $17 billion under management. In total they hold over $90 billion of public funds, and are set to grow significantly in the next 10 years. The Future Fund is already the world's 13th-largest sovereign wealth fund.

Ninety billion dollars is a significant amount of money, and how that money is invested can have significant consequences. This money is invested on behalf of the Australian people. It must be invested prudently, so that when the time comes to tap into the fund for its intended purpose, the balance is enough. It must be invested wisely, so that the balance grows at a reasonable rate and the burden on taxpayers is minimised. It is also important that the investments should not be counter to the interests of the broader Australian community. This bill seeks to address that issue.

A few weeks ago, the Senate passed the tobacco plain packaging bill. This is a world-leading piece of legislation that will make it more difficult for tobacco companies to market their products and entice new smokers. The plain packaging laws, even if they should prove only half as effective as expected, will save lives. It also sets a precedent that could be adopted around the world.

Because this initiative will be effective, it is strongly opposed by the tobacco companies, who will fight it using any tool at their disposal. Already, the Philip Morris company has challenged the plain packaging law under investor provisions of a bilateral trade treaty between Australia and Hong Kong. It is clear that to implement the Act and save Australian lives, the Australian government will have to fight some powerful and well-resourced interests.

At the same time as this is happening, the Future Fund has invested $36.5 million in Philip Morris. This is in addition to $46.4 million in British American Tobacco, $26.1 million in Lorillard, and other tobacco investments. This raises the question of how to reconcile this large investment of public money in companies that profit from damaging the health of Australians and are fighting to prevent reform. There are other significant ethical issues that arise from investing in tobacco companies -investments that increase in value the more people become addicted to deadly products.

There are other examples that raise concerns. There has recently been discussion of the issues caused by the fund's $135 million of investments in 15 companies associated with nuclear weapons. Australia has long been an advocate for nuclear disarmament. Yet the Commonwealth may profit if the pace of disarmament is slowed or reversed.

There are already certain restrictions on what the fund's Board of Guardians may invest in. The fund has indicated that it must not invest in a company whose activity would not be legal in Australia. For instance, in May this year the fund divested itself of stock in companies involved in the manufacture of cluster munitions. Because Australia is a signatory to the Convention on Cluster Munitions, which bans their acquisition or use, the manufacture of these weapons would be illegal in Australia.

The government has correctly pointed out that it lacks the power to direct the fund how to invest. The Future Fund Board of Guardians manages the portfolio and do not take direction from the minister about individual investments. This is a sensible policy which removes the temptation for political interference which must always exist when such large amounts of money are at play. The fund exists to service unfunded liabilities, rather than to seek economic changes that are better pursued elsewhere.
To achieve its investment goals, according to the Future Fund Act the board may invest in any financial assets, however the board does take a manner of direction from the government. This is the Future Fund Investment Mandate. Under the act ministers can provide written direction to the board, and must do so at least once, although they may not direct the fund to invest in a particular asset, business or activity. The current mandate, issued in 2006, specifies that the board must seek a rate of 4.5-5.5 per cent over inflation as the benchmark return. It limits the circumstances in which the Fund may acquire shares in Telstra. And it states that the board must have regard to international best practice with regard to corporate governance including its voting policy.

The mandate suggests a way in which we can resolve the issues such as those regarding tobacco and nuclear weapons. As the board must reference the mandate when devising an investment strategy and making investments, it could also receive guidance on the ethical implications of its investments using a similar mechanism. There are many precedents for this. Around the world, investment funds are adopting ethical investment guidelines in accordance with the wishes of their members. In Norway, the government pension fund—a sovereign wealth fund similar to the Future Fund—has adopted stringent ethical investment practices. This has seen that fund divest itself of all tobacco investments. They have also sold their holdings in mining companies that damage the environment, produce or maintain nuclear missiles, or breach human and labour rights. The fund still maintains a healthy balance.

This bill creates a new instrument that creates a requirement for ethical investing by Australia's funds. For each of the four funds—the Future Fund, the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund—the bill specifies that ethical investment guidelines must be provided by the responsible Ministers.

The bill does not specify everything that the guidelines must cover. There is a large body of experience around the world that should be consulted in developing guidelines that are thorough and appropriate to the context in which they must operate. According to best practices, they should take into account many things, including the environmental impact of a company's business, their treatment of their workers, or whether they profit from conflict and war. All of these factors and more should be considered.

We also believe the fund should be consulted in the development of the guidelines. The bill requires this. The board will be invited to make a submission with regard to any draft guidelines or change to existing guidelines. This submission will be tabled in parliament along with the instrument itself.

The guidelines should be flexible, but there is a minimum outcome that we could expect to see. The bill requires that the following investments be prohibited under the guidelines: Tobacco, cluster munitions and nuclear weapons. Any ethical investment guidelines that allowed continued investment in these industries would not be worthy of the name.

The funds do have large portfolios already. Hundreds of millions of dollars are invested in companies that have ethical question marks over them, and the bill makes provision for this. The fund managers will have 12 months to dispose of any asset that becomes proscribed under this bill. If it is brought to the attention of the board that they are in contravention of the ethical investment guidelines, the bill ensures that the board will notify the ministers right away. should the ministers determine that the fund is in contravention of the guidelines, they will have the power to direct the board to take action to rectify the situation in a timeframe of their choosing. These provisions ensure genuine accountability.

The fund's Board of Guardians have already considered the consequences of some of their investments, as we have seen with the divestment of cluster bomb stocks. This bill formalises the consideration of the impacts of investments made on the public's behalf around the world. This legislation resolves conflicts between the Future Fund's global investments and domestic reform. It brings Australia into line with other funds around the world in upholding the highest standards of ethical investment.
Senator DI NATALE: I seek leave to continue my remarks later.
Leave granted; debate adjourned.

MOTIONS

Cummins, Mr Patrick

Senator PAYNE (New South Wales) (12:02): I move:
That the Senate—
(a) notes the outstanding achievement of young Australian cricketer and Penrith junior, Mr Patrick Cummins, who in his test debut took six wickets for 79 runs and scored the winning runs against South Africa in Johannesburg;
(b) joins the rest of the Australian community in congratulating Mr Cummins on his match-winning performance under intense pressure and wishes him all the best for his sporting future;
(c) notes that cricket is an important sport for local community, promoting fitness, a healthy lifestyle and competition.

Question agreed to.

COMMITTEES

Finance and Public Administration References Committee

Reference

Senator RHIANNON (New South Wales) (12:03): I move:
That—
(1) The Senate notes that:
(a) the Lobbying Code of Conduct (the Code) has been in operation since 1 July 2008; and
(b) the Standing Committee on Finance and Public Administration recommended in September 2008 that it conduct an inquiry into the operation of the Code in the second half of 2009.
(2) The following matter be referred to the Finance and Public Administration References Committee for inquiry and report by 1 March 2012:

The operation of the Lobbying Code of Conduct and the Lobbyist Register.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (12:03): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator LUDWIG: If I could inform the Senate, an inquiry was conducted in 2008 and a separate roundtable process was started in 2010, with a discussion paper being released publicly later that year. That process was a comprehensive examination. The minister adopted changes to the code in 2011 based on the findings of this process, including the requirement for companies registering under the code to disclose former government representatives in their employment.

There is to date no evidence of any problems with the operation of the code. The code is aimed at regulating the behaviour of third-party lobbyists to ensure that members of the executive have a clear understanding of the interests being advocated to them. The lobbyist register allows ministers and their staff to know who is engaged in lobbying and whose interests are being promoted. There is no evidence of significant compliance issues arising from this process.

The extension of the code of conduct to all members and senators has several risks attached to it. The former Clerk of the Senate, Mr Harry Evans, pointed these out in a submission to a 2008 inquiry, and I would encourage the Senate to revisit that to inform themselves of it. It would require the House to regulate the private communications of members, something that may compromise the independence of private members. For those reasons, we do not support the motion.

Question agreed to.
Legal and Constitutional Affairs References Committee

Reference

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (12:05): I, and also on behalf of Senator Cash, move:

That the following matters be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 3 May 2012:

(a) the number of Prospective Marriage (subclass 300) visa applications and grants by post, officer, nationality, age of applicant and sponsor;

(b) the risk and incidence of fraud under the Prospective Marriage (subclass 300) visa program, including the incidence of cases where prospective marriages did not occur;

(c) the incidence of Prospective Marriage (subclass 300) visa applicants and sponsors who entered into an arranged marriage;

(d) the administration, application and effectiveness of eligibility criteria in relation to the Prospective Marriage (subclass 300) visa program, with a special focus on, but not limited to, protections against fraud, age differences, regard for cultural practices and relationship criteria;

(e) the sufficiency and suitability of assessment procedures to protect against fraud and to ascertain the reliability of consent of an applicant for a Prospective Marriage (subclass 300) visa, where it is believed the applicant will be entering into an arranged marriage;

(f) whether current policies and practices of the Australian Government with regard to the Prospective Marriage (subclass 300) visa or other visa categories are facilitating forced marriages;

(g) the policies and practices that could strengthen protections against fraud and for women in other countries applying for a Prospective Marriage (subclass 300) visa, from entering into a forced marriage; and

(h) any other related matters.

Question agreed to.

MOTIONS

Medicare Chronic Disease Dental Scheme

Senator FIERRAVANTI-WELLS (New South Wales) (12:06): I, and also on behalf of Senator Di Natale, move:

That the Senate—

(a) notes that:

(i) Medicare Australia has completed only 62 audits of the 11 469 dentists who have participated in the Medicare Chronic Disease Dental Scheme (the scheme),

(ii) currently between 419 and 556 audits are in process,

(iii) of the 62 completed audits, 41 dental practitioners have been found to be non-compliant with the scheme,

(iv) most of the dentists who have been found to be non-compliant have failed to provide paperwork required by the scheme, but have carried out the treatments for which Medicare benefits have been claimed,

(v) of the 41 who are non-compliant, only eight have been found to have claimed Medicare benefits for services that had not been provided, and

(vi) Medicare Australia acknowledges that those eight dentists may have provided the outstanding services at a later date, but had not done so at the time of the audit;

(b) fully supports the Government pursuing appropriate action against any practitioner who has defrauded the Commonwealth by not providing services for which rebates were claimed;

(c) given the information provided to the Senate on 18 October 2011 by the Minister representing the Minister for Health and Ageing (Senator Ludwig) and by Medicare Australia at estimates hearings on 20 October 2011, calls on the Government to:

(i) acknowledge that non-compliance errors in the scheme appear, in many cases to this point in time, to be minor and technical in nature,
(ii) require Medicare Australia to desist from demanding full repayment of all Medicare benefits from dental practitioners in such circumstances where non-compliance is of an administrative nature only,

(iii) require Medicare Australia to halt all recovery action against dentists until a full reassessment of all current audit results has been carried out to consider whether a warning or smaller penalty would be a more appropriate response, and

(iv) recognise that the vast majority of dentists act in good faith in providing much needed services under the scheme;

(d) orders that there be laid on the table by the Minister representing the Minister for Health and Ageing and the Minister representing the Minister for Human Services, by 5 pm on Tuesday, 7 February 2012, a full report from Medicare Australia on:

(i) the actions taken against the 41 dentists so far found to be non-compliant with the scheme,
(ii) the options available to Medicare Australia in each case,
(iii) the options considered by Medicare Australia in each case, and
(iv) reasons for the course of action decided on;

(e) holds grave concerns regarding the actions of Medicare Australia against dental practitioners for apparent minor and technical breaches of the scheme; and

(f) calls on the Government to convey these concerns to Medicare Australia.

Question agreed to.

**Transgender Day of Remembrance**

**Senator HANSON-YOUNG** (South Australia) (12:07): I, and also on behalf of Senator Pratt, move:

That the Senate—

(a) notes that:

(i) 20 November was Transgender Day of Remembrance,

(ii) the event began in 1999 in San Francisco in the United States of America to honour, Ms Rita Hester, who was murdered on 28 November 1998,

(iii) the annual event provides an opportunity to remember all those transgender people who have been killed in acts of anti-transgender violence;

(b) recognises that transgender people continue to be victims of violent crimes in both Australia and overseas; and

(c) calls on the Government to advocate for the rights of transgender people at both a national and international level.

Question agreed to.

**Climate Change**

**Senator MILNE** (Tasmania—Deputy Leader of the Australian Greens) (12:08): I move:

That the Senate—

(a) recalls that at the United Nations Climate Change Conferences in Copenhagen (2009) and Cancun (2010), more than 100 countries, including Australia, committed to constrain greenhouse gas emissions such that the average global temperature rise can be held below 2 degrees Celsius above pre-industrial levels; and

(b) affirms this commitment in the lead-up to the next conference in Durban (2011).

Question agreed to.

**BUSINESS**

**Days and Hours of Meeting**

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (12:08): I ask that government business notice of motion No. 1, to vary the days of meeting of the Senate for 2011, be taken as formal.

The PRESIDENT: Is there any objection to this motion being taken as formal?

The PRESIDENT: There is an objection.

MOTIONS

West Papua

Senator DI NATALE (Victoria) (12:09): I move:

That the Senate—

(a) notes that:

(i) 1 December 2011 marks the 50th anniversary of the raising of the Morning Star flag by the people of West Papua, a day celebrated as the unofficial day of Papuan independence, and

(ii) the Papuan people will celebrate this anniversary with gatherings and protests throughout the province as is their legal right; and

(b) calls on the Minister for Foreign Affairs (Mr Rudd) to:

(i) pay close attention to the events that unfold in West Papua on this date, and

(ii) express to the Indonesian Government Australia’s hopes that no human rights abuses will be committed on the West Papuan people on this anniversary.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (12:09): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator DI NATALE (Victoria) (12:10): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator DI NATALE: Next week the West Papuan people will celebrate their unofficial date of independence, 50 years since the West Papuan community first raised the Morning Star flag and sang their national anthem. It is clear, based on recent events, that conflict is escalating in West Papua. Only several weeks ago a number of people were arrested and detained, and we understand that a number of people remain in prison at this time. In addition, a number of people were killed. We understand that at least six people were killed as a result of the third West Papuan People's Congress, where people were seeking their right to determine their own future.

We understand that next week a series of protests will be held in West Papua, across the West Papuan community. We also understand now that the Indonesian government has expressed that no dissent from the state of Indonesia will be tolerated. We understand that there is the serious
potential for more conflict in the region. We know, based on recent events, that the human rights of the West Papuan community are under threat and that in fact we may see a number of executions committed in the coming week.

We want to see the Australian government take a leadership role on this issue. We want to see the foreign minister express in the strongest possible terms to his counterpart in Indonesia that Australia will not tolerate any human rights abuses, in fact any violence, on the West Papuan community. Finally I would say, through you, Mr President, that if a motion is not an appropriate way for dealing with issues of foreign policy, please tell me what is.

Question put:
That the motion (Senator Di Natale's) be agreed to.

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

Ayes.......................10
Noes.......................41
Majority..................31

AYES
Brown, RJ
Hanson-Young, SC
Madigan, JJ
Rhiannon, L
Waters, LJ

Di Natale, R
Ludlam, S
Milne, C
Siewert, R (teller)
Wright, PL

NOES
Abetz, E
Back, CJ
Bilyk, CL
Bishop, TM
Brown, CL
Cameron, DN
Colbeck, R
Crossin, P
Faulkner, J
Fifield, MP
Furner, ML
Hogg, JJ
Kroger, H (teller)

Macdonald, ID
McEwen, A
Moore, CM
Parry, S
Polley, H
Singh, LM
Sterle, G
Williams, JR

Marshall, GM
McKenzie, B
Nash, F
Payne, MA
Pratt, LC
Stephens, U
Thistlethwaite, M

I move:
That the Senate—
(a) notes:
(i) the recent demonstrations in West Papua calling for a referendum declaring independence from Indonesia and the resulting 19 deaths that occurred during the demonstrations, and
(ii) that the people of West Papua are facing a situation similar to the people of East Timor in that while both were defended by Australians during World War II, Australia failed to support them when they were annexed by Indonesia; and
(b) calls on the Government to:
(i) commence dialogue with the Indonesian Government and to work with the West Papuans in establishing the free state of West Papua,
(ii) offer Indonesia support by way of funding and the services of the Australian Electoral Commission to organise a free and democratic election, and
(iii) support the West Papuan request for United Nations’ recognition of their right to independence.

I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for two minutes.

Senator MADIGAN: The people of West Papua, like all people in the world, are entitled to pursue the very rights we defend in this house, namely the right to choose their future and to live in a free and
democratic society. Over many years, we have rightly sent troops across the world to protect the most fundamental right of all human beings, the right to live in peace and liberty. In recent times we have given our support to the people of Libya who fought for their right to live under a freely elected government of their choice. Surely, if we have learned something from those tragic years of East Timor, we cannot continue to ignore another neighbour who holds out a hand seeking our support.

Senator DI NATALE (Victoria) (12:22): I seek leave to make a very short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator DI NATALE: While we support the intent of this motion, we do not support any call for West Papuan independence. We think that should be a matter for the West Papuan community. We support their right for self-determination.

Question negatived.

Iraq

Senator HANSON-YOUNG (South Australia) (12:23): I move:

That the Senate—

(a) notes that:

(i) more than 3,000 Iranian exiles and asylum seekers reside at Camp Ashraf in Iraq, and

(ii) these people are at risk of expulsion or refoulement, if the Iraqi Government persists in its plan to close the camp by the end of 2011; and

(b) calls on the Federal Government to lobby:

(i) the United Nations High Commissioner for Refugees (UNHCR) to declare the camp a refugee camp, and

(ii) the United Nations and the High Commissioner for Human Rights to station a monitoring team in the camp to ensure residents’ protection, and

(iii) the Iraqi Government to suspend all plans to close the camp until the UNHCR has had an opportunity to process and transfer all applicants for asylum.


The PRESIDENT: Leave is granted for two minutes.

Senator LUDWIG: The government does not support this motion. If I could reiterate, the Australian government does not believe it is appropriate to deal with complex foreign policy matters via simple Senate resolutions. The Australian government is concerned about the situation of the residents of Camp Ashraf in Iraq. More than 3,000 members of the Iranian opposition group the People's Mujahedin of Iran reside there. The Iraq government plans to close the camp by the end of 2011. UNHCR has undertaken to conduct voluntary individual refugee assessments of camp residents and the government has asked the government of Iraq to extend its full cooperation to the UNHCR to delay closure of the camp to allow completion of refugee processing and to ensure the human rights of residents are respected.

Senator HANSON-YOUNG (South Australia) (12:24): I seek leave to make a very short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator HANSON-YOUNG: While I acknowledge the minister’s comments, I would like to put squarely on the record that once these poor people are moved out of this refugee camp, be sure that they will start arriving on our shores, be sure that they will start engaging people smugglers to access
protection and safety. In the foresight of trying to help people who are being displaced not having to engage in these services at the first point of call, I am surprised that the government are not prepared to put on the record their support for this motion.

Question put:
That the motion (Senator Hanson-Young's) be agreed to.

The Senate divided. [12:26]
(The President—Senator Hogg)

AYES
Brown, RJ
Hanson-Young, SC
Madigan, JJ
Rhiannon, L
Waters, LJ

Noes
Adams, J
Back, CJ
Bernardi, C
Bilyk, CL
Birmingham, SJ
Boyce, SK
Bushby, DC
Cash, MC
Collins, JMA
Eggleston, A
Faulkner, J
Fifield, MP
Furner, ML
Hogg, JJ
Kroger, H (teller)
Macdonald, ID
McEwen, A
Moore, CM
Parry, S
Polley, H
Ryan, SM
Stephens, U
Thistlethwaite, M

Majority
32

AYES
10

Noes
42

Question negatived.

Same-Sex Relationships

Senator HANSON-YOUNG (South Australia) (12:29): I move:
That the Senate—
(a) notes:
(i) the Legislative Assembly of Saint Petersburg in Russia has proposed a new law which will allow authorities to impose fines for public discussion of lesbian, gay, bi-sexual, transgender and intersex (LGBTI) issues, and
(ii) the law would undermine the right to freedom of assembly and expression for LGBTI activists and community members, and has been condemned by human rights groups worldwide, including Amnesty International; and
(b) condemns the continuing discrimination in legislation against LGBTI people by a number of governments across the world.

Question negatived.

COMMITTEES

Australia Network Appointment

Senator BIRMINGHAM (South Australia) (12:30): I move:
(1) That a select committee, to be known as the Select Committee on the Australia Network service, be established to inquire into and report by 31 January 2012, on the following matters:
(a) the management and delivery of the Australia Network service;
(b) the 2010 decision to undertake an open tender process for the contract for the operation of the Australia Network service;
(c) the conduct of the tender process for the Australia Network service; and
(d) the Australian Broadcasting Corporation Amendment (International Broadcasting Services) Bill 2011; and
(e) any other related matter.
(2) That the committee consist of 6 senators, 3 nominated by the Leader of the Opposition in the Senate, 2 nominated by the Leader of the Government in the Senate and 1 nominated by the Leader of the Australian Greens.

Question negatived.
(3) That:
   (a) participating members may be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate or any minority party or independent senator;
   
   (b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee; and
   
   (c) a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.

(4) That the committee may proceed to the dispatch of business notwithstanding that all members have not been duly nominated and appointed and notwithstanding any vacancy.

(5) That the committee elect as chair one of the members nominated by the Leader of the Opposition in the Senate and, as deputy chair, a member nominated by the Leader of the Australian Greens.

(6) That the deputy chair shall act as chair when the chair is absent from a meeting of the committee or the position of chair is temporarily vacant.

(7) That the chair, or the deputy chair when acting as chair, may appoint another member of the committee to act as chair during the temporary absence of both the chair and the deputy chair at a meeting of the committee.

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

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

(10) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives.

(11) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

(12) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator BIRMINGHAM: Last night we witnessed an extraordinary situation where the government's guillotine stopped its own minister from being able to make a ministerial statement. That ministerial statement was then tabled in this place in a manner that provided no opportunity, as ministerial statements usually do, for the opposition to respond. That is of grave concern because the ministerial statement made by Senator Conroy once again poses far more questions than it does answers. Those questions can only be transparently and rightly dealt with through a proper, open parliamentary inquiry. This is exactly what select committees were established for, and I would urge, particularly given the extraordinary nature of Senator Conroy's statement, and the content of that statement that has already been highlighted by others as false or misleading in some ways, that the chamber support this motion.

Senator LUDLAM (Western Australia) (12:31): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for two minutes.

Senator LUDLAM: I will not take up the full two minutes. I have some sympathy...
for this motion that was proposed by Senator Birmingham earlier this week, and I apologise to Senator Birmingham for keeping him in limbo. I wanted to see whether the minister was proposing to make a statement. I also agree that the timing is highly unfortunate. I would have appreciated more time, if it had been tabled today, to put some comments more firmly on the record.

What Senator Birmingham has not recognised in his comments is that the minister announced last night that the Auditor-General is being called in, which I think is an entirely appropriate course of action and should probably have occurred well before now. This issue is vexed and has major commercial players who feel aggrieved, as well as including our national broadcaster in the mix. Rather than further politicising this issue with a select committee to rake over what has occurred, it is appropriate that a senior and neutral official such as the Auditor-General take carriage of the issue, recognising also that the Australian Federal Police is involved in investigating the source of the leaks. With some sympathy for the reasoning behind this select committee motion, the Australian Greens will not be supporting it, for those reasons.

Question put:
That the motion (Senator Birmingham's) be agreed to.

The Senate divided. [12:37]

(The President—Senator Hogg)

Ayes....................31
Noes.......................36
Majority..............5

AYES

Abetz, E
Back, CJ
Birmingham, SJ
Boyce, SK
Bushby, DC
Colbeck, R
Eggleston, A

Adams, J (teller)
Bernardi, C
Boswell, RLD
Brandis, GH
Cash, MC
Edwards, S
Fierravanti-Wells, C

NOES

Arbib, MV
Bishop, TM
Brown, RJ
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
McEwen, A (teller)
Moore, CM
Pratt, LC
Sherry, NJ
Singh, LM
Sterle, G
Urquhart, AE
Wong, P

Bilyk, CL
Brown, CL
Cameron, DN
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Marshall, GM
Milne, C
Polley, H
Rhiannon, L
Siewert, R
Stephens, U
Thistlethwaite, M
Waters, LJ
Wright, PL

PAIRS

Cormann, M
Fawcett, DJ
Heffernan, W
Ronaldson, M

Lundy, KA
McLucas, J
Carr, KJ
Evans, C

Question negatived.

Privileges Committee

Reference

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (12:40): I move:

That the following matter be referred to the Committee of Privileges for inquiry and report:

Having regard to matters raised by Senator Kroger relating to political donations made by Mr Graeme Wood, arrangements surrounding the sale
of the Triabunna woodchip mill by Gunns Ltd and questions without notice asked by Senator Bob Brown and Senator Milne:

(a) whether any person, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator’s conduct as a senator, and whether any contempt was committed in that regard; and

(b) whether Senator Bob Brown received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator, or whether he entered into any contract, understanding or arrangement having the effect, or possibly having the effect, of controlling or limiting his independence or freedom of action as a senator or pursuant to which he or any other senator acted as the representative of an outside body in the discharge of their duties as senators, and whether any contempt was committed in those regards.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12:40): I seek leave to make a short statement.

Leave not granted.

Question agreed to.

MOTIONS

Forestry

Senator MADIGAN (Victoria) (12:41): I move:

That the Senate—

(a) notes that:

(i) at a recent public rally in Hobart, Tasmanian members of the Timber Communities Australia publicly displayed signs calling for the recognition of their cultural heritage,

(ii) the Tasmanian timber communities are among the oldest continuing communities in Australia and derive their identity from the continuing connection to their district, environment and industry which they have developed over generations, and

(iii) the Tasmanian timber communities, as a matter of basic human rights, wish to pass their identity and cultural heritage on to future generations of those communities without government interference;

(b) calls on the Government to withdraw the Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania (Australian Labor Party/Australian Greens governments) until such time as the effects the agreement will have on the cultural heritage of the Tasmanian timber communities has been assessed and addressed to the satisfaction of those communities.

I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator MADIGAN: At this time, some of the oldest established communities in our nation are under threat of losing the connection to their environment and the links to those previous generations which form the foundation of their identity and cultural heritage. The idea of cultural heritage is a relatively new one but one that was long overdue. However, I believe it is an idea that needs to be more widely addressed. Members of the Tasmanian timber communities, who are amongst the oldest continuing communities in Australia, have expressed to me their anguish at the impending loss of the connection to their cultural past by an almost forced displacement from the environment with which they identify themselves.

The intergovernmental agreement of the federal and Tasmanian governments is a direct threat to those communities and fails to respect their cultural heritage. The federal and Tasmanian governments should immediately pull back from their IGA until all these communities are adequately consulted and a level of protection sufficient to address all their concerns relating to their cultural heritage is agreed to. These communities, these people, these Australians deserve to have their cultural heritage
celebrated and respected, not ignored and belittled.

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (12:43): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator MILNE: I just want to respond on this particular motion which is actually calling on the government to withdraw the Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania on the basis that a withdrawal of that agreement would in some way guarantee the cultural heritage of Tasmanian timber communities. In fact, it is exactly the other way around because the timber communities actually approached—

Opposition senators interjecting—

The PRESIDENT: Order!

Senator Bob Brown: Mr President, I rise on a point of order. There are interjections coming from—

The PRESIDENT: Senator Bob Brown, I was aware of the interjections. I called to order—

Senator Bob Brown: the conservatives and they should be called to order. You did quite right there.

The PRESIDENT: Thank you, Senator Bob Brown!

Senator MILNE: As I was saying, the timber communities approached the conservation movement to work out a set of principles, which led to discussions with the state and federal governments to develop an intergovernmental agreement which will deliver substantial funding into rural and regional Tasmania for the kind of transitional assistance that will give those communities some hope of transitioning out of native forest logging. In the absence of that money, those communities are losing jobs and people and are going broke right now. If this agreement is upheld by the federal government to the letter of the law, it will provide some future for those communities. They will have no future unless this federal money assists with retraining and transitioning.

Question put:
That the motion (Senator Madigan’s) be agreed to.

The Senate divided. [12:50]
(The President—Senator Hogg)

Ayes ...................... 29
Noes ...................... 35
Majority................. 6

AYES

Abetz, E
Back, CJ
Boswell, RLD
Brandis, GH
Cash, MC
Edwards, S
Ferravanti-Wells, C
Humphries, G
Joyce, B
Macdonald, ID
Mason, B
Nash, F
Payne, MA
Ryan, SM
Sinodinos, A

NOES

Bilyk, CL
Brown, CL
Cameron, DN
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Marshall, GM
Milne, C
Polley, H
Rhiannon, L

Bishop, TM
Brown, RJ
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
McEwen, A (teller)
Moore, CM
Pratt, LC
Sherry, NJ
Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill 2011

First Reading

Bill received from the House of Representatives.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (12:52): 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 LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (12:53): I move:

That this bill be now read a second time.

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

The speech read as follows—

Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill 2011

The Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill 2011 introduces amendments to the Broadcasting Services Act 1992. These amendments will defer the conduct of a statutory review of whether to allocate one or more additional commercial television broadcast licences. The amendments will also widen the scope of the review to take into account alternative uses of broadcasting services band spectrum.

There is a currently a moratorium that prevents the allocation of any new commercial television broadcasting licences prior to the Minister for Broadband, Communications and the Digital Economy directing the Australian Communications and Media Authority to do so after the conduct of a statutory review. Existing provisions of the Broadcasting Services Act require the Minister to cause this review to be conducted by 1 January 2012. The bill will amend this date to 1 January 2013.

The deferral of this statutory review will allow it to consider the outcomes of the ongoing convergence review, which is scheduled to report to government by the end of March 2012. The convergence review involves a wide-ranging examination of the policy and regulatory frameworks that apply to Australia’s media and communications landscape, including broadcasting. The bill’s amendments will therefore enable a review into the allocation of additional commercial broadcasting licences to be deferred while the very framework underpinning licensing is being reconsidered by a separate review.

Following the completion of digital switchover and the restack of digital television services necessary to achieve the digital dividend, there will be only one television channel available for nationwide allocation.

With incumbent national and commercial broadcasters already using five channels for their
digital multiplexes, this final channel is known as the sixth channel. It is also referred to as Channel A.

While this channel will not be available for nationwide allocation until the restack is completed in 2014, it is currently being used on a temporary basis for community television in mainland capitals cities.

The bill's amendments will expand scope of the review to ensure it can consider the full extent of services (not just commercial television services) that could be provided using the sixth channel in the context of a converged media landscape. The bill will also amend the matters that must be considered by the review to take into account the impact of new services using this spectrum on existing broadcasting services and consumers.

In conclusion, the amendments to the Broadcasting Services Act 1992 introduced by this bill will ensure the value of the statutory review of licence allocation required by this legislation. The Bill's deferral of this review and the widening of its scope will allow the review to be well-informed and in keeping with the government's wider reforms to Australia's broadcasting sector.

Debate adjourned.

Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011
Second Reading

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

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (12:53): When people run out of a burning building it is the firefighters who run in to ensure the safety of the premises and the safety of individuals. They are willing to put their lives at risk for the sake of others and their property. They are people whom all Australians should salute. We in the coalition do so.

There is good, clear evidence that, in general terms, firefighters are healthier than the average punter when they begin their careers as firefighters. That is how we want them. In fact, that is how we need them, because of the physical tasks they are required to undertake. The sad fact is that once they come to the end of their careers as firefighters they are more likely than the rest of the community to suffer from a number of cancers. Health and fitness epidemiological studies, the study of people and their health and other matters—I will not go into the technical detail—indicate that, by all accounts, firefighters when they start their careers would be less likely than the average punter to contract various types of cancers but that at the end of their careers they are more likely to suffer cancers.

We can ask the question: why is that? I think it is pretty obvious that the reason for that unfortunate circumstance is that they go into workplaces that are different from any other Australian's. It is a workplace that cannot be controlled. People who work in factories would and should have a fair idea of the mix of chemicals and other substances in those premises. As a result, they can take precautionary measures to make sure they do not inhale or touch the various noxious substances. The firefighters workplace, of course, is so different. They are unable to determine what is in the workplace. Before they walk in they do not necessarily have a checklist about all the noxious substances they might come into contact with. It is clear that it is because of that fact that our firefighting community suffers from a greater risk of cancers than it otherwise should.

On the other side of the ledger, in the coalition's consideration of this matter, is the fundamental principle that, in general terms, he who asserts must prove: if you want to assert a matter you should have to prove it. I think that is a very strong general principle that has served us well. But from time to
time there are exceptions that prove the rule. With most workplace injuries it is easy to say that on such and such a day I tripped over a loose bit of carpet and broke my leg. It is very easy to put the two together and say that because of the loose carpet somebody tripped. As a result a broken leg was suffered. However, when a firefighter has attended fire after fire and, regrettably, contracts cancer, it is difficult to say that it was this particular fire on this particular day that occasioned the cancer. Indeed, it may well have been a cocktail of noxious substances that the body came into contact with over a number of fires. To try to prove the exact linkage and cause in each individual firefighter’s case would be very difficult.

That is the case that was put to me. Unfortunately, I could not attend the briefing of the coalition, but four gentlemen briefed me whilst I was in Perth, Western Australia. I compliment them on the documentation they provided to me. It was extensive, it was professional and it made out their case exceptionally well. The gentleman concerned were representatives of the United Firefighters Union of Australia. I mention Peter Marshall, Graeme Gear, Mick Farrell and Kevin Jolly, whose business cards I still retain, as I do the evidence and documentation they left with me. They presented a compelling case that convinced us in the coalition that, despite our very strong view that he who asserts must prove, there are occasions, unfortunately, when those good fundamental basics of our legal system also have the capacity to fail and cause an injustice. That is why the coalition, in considering all the factors, determined that this was a matter that should not be frustrated or denied passage in this parliament.

From time to time I have been known to be critical of certain elements of the Australian Greens and of union leadership. But, of course, the great exception to that is Senator Gavin Marshall, who is smiling in the chamber. As I have been talking about other exceptions that prove the rule, I believe that on this occasion, with the legislation that was introduced by Mr Adam Bandt in the other chamber along with Mr Russell Broadbent, the Liberal member for McMillan, and Ms Maria Vamvakinou, the member for Calwell, the Australian Greens, who were there at the front, did a good job—as did Mr Russell Broadbent and other members of the Senate Standing Committee on Education, Employment and Workplace Relations, from all sides, who participated.

As for the trade union leadership, it has been known from time to time that the United Firefighters Union of Australia is not necessarily the most moderate of unions within the Australian community. But that should not detract from the fact that they do, and may, from time to time come up with a proposal that is worthy of consideration. In case somebody thinks that I have been bought by the largesse of the United Firefighters Union, I have declared on my register of interests a firefighters helmet that was kindly presented to me by Mr Marshall with the name 'Abetz' written on the side. It is one of the few things in my office that attracts nearly everybody’s attention, so I publicly thank the United Firefighters Union for it.

The coalition speakers who wanted to speak on this bill have kindly agreed to limit their contributions, not out of any disrespect to the gallery or the firefighters who are in a gallery today but out of respect for them, because we want to see the passage of this bill prior to question time today.

I conclude simply by congratulating the United Firefighters Union for putting a strong case that was built on evidence from
northern America—the United States and Canada—which also showed, given the length of period they have had this type of legislation, that it does not open the floodgates to other claims. I also address the one final issue that some people may be concerned about, and that is that whilst we have what is called presumptive legislation it is nevertheless still rebuttable. To give an extreme example: if somebody has been a firefighter for 15 years—and I hope I do not offend anyone in the gallery—but has been a chain-smoker all his life and has attended only one fire and then develops a cancer, chances are under the legislation that would be rebuttable, and so it should be, because that evens up the ledger.

The totality of the bill that was introduced by those three members of the House of Representatives that I previously referred to and the amendments suggested by the government—all of a technical nature—that were passed in the other place, have resulted in a bill that is now in a form that we as a coalition definitely will not be opposing. I personally will be glad to see it pass. Again, I congratulate the United Firefighters Union on the way they have approached this matter.

Senator WRIGHT (South Australia) (13:04): It is with real pride that I rise to speak in support of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011, which was initiated by my lower house Greens colleague, Adam Bandt. I also note that in a spirit of goodwill and collaboration it was co-sponsored by a member of the government, Ms Vamvakinou, and a member of the opposition, Mr Broadbent.

Legislation of this type to provide proper protection for firefighters for the cancers they contract at a far greater rate than the ordinary population has been a long time coming. I feel fortunate that I have been able to participate in a process whereby we can pass groundbreaking legislation like this in Australia. In an environment where politics too often trumps the rightness of the decisions we should be taking, this process has been an exception. I pay tribute to my colleagues on the Senate Standing Committees on Education, Employment and Workplace Relations that inquired into the original version of this bill. In particular, I pay tribute to the chair, Senator Gavin Marshall, and his colleagues from the government and the deputy chair, Senator Chris Back, and his colleagues from the opposition. Through a process of careful listening with open minds to the evidence—both the science and the human stories of the consequences of not having adequate legal protection—we were all able to appreciate the rightness of the approach taken by this legislation. Senators Marshall and Back then advocated for the bill and set about convincing their colleagues, and the end result is one we can all be proud of. It will be a significant change to the law brought about through a process of negotiation and collaboration in the national interest, which will bring benefits to those who need them. It is a triumph of policy and propriety over politics. The Australian people would be justly pleased to see their parliament operating in this way.

The process of seeing this bill on its journey through the parliament has been one of discovery for me. While sitting on the Senate inquiry into this legislation, I had an opportunity to come to understand more about the work of firefighters. Like all Australians, I admired their work and, of course, I was grateful that they are prepared to put their lives on the line to protect the broader community. Indeed, a recent survey of Australians’ attitudes to the professions had firefighters come in as the second most respected profession just after paramedics—I
will not dare say where politicians were ranked on that scale. Fortunately, I have not needed the services of firefighters in the past and I did not know much about the real nature of their work. It is obvious that firefighters face perils as they work to protect the community. What was a revelation to me, though, and I think also to my colleagues on the Senate inquiry, was that the greatest hazards to firefighters are not the flames and collapsing structures but the unseen chemicals that lurk in the smoke produced in modern structure fires. It is these chemicals that pose the deadliest threat to firefighters in the course of their work and it is the consequence of ingesting them—for some firefighters, the occurrence of cancer—which this legislation is aimed at addressing.

I will not dwell on the science, as it is well canvassed in the committee's report. Suffice to say that dozens of studies over 20 years in various nations have all pointed to the strong association between an elevated risk of cancers and firefighting. It is the harmful substances in the smoke and particulates emitted from the fires which cause the problem. These contain many usually unseen compounds which are taken into firefighters' bodies through their lungs or skin. According to a study in 2006, the LeMasters metastudy, firefighters are routinely exposed to harmful substances such as lead, cadmium, uranium, chemical substances, harmful minerals and various gases that may have acute toxic effects. Approximately 1,000 new chemicals are registered every year in the United States and these include carcinogenic chemicals which are released during combustion.

A disturbing aspect of the evidence before the inquiry was that, despite the established heightened risk of cancers for firefighters and the best personal protective equipment available, they cannot fully protect themselves from those risks. Although Australian firefighters use world-class safety gear and clothing which is consistent with all national and international safety regulations, it cannot and does not form an impenetrable barrier between firefighters and the toxins in their environment. That is because the clothing or protective equipment must be capable of breathing. In intensely hot conditions, with some structure fires approaching temperatures of up to 1,000 degrees Celsius, if the clothing did not breathe, firefighters would suffer heat stress and could quickly perish from metabolic heat build-up damaging their internal organs.

So despite their best efforts firefighters cannot control the hazardous environments they enter. Unlike most workers, who are encouraged to assess risks before undertaking work, firefighters must venture into unsafe workplaces as quickly as possible in order to do the job. The workplace is unknown and the hazard cannot be quantified, but they do know that carcinogens will be present. Contrary to established occupational health and safety requirements, firefighters do not have the same right to refuse unsafe work as other employees. It is the nature of the work which puts them at risk. It is humbling to understand that they do this willingly on our behalf.

The original bill contained a list of seven cancers together with respective qualifying periods but, as a result of up-to-date scientific knowledge available to the Senate inquiry and recommendations flowing from the Senate committee's report, the range of cancers has been extended in the legislation to cover a further five cancers. As data becomes clearer in relation to primary site lung cancer in nonsmokers, it is possible that this too will be included.

Having established that firefighters are at heightened risk of contracting specific cancers as a result of their work, the Senate inquiry heard that it is usually impossible for
a firefighter who has contracted cancer to achieve any compensation or support from his or her employer. In order to receive compensation a firefighter must establish that their occupation was the cause of the cancer, and that can be almost impossible. Proving there was exposure to particular carcinogens in a particular fire and then establishing a direct causal link between that exposure and the illness is very difficult, requiring complex and costly legal proceedings with no guarantee of success. It is that difficulty, that impediment, that this legislation is directed at rectifying.

The Senate inquiry heard evidence from various firefighters who had contracted cancer about the costs they incurred and the income they lost as a result of the illness. In some cases they had to rely on accumulated sick leave and annual leave and lived in fear that they would exhaust their leave before they were able to return to work. In other cases they used wage protection insurance, which led to reduced income, out of which they had to pay for increased medical expenses such as chemotherapy. In one appalling piece of evidence, one firefighter was told his insurance policy had been cancelled once he returned to work in remission. When it was finally reinstated, he was told he would no longer be covered for cancer. He still pays the same premiums, although the cover has been significantly reduced. What an injustice. If he ever contracts cancer again he will not be covered.

The inquiry also heard humbling stories about firefighters relying on the assistance and charity of colleagues and friends. Clearly that is a totally unacceptable situation which has caused great hardship to firefighters and their families, and this bill is designed to rectify the situation. The bill will amend the Safety, Rehabilitation and Compensation Act so that where a firefighter contracts a particular form of cancer, if certain other conditions such as length of service are met, it will be presumed that the cancer is work related. There are precedents for this kind of approach in relation to other work related conditions and in other places. Presumptive legislation for firefighters was first introduced in Manitoba, Canada in 2002 and now exists in seven Canadian provinces and 43 US states.

In recognising the importance of passing this legislation, I pay tribute to the work of Alex Forrest, the Canadian firefighter and lawyer who has fought long and hard to bring the benefits of this kind of legislation to firefighters in Canada, the US and now Australia. He is also continuing his good work in other nations as well. I also acknowledge the tireless advocacy and determination of the United Firefighters Union of Australia in promoting the benefits of this legislation for firefighters in Australia, especially the national secretary, Peter Marshall, and industrial officer, Joanne Watson, among others.

I am grateful for the opportunity to have heard from witnesses whose evidence to the Senate inquiry helped to establish the strong scientific basis for this legislation as well as the need for reform. These included Ken Block, the Fire Chief of Edmonton Fire Rescue Services—a very impressive witness from Canada—and the firefighters and families who flew to Perth to speak to the committee. For many of those firefighters and families, this legislative change will come too late or will not cover them, as it applies to Commonwealth firefighters. However, these witnesses generously gave up their time and shared their very personal experiences in order to bring about long overdue change that will benefit others. Their testimony was straightforward and compelling. In conclusion, I do not think I can say it any better than it has been said by
one of the firefighters who appeared before the inquiry, Ross Lindley. Ross epitomises the matter-of-fact, practical attitude that I found in abundance as I met these people. He accepts responsibility for the choices that firefighters make, knowing the risks they face. He just asks that the government, and, by extension, the parliament, accepts its responsibility to acknowledge the risks we ask people to run on our behalf and takes the appropriate action. I quote from Ross's submission:

As a fire fighter you know the risks of the job. But you take those risks to protect the community. We are asking that the Government now recognises those risks and put the proper protections in place for firefighters.

I commend this Greens bill to the Senate. If passed, it will be a credit to collaboration and bipartisanship in the interests of what is right and fair.

Senator MARSHALL (Victoria) (13:15): Firstly, let me acknowledge all the firefighters in the gallery today. I met many of you last night—

Senator Back: And this morning, we heard!

Senator MARSHALL: and indeed this morning. You are totally responsible for the rather delicate way that I am feeling today, so thank you for that! I want to echo Senator Abetz's words in commending the United Firefighters Union for running such a professional and fantastic campaign, which has culminated in the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 getting through the parliament to this stage. This is the final passage of the bill through the parliament. I know you are all very proud to be here, and I am very proud that you are here and that I could play my small role in helping to get the bill here.

We are under time constraints at the moment, so I am not going to speak for a long time. I am the only person from the Labor Party, apart from the Parliamentary Secretary for School Education and Workplace Relations, who will speak on the bill, and that is not because my colleagues did not want to speak; in fact, they all did. Every single senator on this side of the chamber—and, I expect, on the other side of the chamber—wanted to speak. So I very much speak for every one of my Senate colleagues here, who took enormous interest in the progress and development of this bill and in the facts and figures that were presented to us.

Peter, you made a compelling case. You, Mick and Wattie need to be congratulated. It has been a fantastic effort. I am very proud of this parliament too, because we are only the third jurisdiction, the third country, in the world to introduce such legislation. That is a fantastic result and another one you ought to be proud of. I ought to also say that this legislation had the personal support of the Prime Minister, Julia Gillard, and the personal support of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Chris Evans.

I also want to congratulate my deputy chair on the Senate Education, Employment and Workplace Relations Legislation Committee. The committee report is a comprehensive report. It collected all the science and all the arguments and presented them in a comprehensive document which was the basis of the legislation progressing through this parliament. Many people played a role: Senator Chris Back, as deputy chair; Senators Bilyk and Thistlethwaite from the ALP; Senators Boyce, Cash and McKenzie from the coalition; and Senator Wright from the Greens. Everyone took on the task of doing this work with enormous gusto and enthusiasm.
It became apparent to us very, very early that this was a very worthy cause. The bill does not actually establish any new rights, but it rights a wrong that was happening under the present workers compensation system. It enables firefighters to access the same right that nearly every other worker in this country has. The ability to not have to identify which fire and which particular chemical contributed to a cancer but rather to say that it is the cumulative effect of fighting fires over a period of time is a result for firefighters, because we know that the firefighter population have between two and five times—or even seven times in some instances—greater risk than the general population of contracting many types of cancer. We know, through the scientific studies that have been conducted, that that is as a consequence of their being exposed to a cocktail of chemicals throughout their professional careers. It is an enormous responsibility that they take on to save lives while putting their own lives at risk, both through the immediate danger and through the ongoing exposure. It is right and proper for the parliament to recognise that.

I am very proud, as I know everybody in this chamber is, to take this legislation forward. I am not going to go through all the justification for it, because the committee report stands for itself. I simply want to say how pleased I am. And now that Senator Abetz is back here let me also pay him a very rare compliment from me. I know that Senator Abetz, as the shadow minister for workplace relations, gave his personal support to this bill. I want to commend him on that. I would have liked to have talked for a long time and gone through all the details, but given the time constraints—we are at the end of the year's sitting period—I will say again that it was great to meet you guys last night and this morning. I will not be coming out with you again tonight! But congratulations on a great effort. Once again, I say to Peter, Mick and Wattie, all the branch secretaries, everyone who has come along and everyone who has lobbied their members of parliament: well done.

Senator BACK (Western Australia) (13:21): As a past Chief Executive Officer of the Bush Fires Board of Western Australia, I am proud to lend my support to the passage of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011. As my colleague Senator Wright has mentioned already, it is evidence of the Senate working at its best and, of course, it is common sense. When I joined Senator Marshall this morning at eight o'clock for a meeting and learnt that he had been out during the evening with colleagues from the United Firefighters Union, I was initially very, very disappointed that I had not been invited and I wondered whether I would lend my support to the bill, but, as I saw Senator Marshall's delicate condition, in fact I was very pleased that I had not been invited!

I reiterate also the comments of Senator Marshall and say to you that, from this side of the chamber, there are many if not of all of my colleagues who wished to speak but, given the need for this legislation to be passed, they have passed up that opportunity. I do particularly want to mention Senator Sean Edwards, sitting behind me, who has given up his right to speak. Sean has told me that his first memory as a child was of their family home being burnt down. His presence in the chamber here and the fact that he gave up the opportunity to speak says volumes about his interest and concern for the passage of this bill. I also join with my leader in the Senate, Senator Abetz, in his leadership and that of our parliamentary leader, Tony Abbott, for his support of this legislation.
What is not generally understood is that this is the only civilian occupation in which the employer has no option but to send employees into a situation which they know to be dangerous and which they know they cannot avoid doing. This of course is because of the flashover, a five- to six-minute incident in which time a structure particularly will become enflamed to the extent that any occupants will surely die. Therefore a firefighter has no option, unique in civilian employment, but to go straight into a burning building in the same way that their employer has no option but to demand that they do that.

The second point which needs to be understood, and which was eloquently put by representatives of the United Firefighters Union and other witnesses, is that the very clothing that firefighters must wear is of a nature which allows their body to breathe, otherwise they would hyperventilate and simply expire as a result of overheating of the body. But it is that same clothing that allows heat to dissipate from the body that also allows carcinogens to come into the body, and this is the matter that we are discussing.

Those two points must be understood clearly: we have no option but to send firefighters in and we have no option but to expose them to these carcinogens. It is no accident that the sorts of cancers we are speaking about are those that involve the filtration systems of the body or those areas that are exposed as a result of high blood flow. So it is entirely logical, then, that the sorts of cancers we are considering are those to which firefighters will be exposed.

We know from the Canadian experience that, in 2003, seven cancers were identified; that was increased to 10 in 2007 and then to 14 in 2010. I must say that I am very pleased and proud of the collaborative approach that was adopted by members of this committee in coming to the conclusion that if in fact the evidence was there from Canada and from the United States why would we not go beyond what had been sought in the original request to this parliament and identify those cancers that can be demonstrated from scientific validation to be contracted through firefighters' exposure. It does emphasise that whilst the need is there for scientific validation, and it is around the world, we must also confirm the Australian experience. To that extent I would urge that, over time, more be invested in that activity.

As Senator Abetz and Senator Marshall have said, this confers no greater rights on employees and no greater liabilities on employers. What it does take away is the nonsense situation that existed—that is, the circumstance in which a firefighter had to prove the event, usually many years in the past, at which they actually absorbed a carcinogen. Firstly, that is of course nonsense and, secondly, we know that it is a cumulative effect. So should a firefighter in fact want to have been able to identify an event, anybody else would clearly have been able to dispute that or knock it down.

So we have arrived at a circumstance of which I think this parliament and the people of Australia can be rightly proud—that is, that logic, good common sense and an eloquent and well-developed argument and case have been put forward by the United Firefighters Union. Compliments have already been made about the two people from Canada. I think the fact that they came to this country, provided us with evidence and provided us with endorsement by their government ministers for their presence, speaks volumes of the seriousness with which this is being adopted. There has been concern, as Senator Abetz mentioned, that a circumstance must not be allowed to exist in which spurious claims are made in the future.
following on the precedent of this legislation. I will be very disappointed if it did, and I believe we will not see that happen.

I conclude by, firstly, joining my colleagues in complimenting the officials of the United Firefighters Union for the way in which you have gone about this whole process, the many staff and others at Geelong and at Tullamarine Airport and those in Perth and in Brisbane who generously gave their time not only to be there with us but also to demonstrate equipment. I do recall Senator Marshall and I being high over the Geelong Fire Station, overlooking Kardinia Park, and I did mention to him on that occasion that if he were to let my safety harness go and throw me over the side there would be a lot of people in Australia at that time who would have been quite happy. But Senator Marshall must not have been able to hear me because we arrived back on the ground quite safely. I also join Senator Wright in complimenting and thanking those families, including a wonderful family in Perth whose husband and father had already passed away, for their generosity and maturity in appearing before us and giving us the evidence they did.

In conclusion, can I say again how pleased I am to support this legislation. It is common sense at its best and I hope that it does give some surety into the future for a very, very fine group of people.

Senator McKENZIE (Victoria) (13:28): I would like to commend everybody who has spoken today on the bill. My pen has been busy crossing out paragraphs so that do I not go into duplication, because I know we are under a lot of time pressure. But the very fine words that have been spoken right across the chamber I think are a testament to the commitment to this bill from both sides since its presentation to the House of Representatives by the member for McMillan and the member for Melbourne, both Victorians and who both had personal experience with the volunteer brigades in Victoria during the 2009 bushfire season. I will keep my comments short. Firefighters are asked to take risks that would be unacceptable in any other work environment. All career and volunteer members need our recognition and our thanks. For the record I would particularly like to thank Victorian firefighters, both paid and unpaid, for their efforts, their work and their dedication to the safety of Victorians in regional and metropolitan areas. I genuinely thank them for putting their lives at risk running into danger, towards the fire, when most of us are running the other way.

The Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill was the subject of one of my first Senate inquiries, where we examined the detail of it. It has inspired me to comment today. I would like to thank those members of the service who personally gave their stories. I also thank their families. That had a significant impact on me personally. It supported the understanding that we need a legislative framework to provide security and support for all our firefighters and their families.

The purpose of the bill is to create a legal presumption that employment is the dominant cause of certain types of cancer in the event that the firefighter has been employed for a certain period and is then diagnosed as having the disease. We recognise that their employment is the cause of their disease.

In the additional comments made to the Senate inquiry, coalition senators wholeheartedly shared the committee's majority objective of securing a workable compensatory system for firefighters who became ill with cancer related to their
service. However, there was obviously recognition that some coalition senators remain to be convinced that presumptive legislation was necessarily the best mechanism to achieve this.

The bill replicates similar legislation in force in Canada and in the US. In those two jurisdictions volunteer numbers differ quite significantly from our own. Paid and unpaid firefighters are exposed to the same risks; they are all fighting fires where they can be exposed to dangers and chemicals that can impact on their health.

As a member of the committee I would like to thank the chair, Senator Marshall, and my colleague Senator Back for their approach and genuine participation in seeking a bipartisan response on this issue. I would also like to personally thank Senator Abetz for his leadership. I think it does need recognition.

I also agree with other senators' comments on the professionalism of the campaign—I love my helmet, thank you very much. In the interests of time I will finish my comments there.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)
(13:32): In briefly summing up, so that we ensure the Senate deals with this matter as efficiently as possible, I would simply like to thank senators for their contribution to the debate and not reiterate the many points that have been made throughout the debate.

The Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill will significantly improve workers compensation arrangements for firefighters. It aligns Commonwealth legislation with laws that are already in place across North America. As we have heard, the provisions have been subject to considerable consultation, including through an inquiry of the Senate Education, Employment and Workplace Relations Legislation Committee and also by the Commonwealth government with the ACT government and the United Firefighters Union.

These are important improvements and the government is pleased, indeed proud, to support them, and I do so now.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Back): I call the minister to move the third reading, unless any senator requires that the bill be considered in the Committee of the Whole. That not being the case I call the minister.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)
(13:34): I move:

That this bill be now read a third time.

Senator BOB BROWN
(Tasmania—Leader of the Australian Greens) (13:34): I want to congratulate every member of every party and the Independents of this house and the other house for the impending passage of this legislation, the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill. I pay tribute to the member for Melbourne, Mr Adam Bandt, the Independent Bob Katter, Labor backbencher Maria Vamvakinou, Liberal backbencher Russell Broadbent, all the components of the Senate who have contributed here today and everybody else who has enabled this legislation to come before us. That of course goes primarily to the men and women of the great firefighting services of Australia and their voice through the United Firefighters Union.
On a day in which our hearts go out to the crews who are currently battling this massive and destructive fire at Margaret River in Western Australia, it brings home to us the indebtedness we 22 million Australians have to the remarkable service that firefighters give us, at threat to themselves, in making our own lives more secure from the ever-present spectre of catastrophic fire.

From Canada to Canberra, from Manitoba to Melbourne, through the intermediary of the hard work of the United Firefighters Union, and all who are associated with it, this parliament has been informed about an excellent, socially just piece of legislation that is now to be implemented in our nation. We go into the next year, 2012, with firefighters—as a result of their own work, through the great democratic process we have in Australia—having behind them a parliamentary contribution that will in turn make their lives a bit safer.

On behalf of all I dedicate this impending passage of legislation to those firefighters who have lost their lives directly and, not least, to those firefighters, and they must number in their many hundreds, who have lost their lives because of the indirect impact of the chemicals they have ingested—the cancers that have come from that—and who have not known about the relationship let alone the process that has taken their lives from them earlier than nature would have expected. But it is great to know that, in future, people who put their lives on the line for community service will have this legislation to give them a better go because of the dedicated work of the service and the union.

Question agreed to.
Bill read a third time.

**Work Health and Safety Bill 2011**
**Work Health and Safety (Transitional and Consequential Provisions) Bill 2011**

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

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (13:38): We now move on to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011. Before addressing some remarks to that, I would encourage elements in the Australian media to in fact report the occasion we have just witnessed. Unfortunately, there was not a huge dispute in the parliament, things were not said in the heat of the moment and, as a result, they will not be reported, as they should be.

**The ACTING DEPUTY PRESIDENT** (Senator Back): Order! Senator Abetz, would you resume your seat for a moment. I draw you attention to the actual title of the bills and ask the Clerk to read them again to ensure that we all know the matter that is under discussion.

**Senator ABETZ:** Yes, we have previously dealt with that legislation and we are now dealing with the harmonised work health and safety bills. I still make the point that it would be nice were the media to give much time to this breakout of peace and unanimity within the parliament on this occasion—but I have a funny suspicion that events in the other place, namely the House of Representatives, with the demise of the Speaker for all sorts of nefarious reasons, will undoubtedly capture the attention of the media. Having said that, it is not so much that we in this chamber feel some satisfaction with good reporting; the important thing is that there are now firefighters and men and women in the fire services who know that their workers
compensation claims will be somewhat easier to prosecute, as they should be, and I wish them well.

The bills we are currently considering relate to the harmonisation of workplace health and safety laws in Australia. Most people believe that this is a good reform. It would be of benefit to have harmonised laws so that you do not have the differing standards which cost such a considerable amount to business and, as a result, reduces the productivity within our nation. The idea, of course, is to have a harmonised system—a hope that was commenced by the Howard government. In February 2008 the workplace relations ministers council agreed that the use of model legislation would be the most effective way to achieve harmonisation. The Commonwealth, and each of the states and territories, subsequently agreed and signed the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, which committed jurisdictions to implement the model laws by 2011.

The model bill was intended to be mirrored in all jurisdictions. Separate bills were to be introduced into each jurisdiction's parliament to give effect to the model bill. What we do know is that that has not occurred. We know that in New South Wales they have—with the support, might I add, of the Australian Labor Party representatives in that parliament—ensured that their legislation would not be as per the agreed harmonised model bill. We also know that, courtesy of changes of government in Western Australia and Victoria, there are now some concerns being expressed in relation to the harmonised legislation. We as a coalition recognise that it is important that these bills be viewed in the context of the harmonisation of occupational health and safety laws being conducted under the auspices of the Council of Australian Governments. The intergovernmental agreement also expresses the commitment of each jurisdiction to enact or otherwise give effect to those laws by the end of this year. It is questionable whether that is going to be achieved in some of the other jurisdictions.

There was a review that commenced in 2008 and was finalised in January 2009. The review conducted extensive consultations with a broad range of stakeholders, including regulators, unions, employer organisations, industry representatives, legal professionals, academics, and health and safety professionals. It received over 200 submissions in response to the issues paper released in May 2008. The review panel completed its work with the submission of its second report to the ministerial council in January 2009. That panel made 232 recommendations. The ministerial council responded to that in May 2009. From those responses to recommendations the panel formed the basis for the model act. The model act itself was the subject of extensive consultation. The model act was developed by Safe Work Australia, with the involvement of all Safe Work Australia members. In September 2009, Safe Work Australia released an exposure draft of the model act for public comment—480 submissions were received. In December 2009, after incorporating a number of amendments proposed as a result of consideration by Safe Work Australia, input from the Parliamentary Counsel's Committee and the public consultation process, the ministerial council endorsed the amended model act, which became the agreed model act.

I do confess to being somewhat confused today, because if one believes what the Prime Minister says, this piece of legislation somehow has already been introduced and passed. In the leader's debate during the last election, when asked what her biggest achievement was, she said:
Perhaps less transparent to the Australian people: getting new occupational health and safety laws. Laws around the country. Businesses have been complaining for 30 years that they have different obligations in different states and at the same time not every individual worker had the same safety standards. Now, I have delivered that.

Well, she hadn't, she hasn't and she won't. Just like her 'no carbon tax' promise and assertion, this is a Prime Minister that seems to be addicted to the misleading of the Australian people, to exaggerate that which she may have achieved or obtained. To get all the state Labor governments to agree to her proposal was, I suppose, something to be welcomed but of course was not as she portrayed, which was that she had achieved these laws. We now know for a fact that the states are asking for the implementation to be deferred. Some states still have to pass this legislation. We know that in New South Wales they have deliberately passed legislation which is inconsistent with the harmonised laws.

Senator Bilyk: Shame.

Senator ABETZ: Senator Bilyk interjects and says 'Shame'. You know what, Mr Deputy President, I fully agree with her. But do you know why New South Wales did that? Because members of Senators Bilyk's party in the upper house of the parliament of New South Wales voted to put amendments to the harmonised bill that made it inconsistent with that which is before us today. It was the ALP, with the Australian Greens and, might I add, the shooters party, that would continue to allow trade unions to bring actions against employers when there is an independent, for want of a better term, police force or an independent bureaucracy to do these things. It is highly unwise for the unions to be involved in this. Indeed, having unions involved was specifically rejected by the ministerial council. It was put up and specifically rejected. Yet we have unharmonised laws courtesy of the power of the trade union movement over the Australian Labor Party in New South Wales.

The Prime Minister said: Thirty years—on the day we delivered it—there were some public servants that had tears in their eyes because they spent all their working life waiting for someone to deliver that reform. Wasn't easy, but I got it done.

You can just imagine the TV coverage of all these assertions by the Prime Minister as a go-get-'em type Prime Minister achieving something after 30 years, when she had not at all. But it seems that she was willing to say any words that came into her mind at any time if she thought that might help her win the odd vote during that election campaign. She went on to say:

And what I think that shows is if you believe in something passionately, then you will work through.

So we are told that the Prime Minister got it all done, signed, sealed and delivered. Perhaps Senator Evans might believe that—we do not know—but we do know that in some areas it is unravelling. The harmonisation of the nation's numerous occupational health and safety laws in general terms in principle is a good thing. It was started by the Howard government, in fact, in October 2006. Yet, of course, we were told that some people had been working on this for 30 years and were starting to cry—and if they did sob, it was first started on the official level in October 2006.

The arguments for harmonisation appear compelling to many, and I must say that I am one of those who is compelled by those arguments. But I am also very disappointed that the government has sought to bring on this legislation for debate when the regulations are yet to be finalised. The coalition believes that, in fairness to all sides of the chamber, the government should have
provided a copy of the final regulations and the final regulatory impact statement. This legislation is what is now being described as 'coathanger legislation', where you have just got the wire frame of the coathanger but it is what you hang on it by way of regulations that actually counts, that actually makes the difference. So what this government is yet again seeking to do is to introduce a scheme whereby the Australian people, and more importantly their representatives in this place, are unable to fully judge that which is going to come into being.

Indeed, I recall some draft regulations in one of the areas which would have all building sites that have the potential of a worker to fall more than two metres to be fully safety fenced. That therefore means every single domestic residence, every unit that is being built in the broadacre allotments, would need to be individually fenced off. And we wonder in Australia why we are dealing with cost increases in housing and issues of housing affordability and young people who are not able to get into houses. If these regulations come to pass under this coathanger legislation, every house building site will need to have such a safety fence erected around it. That will simply add to the cost of housing. Of course you want safety on every worksite. Of course you want the minimisation of injuries. I must say I am not sure that this bill itself will deliver that but it will at least develop as much as possible a harmonised scheme.

There are some issues that are of concern to the coalition and we have amendments and will deal with those through the committee stage. Training in occupational health and safety is always an important issue. At this time of transition to new arrangements the availability of courses is vital, and unfortunately the availability of accredited courses has been reduced by 26 per cent since restrictive changes were introduced by the Safety, Rehabilitation and Compensation Commission in 2010 in order to facilitate transition—so called—and ensure the availability of training courses.

I will put forward an amendment to the transitional bill enabling the continuance of courses accredited under the 2006-07 regime. The change made supports union training at the expense of a private provider with no beneficial outcomes. Many an hour, as you know, Mr Acting Deputy President Back, has been spent at the Senate estimates asking Safe Work Australia as to the reason for this change. Was there any problem with the service delivery? Was there any problem with the outcome of the safety training? All we ever get from the bureaucracy, with great respect, is, 'Well, it was a decision and that decision is the decision and therefore that is the decision.' As to the rationale, we are never told why that decision was made. We are never told why 26 per cent of the service providers should be knocked out of the ring, service providers that have been employed by Commonwealth departments and agencies, to whom Commonwealth departments and agencies have written letters of commendation saying how good the training was. But you know what the fault was, don't you, Mr Acting Deputy President. It was not union authorised training. That was the great difficulty with it and that is why they had to be pushed aside—no fault with the training, no fault with the outcome, but deliberately disallowed. And no answers have been given at Senate estimates. Indeed, one of the bureaucrats said in relation to this issue that I think they have now answered over 200 written questions on notice from me on this issue. The reason they got so many is that they cannot come up with a plausible argument as to why this form of training, which has been so exceptionally good, endorsed by Commonwealth agencies and departments, is now no longer allowed.
There are also matters on the major bill that I will be dealing with in the committee stage dealing with the failure to include the term 'control' in identification of duties of care, removal of the right to silence and protection from self-incrimination. Also in relation to the time frame there are certain issues that need to be dealt with. So, whilst the coalition will not oppose this bill, we will put forward some commonsense amendments. It is, as I said before, important to point out that this is coathanger legislation. The regulations will be determinative of the benefit of this change. Model regulations were circulated and I must say they are exceptionally restrictive, with the one example that I gave. The final regulations still have not been released, nor has the regulatory impact statement. If the minister's timetable is to be adopted, these regulations will come out over the next few weeks, one hopes. Indeed, in one area I understand they will be coming out the week before Christmas and then they will have to be applied as of the commencement of the following year. So the decision regulatory impact statement that is currently floating around offers some very real concerns.

I note that in answers in Senate estimates the department could not clearly say that the harmonisation will be achieving the clear goals that were laid out from the outset. The clear goals and the so-called modelling and the savings that would be made in this area will clearly no longer be made because of the fact that we will no longer have genuinely harmonised legislation since a number of states will be going their own way. I look forward to the committee stage, where I will be able to pursue some further remarks.

Senator WRIGHT (South Australia) (13:58): I rise to speak on the Work Health and Safety Bill 2011. The purpose of this bill is to help bring about harmonisation of the nation's occupational health and safety laws.

Via COAG and the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, the Commonwealth and each of the states and territories have made a commitment to implement by December 2011 the model health and safety laws contained in this bill. The Work Health and Safety Bill 2011 seeks to implement the model laws within the Commonwealth's jurisdiction. It is intended that separate bills will be introduced in each of the other jurisdictions in order to give national effect to the model laws. However, not all jurisdictions will meet the December 2011 deadline.

The Greens accept that this legislation will be a significant step towards delivering a nationally consistent legal framework on work health and safety, bringing clarity and certainty to the legal obligations that we all have in delivering safer, healthier workplaces across the country. However, we have also maintained that the harmonisation process must not reduce occupational health and safety standards in any workplace or weaken the rights of employees and their representatives with respect to OH&S regulation. Our aim should be to pursue the highest possible safety standards so that every worker might return home from work in the same level of health as when they left. Indeed, as a young lawyer acting for workers in the 1980s, it did not take me long to understand the devastating impact of workplace injuries on my clients. Clearly, an employer has the right to expect an honest day's work for an honest day's wage, but workers should not have to put their health and safety on the line just to do their job and earn a wage.

Debate interrupted.
QUESTIONS WITHOUT NOTICE

Economy

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:00): My question is to the Minister representing the Prime Minister, Senator Evans. Given that today marks four years since this glorious Labor Party took power—the Labor Party noted today by the rolling fiasco seen in the other place—does this government accept any responsibility at all for the fact that so many Australians are struggling with the basics of everyday life, their standard of living? Does it accept responsibility for the power prices it is forcing up through a carbon tax? Does it accept responsibility for the grocery prices it is forcing up with the Murray-Darling Basin Plan? Does it accept any responsibility to the working families whom it, by its own actions, has shown not only its complete and utter incompetence but, in its actions in the other place, also its complete and utter contempt?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:01): That was a fairly wide-ranging contribution by Senator Joyce, which I take it was a question. This government have delivered a strong economy that is delivering jobs for Australian families, 750,000 more jobs since it came to office. Australians understand that, if they have a job, they are much more secure, their family is more prosperous and they have a much better life. The No. 1 priority of this government has been to deliver jobs for Australians. As I say, we have had record job creation. We have very low unemployment compared to all comparable countries. As result, Australians are enjoying the benefits of a strong economy.

There are cost-of-living pressures in the economy that impact on families. That is obvious. But what we did through the global financial crisis was that we delivered a stimulus package that allowed Australians to stay in work. As a result of the economic stimulus, we saved probably 200,000 people from being cast into the unemployment queues. By building in every primary school in this country we not only invested hugely in the future education of our children but kept people in work—architects, planners, builders, chippies, plumbers, electricians. All sorts of people benefited from that economic stimulus. So we make no apology for taking strong action to stimulate the economy to protect the standard of living of Australians by keeping them in work. I am happy, if there is a supplementary question, to expand on the measures the government has taken to put Australia in a position where we are one of the strongest economies in the world and the Australian people are getting opportunities denied to thousands of others in countries like the US and the UK. (Time expired)

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:03): Mr President, I ask a supplementary question. Given that the Labor Party has been in power now for four years, is the minister proud of his government and the promises it has broken such as the carbon tax; the debt and deficits it has run up as it heads towards its third debt ceiling; the 19 new or increased taxes it has legislated; the billions of dollars it has wasted on pink batts, Fuelwatch, GroceryWatch and the war on obesity; and the fact that it has completely and utterly lost sight of its core constituency, the working families?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate)
Mr President, I will not be lectured by the doormats for the Liberal Party about achievements or the economy of this country. I am happy to take Senator Joyce, chapter and verse, through the record of this government. We are very proud that we were successful in getting the carbon legislation through this parliament. We are very proud that we got the MRRT legislation through the House of Representatives. We are very proud that we got the NBN legislation through this parliament. This government is setting Australia up for a prosperous long-term future. We are making the changes in the economy that will benefit Australians for years to come.

Australians get it. They understand how important the NBN is. They understand that the minerals resource rent tax will deliver a dividend for those who are not directly prospering from the improved mineral resources development in this country. They understand that the increase we gave to pensioners was long overdue and never delivered by the Howard government. They understand those— (Time expired)

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:05): Mr President, we seem to have hit a nerve. I ask a further supplementary question. Given that the Labor Party came to power promising to honour their election promises, when the Prime Minister could not even honour a promise not to stab Mr Rudd in the back; to take the cost-of-living pressure off working families, yet they brought in a carbon tax; to be economic conservatives, yet they are heading towards their third debt ceiling; to fix Australia's public hospitals or take them over; to run balanced budgets, yet we have had record deficits; to end the blame game with the states, yet they have done nothing; and to turn the boats back, but they are coming in droves—why, after four long years, are you so hopeless? (Time expired)

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:06): I know it is the last day for question time this year, but I think Senator Joyce has completely lost it. Senator Joyce has lost all touch with reality. The reality is that the opposition are just negative. All they can do is say no. They are not contributing anything to the public policy debate in this country.

I have outlined how important the carbon price, the MRRT and the NBN are to the economic future of Australians. We know those reforms will set us up for years. I remind Senator Joyce about the tax cuts, about the childcare assistance, about the parental leave, about the support that we have given to working families through a range of measures. We put the interests of families first. We support them through tax cuts, through fair industrial relations and through measures like child care, health and education. We are very proud of our four years in government and we intend to keep doing— (Time expired)

Mining

Senator BILYK (Tasmania) (14:07): My question is to the Minister for Small Business and Minister representing the Assistant Treasurer, Senator Sherry. How is the Gillard government helping small businesses grow, increase productivity and create jobs? How will the government use the proceeds of the mineral resources rent tax to deliver the benefits of the mining boom to all Australian small businesses?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (14:08): In addition to the very important point that Senator Evans, as Leader of the Government in the Senate,
made that we have kept the Australian economy strong over the last four years in the face of world recession, that we have created more than 700,000 new jobs when in many comparable advanced economies they have been losing jobs, the fact that we have kept the Australian economy strong has been particularly important for small business in this country.

We intend to go further. Now that the mining tax has passed the House of Representatives and will pass the Senate next year, part of that tax reform package has important and significant tax cuts for small business. There are more than two million small businesses in this country. They are vital to our economy, providing jobs for almost five million Australians. Part of the tax package, which is funded by the mining tax, which we are also very proud of—a very important, positive contribution to strengthening the Australian economy—is to deliver significant tax cuts to small business. There is an instant write-off of up to $6,500 for each asset acquired by small business and simple depreciation rules to save time and money.

As I have mentioned, this important and very significant tax cut—one of the most significant tax cuts for small business that I can recollect in 20 years in this place—will cost over a billion dollars. My attention was drawn to a statement by the shadow assistant treasurer, Senator Cormann, who said, ‘We will not proceed with any of Labor’s other promises which they have attached to their mining tax’.

Senator BILYK (Tasmania) (14:10): Mr President, I ask a supplementary question. How will the government's use of the revenue from the minerals resource rent tax deliver the benefits of the mining boom to all Australian superannuation fund members and how will these policies improve the superannuation outcomes of female workers?

Honourable senators interjecting—

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (14:11): In other words, what Senator Cormann has said is that the Liberal Party in the run-up to the next election will reverse the small business tax cuts—$1 billion of tax cuts for small business.

Opposition senators interjecting—

The PRESIDENT: Order! Senator Sherry, resume your seat. Obviously, people are excited. I ask people to exercise a bit of calmness. We need to hear the answer.

Senator SHERRY: I am not just excited; I am angry because the Liberal Party is going to increase taxes on small business in this country. It is going to increase $1 billion in new taxes on small business. In addition to that, this Labor government is very proud that it is effectively going to remove the contributions tax from 3½ million Australians. Three-and-a-half million Australians are effectively going to have the contributions tax removed. Again, Senator Cormann yesterday indicated that in the run-up to the next election the Liberal Party is going to increase taxes on 3½ million Australians' superannuation. I look forward to the debate, Senator Cormann. The Liberal Party stands for increased taxes. (Time expired)

Senator Cormann: No, we're not.

Honourable senators interjecting—

The PRESIDENT: Order! Senators Wong and Cormann, I remind both of you that the time to debate this is at the end of question time.

Senator BILYK (Tasmania) (14:12): Mr President, I ask a further supplementary
question. Is the minister aware of any dangers or threats to the Gillard government’s tax relief program for millions of Australian small businesses and workers?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (14:13): As I have indicated on many occasions, and will continue to emphasise, the Labor Party, with the proceeds of the mining tax, which we are proud of, intends to implement a billion dollars in tax cuts for small business. We intend to cut the contributions tax for over 3½ million low- and middle-income workers’ superannuation, of whom six out of 10 are women. Senator Cormann declared yesterday that in the run-up to the next election the Liberal Party, because they have promised to scrap the mining tax—they are saying no to it—they are also saying no tax cuts for small business and no tax cuts for superannuation. All they can do is say no. I wish them a happy Christmas and I hope they find some policy under the Christmas tree. (Time expired)

Economy

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:14): My question is to the Minister representing the Prime Minister, Senator Evans. Is the minister aware that, since the Labor government was elected four years ago today, electricity prices have risen by 60 per cent, gas prices have risen by 36 per cent, water and sewerage rates have risen by 58 per cent, education costs have risen by 24 per cent, the cost of fruit and vegetables has increased by 33 per cent and the overall cost of food and groceries has increased by 15 per cent? Will the minister now concede that his government has comprehensively failed to take the cost-of-living pressures off Australia’s working families?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:15): I thank Senator Brandis for the question. He just read out a list of cost increases imposed by state governments and asked me to take responsibility. I do not know whether the electricity prices he quotes are from the Western Australian Liberal government, the Victorian Liberal government or the New South Wales Liberal government. It is a ridiculous proposition for Senator Brandis to speak in that way. Western Australians know that, since the election of the Liberal government in Western Australia, their electricity prices have gone through the roof. Even the Premier, Mr Barnett, does not blame the federal Labor government for that. He blames his predecessors, he blames virtually everybody else, but even he does not blame us. Even he does not say, ‘Electricity prices are a Commonwealth responsibility.’ Senator Brandis, I am not sure how desperate the tactics committee got this morning. I think when you lead with Senator Joyce, you have clearly got pretty desperate. But, to be honest, to come into the chamber and say, ‘It is four years and the world is ending,’ is a complete nonsense.

This government has delivered a strong economy and a record number of jobs that have allowed Australians to come through the global financial crisis in very good shape. We are the envy of most other countries in the world. While doing that we have also provided tax cuts for middle-income families, we have increased the childcare tax rebate, we have delivered a paid parental leave scheme and we have made continuous improvements in the social conditions in this country, in addition to running a strong
economy, a job-creating economy. We have also prepared for the future, with reforms like the MRRT, the NBN and the climate change legislation, which will serve this country well. (Time expired)

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:17): Mr President, I ask a supplementary question. Given the Labor government's comprehensive failure to deal with the cost of living, its countless broken promises, wasteful spending, economic mismanagement, failure to protect our borders and incompetence, is this the fourth anniversary that no-one wants to have because costs will keep going up, boats will keep on coming and this Labor government will just keep going from bad to worse?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:18): I think Senator Brandis really summed up the opposition's year, not the government's year. It summed up their year. At the end of the year, what have they got to say about the future of Australia? Nothing—negativity, an ability to say no to everything, no vision. It is just no, no, no—negative, negative, negative. They have nothing to contribute. At the end of the year, what do they say? What is their policy alternative? 'We will stop building the NBN. We will give the money back to—'

Senator Heffernan: Mr President, do we have to have such boofhead yelling?

The PRESIDENT: Senator, there is no point of order, but it might help if we have a bit of quiet on both sides of the chamber.

Senator CHRIS EVANS: I am not offended in the least. We have a situation now where the Liberal-National coalition are in the position where they will argue to the Australian people that they will take back their superannuation and they will take back the tax cuts to small business and they will give them to Rio Tinto and BHP because of their seriously needy position. That is where they have ended the year. (Time expired)

MOTIONS

Gillard Government
Censure

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:19): by leave—I move:

That the Senate censure the Government for 4 years of broken promises, economic mismanagement, wasteful spending, lies, hypocrisy and policy back flips, secret deals, leadership intrigue and incompetence, all of which has eroded the living standards of Australians and their confidence in the Government.

Never before in our nation's history have the Australian people been inflicted with a government that has been so incompetent, so wasteful and so deceptive. The last four years have seen the Australian people suffer a surge in their cost of living at the hands of this incompetent, wasteful and deceptive government. The litany of incompetence, waste and deceit is lengthy. Think Fuelwatch; GROCERYchoice; Senator Carr's classic, cash for clunkers; pink batts; and the Building the Education Revolution. Remember the East Timor solution and the Malaysian solution. Above all, who will ever forget the promise: 'There will be no carbon tax under the government I lead'? That was the grossest betrayal of a mandate, the grossest betrayal of an election promise and the grossest betrayal of working families—remember that slogan—ever perpetrated on the Australian people.

For the coalition, working families are in fact our constituents, the people whom we on this side actually seek to serve, not just a glib slogan cynically developed by a focus group to win an election by the Australian Labor Party.
Working families of Australia were cruelly hoaxed by the Australian Labor Party. Having promised lower petrol prices, they delivered—sorry, they did not; they tried—Fuelwatch and they themselves dumped it, knowing it was a promise that would not deliver lower petrol prices. Having promised lower grocery prices to the Australian people, they developed GROCERYchoice. Remember that wonderful, wonderful scheme whereby Australians could go onto the internet and do a price comparison? In my home state of Tasmania, people were able to compare the prices in a shop in Strahan and one in Swansea. The fact is that Strahan is on the extreme west coast of Tasmania, Swansea on the extreme east coast. Of course, with the failure of Fuelwatch they would never have been able to afford to drive from Strahan to Swansea for cheaper groceries, if they were in fact available there. It was another cruel hoax perpetrated on the people of Australia—promising them lower grocery prices and delivering them nothing in return other than the waste of millions of dollars in developing a scheme that was as good as cash for clunkers. This is a three-part betrayal of our fellow Australians on their cost of living. They receive higher petrol prices instead of the lower petrol prices they were promised. They have been delivered higher grocery prices when they were promised lower grocery prices. They were promised no carbon tax and, as a result, lower electricity prices but they will now be delivered higher power prices.

This is a government that won office on a promise of fixing the public hospital system. If they had not signed up by a certain date, Mr Rudd and the Australian Labor Party were going to take them over. Where has that promise gone? Our public hospital system is in greater disarray than ever, waiting lists have ballooned out, all courtesy of this government making huge promises and being unable to deliver on them because they have perpetrated a cruel hoax on the Australian people.

This is a government that won office on a promise of balancing the budget. Remember? They were self-described economic conservatives, and budget surpluses were going to be in their DNA. They have never delivered a budget surplus. All they have delivered is ever-growing and burgeoning debt burdens, ever-growing budget deficits, both of which are impacting on the cost of living. Indeed today, on this day, the Australian people, courtesy of the Greens-Labor alliance, will be accruing another $100 million of government debt because of the government's incompetence and their waste.

This is a government that won in 2007 on a promise of turning back the boats. Remember that—Mr Rudd proudly saying, 'We can turn back the boats and we will because we are a tough government'? As soon as they got into government, to whom did they give the portfolio but the hapless Leader of the Government in the Senate, Senator Evans. What did we have? Not a single boat turned back; a huge flood of boats into this country, which has seen our border protection policy mocked around the world and a huge blow-out. And when I say 'a huge blow-out', I am not talking thousands of dollars or hundreds of thousands of dollars; I am talking thousands of millions of dollars being incurred by the Australian taxpayer because of this undeniable policy failure—a policy failure where they promised one thing before the election and then did another.

Of course, that was Mr Rudd's great promise on border protection. Then we had the rock-solid guarantee that the wonderful Ms Gillard with all her foreign affairs finesse
had been able to negotiate—I wonder if the Labor Party remember this one?—the East Timor solution. Remember the East Timor solution? Just in time for the 2010 election it was, 'We will protect Australian borders with the East Timor solution,' in circumstances where she knew, where she must have known, that that was not a deal, was not likely to occur and would never occur. But what else could we expect from a Prime Minister who is willing to swear undying loyalty to her predecessor and then stab him in the back, a Prime Minister who is willing to stare down the barrel of a TV camera and promise the Australian people: 'There will be no carbon tax.' There is no sense of boundaries for this Prime Minister. She will say anything and do anything to win power and to stay in power, so it was not too far to go to simply make another false promise that there was an East Timor solution in the wind.

What about the government that promised they could deliver a national broadband network to the Australian people for $4 billion and cover 90 per cent of the Australian population in doing so? After they won government, all of a sudden the NBN cost increased tenfold to over $40 billion to cover 10 per cent less of the population than they had promised—another broken promise, another falsehood and another cruel hoax perpetrated on the working families of Australia, a slogan that they have now absolutely run away from like they appear to have run away from their former leader Mr Rudd. This is a government that lied by promising 'no carbon tax', a toxic tax which will hurt every Australian. Make no mistake—in hurting every Australian, it will also hurt the environment. The best example of that is Coogee Chemicals, a company which wanted to start up not only in Australia but in the Prime Minister's own electorate. Coogee Chemicals offered the promise of 150 jobs, the promise of $1 billion worth of investment to establish the biggest methanol plant in the Southern Hemisphere. It would have earned Australia $14 billion worth of export income. They have now decided, on the back of the carbon tax, not to establish in Australia—and where are they going? China. In establishing in China, their carbon dioxide emissions will be four times greater than they would have been in a pre-carbon tax Australia. That is why we on this side say the government is incompetent, wasteful and deceitful.

We know that in Coogee Chemicals we have only one of many future examples where investment will not come to Australia and where jobs will be denied to Australians. What is more, the carbon footprint in the world will be made worse, exactly as the European experience has been. You see their aluminium smelters deserting Europe and going to Africa. Does anybody in the Green-Labor alliance honestly believe that environmental standards in Africa are better than they were in Europe before they closed shop? Of course not. That is why we are now getting report after report out of the European Union telling us that the carbon price is a disaster and has made no difference, zero difference, to the carbon dioxide emissions of the European Union.

Countries such as the United States, Canada, France, Japan, South Korea and New Zealand have all come to this conclusion—and what policies are they adopting? They are adopting a better way. They are adopting a direct action plan, a direct action plan such as the one the coalition took to the last election. It is a policy which will deliver what the Australian people want without the need for this toxic tax.

We were also promised that the Labor Party would not engage in the blame game. What did the Leader of the Government in
the Senate start his answer off with just a few minutes ago, when Senator Brandis asked the question about increased cost of living for Australians? He immediately blamed the states—in direct conflict with the great promise: 'We will never play the blame game; we will not blame the states.'

What other promises did they take to the election? They promised a government of transparency. Remember Operation Sunlight? 'We will allow the sun to shine in,' they said. I understand sunlight acts as a bit of a disinfectant. I would like to know how much sunlight or indeed disinfectant will be needed to deal with the speakership deal. I think that will play itself out in due course and the Australian Labor Party will be able to justify, one assumes, what they did today with Mr Jenkins. Make no mistake—Mr Jenkins did not fall in love with his constituency all of a sudden. He did not suddenly decide he wanted to go to the backbench so he could go to more school fetes and do a bit more doorknocking before his retirement. He was forced out of that position by a grubby deal, the sort of grubby deal that this government does on a regular basis.

They did another one earlier this week with the Australian Greens, you will recall, and the Independents in the lower house who promised us transparency and were willing to let the mining tax go through not knowing what deal had been struck with the Australian Greens. Talk about lemmings! Is there nobody in the ALP caucus in the House of Representatives who has any sense of self-respect? They were required to vote, like lemmings, for a policy not knowing what they were voting for or why.

The _Hansard_ is littered with all sorts of examples of the Leader of the Australian Greens and the other Greens talking about the issue of time for parliamentary debates. What a great promise that was: transparency—that there would be a parliamentary process, that we would consider things appropriately. As every senator in this place knows, we have now had 13 bills guillotined without one single word of debate spoken on them. This is transparency. This is Operation Sunlight according to the Australian Labor Party. What I have been able to portray is a seamless—

**Senator Cameron:** Eric, you are a hypocrite.

**The PRESIDENT:** Order! Senator Cameron, you need to withdraw.

**Senator Cameron:** I withdraw.

**Senator ABETZ:** I have been able to portray a seamless transition of incompetence, waste and deceit—from Mr Rudd to Ms Gillard. It begs the question as to why they changed leaders. We were told they changed leaders because the government had lost its way. You betcha they had; they had lost their way. But now, with Ms Gillard, not only have they lost their way, they have thrown away their moral compass and they have thrown away their policy map. In the words of Mr Graham Richardson, 'whatever it takes' is what the Australian Labor Party will do. They will betray the working families, the people they used shamelessly in their slogans.

**Government senators interjecting—**

**Senator ABETZ:** This is a government which promised to look after the working families in Australia. They said they would look after the little people, but the mining tax they boast about was a dirty deal struck behind closed doors. Out of the 3,000 mining companies in Australia, with how many did they negotiate? Three—the three biggest. This is big government, big business and big unions and working families and small businesses can go jump.
Senator Sherry: You want to give them the money back!

Senator ABETZ: Senator Sherry foolishly interjects, giving me another opportunity to highlight the deceit of this government. Day after day in this chamber he has been saying in question time that the superannuation to be paid to workers will be coming from the mining tax.

Senator Sherry: It will.

Senator ABETZ: It will not. The employers will be paying the mining tax and, as the Henry tax review has indicated, that will mean lower wages for workers. Senator Sherry has himself followed the example of his leader: set out to deceive, repeat the deception and hope that somehow, miraculously, if you repeat the deception often enough it might become a truth. It will not become a truth. And, what is more, when he says there are going to be benefits for all small businesses, what he fails to tell the Australian people is that only 30 per cent of small businesses have a company structure. The 70 per cent of Australian small businesses which do not have a company structure—that is, one-man bands, partnerships, et cetera—will not be getting the benefit of which he claims and the small businesses of Australia know that. That is why they are not buying the deceit sought to be perpetrated by Senator Sherry.

We have example after example—a litany of deceit, waste and incompetence. You can go through virtually everyone on the frontbench. Senator Evans, a great success in the immigration portfolio! Live exports, Senator Ludwig, great! Senator Conroy, who could increase the cost of the NBN tenfold! Senator Wong, who got dumped as climate change minister. I will stop with the cabinet at Senator Carr, 'Cash for Clunkers Carr'. This is a smorgasbord of incompetence.

Senator Conroy: Mr President, I rise on a point of order as to relevance. Senator Abetz has had 19 minutes to mention one coalition policy. Go on, you have one minute to go—

The PRESIDENT: Senator, there is no point of order, you know that.

Senator ABETZ: It shows how desperate the deputy leader has become that he has to try to stop the flow of this debate by making a spurious point of order. This is a government full of incompetence. It is a government which has wasted taxpayers' money—pink batts, BER, the list goes on and on. The greatest problem with this government is its deception of the Australian people at the last election in relation to border protection and in relation to the carbon tax. That is why I have moved that the Senate censure the government for four years of broken promises, economic mismanagement, wasteful spending, lies, hypocrisy and policy backflips, secret deals, leadership intrigue and incompetence. (Time expired)

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (14:41): That's it. That's all they've got. At the end of the year, that's all they've got. Senator Conroy made a very important point, highlighting the fact that at the end of the year, as the parliament comes to its close, the Leader of the Opposition in the Senate gets up to explain his alternative vision for Australia, to explain what the alternative government of this country would offer to our people. There was not one policy, not one idea, not one contribution; all there was was abuse and negativity. He followed his leader, 'Dr No,' with 'No, no, no,' and with fear, fear, fear, but had nothing else to say. I
suspect there is some anger and frustration behind the petulance we see today.

I suspect the Liberal Party think they have not had a great week. I think they are right. I understand their anger and frustration but, quite frankly, they really ought to try to focus on the things which are important to Australians. To those who do not understand parliamentary process, generally a tactics committee meets and drafts the questions the opposition will use to apply pressure on the government at question time. They got to question No. 2 today. They could find only two questions and when the tactics committee racked their brains—such as they are—their solution was: ‘Let’s move a censure. Let’s hide behind abuse, ridicule and negativity, rather than contribute something to the public policy debate in this country.’

I understand that what happened in the House of Representatives earlier today has upset them. They are upset, they are frustrated, and I understand that. What today highlights again is the capacity of this government, despite being a minority in both houses of parliament, to deliver. We continue to deliver. We continue to give good government to the people of Australia. During this parliament we have passed 250 pieces of legislation. We have had to negotiate. We have had to work our way through the processes but we have shown the capacity to do that.

The reason this government was formed was we had the capacity to negotiate, to offer a vision for the future of this country and to govern in a sensible, pragmatic and moderate way to deliver for Australians. We continue to deliver for Australians.

Despite the challenges of being a minority government, this government has delivered some of the most major economic reforms seen in the history of this country. Despite the pressures of numbers the government confronts, we continue to deliver good policy. The best measure of that is that we have created more than 700,000 jobs. More Australians are in work. More Australians are earning a living and are able to afford a decent standard of living not only because they are in work but also because they have an industrial relations system that gives them some protections, that allows them to get a decent wage, that allows them protection from unfair dismissal and that gives them decent industrial conditions. This is not the sort of thing the Liberal Party stands for—it is not the Work Choices regime. We have people in this country who have jobs, who have good conditions at their workplaces and who have security. They are able to plan their lives, to invest in buying their homes and to invest in the future of their children. We continue to deliver security to those families by providing jobs and stable economic conditions.

It is interesting to look at the unemployment figures in this country and compare them with the USA, the UK and Europe. We have half the rate of unemployment those countries have because this government invested during the time of the global financial crisis in a stimulus that saw us through. It saw us emerge as a country that is the envy of most countries of the world. It is because we invested.

Opposition senators interjecting—

Senator CHRIS EVANS: The opposition goes on to ridicule that investment, but at every school opening and every BER opening I go to the community, the school community, the churches, the independent schools and the public schools say: ‘This is a great investment. This is giving us kids a chance.’ The interesting thing is that when I go to BER openings now I find there is a marked difference. When I
used to go, in the first six or nine months of openings, there were no opposition people there. The local member who had voted against the stimulus and who had voted against the investment in schools never used to turn up. The Liberal and National parties had a strong position: they opposed that money going to schools. As my colleagues find now when they go to the openings, who do they run into? Local Liberal members proud to be associated with the opening of the buildings and welcoming of the investment in the schools. State Liberal premiers say, 'It's the best thing the federal government's ever done.' Liberal members say, 'Our schools welcome the investment.' So they come in here and they vote politically and then they go out to their electorates where they now like to be associated with our tremendous investment in the education of our country.

Mr President, you go to any primary school in this country and you will see an investment that those schools and those parents appreciate. Go to the science and language labs in high schools and you will see that investment. Go to the TAFEs and universities of this country and you will see that investment. We are investing in the education of our young people, which will give us a dividend for many years to come in their skills and abilities and in our productivity.

**Senator Mason:** School halls!

**Senator CHRIS EVANS:** They go on about the school halls program, but they turn up to the openings.

*Senaor Mason interjecting—*

**Senator CHRIS EVANS:** Senator, your local members do. Even Mr Pyne, your education spokesman, comes. Mr Randall comes.

*Honourable senators interjecting—*

**Senator CHRIS EVANS:** I enjoy meeting them when they get to learn about the tremendous value of the investment we made not only in protecting jobs but in improving the schools of our country. I have not heard one of them get up at those assemblies and say, 'We oppose this investment.' They are silent. I wait for it. I wait for them to say, 'Oh no, we think this is a waste of money.' They do not say that. I have my photo taken now with local members pleased to be associated: 'Here I am cuddling up to the minister and the principal so I can be in the local paper!' But they come in here and say, 'What a terrible waste.' What hypocrites.

**The PRESIDENT:** Senator Evans, you need to withdraw that.

**Senator CHRIS EVANS:** If it is not parliamentary I will withdraw it, Mr President.

**The PRESIDENT:** Thank you.

**Senator CHRIS EVANS:** It is a great Labor program that has delivered for every primary school in this country. But the government's program of reform continues with the introduction of the NBN. Australians know that we are investing in their future. We are giving them one of the best information technology systems that they can get and that will allow them to run businesses and to be educated and health services that are some of the best in the world. People tell me, 'This is the best thing since the Snowy Mountains scheme.' They understand that investment in the infrastructure in Australia is vital to their future.

*Opposition senators interjecting—*

**Senator CHRIS EVANS:** Again, the Liberal Party mock. They say no—they oppose everything. But they have nothing to offer. They opposed the investment in our schools, they opposed the NBN, which is
going to deliver a fantastic information technology workforce for us, and they opposed the price on carbon.

The former Prime Minister John Howard was in here yesterday to see his boy, Senator Sinodinos, give his first speech. It was great to see—

Senator Brandis: That is a bit disrespectful!

Senator CHRIS EVANS: Sorry, I mean 'his close friend'. I do not mean any disrespect. I withdraw. But, although the senator's references to Work Choices made Mr Howard squirm in his seat a little bit, we know that Mr Howard provided strong leadership in arguing for putting a price on carbon. He argued at the 2007 election that we ought to put a price on carbon. What is more, he said, 'We should not wait for the rest of the world; we should show leadership.' Mr Howard provided that leadership in 2007, but the conservatives in the Senate, the real hardline right-wingers, ganged up to execute Mr Turnbull because he was far too progressive.

This government thinks this is a very important economic reform. It is an environmental reform and an economic reform that will serve Australia well. We have made the tough decision to transform our economy. What have the opposition contributed? They said no. That was their contribution to that debate. For months in the parliament they had nothing to contribute.

We now have the MRRT, a tax on the superprofits of mining companies. At a time when mining companies are making the largest profits in the history of mining companies in this country—they are making huge returns—this government said, 'We think it is a reasonable proposition that all Australians get some return for the use of their resources. After all, they are the resources of the Australian people.' We sought to put a tax on those superprofits. Some of the leading mining companies came to agree that that was a fair thing. They recognise that they are the Australian people's resources. Those resources can be used only once, so the Australian people have the right to ensure that they get benefit from those resources. We get the benefit of jobs and investments, but it is a perfectly reasonable proposition for all Australians to benefit from the use of their resources.

So we introduced the minerals resource rent tax into the House of Representatives, a major economic reform that will deliver $11 billion in revenue to the Australian people, and what did the opposition say? No. Not only did they say no but they now want rollback. What we are doing with the profits from the MRRT is investing in the superannuation of 8½ million Australians, particularly low-income Australians. Those earning less than $37,000 a year are getting concessional treatment. We are looking to give extra help to those people who most need to invest in their super to provide for a comfortable retirement. Two-thirds of those who will benefit are women because they have traditionally not done as well under the superannuation system. That is what we are doing—taking the profits from the mining tax and giving it to low-income workers and female workers to ensure they have a better retirement, investing in their retirement and in their future.

We are also giving a tax cut to small business, allowing them to keep more of the money they earn to invest in their business and to employ people. We are also investing those profits in infrastructure to provide the roads and bridges that support the growth of our economy—things like the gateway in Western Australia, where we have invested
around $480 million to support the developments around the airport area.

The Liberal Party are in such a mess. They have talked themselves into this position. They say, 'If we are elected to government at the next election we will take the tax cuts back out of the pockets of small business owners. We will take the superannuation benefits away from the low-income earners and female workers of Australia. We will take the money out of their pockets and—you know what?—we will give it to BHP and Rio Tinto.' That is where they have got to. They are going to say, 'You may be a struggling small business or a low-income earner but the money the Labor government gave you and invested in your future we are going to take back out of your pockets and we are going to give it to Rio Tinto and BHP because they are doing it tough mining your resources.' What nonsense! They are making record profits. But the Liberal Party have got themselves into that position. I bet they are looking very hard for a way out of that. I look forward to that debate. The Liberal Party will argue that the mining companies are doing it tough and that they ought not pay fair taxation and that we ought to take the money out of the pockets of low-income workers and small businesses in this country in order to give it to the largest and most profitable miners in the country.

Not only are they saying, 'No,' but they are saying, 'Roll back.' This is where the modern Liberal Party under Tony Abbott are finished. This is where they have ended up. After a year or so of negativity and of saying, 'No, no, no,' to everything, they have ended up in this position with nothing to say about policy. In 20 minutes Senator Abetz had nothing to say about the way forward. He had nothing to say about the future.

Remember—and they went very quiet on this—they opposed the funding for flood relief in Queensland and Victoria. They opposed supporting the families of Queensland and Victoria to recover from the floods. That is where they have got to. They do not want to support flood victims but they do want to give the money back to BHP and Rio Tinto. This is what the Liberal Party have come to. They are so focused on negativity, opposing everything the government proposes, that they oppose flood relief to Queensland and Victoria. I have not heard much from them about that lately. That was another one of those 'die in a ditch until the last drop of blood' sort of promises that seem to have disappeared. The blood oath—

Honourable senators interjecting—

The PRESIDENT: Senator Evans, resume your seat. A couple of people are just getting a little bit excited.

Senator Ian Macdonald: Mr President, the leader is wrong when he says we voted against—

The PRESIDENT: Senator Macdonald, you have no entitlement to speak at this moment. There will be opportunities later in the debate. I am asking people on both sides to respect the practices of the chamber.

Senator CHRIS EVANS: I welcome another interruption by Senator Macdonald, who has contributed so much to debate in this chamber in the last few weeks and has revealed the abject lack of leadership of Senator Abetz and Senator Brandis. Senator Macdonald has been providing the leadership for the Liberal Party. He represents where they have got to as well—the Leader of the Opposition in the Senate has no control over them; they have nothing to contribute other than to make spurious points of order. This is the discipline of the coalition; this is the leadership provided in this chamber. It is
embarrassing to see Senator Abetz so badly undermined.

As I say, the coalition oppose flood relief for the victims of the floods in Queensland and Victoria, they oppose tax cuts to small business, they oppose superannuation concessions for low-income and women workers, they oppose putting a price on carbon and they oppose taxing the superprofits of mining companies. They have worked themselves into a position of total negativity, of opposing everything that is good for Australia, and they have nothing to contribute to the policies of this country. This government is absolutely focused on the future of Australia, be it through investing in education or health or through the reforms I have talked about. We are absolutely focused on growing this country and growing opportunities for Australians.

In my own portfolio we are seeing record investment in tertiary education and in trade training education. We have 100,000 more young Australians going to university than when we came to office—people who had been denied access. Lots of them are from the bush and, under years of the National Party, they never got a chance to go to university. They are now going to university. Families who never had the opportunity can now send their kids to university. These students will take the high-pay, high-skill jobs in the future. We are investing in the future of this country. We are investing in child care and preschools, in primary schools and secondary schools, and in TAFES and universities. We know the value of education to this country, not only for the development of the individual people concerned but also for the development of our economy. We are investing in the health of Australians by putting record amounts of money into health, by trying to streamline the health system and opening up more GP clinics to provide better access.

This government has a vision for Australia's future. This government knows where it is headed. This government is positive and optimistic about Australia's future. We are going to provide the economic leadership that will allow Australia to continue to grow and prosper; the economic leadership that will provide opportunities for Australians in education and employment. That is what this government is focused on, and that is in stark contrast to the sort of thing we see from the opposition. I encourage people to read Senator Abetz's speech today. That tells you just what they have to offer—not one idea, not one policy, not one positive, not one optimistic view of Australia. They are just talking Australia down—talking the Australian economy down and talking Australians' contribution down. They are full of negativity. They are led by Dr No, and that has infected the whole Liberal-National Party organisation. They have made themselves irrelevant. Not only do they oppose everything now but they have got themselves in the ludicrous position of taking money off small businesses and low-paid Australians to give it back to the BHPs and Rios of this country.

Senator Abetz: You've said that before.

Senator CHRIS EVANS: I will keep saying it—we will say it all the way up to the next election. At some stage we know Senator Abetz will walk away, and I look forward to the day when he comes in here and has to admit what a terrible mistake he has made. This government will stay focused on the future of Australia, stay optimistic about the future of Australia and keep delivering good policy to assist Australia to grow.

Senator LUDLAM: I move:

That the question be now put.
Senator Ian Macdonald: Mr President, I raise a point of order on why you called someone from the government side next when someone from our side was on their feet.

The PRESIDENT: That is not a point of order.

Senator Ian Macdonald: No, but it is about the procedures of this place. When someone from that side has spoken, you call someone from this side.

The PRESIDENT: It is not a point of order. The question is that the question be now put.

The Senate divided. [15:09]

(The President—Senator Hogg)

Ayes....................9
Noes.......................60
Majority....................51

AYES
Brown, RJ
Hanson-Young, SC
Milne, C
Siewert, R (teller)
Wright, PL

NOES
Abetz, E
Arbib, MV
Bernardi, C
Birmingham, SJ
Boswell, RLD
Brandis, GH
Bushby, DC
Carr, KJ
Colbeck, R
Crossin, P
Eggleston, A
Farrell, D
Feeney, D
Fifield, MP
Furner, ML
Hogg, JJ
Johnston, D
Kroger, H (teller)
Lundy, KA
Madigan, JJ

Question negatived.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (15:14): The right approach for an opposition in the face of a bad government introducing bad policies is to oppose it, to defend the Australian people from those bad policies. As a matter of fact, most of the measures that this government has introduced the opposition has supported, but Senator Evans is quite right when he says that on many occasions we have said no. We have said no because the Australian people want us to say no.

Senator Crossin interjecting—

Senator BRANDIS: Senator Crossin, if you want us to stop saying no, stop introducing bad policies, because we will always say no to bad policy. If you want us to stop saying no, stop increasing taxes, because your government in the last four years has increased or introduced 19 new taxes. So stop increasing new taxes and stop casting new burdens on the shoulders of the Australian people, and we will not say no to it. If you want us to stop saying no then stop wasting money. Tens of billions of Australian taxpayers’ dollars were wasted on programs like pink batts, school halls and cash for clunkers, and the list goes on.

If you want us to stop saying no, stop blowing out the national debt. It should never be forgotten that when this
government came into power Australia had no public debt. That was the first time, in the memory of anyone in this chamber, that Australia had no public debt and it was a result of the prudence and the competent economic management of John Howard and Peter Costello. In less than four years, Australia now has the highest level of public debt in our peacetime history. That is your legacy to the public finances of Australia. So if you want us to stop saying no, then you stop placing the burden of debt on the shoulders of the next generation and the generation after that. To this day, this government is borrowing $100 million a day to service its debt. Our net public debt today stands at $110 billion as a result of you. You inherited from John Howard and Peter Costello the most favourable set of public finances of any country in the OECD, and within four years you have wasted that decade of saving for which your predecessors were responsible. So if you want us to stop saying no, you stop imposing that burden on our children's shoulders. If you want us to stop saying no, introduce some policies you can be proud of. If you want us to stop saying no then stop telling lies and stop breaking your promises.

We all remember four years ago to this day when there was a change of government, and at the start of any new government there is a sense of hope. The people who decide to throw out an old government and install a new government do so with a sense of hope. Mr Kevin Rudd, who was stabbed in the back last year by Prime Minister Gillard—just as your friend and colleague Harry Jenkins was stabbed through the heart by Prime Minister Gillard this morning—in 2007 instilled in the Australian people a sense of hope. In particular, he made a pitch to Australian working families. He said to the Australian people, but in particular to Australian working families—people who had previously been called the Howard battlers or the forgotten people in a generation before that—'The Howard government is neglecting you, but we will make your lives better.' The Rudd government was elected, four years ago today, for this reason more than any other, because it won the confidence of the great Australian middle class. It made them believe and made them hope that it would make their lives better. What has it done? It has made their lives worse.

Senator Conroy interjecting—

Senator BRANDIS: It is all very well for Senator Evans to entertain a backbench of superannuated trade union hacks on the Labor side with the speech that he just gave, but if you go out into the real world, Senator Conroy—somewhere I know you have never stepped—and you ask ordinary, everyday Australian families whether their lives are better today or worse today than they were under the Howard government, you will find nary a one who will tell you their lives are better. If you go to the supermarkets of Sydney, Melbourne, Brisbane or any other Australian capital city or any regional centre and you ask a sample of the Australian people, 'Are you doing better today than you were under John Howard?' I bet you that you will scarcely find one of them who will say, 'Well, you know, Senator, things are a lot better today than they used to be four years ago.' You will not find one.

Senator Crossin interjecting—

Senator BRANDIS: I know you do not mix with ordinary Australians, Senator Crossin. You only mix with superannuated trade unionists and party hacks. But if you spoke to real people you would not find one who would say that their life is better today because of your government, because they know the truth—that is, their life is harder because of your government's waste and
incompetence and addiction to spending and taxing.

In my question to Senator Evans today, in which he sought to pass off the responsibility to state governments, I reminded him, and let me remind the chamber again, that since his government came into office electricity prices have increased by 60 per cent. People are suffering and working families are suffering because of you, and it did not have to be this way. You did not have to blow the budget. You did not have to take the country into an unprecedented level of peacetime debt. You did not have to waste those tens and tens of billions of dollars that have forced up costs, but you did because you are hopeless and because every Labor government, when it comes to managing public spending, is hopeless. As a Senator Mason is fond of pointing out, every Labor government leaves the country deeper in debt when it goes out of office than when it came into office. Every single Labor government in the history of Australia has left the country in more debt when it went out of office than it had when it came to office. In this case, you came into office inheriting a surplus and you will go out of office, next year or the year after that, with the biggest peacetime debt that any Australian government has ever clocked up.

In any event, on your watch and because of your policies, after only four short years Australians are paying 60 per cent more for their electricity. To make matters worse, you have just forced through this parliament, against a solemn pledge not to do so, a great big new carbon tax which is designed to force electricity prices up yet further. Because of you, because of your policies, Australians pay 36 per cent more today for their gas bills than they did when you came into office. Whatever Senator Evans might say, it is your responsibility. It happened on your watch, because of your policies. You face the people next year or in 2013 and tell them that it was on your watch that electricity prices went up by 60 per cent, that gas prices went up by 36 per cent.

Senator Conroy: No! Just say no!

Senator BRANDIS: You face the Australian people whenever you have the courage to do so, Senator Conroy, and explain why on your watch water and sewerage rates have gone up by 58 per cent. You face the Australian people next year or the year after and explain to them why on your watch education costs have gone up by 24 per cent. You face the Australian people and tell them why on your watch fruit and vegetable prices have gone up by 33 per cent and grocery prices overall have gone up by 15 per cent.

Senator Wong interjecting—

Senator BRANDIS: And what are you doing about it, Senator Wong? I will tell you what you are doing about it. Rather than trying to ameliorate the problem, rather than dealing with the cost-of-living pressures on ordinary families, the kitchen table pressures, what you are doing is introducing a tax to make a bad situation worse.

Senator Conroy: No!

Senator BRANDIS: Senator Conroy, we say no to that. We are saying no to your policies that force up the cost of living of ordinary families. Senator Conroy, we also say no to your litany of broken promises. Cost-of-living pressures were one of the great issues four years ago. The appeal to working families was one of the great issues of four years ago, but there were other issues as well.

Senator Abetz interjecting—

Senator BRANDIS: As my leader, Senator Abetz, says, whatever happened to Fuelwatch? It was an incompetent policy which was abandoned. Whatever happened
to GroceryWatch? It was an incompetent policy that was abandoned.

But one of the other great issues four years ago, at the 2007 election, was the issue of border protection. You went to the 2007 election with Mr Kevin Rudd saying: 'There's one thing we stand against; we stand against offshore processing.' And this is a promise, as a matter of fact, that you did not break—one of the few—because less than a year later, in 2008, you abandoned offshore processing, and as a result you let the people smugglers back into business. Mr Deputy President, do you know the rate of unlawful arrivals in the last six years of the Howard government, before Labor abandoned John Howard's policies? There were an average of three boats a year.

Senator Abetz: Is that a week or a year?

Senator BRANDIS: Three boats a year, Senator Abetz—a year. In the period since Labor abandoned John Howard's policies, do you know what the average number of unauthorised arrivals has been? Sixty-four a year, an increase of more than 20-fold. So you went to the 2010 election under Julia Gillard, having stabbed Kevin Rudd in the back, and Julia Gillard said: 'The one thing we stand for is offshore processing.' 'In 2007 the one thing we stand for,' you said, 'is offshore processing.'

Senator Crossin: Mr Deputy President, on a point of order: Senator Brandis is very excited, but I would like to remind him that the Prime Minister should be referred to by her correct title in this chamber.

The DEPUTY PRESIDENT: Senator Brandis, before you resume, could I remind senators to address their remarks to the chair, not across the chamber. Interjections are disorderly and I do remind senators to address members of the House of Representatives by their correct titles.

Senator BRANDIS: Ms Gillard, the Prime Minister, after she stabbed her predecessor, Mr Kevin Rudd, in the back on 23 June 2010, went to the 2010 election and said: 'There's one thing we stand for, and that is offshore processing'—a complete 180-degree policy turnaround—but, nevertheless, the one thing we can promise you is we will only ever send refugees to offshore processing in a country which is a party to the UN refugee convention.' So in 2007 it had to be onshore processing, in 2010 it had to be UN refugee convention compliant offshore processing, and now what is the basis of this government's immigration policy? The basis of this government's immigration policy is to say: 'The one thing we stand firmly for is sending refugees to Malaysia,' a country which is not a party to the UN refugee convention. You, Senator Conroy, and your party have had every position under the sun on this issue and you still cannot get it right, because you are hopeless.

But all of this pales into insignificance by comparison with the grossest betrayal of all of the Australian people, and that is the carbon tax. It cannot be said often enough and we will not stop saying it, reminding people that six days before the 2010 election Ms Gillard, the Prime Minister, stared into a television camera and said in a considered, careful, modulated fashion: 'There will be no carbon tax under the government I lead.' It could not have been a more solemn, more deliberate pledge. It was not an off-the-cuff remark. It was not a thought bubble. It was not a piece of flimsy rhetoric. It was a solemn pledge. And everyone in this chamber knows that, if Ms Gillard had not made that solemn undertaking to the Australian people, she would not have won the 2010 election. She did not quite win the 2010 election, of course, as we know, but she put herself in a position to secure the
agreement of the Australian Greens to form a devil's alliance in order to maintain her dreadful government in office. If she had not made that statement—

Senator Di Natale interjecting—

Senator BRANDIS: Keep doing it, Senator Di Natale. If she had not made that commitment, she would not be in office today.

One of the most unappetising sights I think we have ever seen in Australian politics was the morning in the House of Representatives when the carbon tax went through the chamber. Labor ministers were high-fiving one another, slapping each other on the back, kissing each other and jumping around like kindergarten children in glee because they had succeeded in betraying the people. One does not usually, in a democracy, celebrate betraying the people, but that is what you did. You will never be forgotten for it and you will never be forgiven for it. No matter how far away the next election is, on the slippery slope to the next federal election, you will be reminded every waking hour that your government was elected on a lie and sustained by a betrayal.

The litany goes on. Commonly, in the pubs, clubs and supermarkets of Australia, people shake their heads in bewilderment and say, 'This must be the worst Australian government we have ever seen.' One of the reasons it is such a bad government is that it lacks integrity. It has no vision for the future. It has no policy integrity. It has no policy courage. It is a government based on fixes and the media cycle.

Senator Conroy interjecting—

Senator BRANDIS: And you, Senator Conroy, are one of the worst examples of it because, Senator Conroy, you are hopeless. I am sorry to say this. And you are now proudly presiding over the introduction of the greatest white elephant in Australia's public policy, the NBN.

Get out of Canberra, get out of your white cars, get out of your union meetings, get out of the political class and mix with and speak to everyday Australians, and you will see their despair. I really do not think you get it. The Australian public are not just critical of you. They are not just scathing about you. They hang their heads in despair and wonderment and say: 'How can a government make so many wrong calls? How can a government get so many key policy decisions wrong? How can a government be so shameless and flagrant in breaking solemn promises?'

Senator Conroy: No!

Senator BRANDIS: Senator Conroy, keep yelling out 'No!' because we will say no every time you betray the Australian people. We will say, 'No way will you get away with it,’ every time you lie to the Australian people. We will say, 'No, we're going to stop you,' every time you waste another $10 billion here and another $10 billion there. We will say no every time you try to put more burdens of public debt on the shoulders of our children and our grandchildren.

It is not our fault, Senator Conroy, that you are hopeless; it is your fault. It is not our fault that you give us so little to pat you on the back about. It is not our fault that you give us so little to agree with. If you are a hopeless government with bad policies and an addiction to taxation and waste, we will continue saying no, because we will continue defending the Australian people and their interests.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (15:34): I think that has to be a
new record: 40 minutes. The Leader of the Opposition in the Senate and the Deputy Leader of the Opposition in the Senate spoke for 40 minutes and did not mention one single policy of their own—in 40 minutes. I am not surprised that they did not, because if they were going to mention a policy they might have to talk about their new NBN policy. Apart from it being 'demolish', apart from it being 'no', recently Mr Turnbull has given a number of speeches.

We have now seen Citigroup give us a report on exactly what they find the costings to be of Mr Turnbull and the opposition's plan. Let me take you to the Citigroup report on the opposition's policy that they will take to the next election. The Citigroup report called the opposition's plan 'quick and dirty'.

Senator Birmingham: Mr Deputy President, I raise a point of order under tedious repetition. I am pretty sure the minister is about to repeat an answer he gave in question time earlier this week in regard to this report, and if the minister—

The DEPUTY PRESIDENT: Senator Birmingham, there is no point of order.

Senator CONROY: A discussion on a Liberal Party policy and they want to shut the debate down straightaway. The Citigroup report called the opposition plan 'quick and dirty'. Citigroup estimates the cost of the coalition's—

Senator Birmingham: Mr Deputy President, I raise a point of order. While the minister is on 'quick and dirty', perhaps he would like to explain why he misled the Senate in his ministerial statement yesterday and correct the record and apologise—

The DEPUTY PRESIDENT: There is no point of order, Senator Birmingham.

Senator CONROY: I do not blame him for wanting the public of Australia not to know about the Liberal's policy, because Citigroup says it is $16.7 billion—

Senator Joyce interjecting—

Senator CONROY: and that is on budget, Barnaby: $16.7 billion. And the report says that regional Australians will be worse off. Here is a direct quote: By implementing a market-driven approach to Broadband, the Coalition Policy risks the possibility of skewing telecommunications infrastructure investment and competition towards densely populated areas as is the case today.

'Densely populated areas'!

It also says:

We are concerned the need for the private sector to generate commercial returns will continue to limit broadband development in regional areas.

Further, it says:

The rapid speed demand growth observed in the past indicates that demand in Australia is likely to exceed the capabilities of what the coalition plan can deliver sooner rather than later, requiring nationwide upgrades to keep up.

In other words, when you finish the policy in 2018 or 2019 if you are lucky, it will already be obsolete. They did not finish there. Fibre to the node is—

and I want to make sure we all hear this clearly—

not an upgrade path to fibre to the home. If the Coalition Policy is implemented it could simply delay an eventual national fibre-to-the-home build.

It is not just 'quick and dirty'; it is deceitful to try to pretend that they are building a better network when they know they will have to replace it before they start building it.

Mr Turnbull keeps talking about New Zealand. New Zealand started building a fibre-to-the-node broadband policy. They started to build but do you know what happened? The conservatives were elected in New Zealand and halfway through the build
they decided it was not good enough, and that they had to build fibre-to-the-home. So in New Zealand they abandoned fibre-to-the-node and are building a fibre-to-the-home broadband plan. It goes on and on and on.

But people are not fooled by those opposite when it comes to broadband. Let me talk about some of the regional towns that are currently receiving—the national broadband network. I will let you know where some of them are because it is obvious from those opposite that they do not talk to people out there in regional Australia, otherwise they would know the people are currently using it. We have, in New South Wales towns like Black Springs, Clarence, Hampton, Rydal, Arkell, Clear Creek, Dark Corner, Fosters Valley, Rockley, Upper Turon, Millthorpe, Neville, Newnes, Glen Davis, Portland, Toobong, Gumble, Baldry, Bogan Gate, Bellbrook, and I could keep going on and on in New South Wales. I have covered only two electorates.

**Senator Birmingham:** On a point of order, Mr Deputy President, with only five minutes left before the government's guillotine motion starts to apply for the day, the minister has only five minutes to explain why he lied to the Senate in his ministerial statement yesterday and I would urge—

**The DEPUTY PRESIDENT:** There is no point of order. Could you withdraw the imputation levelled at Senator Conroy.

**Senator Birmingham:** I withdraw 'lie' and would like to invite him to explain why he misled the Senate.

**The DEPUTY PRESIDENT:** Senator Birmingham, you have to withdraw that unreservedly. Please withdraw that without any qualification.

**Senator Birmingham:** I withdraw 'lie'.

**The DEPUTY PRESIDENT:** Thank you, Senator Birmingham. Senator Conroy.

**Senator CONROY:** We can keep going. We have got Hay, Maude, Mungo, Euston, East Lynne, Woodstock, Furner, Foxton, Big Hill, on and on and on I can go but I do not want those opposite to think that we are only interested in New South Wales because, unlike the opposition's plan, our plan is a national plan. We can move to Queensland, seeing that Senator Brandis and Senator Mason are in town. We could talk about communities—

**Senator Wong:** And Senator Joyce.

**Senator CONROY:** Senator Joyce, of course, but he is moving to Armidale so he can get access to the National Broadband Network. He is so desperate to get to the NBN he wants to move states, that is why he is trying to pretend that he wants to challenge Tony Windsor. What he really wants is to get on the NBN straight away. In Queensland, we have communities in Burbank, Wynnnum West, Fortitude Valley, Ditmar, Bowen, Rita Island, Samsonvale, Helensvale, Buderim, Glasshouse Mountains, Taroom, Abbeywood, Monto, Buca, Mount Perry, Boynedale—I could go on.

Senator Mason does not want to hear the truth. He does not want to hear about all the Queensland communities that are today using the National Broadband Network because those opposite are going to turn it off, they are going to stop it, close it down and abolish it. That means to all of these people in all of these communities that they are going to pay higher prices. Every single one of these people is going to—

**Senator Birmingham:** Mr Deputy President, I have a point of order.

**Senator Wong:** We listened to Brandis in silence.

**The DEPUTY PRESIDENT:** Order!
Senator Birmingham: That is because Brandis is not a serial misleader of the Senate, which is what Senator Conroy is doing again. It is what he is doing again with this. Once again, he is misleading. Nobody is going to shut down those—

Senator Wong interjecting—

The DEPUTY PRESIDENT: Order! Senator Birmingham, on a point of order.

Senator Wong: It is not a point of order; it is abuse.

Senator Birmingham: Once again, Mr Deputy President, the minister is misleading the Senate, claiming it is going to be shut down. He did it yesterday—

The DEPUTY PRESIDENT: Senator Birmingham, there is no point of order. Resume your seat.

Senator CONROY: Yet again, we can see the glass jaw of those opposite. They do not want the people of Australia to hear about their broadband plan. They do not want people to know that they are going to increase broadband prices and slow the speed down. If you live in regional Australia, you get a choice at the next election. Seventy per cent of homes in regional Australia will get fibre-to-the-home and the other 30 per cent get a satellite service faster than anything you ever gave them, a fixed wireless far superior to anything else. Do you know what those opposite want to give them, out of Mr Turnbull's own mouth? They are going to give them a voucher—a voucher to stimulate demand so that all those private sector companies will come in and start providing broadband in regional Australia.

They are coming to St George, are they not Senator Joyce? When you get your voucher, all those companies are going to come to St George to provide broadband? I do not think so and neither do you. We have those opposite too embarrassed to come into this chamber and say: 'Here is our policy. Let's compare your policy, government. Let's compare them to ours'. Not one word. We had 40 minutes from them and not one word on your policy. You are too embarrassed to debate them and so you should be. Let me give you a couple of examples of communities in Bendigo. The Bendigo Health CEO, John Mulder, said: 'We will require high-speed broadband for new initiatives such as teleradiology, telestroke and remote patient monitoring.' In Geelong: 'Health is going to be practised differently in the future because of this technology. It is going to revolutionise medicine.' And you want to say no. (Time expired)

The DEPUTY PRESIDENT: Order! The time for the debate has now expired.

BILLS

Work Health and Safety Bill 2011
Work Health and Safety (Transitional and Consequential Provisions) Bill 2011
Second Reading
Debate resumed on the motion:

That these bills be now read a second time.

Senator WRIGHT (South Australia) (15:45): In speaking on the Work Health and Safety Bill 2011 and a related bill, I wish to express our extreme disappointment in the rejection by the lower house of a number of important amendments to this legislation which would have strengthened the protections available to Commonwealth employees and brought them into line with the protections available to workers in other jurisdictions, particularly New South Wales.

My Greens colleague, Adam Bandt, moved three groups of amendments when this bill passed through the House of Representatives, each of which failed to receive the support of either the coalition or, perhaps more surprisingly, Labor. The first
of these amendments sought to bring the Commonwealth bill in line with its New South Wales equivalent by giving unions the power to initiate prosecutions with respect to category 3 offences, which are those at the lower end of the offending spectrum.

Trade unions have been able to prosecute breaches of workplace health and safety laws in New South Wales since the 1940s. In that time, union prosecutions have been rare. However, when they have been taken, they have been very effective in strengthening the safety standards for workers and for the community at large. That is why, when the model work health and safety laws came to be considered by the New South Wales parliament earlier this year, my New South Wales Greens colleague, David Shoebridge MLC, moved to ensure that union prosecution rights were retained in that state.

Why are union prosecution rights so important? Because the union right to prosecute ensures that employers respond more quickly to demands from their workforce for safety improvements. This right acts as a powerful incentive for employers to protect their workers' health and safety. Take, for example, the very successful prosecutions taken last decade by the Finance Sector Union, which were directed at reducing armed robberies in New South Wales bank branches. Tired of seeing not only their members but also members of the public both physically and psychologically injured as the result of armed hold-ups, the FSU decided to take action. As a result of this action, the major banks in New South Wales were forced to invest a significant amount of money—in the vicinity of $100 million—in order to improve safety standards. This included the installation of full-height anti-jump barriers, ATM bunkers and digital controlled circuit TV with back-to-base monitoring. The result has been a dramatic fall in armed robberies, from 102 in 2002 to just four in 2010. It is a shame that because of the failure of the lower house to adopt my colleague's proposed amendments, such court actions will not be available to unions seeking to improve the safety conditions of Commonwealth workers. It is a particular indictment of the government, whose New South Wales Labor colleagues rightly supported the retention of the union right to prosecute in that state.

The second group of amendments proposed by my colleague Adam Bandt in the lower house would have introduced a test of 'gross negligence' into the definition of a category 1 offence. Category 1 offences are the most serious of the three offence categories contained in the bill. In its current form, a category 1 offence is made out if a duty holder, without reasonable excuse, engages in conduct that exposes an individual to whom a duty is owed to a risk of death or serious injury or illness, and the person is reckless as to the risk of death, serious injury or illness. In this context, proving recklessness would require proof that a defendant charged with a category 1 offence knew that death or serious injury was a probable or possible consequence of his or her conduct but consciously chose to disregard the risk. It is a subjective concept for which proof of awareness of risk is essential. So, for a category 1 offence to be made out, it must be proven that the defendant foresaw that death or serious injury was a likely result of their conduct.

In contrast, criminal negligence, or gross negligence, as proposed by Adam Bandt, is not concerned with the defendant's actual state of mind. Rather, culpability is determined objectively by referring to what the reasonable person, in the position of the defendant, would have known and done. If gross negligence were to be included in the test for a category 1 offence, it would be enough to show that the risk existed and that
the accused's conduct involved a great falling short of the standard of care required of a reasonable person.

The National Occupational Health and Safety Review Panel, created in 2008 to report to the Workplace Relations Ministers' Council on the optimal structure and content of model OH&S laws, concluded that both 'recklessness' and 'gross negligence' should be included in the test for a category 1 offence. This recommendation was overturned by the Workplace Relations Ministers' Council. The rejection by the lower house of the 'gross negligence' test is a rejection by the government and by the coalition of best practice safety standards in the workplace.

The third group of amendments proposed by my colleague Adam Bandt would have brought the provisions relating to discriminatory conduct in the Work Health and Safety Bill into line with the corresponding provisions in the Fair Work Act. Clause 104 of the bill imposes civil and criminal liabilities upon a person who engages in discriminatory conduct for a prohibited reason. The purpose of this provision is to provide protection against adverse treatment to those individuals who seek to enforce or act in accordance with their health and safety rights under the bill. It would protect, for example, an employee who raises concerns about safety within the workplace or who nominates for a position as a health and safety representative.

In its current form, the bill only imposes criminal liability if the prohibited reason is the dominant reason for the discriminatory conduct and, in the civil sphere, if the prohibited reason is the substantial reason for the discriminatory conduct. The purpose of the proposed amendments was to remove the substantial and dominant reason tests and instead impose liability for any discriminatory conduct in which a prohibited reason plays any role at all in the decision-maker's mind.

I note that the second and third sheets of amendments moved by Adam Bandt in the lower house would have directly enacted recommendations made by the Senate Education, Employment and Workplace Relations Legislation Committee in its report on this bill, tabled in August 2011. This committee was chaired by Senator Gavin Marshall and membership of the committee included two of his Labor colleagues. The failure of Senator Marshall's lower house Labor colleagues to pass the second and third groups of amendments I have discussed today is hard to understand. It is unfathomable to me why, in the lower house, Labor voted against the very recommendations made by their Labor colleagues in the Senate through their involvement in the Education, Employment and Workplace Relations Legislation committee's majority report.

The Greens will not be opposing the passage of this bill through the Senate in its current form; however, we ask the Senate to note the wasted opportunity these rejected amendments represent.

Senator BILYK (Tasmania) (15:52): I rise to speak on the Work Health and Safety Bill 2011 and the Work Health and Safety (Transitional and Consequential) Provisions Bill 2011. The first speech on legislation I delivered in this chamber, only shortly after beginning my term in the Senate, was on the Safe Work Australia Bill, which later received royal assent and became the Safe Work Australia Act. The act established Safe Work Australia, a tripartite statutory body with representatives from employers, employees and government for improving occupational health and safety outcomes and workers compensation arrangements in Australia.
The establishment of this authority placed Australia on the path to the first ever set of nationally consistent harmonised work health and safety laws. The decision to harmonise work health and safety laws was made by the Council of Australian Governments at its meeting in July 2008. One of Safe Work Australia's responsibilities was to drive the reform process and to develop model occupational health and safety laws for adoption by each jurisdiction. These laws would encode a model occupational health and safety act, model occupational health and safety regulations and model codes of practice.

The model act was developed by Safe Work Australia in accordance with the decisions of the ministers council. An exposure draft of the model act was released for public comment for six weeks in September 2009. This resulted in significant public feedback to the act, with a total of 480 submissions received in response, which informed amendments to the exposure draft. The model act, regulations and codes of practice to be implemented across all jurisdictions, in accordance with the intergovernmental agreement, were agreed to by the Workplace Relations Ministers Council in December 2009.

Since the endorsement of the model act by the ministers council, two jurisdictions have taken the important step forward of passing new health and safety legislation. The Queensland Work Health and Safety Act received royal assent on 6 June this year and the New South Wales Work Health and Safety Act received royal assent the following day. As Senator Abetz said in his contribution, it is a shame that the New South Wales parliament decided to change the legislation. I agree with the statement made by the Prime Minister when the previous New South Wales government proposed the changes. She said:

… a deal is a deal and the federal government requires this deal to be honoured.

What the coalition has failed to mention is that the current WA Liberal government have not yet even introduced legislation into their parliament. They have flagged changes that are inconsistent with the harmonised laws and will give Western Australian workers a worse deal when it comes to safety. The Victorian government also appear to be walking away from harmonisation, even though their own regulator has signed up to the laws and businesses strongly supports them. The purpose of the model act is harmonisation, the benefits of which should flow to all workers and businesses, including those in Victoria and Western Australia.

The Work Health and Safety (Transitional and Consequential) Bill will provide for the transition from the Occupational Health and Safety Act, including making necessary consequential amendments to the Safety, Rehabilitation and Compensation Act 1988 and the Social Security Act 1991. As I said in my speech on the Safe Work Australia Bill, there is much to be gained from harmonising workplace health and safety laws across Australia. It reduces regulation, particularly for those businesses that operate across state and territory borders and would otherwise have to deal with several separate workplace health and safety regimes. Significant savings will result for businesses that work across jurisdictions—savings that they can potentially redirect to make real improvements to workplace health and safety for their employees.

There are roughly 40,000 businesses operating across state and territory boundaries in Australia. According to Access Economics, harmonising work health and safety laws will save these businesses $179 million per annum. The harmonised laws also provide workers with the same rights
and protections regardless of where their work is carried out. Labour mobility will be enhanced by the recognition of training and licences across jurisdictions.

Of course, harmonising our work health and safety laws across Australia also provides a valuable opportunity to modernise our laws and make some important improvements to workplace health and safety regulation. The model bill provides coverage of a wider range of contemporary work relationships, including contractors, employees of contractors, subcontractors, labour hire workers, apprentices and volunteers. It provides a new statutory right for workers to cease unsafe work in certain circumstances. It introduces tougher penalties for failing to meet a duty of care. It removes the Commonwealth's immunity from criminal prosecution. And it provides for a wider range of enforcement options, including infringement notices, remedial orders, adverse publicity orders, training orders and orders for restoration. The bill establishes Comcare as the sole regulator of workplace health and safety in the Commonwealth, whereas currently regulatory powers are shared between Comcare and the Safety, Rehabilitation and Compensation Commission.

Finally, the bill extends work health and safety laws to other persons deemed to be employees under the current Occupational Health and Safety Act. The laws are also extended to members of the Defence Force, although the bill enables the Chief of the Defence Force and the Director-General of Security, with the approval of the minister, to disapply specified provisions of the act. This provision existed previously, obviously in recognition of the heightened risk that employees such as Defence Force members accept as part of their employment; however the minister's agreement was not previously required.

The bills have been the subject of some scrutiny, and as a member of the Senate Education, Employment and Workplace Relations Legislation Committee I participated in the inquiry into the bills. It was a robust inquiry with one public hearing, and we had a wide-ranging discussion with witnesses from four organisations: the Australian Council of Trade Unions, the Australian Manufacturing Workers Union, Master Builders Australia and the Department of Education, Employment, and Workplace Relations. Other than to support the bill, the committee made two recommendations. The first was to remove the substantial and dominant reason test from the discrimination provisions in part 6. The purpose of the discrimination provisions in the bill is to avoid discrimination or coercion from discouraging engagement in work health and safety roles. However, the ACTU and the union both submitted that the bill should penalise employers if discrimination plays any role in a decision. They also submitted that they believed this provision should be brought into line with the discrimination provisions in the Fair Work Act, which do not include the substantial and dominant reasons test.

In responding to the recommendation, the minister pointed out that the discrimination provisions in the Work Health and Safety Bill do not displace the adverse action provisions in the Fair Work Act. It is also important to recognise that the discriminatory conduct provisions in the Work Health and Safety Bill provide for a criminal offence, whereas those under the Fair Work Act only provide for a civil offence. The substantial and dominant reason test is reserved for the more serious breaches where criminal penalties may apply.

The second recommendation of the committee was to include 'gross negligence' under category 1 offences. Category 1
offences involve reckless conduct which exposes an individual to a risk of death, serious injury or illness. However, the ACTU were concerned that, given the seriousness of category 1 offences, the test should not be set so high that it would be difficult for the regulator to prosecute. It was considered by the committee that the onus of proof for category 1 offences would include the prosecution establishing that there was not an honest and reasonable mistake of fact on the part of the accused.

The minister responded to this recommendation by pointing out that such an amendment would go beyond local general criminal laws, in that it would apply to conduct which exposed an individual to a risk of death, serious injury or illness even when the conduct did not actually result in death, serious injury or illness. Such conduct, in the government's view, would constitute a category 2 offence, whereas serious category 1 offences which attract a jail term should include an element of intention.

Throughout all consultation processes—including the national occupational health and safety review, the model act consultation, the exposure draft process, and the committee inquiry—the consistent message from stakeholders has been that there is broad support for national harmonisation of occupational health and safety laws. Fortunately, workplace health and safety is a matter which is universally supported by employers and employees, as it is in their respective interests. Workplace injuries, accidents and illnesses not only lead to great pain and suffering, not to mention financial burden, for employees but to financial costs, low productivity and loss of morale for businesses.

Safe Work Australia estimates that in 2005-06 the cost of workplace related illnesses and injuries—including the economic impact on the broader community in the form of medical and legal expenses, as well as the costs associated with retraining and loss of productivity and morale among co-workers—was a staggering $57.5 billion, or almost six per cent of Australia's gross domestic product.

The sheer cost of workplace illness and injury demonstrates the importance of improving workplace health and safety in Australia. Not only is it in the interests of employers and workers, it is in the national interest. This is why this Gillard Labor government wants all employers, including those in the Commonwealth jurisdiction, to be spending less time and resources worrying about the red tape of compliance with occupational health and safety laws. Instead, the Gillard Labor government wants employers to focus those resources on dealing with the real issues which confront health and safety in their workplaces. With the support and agreement of state and territory governments, we will achieve this by being the first government to take a national approach to workplace health and safety.

We will also improve workplace health and safety through tougher penalties and by extending the scope of our workplace health and safety laws. It has been a lengthy process to get to this point, but these bills are part of a reform which was long overdue even when we started on this path. I would like to thank the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Evans, and the previous minister, now Prime Minister Julia Gillard, for all their hard work bringing these bills to the parliament. In times to come, many businesses, unions and workers will be grateful for this important reform. I commend the bills to the Senate.

Senator EDWARDS (South Australia) (16:03): I rise to speak in support of the

Once again we see another example of Labor-Greens social engineering. The Work Health and Safety Bill 2011 has emerged with serious flaws. The coalition has no problem with harmonised or universal occupational health and safety laws. Indeed the process was started by the last coalition government. Where we differ is that we can see that the unions will use harmonisation as the basis for a whole new minimum national standard. It is the old story—give unions an inch and they will take a kilometre. They demand their pound of flesh, their right, regardless of the merits of their case—and they never resile.

The Prime Minister spoke about some public servants having had tears in their eyes because they had spent their working lives waiting for someone to deliver that reform. Where were they and the Prime Minister when New South Wales decided it wanted more? I note that Senator Williams raised this in an interjection—it was the previous state Labor government which turned this around at the last hurdle. We only have to see what happened there in New South Wales, how the then government, under pressure from its union bosses—Sussex Street again—departed from the harmonisation in this bill. What did we see in the redrafted New South Wales bill? We saw nothing less than an introduction of the union right to prosecute. Once more we see the heavy hand of the comrades exerting their muscle—with some help from the Greens.

How long before a similar tactic is employed on this bill, as the union heavies try to turn an occupational health and safety measure to their own industrial advantage? Not content with representing their members, the union leaders also see a role for themselves in bringing about prosecutions. The naked opportunism under the guise of looking after the workers is there for all to see. Under this legislation, occupational health and safety inspectors will have powers that are not available to the police. Unions should realise they do not represent the whole community, although they are over-represented on the Labor benches opposite in this Senate.

In a past life I ran a business. I employed many employees during my time. I have had practical, hands-on experience in using and implementing OH&S rules. I know how important it is to have a safe workplace. With all the gantries, tanks and confined spaces in my old workplace, I know only too well the importance of OH&S rules. However, as you may remember, in my first speech in this place I referred to the fact that I have never had a unionised workplace. Not only did I ensure that our employees were looked after but they continue to be well looked after by subsequent management. I feel secure and confident, in coming to work here now, that that environment is still very productive with its OH&S and is still very conscious of its obligations to continue with its auditing. At my business, we upheld the highest standards of workplace safety. While I did not operate in multiple states and across state borders as many of my peers do across the wine industry, I understand the frustration that that would cause businesses. The process of harmonisation, initiated by the Howard government in 2006, is common sense. The coalition is concerned that unions see harmonisation as setting a minimum national standard which could be built upon.
Coalition senators agree with the Master Builders Association who 'strongly reject union right of prosecution'. The authority to prosecute and to commence criminal proceedings should rest solely with the state. The Master Builders Association rightly point out in their submission:

A prosecutor represents all members of their community and cannot, therefore, act as if representing private or factional interests.

Unions, by their very nature, represent the interests of employees and therefore cannot represent the entire community. To empower them with the ability to prosecute is akin to empowering employers with the ability to prosecute employees for a breach of health and safety, an issue that would be viewed as inappropriate by the community.

The Work Health and Safety Bill 2011 is 'coat-hanger' legislation—the regulations will determine any benefit of this change. The final regulations have not yet been released nor has the regulatory impact statement. This is despite the objectives of harmonisation that were laid out in the Access Economics' draft regulation impact statement. There is concern that the regulations will not achieve these objectives.

The harmonisation of OH&S legislation is part of the Council of Australian Governments National Reform Agenda that seeks to minimise the regulatory burdens and create a seamless national economy. Training in occupational health and safety is always an important issue. At this time of transition to new arrangements the availability of courses is vital. Unfortunately the availability of accredited courses has been reduced by 26 per cent since restrictive changes were introduced by the Safety, Rehabilitation and Compensation Commission in 2010. The coalition have put forward an amendment to allow the ongoing use of accredited courses under the 2006-07 guidelines.

Prosecutions under OH&S laws involve criminal matters. Under normal criminal law everyone has the right to silence and protection from self-incrimination—that is, you cannot be forced to say something to an investigator, the police, unless an investigator first obtains a court order and so on. This protection is a right we all have and is essential to community confidence in our criminal justice system and to the rule of law. It stops abuse of power. Protection against self-incrimination is currently available under OH&S laws in New South Wales, Queensland, South Australia and Victoria. The model OH&S laws take away the right to silence and protection from self-incrimination. This will apply not only to employers but to all managers and workers in workplaces. It will give powers to OH&S inspectors not available to the police. Consequently, the coalition recommends that subclause 172 of the Work Health and Safety Bill be amended to include a right to silence and protection from self-incrimination, in line with criminal law and current OH&S laws in New South Wales, Queensland, South Australia and Victoria.

The modern principles of OH&S safety were first created in the UK in 1972 under the Robens review. The principles hold that responsibility for safety is allocated according to what is reasonable and practicable to control. These are the internationally accepted benchmarks embedded in International Labour Organisation conventions to which Australia become a signatory in 2004. ILO Convention 155 (article 16) states:

Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

The national review into model OH&S laws stated that there was much dissent in submissions over the inclusion of the word
'control' in duties of care. Recommendation 8 called for the removal of the word 'control' from the definition of 'reasonable and practicable'. This is implemented in the national model OH&S laws.

The model laws also introduce a new and untested legal concept of connecting duties of care to a 'person conducting a business or undertaking'. The removal of the word 'control' not only creates confusion over who is responsible for what in work safety but is a major shift away from known OH&S principles in all Australian jurisdictions except New South Wales. Further, it removes a key element of the ILO OHS Convention, to which Australia is a signatory, and creates a legal void due to unknown application and understanding of duties of care under the new notion. It is realistic to expect that, with the removal of the word 'control', legal uncertainty will occur and will require many years of judicial testing before clarity is achieved. Another lawyer's picnic. The wording of the act must give unambiguous signals in clear lay language to every person involved in workplaces right across this country. People understand in a practical sense that if they control something, or even share control, that they are responsible. With the word 'control' removed, clarity and focus on personal responsibility for safety is diminished and becomes confused. This works against the objective of achieving safe workplaces.

As a former employer, I believe OH&S regulation must be clear if it is to be successfully implemented across Australian workplaces. One of the barriers to successful implementation of this kind of law is that the average employer does not fully understand it. While it is not their intent not to properly implement OH&S requirements, simple misunderstandings do occur. This kind of legislation must be crystal clear to provide employers with certainty.

The object of this bill is to improve safety outcomes, but it is also to reduce compliance costs for business and improve the efficiency of regulatory agencies. Every piece of legislation that comes before this place should be about cutting red tape, getting rid of unnecessary regulations and getting government out of the boardrooms, the workshops and the factory floors, not adding more bureaucratic measures that will require more bureaucrats. It is just churn, churn, churn. Harmonisation is a good aim, but not if it is to be handicapped at birth by union ambition and the probable hatred of the Greens for employers as a continuation of the Marxist class struggle.

We also have the changes to the guidelines that support union training at the expense of a private provider with no beneficial outcomes. We are expected to pass this bill without having seen the regulations or the codes of practice. There is still no clarification on whether this Work Health and Safety Bill will apply to voluntary organisations. Those people out there in the community are unsure of whether this will apply to them. One thing they can be sure of is that any piece of legislation where the unions have been calling the shots regarding content will be to the detriment of any voluntary organisation. We must keep this in perspective. Union participation in the workplace is at an all-time low, with 18 per cent of the Australian workplace belonging to a union. I think they are coming to their senses.

The unions have no time for volunteers. Again, the shades of Marxist leanings come out in 2011. Then there are the health and safety representatives, another device cooked up by the unions to reward their junior cohorts with the first rung up the union industrial ladder, and paid for by the employer. There is less work for the union organiser when they have health and safety
representatives—or HSRs—to carry out such duties for them.

While the coalition will not oppose this bill, we will put forward some straightforward and logical amendments. However, it is very important that I point out that this is coathanger legislation. The regulations will be determinative of the benefit of this change. The model regulations were circulated and are exceptionally restrictive. The final regulations have not yet been released, nor has the regulatory impact statement.

In closing, I reaffirm that good policy in government is to always continue to review and propose, and hopefully the government will see the merit in what we are looking at for the benefit of employers all across this country. Harmonisation was initiated by the Howard government in 2006. It is something that the Gillard Labor government should continue to champion at every opportunity at COAG, so that employers can get some certainty as to what can take place in their workplaces, and so NGOs can run their operations and know who can come in and affect their business and their operations.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)
(16:20): I rise to speak on the Work Health and Safety Bill 2011 and the Work Health and Safety (Transitional and Consequential Provisions) Bill 2011. I thank senators for their contributions to the debate on this important legislation. Although the Work Health and Safety Bill currently before the parliament applies largely to Commonwealth public sector employment, it forms a crucial part of the Australian government's commitment to nationally harmonised work health and safety laws. This bill complements legislation being enacted across the states and territories that will lead to enhanced work health and safety protections for Australian workers, as well as greater certainty for businesses.

The arguments in favour of the occupational health and safety harmonisation are outlined in the second reading speech to the bill, so I will not repeat them here, save to say that they are very compelling. However, it is important to put on the record that, since the bill was introduced into parliament by the government, harmonised occupational health and safety laws have been independently assessed as having the potential to deliver up to $2 billion per annum in productivity improvements. This is in addition to the national benefit of $250 million per annum reflecting reduced red tape for businesses overall and better work health and safety standards for workers.

I would like to deal with Senator Edwards's claim that the regulatory impact statement was not available and highlight that it is, indeed, available, and the figures I mentioned relate to it.

This assessment and these measures affirm the Gillard government's strong commitment to occupational health and safety harmonisation with a major reform that will deliver tangible benefits to businesses and workers alike. It is this balance that is critical and most important to this government. Federal Labor is proud to be implementing and supporting these important laws which are strongly supported by industry and the community as well as the vast majority of state and territory governments. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

Bills—by leave—taken together and as a whole.
Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:24): by leave—I move opposition amendments (1) to (4) on sheet 7154 together:

(1) Clause 19, page 23 (line 3), after “undertaking”, insert “who has control over the matter”.

(2) Clause 19, page 23 (line 9), after “undertaking”, insert “who has control over the matter”.

(3) Clause 19, page 24 (line 7), after “as”, insert “he or she has control over the premises and it”.

(4) Clause 19, page 24 (line 8), after “practicable”, insert “to do so”.

The primary duty of care is, from the coalition’s point of view, an important issue that needs to be considered. We believe that the modern principles of occupational health and safety were first created in the United Kingdom in 1972 under the Robens review. The principles of that review hold that responsibility for safety is allocated to what is reasonable and practicable to control. That is a very important test, from the coalition’s point of view. That is the control test.

That benchmark of ‘reasonable and practicable to control’ is in fact also embodied in the International Labour Organisation conventions to which Australia became a signatory in 2004 under the Howard government. ILO Convention 155 states in article 16 that:

Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

We believe that that word ‘control’ is a very important component of any sensible legislation.

As I indicated, this had its genesis nearly 40 years ago in the United Kingdom. I understand that there was also a Victorian review after the Robens review in the United Kingdom and that the state of Victoria came to a similar conclusion. The national review into the occupational health and safety laws in its report of 1 October 2008 stated that there was much dissent in submissions over the inclusion of the word ‘control’ in duties of care and then recommendation 8 called for the removal of the word ‘control’ from the definition of reasonable and practicable. This is implemented now in the national model OHS laws. It is to be remembered that during this time—I do not want to get into it too much—we did have wall-to-wall Labor governments and it was agreed at that time by all of the Labor governments that that should be the case.

The coalition cannot understand changing the law to get a new test which is untried. The existing test originated in the United Kingdom some 40 years ago and was put into an International Labour Organisation convention only some seven years ago. The test that had been implemented about 30 years earlier and had attracted the attention of the International Labour Organisation was deemed by that organisation to be a good and proper test. Why we would seek to take out of the Australian law a provision which has been well established for some 40 years is something that I confess the coalition cannot quite understand, other than perhaps because certain pressure was brought to bear on the government—all governments at the time being Labor—courtesy of elements of the trade union leadership.

The model laws introduce a new and untested legal concept of connecting duties of care to a person conducting a business or undertaking. At a later stage the Parliamentary Secretary for School Education and Workplace Relations might be able to give us some clarity on how that applies to the volunteer sector, as well. The removal of the word ‘control’ not only creates confusion over who is responsible for what
in work safety but also is a major shift away from known occupational health and safety principles in all Australian jurisdictions except New South Wales. Further, it removes a key element of the ILO convention to which Australia is a signatory, and creates a legal vacuum due to unknown application and interpretation of duties of care under a new concept. It is reasonable to expect that with the removal of the word 'control' legal uncertainty will occur and many years of judicial testing will be required before clarity is achieved.

One of the aims of harmonisation was to get a simpler regime—a regime that was clear; that had legal clarity. The coalition believes the wording of the act must give unambiguous signals in clear, lay language to every person involved in workplaces. People must understand in a practical sense that if they control something or even share control they are responsible. With the word 'control' removed, clarity and focus on personal responsibility for safety is diminished and becomes confused. This works against the objective of achieving safer workplaces. I commend the amendments to the committee.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:33): The government opposes both sets of amendments proposed by the opposition in relation to primary duty of care. Consistent with the model act, this bill broadens the duty of care provisions beyond the traditional employer-employee relationship so that all persons who conduct a business or undertaking owe a duty of care to all persons who may be put at risk by the conduct of the business or undertaking. Importantly, this includes workers whose activities in carrying out work are influenced or directed by such persons. The primary duty of care in the bill requires persons conducting a business or undertaking to ensure the health and safety of workers and other persons so far as is reasonably predictable. It is not an absolute requirement—the person conducting the business or undertaking need only do what can be reasonably done in the circumstances to comply with the duty.

The National Review into Model Occupational Health and Safety Laws recommended, and workplace relations ministers agreed and have maintained such agreement, that control should not be a separate element used to limit the extent of the primary duty of care or be expressly included in the definition of what is reasonably practicable, for two key reasons. Firstly, the inclusion of 'control' in the primary duty of care can result in the focus being on whether or not a duty applies rather than on what needs to be done to ensure the health and safety of workers. In other words, a control test might encourage arrangements to avoid control in order to avoid the duty. Secondly, the case law provides that control is relevant in determining what is reasonably practicable in the circumstances. An inability to control relevant matters must necessarily imply that it is either not possible for duty holders to do anything or not reasonable to expect them to do so.

This is not to say that the concept of control is not contained in the bill. The bill includes specific duties for persons with management or control of workplaces and persons with management or control of fixtures, fittings or plant at workplaces. Further, the duties in clause 19(4), which the opposition is seeking to amend to include reference to 'control', only apply where the person conducting the business or undertaking has management, or control, of the accommodation. At best amendments (3) and (4) add nothing to the provision as drafted; at worst, they simply confuse the provision. It
is on this basis that the government opposes the amendments.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:36): Can the parliamentary secretary explain to the chamber how the re-establishment of a well-accepted test will lead to confusion? It is a test that was adopted in the United Kingdom 40 years ago and 30 years later, in 2004, it was adopted by the International Labour Organisation. Given that it was all settled, why would maintaining the settled provisions, the settled understanding, lead to confusion? It is, with great respect, the other way around—because we are having new tests imposed on us, there is this legal uncertainty. Whilst you are dealing with the issue, can I also comment that, given the very serious penalties that will be imposed by this legislation, it is a very important consideration to know whether somebody has the control, and therefore, if you like, the duty, before one starts making people liable for what will become very hefty penalties.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:37): I will commence with the last part of the senator's question, because I covered that in my earlier comments. The duties in clause 19(4), which the opposition is seeking to amend to include a reference to control, only apply where the person conducting the business undertaking has management or control of the accommodation. I think that point is fairly clear.

There are perhaps two components to the answer on the other point that Senator Abetz makes. The first is that these provisions reflect, as I stressed, the model act. This is the act that is being introduced in states and territories. I accept his point that when they were first agreed there was a different composition of governments in those states, but the ones that are being delivered in those states are consistent with the measures being included here. On the second component: perhaps I could stress that Senator Abetz obviously takes issue with the recommendations of the national review, which, as I mentioned earlier, the government has accepted in the framing of the current bill.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:39): I thank the parliamentary secretary for that. What is the difference and how will it be determined, if the clause refers to the person who has the management or control? Clearly, management and control are now being seen as two different things, but both can be responsible. Of course, there are potentially work sites for which somebody has the overall management responsibility but for which a subcontractor has the actual control in a particular circumstance. To say that the manager of that site bears as much responsibility as the subcontractor who is controlling the situation leads, I think, to duplication. It is potentially a hugely unfair burden to place on those who have the management responsibility as opposed to the direct control that one would imagine the subcontractor in my example would have.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:40): Let me explain to Senator Abetz what is relatively clear to me through addressing these matters on a case-by-case basis. The bill contemplates that there may indeed be concurrent responsibilities where you may have more than one party responsible to one extent or another. The test of that would then be what was reasonable and/or practicable with respect to the level of management or control associated with the particular party.
Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:40): With respect to the parliamentary secretary, that has not been explained in the detail that would satisfy me in this debate. We have a situation where somebody bears the management or control. It stands to reason that, in some circumstances, there may be people who bear responsibility for the management and others who bear the responsibility for control of a situation. In those circumstances, on whom will the duty rest or can you just cherry-pick to determine whom, on a particular occasion, you should pursue? Or should you pursue both and potentially get a double whammy? That is the difficulty that we have with this language.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:41): I think I would need to cover ground that I mentioned earlier. The bill envisages that there would be concurrent responsibilities. It is not, in our view, an issue of cherry picking to assess what is reasonable or practicable with respect to management and/or control issues in relation to health and safety incidents.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:42): I thank the parliamentary secretary for clearing that up, because it means that there is a concurrent responsibility. The manager of the project clearly has a responsibility and will therefore have to incur the extra expense and time to ensure that they look at everything done by the subcontractor, who would actually have the control. We will have two different parties, one in management and one with the actual control. Let us say that you are a project developer and your first task is to dig the foundations. That has to be done in a safe manner. You get in a subcontractor to dig the foundations. The person doing the overall management of the project will therefore basically have to be there supervising the subcontractor, to ensure that they avoid liability under this legislation, in case the subcontractor digging the foundations, who actually has the physical control of the site, does something wrong. In those circumstances, they would have to be there and incur an extra cost. That was never the idea of harmonised legislation. The idea of harmonised legislation was to make it simpler and to increase the productivity of our workforces and our nation. This of course will clearly reduce productivity, because we will have to have supernumeraries double-checking each other to make sure that they escape liability. So this becomes a very bureaucratic and costly exercise.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:44): It is the government's view that requiring, as this bill does, that duty holders consult about such matters is important and does not need to be a costly process. Again, though, I stress the point that the duty relevant to duty holders is what is 'reasonably practicable' in the circumstances. But at the other extreme, in the circumstances that Senator Abetz is raising, I am sure that, in his view in dealing with these matters, he accepts that by the same token we do not want provisions that encourage management to outsource responsibilities for the health and safety of their workplaces.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:44): That of course is going to the bizarre length which is not at all within the parameters of what I was mentioning, because it would be very hard to argue that it was unreasonable or impracticable for the duty holder—in this case, the manager—to have a person there on
site, supervising at all times the work of the subcontractor. So in those circumstances that will be an extra cost and a reduction in productivity. The question then is: if the duty holders have to consult with each other, and do consult, are they able to contract out of their obligations in this legislation by asking, or by getting one party to agree, that they will take over the responsibility of both the manager and the controller of a particular site?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:46): Senator Abetz, I stress that the consultation is about making sure that there are no gaps. But the critical issue is what is reasonable and practicable. Your suggestion that there would be massive costs because a manager might require a supervisor to supervise what is happening at a workplace where work is occurring under a subcontractor is by far to the extreme. The suggestion that the provisions in the bill that consultation needs to occur to ensure that there are not gaps in dealing with the health and safety issues in the workplace, and the suggestion that the provisions in this bill might require a supervisor for the manager to be in attendance at all times, is quite extreme.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:47): Well then, if that is 'extreme', why do they hold the responsibility, as I understand it, jointly? As I understand it, the manager and controller have that responsibility jointly—so, unless you can tell us that that is not held jointly, your suggestion that it is an extreme example cannot be maintained.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:47): The word I used was 'concurrently', and the meaning is quite different. What will be assessed on a case-by-case basis is whether either of the parties with duty have undertaken what is reasonable and practicable in the circumstances.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:47): So can you just explain, for the workers of Australia, and in particular the small businesses of Australia, the difference between the word 'jointly' and the word 'concurrently'.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (16:48): Without referring to a dictionary, which I do not have at hand, and without having been intimately involved in the drafting of this bill, I think the common-sense meaning is essentially that 'concurrently' picks up the concept that in some circumstances, or at some points in time in a particular project, it is reasonable to expect, given what is reasonable and practicable, that the responsibilities hold at one level, or at another level or indeed at both—it will depend on a case-by-case basis on the circumstances involved.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:48): It was so easy to dismiss me by saying that the word 'jointly', which I used, was not the word used but that we could not be told exactly what the difference was. The Hansard will show that to be the case. But why have we removed the word 'control' in the test if it is so practicable and reasonable to know who would be in control at any one particular time? The difficulty with this is that at least that was a test that has had some 40 years of jurisprudence behind it, and people actually understand what the control test means. By removing it, you now leave it
open, one imagines, to another 40 years of jurisprudence to settle the matter, which will occasion expense and uncertainty—and that, I would have thought, is not good for workers, small business or indeed premiums.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)
(16:49): I will go back to Senator Abetz’s earlier point and take him to clause 16 of the bill, which describes quite clearly the circumstances around which more than one person can have a duty. It says at point (1):

More than 1 person can concurrently—that is the language used in the bill, not 'jointly'—have the same duty.

Point (2) then states:

Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

It envisages that different duty holders may indeed have different duties in relation to the health and safety of workers in the circumstances.

Also, addressing the earlier point, point (3) states:

If more than 1 person has a duty for the same matter, each person—

(a) retains responsibility for the person’s duty in relation to the matter; and

(b) must discharge the person’s duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

I think that also answers the concern, in part, raised by Senator Abetz with respect to the control issue. I would further make the point that I earlier made, which is that Senator Abetz is, in these amendments, reprosecuting a matter that has already been addressed. It has been addressed by the state ministers; it has been addressed by new state governments in accepting the terms in the model act, and his difference of opinion is with the national review panel, whose recommendations we have accepted.

Senator ABETZ
(Tasmania—Leader of the Opposition in the Senate) (16:51): It might come as a surprise to the parliamentary secretary—it does not worry me who I might be disagreeing with or not—but sometimes panels come up with bad laws and bad considerations. There is still no overwhelming rationale as to why 40 years of jurisprudence, accepted internationally, accepted by the International Labor Organisation, should be set on its head by this bill. For the review panel to somehow think that they have got it better than the international experience and the ILO is interesting. I might remind the parliamentary secretary that on matters of climate change and a few other things we are very able now to just reject the view of international bodies when they make certain determinations—but we will not go there for the purposes of this debate.

A concurrent responsibility clearly indicates that two or more people might have a responsibility in a particular circumstance. So there is duplication, and one imagines there could potentially be triplication or quadruplication of these responsibilities in circumstances, which happen from time to time, where you have, say, a project manager who then subcontracts certain work out and then that subcontractor subcontracts out to a number of other subcontractors, and you can go right down the chain. This happens on major building sites on a very regular basis. So you could have three or four different people or organisations concurrently responsible for the control of a situation. To suggest that that will not lead to uncertainty is to fly in the face, I would suggest, of common sense and personal experience that I
thought we must all acknowledge will be a problem for the future of this law.

Question put:
That the amendments (Senator Abetz’s) be agreed to.

The committee divided. [16:59]

(The Chairman—Senator Parry)

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

AYES
Abetz, E
Back, CJ
Birmingham, SJ
Boyce, SK
Bushby, DC
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Humphries, G
Kroger, H
Mason, B
Nash, F
Ronaldson, M
Scullion, NG
Williams, JR (teller)

NOES
Arbib, MV
Bishop, TM
Brown, RJ
Carr, KJ
Conroy, SM
Di Natale, R
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
Madigan, JJ
McEwen, A (teller)
Milne, C
Polkey, H
Rhiannon, L
Siewert, R
Stephens, U
Thistledthwaite, M
Waters, LJ
Xenophon, N

This harmonisation has been sold to the community as being of overall benefit, and one hopes that it will ultimately remain so, but does the government accept that there will be some winners and some losers? Is the government able to advise the Senate who it would anticipate that the losers will be as a result of the harmonisation?

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:03): Senator Abetz, there seemed to be some confusion on this issue during the second reading debate. I think Senator Edwards suggested that the regulatory impact statement had not been made...
available. It is indeed available, and I referred in my summing up speech to some elements of that assessment—that is, the harmonised occupational health and safety laws have been independently assessed as having the potential to deliver up to $2 billion per annum in productivity improvements in addition to a national benefit of $250 million per annum reflecting reduced red tape for business overall and better work health and safety standards for workers.

If Senator Abetz is interested, I can come to a bit more detail in terms of the regulatory impact assessment. But you may indeed need to look at it yourself to gauge the winners-and-losers aspect of your question. If you wish, I will cover some other elements of the RIS.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:04): If I can help direct the parliamentary secretary's attention: as I understand it, the regulatory impact statement that was released, if I am correct, makes this statement:

While some of the type of harmonisation and reform-model work health and safety regulations will result in clear 'winners' and 'losers', especially for small businesses …

Was that phrase in there, and, if so, who are the losers?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:05): Senator Abetz, perhaps there needs to be some context built around the remarks that you just made.

Senator Abetz: Yes, of course. Sorry, you know what I am referring to?

Senator JACINTA COLLINS: I believe so, yes.

Senator Abetz: Sorry, I thought you wanted me to provide some—

Senator JACINTA COLLINS: No, that is fine. The RIS deals with matters on two levels. It indicates that there is a broad benefit for the national economy, for productivity across the board. It does highlight that in some cases there may be some issues, particularly for small business.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:05): First of all dealing with the broad benefit, was the broad benefit determined on the basis that every state would have identical legislation? We know that, courtesy of the Labor-Greens alliance that operates in the New South Wales upper house, like it does in this place, New South Wales does not have harmonised laws, which will incur extra costs, one would imagine, and therefore those figures that were mentioned clearly need to be reassessed. Then, in relation to the winners and losers, which ones are the small businesses that will be the losers that the 336-page impact statement told us about?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:07): The regulatory impact statement was done on the basis of harmonised laws across the nation, so Senator Abetz is correct to the extent that there are variations to that. That may have some limited impact on the overall assessment and, presumably, the level of variance. I stress 'may' because, depending on the level of variations, it may not. But I can indicate to him that that was the basis upon which the regulatory impact statement was conducted.

In relation to small businesses, the regulatory impact statement is not specific about any particular types of small business where impacts may be seen as greater or lesser, other than to highlight that for some small businesses there may be some issues.
Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:08): This is another example of how the government treats small business. They give you the big picture, saying it will save this amount of money, that amount of savings, but then in the fine print they finally admit that, yes, some small businesses will be impacted. Then, when you ask for the detail or for the specificity of that, they try to deal with it in a broadbrush way. We in the coalition are concerned about every individual small business. We are concerned at how they might be impacted. We are concerned if small businesses will face increased costs and, undoubtedly, overall that will then run into literally millions of dollars for small businesses. It looks as though we cannot identify those small businesses. I am sure they will soon identify themselves.

In relation to the broad picture of the $2 billion savings to the economy, you are saying now that an unharmonised system—if I can use that term—will only lead to a small reduction of that $2 billion figure.

Senator Jacinta Collins interjecting—

Senator ABETZ: You are not? All right, what is the figure?

Senator Jacinta Collins interjecting—

Senator ABETZ: Yes, we were told $2 billion was the approximate productivity dividend to the economy through harmonisation. The government still insists on and pursues this figure of $2 billion when it is now absolutely clear to everybody that the laws will not be harmonised. New South Wales, courtesy of the ALP-Greens alliance in that state's upper house, has ensured it does not have harmonised legislation. Western Australia is expressing concern. South Australia has had fits and starts in relation to its determination. We still do not know exactly when this is proposed to start. Possibly, parliamentary secretary, you could indicate to us when you anticipate these laws to commence.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:11): I think there are two issues that I need to address at this stage. The first is in relation to a regulatory impact statement. As I mentioned, this was an independent regulatory impact statement. It meets the conditions set out by the Office of Best Practice Regulation. Indeed, those were provisions that were established by the former Howard government that relate to the process of doing a proper impact assessment, and this has been conducted.

I indicated previously to Senator Abetz that the basis of that assessment was indeed the harmonisation as consistent with the model bill. To be clear about my earlier comments, the point that I made was how less a value might be ascribed to variances is obviously going to depend on the nature and the extent of those variances. Small changes—in New South Wales, for instance—may have next to no impact on that assessment of $2 billion. What will have a significant and large impact will be if states do not proceed down this path of harmonisation. On that point, I would encourage Senator Abetz if he wants to assist the government in ensuring we get the full $2 billion per annum in savings that he encourage his state colleagues in Victoria and Western Australia to proceed with harmonisation.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:12): Given that you have no guarantee that that will occur, how can you stick with the figure of $2 billion? More importantly, and we must all accept this, the devil is going to be in the detail—namely, the regulations. How on earth can an honest assessment be made that
the productivity dividend of harmonised laws will be $2 billion when we do not know the cost and the impact on the economy of each of those regulatory regimes that will be applied? How on earth can the government or, indeed, this office of independent assessment make these determinations when we do not know what is going to be in the regulations and what the cost is going to be?

For example, in my speech on the second reading I asked whether safety fencing will now have to be installed around every single home site. Were those sorts of matters taken into account in relation to the determination of the productivity dividend? Or do I take the tip they clearly were not because by the sound of the regulatory regime, it will simply make the cost of housing, the cost of building and all enterprises considerably more expensive.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:15): A couple of points need to be clarified in relation to the regulatory impact assessment. There are indeed two regulatory impact assessments. One relates to the model act and the other to the model regulations. The first question was, 'Has the regulatory impact assessment taken into account the regulations?' The answer to that is yes.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:16): Yes, the model regulations and the model act, on the basis that every state would implement basically the same bill. We now know that the same bill will not be introduced Australia-wide, and exhibit A for that is New South Wales. We still do not know what the final regulations will be in relation to this. Therefore, that figure must of course be, to use the technical term, quite rubbery, because we do not know what the final situation will be. In relation to regulatory impact statements, a minister in the other place, Mr Crean, referred to another regulatory impact statement when the legislation was over there. I assume that he was referring to the further regulatory impact statement in relation to the model regulations—or was he referring to something else?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:18): Subject to clarification, my understanding is that when the bill was introduced in the House, the regulatory impact statement with respect to the regulations was not available, but before it was debated and passed they were subsequently made available. In all likelihood that is indeed what the minister would have been referring to.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:18): Thank you for clarifying that. I was assuming that that would be the case. The parliamentary secretary may, in general terms, be aware of some concerns that have been expressed by the volunteer sector in relation to harmonisation. One example I had was in relation to the definition of the expression 'business or undertaking'. Can the minister advise whether that will include voluntary organisations? As I understand it, many of the volunteer associations are in fact incorporated associations. What will be the width, breadth and reach of this legislation for the volunteer sector?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:20): Indeed, the circumstances around volunteers are possibly even a bit more complex than that. I am sure that Senator Abetz understands that many incorporated or even unincorporated volunteer organisations...
involve both employees and volunteers. This is why the government believes the bill strikes a balance between protecting volunteers in the workplace while also not discouraging voluntary participation in community activities.

Under the model laws, workers who are volunteers are owed the same protections as any workers. This is an important protection and it ensures that volunteers are not treated differently to employees and contractors who are engaged in the same workplace. The application of the bill to volunteer associations is not directly relevant to this debate because the Commonwealth bill before us today will only apply to the Commonwealth, Commonwealth public authorities and, for a transitional period, non-Commonwealth licensees. However, the Commonwealth Work Health and Safety Bill does form part of a national scheme of harmonised work health and safety laws that recognises that there are some voluntary associations that do not have health and safety duties. To that extent, I think it is still relevant to deal with this point. These are groups of volunteers working together for community purposes who do not employ any person to carry out work for the volunteer association. The engagement of contractors for one-off jobs—for example, to audit the accounts or drive a bus for a day trip—will not affect a volunteer association's status. However, if a volunteer association has employees, then it will owe health and safety duties to all workers, including any volunteers who engage in work for the association. The engagement of contractors for one-off jobs—for example, to audit the accounts or drive a bus for a day trip—will not affect a volunteer association's status. However, if a volunteer association has employees, then it will owe health and safety duties to all workers, including any volunteers who engage in work for the association. The Model Work Health and Safety Regulations clarify that the law applies equally to both unincorporated and incorporated volunteer organisations. An officer who is a volunteer will have the duty to exercise due diligence but cannot be prosecuted as an individual for failing to do so. This is designed not to discourage voluntary participation as officers. Importantly, Safe Work Australia is developing, in consultation with Volunteering Australia, further guidance material for volunteer organisations, volunteer officers and volunteer workers.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:22): I am looking at a piece of correspondence I received from Snedden, Hall and Gallop Lawyers, dated 19 August, dealing with the volunteer sector. If I may, I will read out a section of it and obtain the parliamentary secretary's response.

Senator Jacinta Collins: Is it a short section?

Senator ABETZ: Unfortunately, it is not. I am thinking that possibly, if the chair will excuse, it might be better—

The TEMPORARY CHAIRMAN (Senator Pratt): To provide a copy?

Senator ABETZ: if we can actually make a photocopy. I thank the senator for that indulgence. We will try to get the documentation to the parliamentary secretary as soon as possible. I understand the minister was written to on 27 June 2011 as well.

Also, a letter from Safe Work Australia on 15 March 2011, signed by Mr Rex Hoy, in particular talks about clause 5 of the bill and the definition of a 'person conducting a business or undertaking'. Safe Work Australia, in Mr Hoy's correspondence, tells us:

Subclause 5(1) makes it clear persons conducting a business or undertaking are covered regardless of whether the business or undertaking is conducted for profit or gain. In other words, the not-for-profit sector is included. The letter then says:

Further guidance and the intended scope of the term 'person conducting a business or undertaking' may be found in the explanatory memorandum. The explanatory memorandum
explains that it is intended to be read broadly and covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown. This would also cover, for example, other organisations and entities that are recognised at law, including incorporated associations.

We are then told:
The ministerial council decided the model work health and safety laws should protect volunteers in their capacity as workers, but it should not have the unintended consequences of discouraging voluntary participation in community based activities.

We are told further:
The ministerial council directed that regard must be given to the extent to which the model work health and safety laws should place duties on volunteer directors or organisations and the extent to which duties of care should be owed to persons who undertake work in a voluntary capacity.

Possibly, Parliamentary Secretary, you could just explain to us again how that direction from the ministerial council was implemented to ensure that regard be had to 'duties on volunteer directors of organisations and the extent to which duties of care should be owed to persons who undertake work in a voluntary capacity'.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:27): I will revisit a couple of the points I made earlier: firstly, that Safe Work Australia is developing, in consultation with Volunteering Australia, further guidance material for volunteer organisations, volunteer officers and volunteer workers—and indeed some of the specificity that Senator Abetz would like to see may need to wait upon that guidance material.

Also, I should repeat that the Model Work Health and Safety Regulations clarify that the law applies equally, as he has indicated, to both unincorporated and incorporated volunteer organisations. But an officer who is a volunteer will have the duty to exercise due diligence but cannot be prosecuted as an individual for failing to do so. This is what I think the ministerial council was referring to, in that it is designed not to discourage voluntary participation as officers.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:28): The letter from Snedden, Hall and Gallop to which I referred, on page 2—possibly the first two paragraphs—refers basically to obtaining an assurance for the volunteer sector that those people who volunteer and those who give of their time voluntarily, especially sitting on committees of these associations, will be completely protected, given that in our society—and I am sure everybody in the chamber irrespective of their political persuasion would salute the work of volunteers—it is often hard to get people to serve on committees and if they now have an added burden of responsibility then that might mitigate against people putting their hands up to be of service.

I hear what the parliamentary secretary has said thus far, and if she could confirm that those two paragraphs on page 2 of the letter which I have provided her are not matters of concern then I will be happy, as I think the volunteer sector will be.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:30): Those two paragraphs do indeed cover some of the material we have discussed thus far. There are two key points in them, I think. The first is that directors of volunteer associations will have duties or responsibilities, but, so as not to discourage voluntary participation, they will not be able to be prosecuted as individuals for failure to discharge them. It is that inability to be prosecuted which provides the protection for
voluntary officers. The other issue is in relation to exemptions, where I think there was some concern as to whether the exemptions for voluntary associations that do not have employees would cover both incorporated and unincorporated organisations. The response to that is: yes, it covers both.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (17:31): As I understand it, the volunteer directors of associations will bear all the responsibilities but will not be able to be prosecuted. Have I understood that correctly?

**Senator JACINTA COLLINS** (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:32): I think officers will correct me if I am wrong. I think part of this relates to our earlier discussion about people potentially having concurrent responsibilities. The first step is that a voluntary association, because of the exemption, needs to have employees. So there may be some concurrent responsibilities between directors of a board of a voluntary association and a manager of both volunteers and workers in a voluntary association. Again, we are back to that earlier discussion about concurrent responsibilities. But the other point is that, if you are an officer who is a volunteer, you will still have the duty to exercise due diligence but you cannot be prosecuted as an individual for failing to do so.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (17:32): That then begs the question: they have a duty but they cannot be prosecuted—so what penalty applies, if any, to the director if they have not fulfilled their duties?

**Senator JACINTA COLLINS** (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:33): There would be no penalty to the director. There may indeed be penalties to the organisation itself. The protection we are referring to is that a voluntary officer cannot be prosecuted as an individual.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (17:33): If an organisation has given that responsibility to a particular director who then fails in that duty, is the organisation still responsible? If it has given that responsibility to somebody else, can it, in effect, sidestep its responsibility? Or is this a clear example where an organisation—or indeed a business, to take it that step further—which seeks to ensure that everything is done properly, but then delegates responsibility to a person who fails, can then still be prosecuted?

**Senator JACINTA COLLINS** (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:34): Senator Abetz, there is a separate duty which relates to the organisation and the organisation is unable to delegate that responsibility to a voluntary or a non-voluntary officer.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (17:35): That is a very interesting concept because the organisation of itself cannot do anything other than through individuals. The organisation cannot go along to a work site. The organisation will have a resolution, or will have determined, that a particular person is to take on a particular responsibility. The organisation itself cannot. What we are being told is that, even if the organisation has sought to do everything within its powers—set out what the duties are chapter and verse to the individual who has been delegated the responsibility—and that person then fails in delivering on that responsibility, the organisation could still be held responsible; is that correct?
Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:36): I think in part we are confusing duties here. In one sense, I should relieve the concern that, if a voluntary officer has a duty and fails to meet that duty, certainly they are protected in that they cannot be prosecuted as an individual, but simply by virtue of that failure to be able to prosecute them as an individual that does not then leave that duty with the organisation. The duties for the organisation are quite distinct from those which might lay with any individual voluntary officer.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:37): That comes back to my question that clearly the organisation has the responsibility for the management whereas the individual may have been delegated with the responsibility of controlling the situation. So the management has done everything within its power to ensure that the individual delegated does the right thing but by virtue of being in a management position they will still be held responsible albeit they do not have the control by virtue of an individual having been delegated that responsibility.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:38): I think one of the difficulties in discussing this situation is that in some senses it is hypothetical. The circumstances will depend on the facts of the case. It may be that there are circumstances where, despite the best endeavours of a voluntary officer, it was inappropriate that that officer should be given the tasks involved. But in the absence of any particular facts in a matter, it is very difficult to second-guess the circumstances where you might suggest that an organisation has done everything in their control and responsibly given certain roles to a voluntary officer.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:39): And of course that makes out the point: why on earth are we throwing out 40 years of jurisprudence in relation to the test because every circumstance with this legislation is going to be hypothetical until such time as we get case studies and case law on the interpretation of this new regime locked in. I think I have made the point as much as I can in relation to that and the government clearly has a model bill from which it will not depart, irrespective of the strength of the logic of the arguments I put to them.

Question negatived.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:40): by leave—I move:

(1) Clause 155, page 111 (line 28), omit “sections 172 and”, substitute “section”.

(2) Clause 155, page 112 (lines 8 and 9), omit subclause (7).

(3) Clause 171, page 123 (line 26), omit “sections 172 and”, substitute “section”.

(5) Clause 173, page 124 (line 21), omit paragraph (1)(c).

(6) Clause 173, page 124 (lines 26 and 27), omit “, unless he or she was first given the warning in subsection (1)(c)”.

It is quite clear in this legislation that a prosecution under the occupational health and safety laws are criminal matters. Under normal criminal law, everyone has the right to silence and protection from self-incrimination—that is, you cannot be forced to say something to an investigator, let us say the police in normal life, unless the investigator first obtains a court order. This protection is a right we all have and is essential to community confidence in our criminal justice system and in the rule of law. It stops abuse of power. Protection
against self-incrimination is currently available under the occupational health and safety laws, or was in New South Wales, Queensland, South Australia and Victoria. These model laws take away that right of silence and protection from self-incrimination. This will apply not only to employers but to all managers and workers in workplaces. It will give powers to occupational health and safety inspectors which are not in fact available to the police. I would be interested in the public policy arguments as to why a breach of an occupational health and safety law might be of greater moment than, let us say, a murder in which the murderer is given the right to silence but that right is not given under this bill.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:43): Senator Abetz is correct. The right to silence and the privilege against self-incrimination are important individual rights. However, these individual rights are not absolute and they must be balanced against the public interest. In the field of regulation, particularly in the regulation of workplace safety, which is a matter of major public importance, one crucial public interest is securing effective compliance and all prosecutions. It is well established that the abrogation of individual rights may be justified if the information to be compelled concerns an issue of major public importance that has a significant impact on the community in general or on a section of the community. Safety in the workplace is such an issue of major public importance.

Abrogation of the right to silence and the privilege against self-incrimination may also be justified where there is an immediate need for information to avoid risks such as danger to human life, serious personal injury or damage to human health, or where there is a compelling argument that the information is necessary to prevent further harm from occurring.

The Work Health and Safety Bill seeks to ensure that the strongest powers to compel the provision of information are available for securing ongoing work health and safety. This means abrogating the right to silence and the privilege against self-incrimination. However, the bill balances the loss of a person's right to silence by limiting both the direct and indirect use of forced disclosure against the person required to provide the information. This means that an individual will be compelled to provide information when asked but that that information and any subsequent obtained as a result of the forced disclosure cannot be used to prosecute the individual. The advantage of section 172 is that all information is available to an inspector following a safety incident, thereby enabling an inspector and a PCBU to take timely safety and remedial action.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:45): So we can force somebody to give evidence which might incriminate them to stop a further injury taking place, but if we suspect a serial murderer is on the run, despite the fact that we think he or she may commit another murder, we cannot have the same powers applied to them. Can the parliamentary secretary confirm that that is the case and then explain what the public policy arguments are?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:45): I think I can simply reiterate my last two points. The bill balances the loss of a person's right to silence by limiting both the direct and the indirect use of forced disclosure against the person required to provide the information. This means that an
individual will be compelled to provide information when asked but that that information and any information obtained as a result of forced disclosure cannot be used to prosecute the individual. The public interest argument is to avoid further safety incidents.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:46): I am not sure I fully got an answer to that, but can the parliamentary secretary now explain how this regime is different to the regime under the Australian Building and Construction Commission?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:47): The point that I can make on this issue to Senator Abetz is the regime that has been referred to here is indeed similar to that in the ABCC bill that is currently before the parliament.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:47): How does the bill relating to the ABCC differ from that which is in the current legislation for the Australian Building and Construction Commission?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:48): I will take advice. I may need to take some elements of this question on notice. I can cover it broadly, but we do not have the relevant officers for the ABCC bill presently with us. In rough terms, my understanding is that the protections that I have mentioned in this regime regarding the inability to prosecute the individual with respect to the information provided are different to those that are in the ABCC bill.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:49): If somebody has told you they are different they must have some knowledge as to why they believe them to be different and how they are different. With great respect, to just be told that they are different must hopefully be based on something.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:49): I am happy to take this issue on notice and for officers to confirm their impression, but I would not want to mislead the chamber that the nature of the answer I have given you is absolute.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:50): I appreciate that response from the parliamentary secretary, but what we will be witnessing later on this evening is the Labor-Green alliance voting down this amendment to protect people from the right to silence and from self-incrimination because Labor and the Greens believe it is so important in the occupational health and safety regime. But exactly the same people—trade union leaders and bosses and so-called human rights lawyers—who have advocated for these to become criminal laws and to have the normal criminal law diluted to remove the protection from self-incrimination have frothed at the mouth and carried on about a virtually identical regime in the Australian Building and Construction Commission. They have condemned the coercive powers, saying what an outrage it is, how it is a denial of fundamental human rights and how we in a free, democratic society should not be subjected to the types of laws that were designed to stamp out thuggery, physical violence, standover tactics et cetera in workplaces all around the country. These recommendations, I might add, came not out of a ministerial council dominated by all Labor governments but out of a royal commission. It will be interesting to see how strongly this principle is upheld by the
smorgasbord of ex trade union bosses that sit on the other side. If I recall correctly, the statistics are that out of the 31 Labor senators in this place 28 of them are former trade union bosses or officers. When dealing with the issue of principle and the application of criminal law, if it relates to trade union bosses it is an outrage against human rights and you will get people frothing at the mouth and opinion pieces in the paper that are morally outraged. Yet, when it is in legislation such as this, all of a sudden they take a completely different approach. It would be interesting to see if the parliamentary secretary has, in the meantime, found out what the government's position is in relation to what is a very similar regime in two pieces of legislation.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:53): As I indicated, the differences are something that the government has taken on notice, although my understanding at this stage, as I said, is different to Senator Abetz's in his assertion that they are similar regimes. Indeed, my understanding of this regime is that the provisions around protecting an individual from prosecution are different to those in the ABCC bill.

Question negatived.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:55): I move:

(1) Clause 176, page 125 (line 25) to page 126 (line 4), clause TO BE OPPOSED.

First of all, I ask the parliamentary secretary why the power in clause 176 exists. Why does it exist? What are the reasons for it and its intent?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:56): This item proposed by Senator Abetz would remove clause 176, which allows an inspector to seize a workplace or part of a workplace or a plant, substance or structure at a workplace that the inspector has entered in accordance with part 9 if the inspector reasonably believes that the workplace or thing—that is the first time I have used 'thing' in a contribution!—is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident.

An inspector's power to seize part of a workplace will only arise in the most dangerous situations where an item is defective or hazardous to a degree where it is likely to cause serious injury or illness or a dangerous incident. If those circumstances cease to exist then it may be reasonably expected that the item would be returned immediately. Without this power, worker safety is potentially put at risk. Inspectors are subject to the regulator's direction and oversight and also other checks and balances.
in the provisions, including the requirement for written notice to be given of the decision and the requirement to provide a receipt for seized items. Higher courts such as the Supreme Court also have inherent judicial oversight of the decision making and actions of inspectors as public officials. Procedures are included in the bill for return of seized items in clause 180 and access to seized items in clause 181.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:58): On the face of it, this seems quite excessive, so can the parliamentary secretary explain why an authority would not just be able to cause the work that is unsafe to cease. Why do we need the power to seize and, one therefore anticipates, also remove these alleged offending items rather than simply closing down the workplace from further work? As I understand it, that is the current law and this takes it a step further.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:59): I will ask my officers if they can give me an example of an item that might be particularly relevant to these types of circumstances. I can imagine some circumstances where the item of risk might be something in the nature of a substance where its removal would make a significant difference to the risks involved in a workplace as opposed to simply ceasing work. While we are thinking of a particular example that might highlight the issue, I do have some further background. The Review of National Occupational Health and Safety Laws specifically considered the need for seizure powers and recommended that inspectors be given the power to seize dangerous things at a workplace. The review also recommended that broad powers be given to inspectors in a way that consolidates the powers in current occupational health and safety legislation in various jurisdictions. Clause 176 is modelled on the equivalent Queensland provision in section 110 of the Workplace Health and Safety Act 1995. Section 44 of the Commonwealth's Occupational Health and Safety Act 1991 provides inspectors with the power to seize any plant, substance or thing at a workplace if it is reasonably necessary to do so for the purposes of an investigation.

Concerns about the seizure powers in the Workplace Health and Safety Act were previously raised by Independent Contractors Australia. Specifically, ICA considered the powers to be expansive and not subject to court oversight. A number of important safeguards were included in the act. The powers are subject to the regulator's oversight and also other checks and balances in the provisions including requirements for written notice to be given of the decision and providing a receipt for seized items. There is a defence of reasonable excuse for failure or refusal to comply and procedures are included in the model act for return of seized things, in clause 180, and access to seized things, in clause 181.

It is also not the case that there is no possibility for court oversight as higher courts such as the Supreme Court generally have inherent judicial oversight over administrative decision making. I refer to the High Court's comments in Kirk v WorkCover NSW & Ors.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:02): And what a great High Court decision that was in the Kirk case. I refer everybody to Justice Heydon's decision. Is the written notice required to be given before or after the seizure?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations)
(18:04): I can refer Senator Abetz to clause 177(4):

The requirement:
(a) must be made by written notice; or
(b) if for any reason it is not practicable to give
the notice, may be made orally or confirmed by
written notice as soon as practicable.

Then subsequent provisions in 178 say that
such notice is to be followed by provision of
a receipt.

Senator ABETZ (Tasmania—Leader of
the Opposition in the Senate) (18:04): Is it
written notice before?

Senator Jacinta Collins: Yes.

Senator ABETZ: So it is definitely
before. If it is before, how long before or
does that depend on the circumstances?

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for
School Education and Workplace Relations)
(18:05): Yes, it does depend on the
circumstance—it is not specific about how
long before.

Senator Abetz: But it has to be before?

Senator JACINTA COLLINS: Except
for provision 177(4)(b), which indicates:
if for any reason it is not practicable to give
notice—

presumably the absence of notice is provided for—

may be made orally and confirmed by written
notice as soon as practicable.

Senator ABETZ (Tasmania—Leader of
the Opposition in the Senate) (18:05): Clause 176 states:

This section applies if an inspector who enters
a workplace under this Part reasonably believes that:

... ... ...

(c) a substance at the workplace or part of the
workplace;

... ... ...

is ... hazardous to a degree likely to cause ...
injury or illness ...

Would that include the removal of drugs and
other similar substances?

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for
School Education and Workplace Relations)
(18:07): The first point is that, in practice, if
workplace inspectors found drugs they
would call in the police to deal with the
matter. But, on your reading of the provision,
I think we need to indicate that we are
talking about circumstances such as
defective equipment or hazardous material to
a degree likely to cause serious injury. In the
case you gave of a substance, if the presence
of that substance was hazardous and likely to
cause serious injury then the provision would
apply.

Senator ABETZ (Tasmania—Leader of
the Opposition in the Senate) (18:08): All
very interesting. We will be doing the drug
forces out of a job, no doubt. I will await
with interest whether that actually ever
occurs. But an inspector, under this
provision, will be part of the regulator, if that
is the correct term—

Senator Jacinta Collins: Yes.

Senator ABETZ: it is the correct term—
and the people who run the show, if I can use
that technical term. Can we be advised of the
type of people it is intended to appoint? With
Fair Work Australia, for example, we were
promised by the former Prime Minister, Mr
Rudd, that we would not be subjected to an
endless tribe of 'trade union officials'. Of
course, that is exactly what we have got with
Fair Work Australia. What is going to be the
procedure in relation to the appointment of
the regulator and of the important personnel
who will run this outfit?

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for
School Education and Workplace Relations)
(18:10): Employees of Comcare will be the inspectors. On the role of the inspectors, I think a better comparison would probably be with the officers of the Fair Work Ombudsman rather than members of Fair Work Australia, which I think might have been your point.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:10): I note that the parliamentary secretary very wisely did not seek to engage on the point I made about the appointments to Fair Work Australia. Seeing that she desisted from that I will not prolong by pointing out that which has occurred with Fair Work Australia. I appreciate the answer she has just provided.

The TEMPORARY CHAIRMAN (Senator Boyce): The question is that clause 176 stand as printed.

Question agreed to.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:11): by leave—I move opposition amendments (1) and (2) on sheet 7160 together:

(1) Heading to clause 275, page 189 (line 1), omit the heading, substitute:

275 Effect of compliance with regulations or compliance codes

(2) Clause 275, page 189 (lines 2 to 12), omit subclauses (1) to (3), substitute:

(1) If:

(a) the regulations or a compliance code make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and

(b) a person complies with the regulations or compliance code to the extent that it makes that provision;

then, for the purposes of this Act and the regulations, the person is taken to have complied with this Act or the regulations, as the case may be, in relation to that duty or obligation.

Currently, as I understand it, we have codes of practice, which are given high importance. What this amendment seeks to do is accept compliance with a code of practice as evidence of compliance with required safety standards. As I understand it, there are a number of codes of practice in existence and it would seem fair, especially fair, if I might say, to small businesses, if compliance with a code of practice were deemed to be compliance with a required safety standard. What could occur, as I understand it, under this legislation is that in proceedings a code of practice could be admissible as evidence of whether or not a duty or obligation had been complied with and that a court could have regard to the code as evidence of what is known about a hazard or a risk. It seems to the coalition that it would be helpful if a person could be taken to have complied with this act or the regulations in relation to that duty or obligation so that there was no grey area in relation to compliance with these codes of practice.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (18:14): The national review panel considered the role of codes of practice and recommended that compliance with a code should not be deemed to constitute compliance with the act or regulations, and this view was endorsed by the Workplace Relations Ministers Council. The review panel explicitly considered deemed to comply codes and rejected their adoption, noting that deeming can only be useful to the extent to which the code is relevant to the duty and there may be a breach of duty for matters falling outside the code. Currently, only two out of nine jurisdictions—Queensland and Victoria—have deemed to comply codes. The Work Health and Safety Bill recognises the important role of codes of practice and achieves the right balance between formalising this role while also avoiding overprescription and discouraging a
'tick and flick' approach to safety in the workplace.

While codes of practice play an important role in explaining the requirements of the act and regulations and in setting out practical ways to meet the required standard of occupational health and safety practice at work, the focus of duty holders should always be on achieving the best possible standard of safety in the workplace. Achieving this may involve adopting measures that are not specified in the regulation or code of practice. Under the Work Health and Safety Act, an approved code of practice will be admissible in proceedings as evidence of whether or not a duty or obligation under the act has been complied with. For example, a court may use a code of practice as evidence of what is known about a hazard and risk control. A code may also be used to determine what is reasonably practicable in the circumstances to which the code relates.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:16): We understand what occurred and what the current bill suggests, but it does seem to the coalition that a person that complies with a regulation or compliance code, to the extent that it makes a provision, should be taken to have complied with this act or the regulations in relation to that duty or obligation. It seems to the coalition that that is a fair and reasonable thing, especially for somebody who might be starting up in a particular business or in a particular area and wants to search out the appropriate regulations or compliance codes. If they abide by that, then they should be seen as fully satisfying the legislation. It is not necessarily just a 'tick and flick'. Once a business is in a particular area of endeavour for a longer time and it gets material sent to it as to best practice, that might then inform it of other things. I believe and the coalition believes that especially start-up businesses should be afforded the protection that we would seek to provide. That is the debate in relation to the amendment. Can I ask the parliamentary secretary: is it correct that Queensland have advised of concerns in relation to the mining code of practice.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (18:18): I understand that there are a number of mining codes of practice that are out for consultation and that that consultation period has just closed. There is nothing at hand on that issue, but we will see what we can do.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:18): Parliamentary Secretary, you may have indicated to the chamber before as to when the regime is to commence. Could you just remind us of that date? Is it 1 January 2012?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (18:19): The act will commence in January 2012, but there is a separate process with respect to mining.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:19): What about other endeavours apart from mining? Do we have a calendar or a flowchart as to when different codes of practices will start, and when do we anticipate that the mining code will come into being?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (18:21): Some of the difficulty with this answer is that it depends in part on jurisdictions. There are a number of codes that are due to commence on 1 January 2012. There are others, such as the mining codes, that it is envisaged will commence around mid that year. Further to that, there are also
other codes that are in various stages of development. The complication with the mining codes is that the way some jurisdictions deal with mining differs between jurisdictions as well.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:22): The legislation somehow is supposed to start on 1 January 2012, but as we indicated earlier—when I say 'we' I mean both sides of the chamber are agreed; I was not using the royal 'we'—both sides are agreed that this is basically coathanger legislation and it is the regulations that will actually be the important aspect. Looking at the Safe Work website, we are told that issues papers are released and then there are closing dates for submissions. If you go through that, you see, for example, that safe design of building and structures has a closing date of Friday, 16 December 2011. I am not sure how many builders are still going to be around on building sites on 16 December 2011. Possibly on that issue, can we be told when that will start applying? Can we also be told how many codes are still outstanding at this stage? How many codes are there altogether, how many codes are already in place, ready to roll as at 1 January 2012? How many are outstanding and how much notice will the different—what is the word I am looking for?

Senator Jacinta Collins: Sectors.

Senator ABETZ: Sectors—thank you very much, Parliamentary Secretary. How much notice will the various sectors be given of the new practices and codes which they will be expected to comply with?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (18:24): Senator Abetz, I would like to provide you with as comprehensive an answer to this as is possible, but I am conscious that I suspect some of the information will not be immediately available. So I am happy to take on notice what I cannot cover. Safe Work Australia came up with a list of priority codes—I think there were about 12—and all of those are due to commence on 1 January. In terms of how many others are under development, I am not sure that a total number will be immediately available.

Here it is. Beyond the first 12 priority codes, I understand that there are six further codes that are due to commence on 1 January as well, and there are roughly half a dozen further that are under development for introduction later in that year. How many more beyond that are envisaged for development I think is an ongoing process with Safe Work Australia. But I can also indicate that Safe Work Australia has been dealing with transitional arrangements in terms of movements within some jurisdictions from an existing code to what may be a new national code for the sector. Also, they will be issuing a notice about the issues you have raised about how much notice different sectors may have of any new practices or requirements as they develop them.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:27): Can we be given a list of those 12 priority codes? If I am reading the Safe Work website correctly, first aid in the workplace to me would have been potentially a priority area, given that this is a bill and a regime designed to enhance safety in the workplace, but I look at the code and the release date was 26 September and the closing date for submissions was 18 November 2011. So can you give us an indication of whether first aid in the workplace is one of the priority codes? Also, when will it be finalised and released to the public, and from which date will it apply?
Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (18:28): With respect to that particular code, we will need to check on the time frame that it sits within. If it pleases the Senate, it may well be better to take the full circumstances of all of the codes and give you, as you said, that template so that you can get a comprehensive picture in relation to all of the codes.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (18:28): Without wanting to make people work overtime and over their dinner break—and you know that when you say something like that is exactly what you are asking them to do, and I apologise for this, but if I am reading the clock correctly we are only about a minute away from the dinner suspension—I would appreciate it if that material could be found. There is also the other question that the parliamentary secretary has kindly taken on notice. If those other questions could be answered so that we can resume the debate after the dinner suspension at 7.30, that would be most helpful. I understand, for example, that the building industry code is one of the priority codes and that it will only be coming out after mid-December and it will be applying as of 1 January 2012. Whether all those—I will not say facts—assertions being made by me at this stage are in fact correct—

The TEMPORARY CHAIRMAN (Senator Boyce): Order! It being 6.30, the sitting of the committee is suspended until 7.30 pm.

Sitting suspended from 18.30 to 19.30

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:30): Does the parliamentary secretary have answers to the questions that were taken on notice to be answered after the dinner break?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:30): With respect to codes of practice, this is the level of information that officers have been able to ascertain over the dinner break. The staggered approach to the development of codes, including the identification of priority codes to commence from 1 January 2012, was agreed by Safe Work Australia members comprising representatives of each state and territory, the Commonwealth, the ACTU, the AiG and the Australian Chamber of Commerce and Industry. The staggered approach to public comment was at the request of stakeholders so that they could engage and provide considered comment.

Eleven priority codes of practice have been agreed by ministers from seven out of nine jurisdictions and are due to commence from 1 January 2012. These are: hazardous manual tasks; how to prevent falls at workplaces; labelling of workplace hazardous chemicals; preparation of safety data sheets for hazardous chemicals; confined spaces; managing noise and preventing hearing loss at work; managing the work environment and facilities; work health and safety consultation, cooperation and coordination; how to manage work health and safety risks; how to safely move asbestos; and how to manage and control asbestos in the workplace.

Public consultation on a further six codes of practice closed on 18 November. These are due to be finalised by the end of this year. They are: first aid in the workplace—the one you mentioned, Senator Abetz; managing risks in construction work; preventing falls in housing construction; managing electrical risks at the workplace; managing risks of hazardous chemicals; and managing risks of plant in the workplace.
Public consultation on nine codes of practice will close on 16 December. They will be reviewed following this consultation and are due to be finalised in the first half of next year. They are: safe design of building and structures; excavation work; demolition work; spray painting and powder coating; abrasive blasting; welding and allied processes; safe access in tree trimming and arboriculture—something I am sure Senator Faulkner would appreciate; preventing and managing fatigue in the workplace; and preventing and responding to workplace bullying.

It is proposed that further model codes of practice are developed to support the implementation of the Model Work Health and Safety Act and Regulations 2012, and at this stage these codes include: traffic management; diving; forest operation; precast, tilt-up and concrete elements; formwork and falsework; plant design, manufacture, import and supply; guarding plant; amusement devices; scaffolds; cranes; industrial lift trucks; rural plant; cash in transit; managing risks in policing; vibration; and biological hazards.

Aside from codes, guidance material is being developed on worker representation; personal protective equipment; heritage plant; exposure standards; health monitoring; foundry work; electroplating; major hazard facilities; nanotechnology; and synthetic mineral fibres.

These lists of codes and guidance material are indicative only. Safe Work Australia will continue to identify areas where guidance is needed under the model work health and safety legislation and to develop relevant model codes of practice and guidance material. To avoid a gap, the transitional arrangements for the Commonwealth Work Health and Safety Bill will preserve those parts of the current codes of practice covering topics still under development. This is consistent with transitional principles for the model act agreed by Safe Work Australia members.

Safe Work Australia members have also agreed to a policy of transitioning to new requirements in approved codes of practice on 1 January 2012. This policy provides that, to help duty holders to transition to any new safety practices, processes and control measures recommended in approved codes of practice, inspectors will use the guidance provided in the codes to assist duty holders to achieve compliance. Where new approved codes of practice are in place, regulators understand that a period of adjustment is required for duty holders to gain an understanding of the detail in a code of practice and how it applies to activities at their workplaces.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:37): In relation to the body that looks at the codes of practice, we have been told that there is a Commonwealth representative, state and territory representatives and, then, the ACTU, the AiG and the ACCI. Are those organisations equally represented, one each from those organisations? Also, why is it that we did not have, say, the Council of Small Business of Australia represented or Independent Contractors Australia or some organisation that specifically does seek to champion the cause of small business?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:37): We have had debates about the composition of work safety institutions for quite some time but I must admit my understanding currently is in neglect. If you wait one moment I will get the full details for you.
The relevant act provides for two representatives who would be regarded by the minister to represent employer interests. At this point in time they happen to be the Australian Industry Group and the Australian Chamber of Commerce and Industry. I suspect the Australian Chamber of Commerce and Industry would certainly purport to represent the interests of small business. Similarly, for employee organisations at this point in time the two representatives are from the ACTU.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:39): I thank the parliamentary secretary for that. I did caveat my remarks by saying an organisation that 'specifically' champions small business, being cognisant of the fact that ACCI does in fact see itself partially in that role.

Please correct me if I got some of the figures wrong, if not all them, but I understand that 11 codes of practice have now been agreed by seven out of nine jurisdictions. Could the parliamentary secretary indicate to us the two jurisdictions that have not agreed to those 11 codes?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:40): Those figures are correct. Victoria and Western Australia have indicated that they want more time before they indicate their position.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:40): They are quite significant jurisdictions. Has any time indication been provided to the government as to when they might, if at all, sign up to those codes? And what are the issues in relation to the codes that have held Victoria and Western Australia back?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:41): I understand the outstanding issues are that both jurisdictions are looking at further regulatory impact assessments. They have sought a delay of 12 months. At this stage the government is urging both jurisdictions to come to the party.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:42): Once again this highlights the rubbery nature of the figures that have been submitted to us about what the harmonisation will actually do, because it is all premised on increased productivity and costs being saved by a genuinely harmonised regime. But here we have the two very significant jurisdictions of Western Australia and Victoria not giving an indication at this stage as to when they might sign up in relation to the 11 codes that have been agreed by seven jurisdictions.

In relation to those 11 codes that have been agreed by the seven jurisdictions, can we be advised as to what dates those codes were finally made available to the community? I do not need all the specific dates, necessarily, unless you have them, but I ask how much time have the various sectors been given to make the changes, because, as I understand it, there is one within the building and construction sector that is only going to be released some time later next month. Could this be confirmed: past the half-way mark in December yet it is to apply as of 1 January?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:44): The first 11 codes were available for public comment between December last year and April this year, and the revised versions have been available publicly since 9 November. The further six codes were available for public consultation which closed on 18 November. I think one there,
about preventing falls in housing construction, may be the one you are thinking of, Senator Abetz. And, yes, it is still envisaged that they would apply from 1 January.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (19:45): When will that particular one, the housing one, be made available to the public?

**Senator JACINTA COLLINS** (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:45): Senator Abetz, it is envisaged that this one will be available in December, subject to approval by the ministers. They are not meeting; it will be between ministers in writing. A specific date is yet pending that process.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (19:46): A number of these codes now are being imposed and businesses required to comply with less than two months notice in the case of those that were publicly available as of 9 November. I confess that, when I come into this chamber, most of the time I am of the view that big business is generally big and ugly enough to look after itself, but my concern here is: how on earth are small businesses going to be able to adjust and make any investments, changes or whatever within a period of two months? If that is not bad enough—

**Senator Jacinta Collins:** That's not what's being suggested.

**Senator ABETZ:** Well, as I understood it, there were certain codes that had been made available from 9 November which will come into being as of 1 January 2012.

**Senator JACINTA COLLINS** (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:47): Just a point of clarification here: I should take the senator back to the transition arrangements which I mentioned earlier. Perhaps, after the very long list of various codes, guidance notes and the like, they were lost within that. Safe Work Australia members have agreed to a policy for transitioning to the new requirements in approved codes on 1 January. This policy provides that, to help duty holders transition to any new safety practices, processes and control measures recommended in approved codes of practice, inspectors will use the guidance provided in the codes to assist duty holders to achieve compliance. Where new approved codes of practice are in place, regulators understand that a period of adjustment is required for duty holders to gain an understanding of the detail of the code of practice and how it applies to activities at their workplace. Perhaps it might be more useful for Senator Abetz if I table the full version of the policy for transitioning to the new requirements in approved codes of practice for 1 January 2012.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (19:48): The tabling of that document would of course be most helpful, but it does not overcome the issue that it is basically at the discretion of the regulator to determine whether or not in a particular circumstance they believe that the business concerned should be complying with a particular provision of a code. That is where the concern is from the coalition perspective: in relation to the uncertainty with this regime. They will now have to rely somehow on the good grace and offices of the regulator to ensure that they are not prosecuted, keeping in mind that the prosecution under this legislation will be for a criminal offence, so we are talking about serious matters here. It is all very nice to say that there is a transitional period, but it is only about giving advice on compliance and seeking voluntary compliance. If a case is brought in any event, what impact may that
have, if any, in relation to the court's determination?

It will be interesting to know what arrangements have been made by Safe Work Australia in relation to these new codes of practice to educate all the businesses that might be impacted. One wonders whether or not they have been provided with the code of practice and told that this is what is going to apply, and how widely distributed this document, the policy for transitioning to new requirements in approved codes of practice on 1 January 2012, has been to all the small businesses that might be impacted. If we could be advised of the distribution of this policy document, that would be most helpful.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:51): The education programs around these measures have principally been conducted by the various different jurisdictions. This policy about transition is relatively recent, but I think the Commonwealth can certainly recommend that this be a component of the education programs if it is not already. I understand that it is available on the Safe Work Australia website as well, but I appreciate your concern that that is not necessarily adequate.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:52): I thank the parliamentary secretary for her approach in relation to that matter because with things of this nature when I talk to small businesses in relation to the new modern award system, I find that with compliance and the transitional arrangements, overwhelmingly, small businesses try to do the right thing. Unfortunately, every now and then they do get confused. They are not sure of exactly where to look for information or how to gain information. Unfortunately, ignorance is no excuse and so many a good and decent small business person finds themselves in difficulty. I would hate to see that occur yet again with this particular regime. If the government is picking up on that, or going to make that suggestion if it is not occurring, I thank the parliamentary secretary and the government. Can I be reminded as to the confined spaces code and the first aid code? As I understand it, they were not in the priority list.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:55): One was.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:55): Which was? The first aid or the confined space?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:55): In the first 11, confined spaces is in that list. The first aid one is in the subsequent six.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:55): Given the pink batts experience, one assumes that the confined spaces code of practice was deemed as a priority and one assumes that would also impact on a roof cavity. That the government has finally learned something out of the pink batts debacle is to be welcomed, but I would have thought that with the first aid code—if we are talking here about occupational health and safety and safety of workers—why on earth would first aid of itself not be a priority code of practice? Please do not tell me that that is what the minister or ministerial council decided. I would like to know what was the basis of determining that something was a priority area and other areas were not.
Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:55): I must admit, Senator Abetz, I am pleased to understand that the answer is pretty much as I would have guessed. The first 11 were established in areas where there were regarded to be significant risks or the level of information presently available in those areas was seen as void, whereas the subsequent six were recognised to be areas where there was a reasonable level of information already available and already in place that could apply until such time as the further work brought up a model standard.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:56): Thank you for that. That does make sense. I return to the policy document that the parliamentary secretary has kindly tabled. We are told, at about halfway down the first page, 'regulators have discretion to determine the most appropriate tool in any given circumstance' and then we are told, 'giving advice right through to court-based enforcement'. This discretion that regulators have is not only for the transitional period but also is a discretion that they will have at all times. Therefore, it is not a special discretion for the transition period. Has a transition period been determined? If we are going to talk about transitioning, what is the transition period?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:57): The short answer, Senator Abetz, is where there is a new or significantly different duty, it is essentially agreed that that transition period will be 12 months. There is general agreement around the transition period for the regulations but each jurisdiction is, in some areas, moving on different starting points so the nature of the transitions will be different depending on the circumstances.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (19:58): I thank the parliamentary secretary for her answer but, once again, how is a small business in particular going to determine whether something is a new or significantly different practice that is required, especially if it is a new code of practice? Where in this document—and I may well have missed it so I will not allege anything—even if a small business were to happen upon the Safe Work website are they told that this transition period will go for 12 months? I cannot see it in the document.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (19:59): They are not told that in the document because whether the 12 months applies or not is going to depend on whether there are new or significantly different duties relevant to any particular workplace. The more critical point though is the one I have referred to at the commencement—I cannot at the moment point you to exactly where in the paper I told you it was—and perhaps a more common language description of that might assist small business. It is the provision in the last two paragraphs that says: 'To help duty holders'—again, language that is not necessarily helpful for a small business—to transition to any new safety practices, processes and control measures recommended in approved codes of practice, inspectors will use guidance provided in the codes to assist duty holder to achieve compliance.' The point is that if there are significant differences in the codes or in the duties that are required, it is incumbent upon the inspectors to use the guidance provided in the codes to help small businesses to achieve compliance rather than to prosecute those small businesses.
Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:00): So do the codes of practice set out in red ink, to use the old-fashioned terminology, those sections that are new or significantly different? How is that highlighted to the punter that is reading through the code of practice?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:01): That will of course differ on a jurisdiction-by-jurisdiction basis. As I indicated, the jurisdictions are responsible for their education programs. I suspect it varies across jurisdictions as to the extent to which they have engaged organisations such as small business organisations and others in producing material which would have that effect.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:01): So that provides absolutely no certainty for a small business and anything that is so-called model in these so-called model rules and model codes of practice, because how they vary in each jurisdiction will not be highlighted in that code because it is a national code. So the punter who goes to Safe Work Australia's website will only see the code and not be informed, as I understand it, as of necessity or at all, how that might be different to the existing regime or standards, let us say, in the state of Victoria as opposed to the state of Tasmania.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:02): That may also be a quite helpful suggestion. I know from our experience with model workplace relations requirements and the work we have done with industry parties there that the development of information around what differs has been important as people have moved to modern awards and has been quite useful to the parties in that sense, in that their own organisations have had assistance to develop material. I think that is quite a helpful point that should be made back to the jurisdictions in terms of how they put out their information programs and indeed that the website for Safe Work Australia adopt links to such material.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:03): I am here to help, so it is nice to know that every now and then the opposition can make the odd suggestion that is taken up. The assurances that the parliamentary secretary gives are the sorts of assurances that one would expect the government to give in matters such as this, but they were identical, or similar, in relation to the Fair Work Act and the way the Fair Work Ombudsman would undertake his activities. In recent times we have had the Federal Court decision of the Fair Work Ombudsman v Ballina Island Resort, if I recall correctly, where the federal magistrate was highly critical of the high-handed approach taken by the Fair Work Ombudsman in relation to the matter for not having actually sought to educate and overcome some of the issues; they were in fact just technical issues. I will not seek to delay the committee much longer in relation to this matter, but once again confirm the coalition's very, very strong concerns about how this will impact, especially in relation to small businesses.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Mark Bishop): We now move to the Work Health and Safety (Transitional and Consequential Provisions) Bill 2011.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:05): by leave—I move opposition amendments (1) and (2) on sheet 7157 together:
(1) Schedule 2, item 10, page 14 (line 29), omit “12 months”, insert “3 years”.

(2) Schedule 2, item 10, page 14 (after line 31), at the end of the item, add:

(3) For the period of 3 years after the commencement day, the following courses of training will be taken to be covered by paragraphs 72(1)(a) to (c) of the WHS Act:

(a) courses that were accredited under the 2006/2007 Safety, Rehabilitation and Compensation Commission's Guidelines for the Accreditation of Occupational Health and Safety training courses for Health and Safety Representatives;

(b) courses that were accredited under the 2010 Safety, Rehabilitation and Compensation Commission's Guidelines—Health and Safety Representatives training in the Commonwealth jurisdiction, or under any later guidelines issued by the Commission for accreditation of occupational health and safety training courses for health and safety representatives (as amended from time to time).

(4) Subitem (3) applies only in relation to courses covered by paragraphs (a) and (b) of that item whose content is updated to reflect legislation in force at the time.

We are dealing with the Work Health and Safety (Transitional and Consequential Provisions) Bill 2011. Training in occupational health and safety is always an important issue and at this time of transition to new arrangements the availability of courses is vital. Unfortunately, the availability of accredited courses has been reduced by this bill by some 26 per cent since restrictive changes were introduced. In order to facilitate transition and ensure the availability of training courses, the coalition is putting forward these amendments to enable the continuance of courses accredited in 2006-07. The changes made by the government support union training at the expense of a private provider, with no beneficial outcomes whatsoever.

Can I repeat that which I pursued at Senate estimates. There is a particular provider that I have in mind that has delivered work health and safety training to a very high standard to Commonwealth departments and agencies that have written back to this provider complimenting him on his high standards of training and saying that the outcomes were exceptionally good. Yet he will no longer be allowed to provide that training methodology.

You have to ask the question: why? Is this all about process or is it about outcomes? Surely in developing courses and training the one issue ought be: what is the outcome? Will the workers, after their training, be able to deliver the work health and safety, and understand the issues in their workplace? Commonwealth agencies and departments have said: 'Yes, the particular training provided by this trainer has been exceptionally good. The people who have been trained have complimented the scheme.' Yet now it can no longer be taught because the teaching methodology is deemed to be inappropriate; it does not fit the one-size-fits-all approach.

Another thing that I am absolutely gobsmacked by is the fact that internet training will not be allowed either. In this day of the NBN and all the rest that Senator Conroy bangs on about day after day in this Senate, training has to be face to face. That is one of the real issues: if you can get your training for a university degree and other things over the internet, why on earth can't you get work health safety training also over the internet? Can I indicate that the trainer of which I was speaking before is not necessarily in that space, but I can imagine innovative trainers might be developing packages going down that track. This ham-fisted, one-size-fits-all approach is designed basically to support one particular group of providers. It seems to me that there has to be a detailed explanation provided to this
committee. I have pursued it at Senate estimates and I think at one stage—

Senator Jacinta Collins: You'll have more luck there than with me here.

Senator ABETZ: Senator Collins, do not sell yourself short, because you could not, even if you tried your hardest, do worse than the non-answers we got at Senate estimates in relation to this. We had certain people complaining that we had put about 200-plus questions on notice about these issues and then all we get is: 'Well, the decision is the decision because it is the decision, and that is the reason why—because it is decision—and people looked at the decision and confirmed the decision.'

But when you then ask, 'What is the decision and what is the public policy reason behind the decision?' it is, 'Well, this body made the decision.' That is not a sufficient explanation, especially when somebody who has been delivering an excellent service has been cut out of the marketplace in this manner. That person's name is well known; it is Dr John Culvenor. Why should he and the way he does business be cut out of the marketplace, especially when he has got accolades from Commonwealth departments and agencies? It still defies any logic, any explanation, other than somebody has tapped somebody on the shoulder to say, 'If we can get rid of this exceptionally good provider it might open up the marketplace for us to provide that training service and charge for it.' I just wonder whether certain trade unions might be seeing a potential market opening for themselves.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)
(20:11): As I understand it, this issue actually predates harmonisation but I am happy to explore it in this context, as I can understand that for some providers it is bringing things to a fine point. It goes back to the guidelines about delivery of training and, as you have indicated, the decision that was made by the SRCC on those guidelines.

I am going to explore this partly from personal experience, and that is that there is some training that is obviously appropriate for online delivery but there are some training components that are not regarded as appropriate for online delivery. Certainly many university courses structure a compromise between the two, but the difficulty as I understand it with these guidelines is the requirement that a trainee attend. From my somewhat dated understanding of health and safety training courses, the training that deals with developing skills on negotiation with some level of role-play and experiential training is an important component. But to put a finer point on that would be relying more on my experience than what may have informed the SRCC's decision on how they proceeded in this instance.

The government recognises that a transition period is required for health and safety representatives to complete updated training on the new work health and safety laws. The bill currently allows 12 months for them to do so, after which time, if they have not completed updated training, they will no longer be able to exercise their powers under the Work Health and Safety Act to issue provisional improvement notices and to direct that work cease. This is addressing item 1 of these amendments.

The period of 12 months is consistent with nationally agreed principles for the transition to the new laws and strikes a balance between a smooth transition and recognition that new laws mean some changes and updated training is required. It is unclear why the opposition is seeking to extend to three years the period for which previous training is recognised while at the same time
seeking to expand the pool of training courses recognised under the new regime beyond those accredited under current arrangements.

With respect to item 2, the second amendment proposed by the opposition would allow training providers whose accreditation may have lapsed some years ago to provide training under the new laws without having to satisfy the current guidelines issued by the commission or any future guidelines developed and agreed by occupational health and safety regulators. The Safety, Rehabilitation and Compensation Commission is currently responsible for the accreditation of training courses for health and safety representatives under the current Commonwealth Occupational Health and Safety Act. To assist training providers, they have established clear guidelines for the accreditation of training courses. The intention is for training courses that are currently accredited under the Occupational Health and Safety Act to be recognised on a transitional basis following commencement of the new work health and safety laws to ensure the continued availability of courses.

The accreditation process is an important safeguard to ensure health and safety representatives receive quality training at this vital time as we transition to the new laws. Consequently, the Commonwealth does not support an amendment which seeks to override decisions made by the independent Safety, Rehabilitation and Compensation Commission under the current Occupational Health and Safety Act. The proposed amendment would grant accreditation to training providers who do not hold current accreditation under the current guidelines issued by the SRCC in 2010 but who held accreditation under previous guidelines for health and safety representative training. In doing so, the proposed amendment would undermine the integrity of the accreditation process. With respect to the particular training provider you referred to, my understanding is that he has chosen not to seek accreditation under the current arrangements.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (20:16): The fingers on the keyboard that provided that answer to the parliamentary secretary belong, I detect, to the same people who provided the answers at Senate estimates, because once again it is basically, 'The decision is the decision.' Dr Culvenor has a proven methodology. It has worked exceptionally well. People have complimented him on it and he sees no reason why a trainer with a proven method should be forced to change to a lesser-performing method. That prompts me to ask: why? What were the perceived deficiencies in Dr Culvenor's training methods, which delivered outcomes that agencies complimented him about, that made it so important that this legislation rule out his methodology? What are we interested in here? Is it the process or the outcome we are interested in? If it is the outcome and the training people get, the accolades given by Commonwealth agencies and departments to Dr Culvenor speak for themselves. So that cannot be the reason; it has to be something else. But we have continually been denied any genuine rationale other than: 'It is the decision.' We know it is the decision. We want to know what underpins that decision.

**Senator JACINTA COLLINS** (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:17): As I indicated earlier, I think this issue predates harmonisation. I have been happy to explore it in terms of how the current circumstances relate to it. But my understanding, with respect to what informed the SRCC in reaching its decision about the guideline requiring attendance at face-to-face
training, was that it was an employee survey which demonstrated a significant preference by employees for training which is face to face. I mentioned earlier in my discussion that I can understand that preference from a professional training point of view. I certainly participated in training programs which were a combination of both. There are simply some areas of skill development which require direct one-to-one or face-to-face contact.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:18): But the employees and employers who went through the—if I can use the term—Dr Culvenor process got exceptionally good results. You did not need a survey because the agencies and departments wrote in saying how exceptionally good the training was. So why would you discount it? I would have thought that, in this age, even if 80 per cent of employees were to say in a survey, ‘We prefer five days face to face so we can be out of the workplace for five days straight because that might actually suit our personal purposes somewhat better than other arrangements’—I do not know what the motives may have been—you would look beyond that. If 20 per cent or even 10 per cent of employees can, or prefer to, achieve the required results through other methods—and I understand that 26 per cent of the accredited courses are different but achieve the outcomes—why would you rule them out? That surely should be the test—the outcomes. If the outcomes are good, why would you say, just because some employees want something else—although, nevertheless, the outcome is good—that we are going to legislate to ensure that this particular type of delivery of training will, in effect, be outlawed? Yet again, no rational explanation has been provided.

Senator IAN MACDONALD (Queensland) (20:20): I thank Senator Abetz and I do not want to interrupt his line of questioning, but I do have a question for the parliamentary secretary. Parliamentary Secretary, you would be conscious that workplace relations and workplace health and safety are not areas of policy that I closely follow, but I have been sitting in my office all afternoon watching this debate today and I have been very interested—and I know a lot of my colleagues have been interested as well. I have been following the questions Senator Abetz has been putting to you and the answers you have given. The debate, I think, has been very useful in clarifying many of the issues on this bill and, I might say, even a little more broadly.

This is what I want to put to the parliamentary secretary: this is a debate which I would like to continue to follow. I am conscious that Senator Abetz has some other amendments to move which I think may well attract majority support in this chamber. But, Parliamentary Secretary, you are aware that tonight, in the 40 minutes left to us, we have to deal with the Corporations (Fees) Amendment Bill, the Auditor-General Amendment Bill, the Personal Property Securities Amendment (Registration Commencement) Bill, the Competition and Consumer Amendment Bill (No.1) and the Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Bill. We have to do that in a very limited period of time. I do not want to curtail this debate because, as I say, it is interesting. Good considered answers are being given, if I may compliment the parliamentary secretary, although they are not always fulsome. I would like to follow this debate further. I think there is a lot of good coming out of it. In spite of the derision of some members on the government side, a lot of people listen to these debates on the radio. I think the people of Australia would
like to hear this debate go through to its conclusion.

We have Monday, Tuesday and Wednesday set aside for parliamentary sittings. That is something the Senate agreed upon nine months ago and it has not been changed. I am not aware of what is on the agenda for those three days. In fact, I have tried to find out but the government seems to have no legislation planned for the days set aside. So my question to the parliamentary secretary is: would you be prepared to come back on Monday, Tuesday and Wednesday so we can complete the debate on this bill, so that I and other senators who are following this very closely could get to a conclusion and so that Senator Abetz could move his amendments, which I believe will attract majority support in the chamber?

I emphasise that there are three days set out next week and as far as I am aware there are no listed agenda items from the government manager—but then the government manager is not terribly good at organising the chamber. I do not want to raise issues but it would seem like a good opportunity with an important bill before us, a bill which I think demands very good debate. Unfortunately, in the last three or four weeks we have seen the most complex legislation this parliament has seen for a decade—that is, the 18 carbon tax bills—rammed through this Senate without sufficient debate. Some bills were not even mentioned. This week we have had Monday, Tuesday and Wednesday—

Senator Ludlam: Chair, I rise on a point of order. I wonder would you ask Senator Macdonald to address his remarks to the question before the chair.

The TEMPORARY CHAIRMAN (Senator Mark Bishop) (20:25): Senator Macdonald, you should always, of course, address your remarks to the chair and be relevant to the question.

Senator IAN MACDONALD: Thank you, Chairman. I appreciate your guidance. I can understand the why Senator Ludlam is very concerned. He really does not like me pointing out that the Greens have been part of this curtailment of democracy by preventing debate on many bills, including this one and including the five we are about to do.

Senator Ludlam: I am not concerned; I am just bored.

Senator IAN MACDONALD: Perhaps you should go and have a sleep and take a pill while you are there, Senator Ludlam, if you are bored. And perhaps next time you will think twice before you curtail debate in the chamber.

The TEMPORARY CHAIRMAN (Senator Mark Bishop) (20:25): Senator Macdonald, you should address your remarks to the chair and not engage in an exchange with Senator Ludlam.

Senator IAN MACDONALD: I am sorry, Mr Chairman. I have been attacked by Senator Ludlam by way of interjection. I seek your guidance as chair to protect me from these penetrating interjections which are, of course, disorderly. I have been distracted from what I am saying. I repeat: this is a very important debate. It is being followed in every office of this building and the people of Australia are listening. It is not a debate which should be rushed. Senator Abetz's amendment should be dealt with properly. We have three days set aside for a discussion on bills so I ask the parliamentary secretary to agree to come back on Monday, Tuesday and Wednesday. Of course, we will all be here because that is what the rules and regulations of the parliament say.

Senator McEwen: The question was actually about the bill.
Senator IAN MACDONALD: What I am saying is related to the bill because I want to hear it fully explained. I concede it is not my area but I am following the debate very closely and becoming an expert from hearing the interaction between Senator Collins and Senator Abetz. I am very keen to hear the amendments. Parliamentary Secretary, would you come back next week so that we can finish this without having to rush it through in the next 30 minutes?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:27): I am happy to respond on a range of issues. My understanding of where we were just ahead of Senator Macdonald’s contribution was on the last amendment and we were close to wrapping up—not to put words in Senator Abetz mouth. Senator Macdonald, in relation to your question about my preparedness for next week, I will simply refer that to the Manager of Government Business. It is not my role in this bill to talk about ongoing procedures of the chamber. I am happy to relay your question to Senator Ludwig.

Going back to the issues of substance remaining in this matter, one issue Senator Abetz was on before we went to Senator Macdonald was still about the evaluation of training providers. I am not in a position to personally gauge how effective the evaluation was of the doctor’s program. Certainly any training program can gather some level of endorsement. How effective the actual evaluation was is not knowledge I hold at the moment but I must admit I would have some level of confidence in the SRCC’s evaluation process, if they did indeed establish one. So the information I gave you about a survey which had been conducted about employee preferences in how training is delivered I suspect is probably an evaluation which was specifically targeted at determining what was the appropriate training which should be part of the guidelines. That is not to say that the doctor referred to has not delivered competent training. I must admit my impressions of the value of online workplace training that our own employees receive has not been great. I have not been enthralled with the quality of the online training courses in this particular space from my own experience as an employer. But until such time as I could compare the evaluation methods to which you refer, or indeed drill further into the quality of the SRCC’s training and the evaluations of this doctor, I am not in a position to comment further.

The one remaining matter, if Senator Abetz is happy to move onto that, is the question about the differential between the ABCC and the work health and safety regulator powers to compel production of information. I can indicate that both the current Australian Building and Construction Commissioner and the proposed work health safety regulator can compel individuals to provide information. However, in both instances this is subject to the use of derivative use immunity, which prevents that information from being used against the individual, so my impression earlier was not quite accurate. There are areas of difference, but I will come to those in a moment.

Under the current BCII Act the power to compel the person to attend an interview can be used as a power of first rather than last resort, although on this point it is important to note that the current commissioner does, as a matter of practice, exhaust all other avenues of information gathering before using these powers. Under the Work Health and Safety Bill the power to compel a person to attend an interview can only be used as a last resort. The current BCII bill which is before the House also seeks to ensure that this power is only used as a last resort. The
The current BCII bill will also introduce a range of other safeguards with respect to coercive powers. These differ from the Work Health and Safety Bill, and reflect the fact that the maximum penalty for noncompliance under the BCII legislation is six months imprisonment. The Work Health and Safety Bill does not impose custodial sentences for noncompliance in relation to information-gathering powers.

Senator MADIGAN (Victoria) (20:31): What is inbuilt with the accreditation of these occupational health and safety people in different industries? For instance, foundries are very different to the crane industry. There are common things—people needing steel capped boots, safety glasses and gloves—but when we are talking about foundries, where people are at the molten metal face, and about people who are slinging a load for a crane, what assurances does the Senate have that the people conducting these courses are specific to an industry and that they specifically understand the industry that they are dealing with?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:32): Can I perhaps rephrase the question to see that I have it correct in my mind? Are you asking what assures us that the training providers are delivering relevant training for particular sectors of industry?

Senator MADIGAN (Victoria) (20:32): Yes.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:33): The answer to that is essentially that the training itself is relatively generic but providers are in circumstances where they will tailor that generic training to the particular industries or sectors to which they seek to deliver the training. So if you are working in a particular sector the appropriate thing would be to find a training provider who focuses on delivery for that sector. If it is a foundry, or if you are dealing with heavy metals or the like, then the training marketplace is where you would look to find those providers specialising in delivery for those sorts of areas. Providers are in fact encouraged to do so.

Senator MADIGAN (Victoria) (20:34): Should I take it that, in the case of foundries, the training provider would consult with the Australian Foundry Institute to gain its input into health and safety matters when dealing with electric induction furnaces, heat treatment or whatever it may be? I know that the theory and the reality at the coalface for a lot of these things are set widely apart. I know that it concerns a lot of small businesses, medium sized businesses and large businesses that on a lot of occasions there is a gap between the practicality, the reality, and the legislation.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:35): I understand your point, Senator Madigan, and this is why you will generally find that providers of training in this type of area seek to market their product by attracting the very types of endorsements that you are talking about. For foundries, that association would obviously be one that providers would be seeking endorsement from. For the retail sector it would be the relevant retailers' association, and so on sector by sector. It is part of the marketing of their product to attract those types of endorsements to demonstrate to trainees or to employers that they are delivering relevant training.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:36): As I understand it, the government's explanation
for not allowing the re-accreditation of the approach taken by Dr John Culvenor is not that the result was in any way deficient, or that the training was deficient. There was nothing wrong with the course. It was simply based on a survey of employees as to the type of training they might prefer. That was my understanding. If that is wrong, please tell me.

It reminds me that democracy is not two wolves and a sheep getting together and voting on what is for dinner; we know the outcome, and it would not really be fair. Similarly with training one wonders why one would do a survey as to what people might or might not want. Surely the survey ought to be on the results. Was the training effective? Was it good? Did people like it? Did people think they learned something from it? As a result, are our workplaces safer because we have better trained people? According to all the Commonwealth agencies and departments, that was exactly the outcome with Dr Culvenor's training methodology. Yet we have just unilaterally ruled it out without any genuine reason being given. We allow different approaches within our education system. Some schools still have the old chalk and talk; others have an open classroom. What suits some people should not be the deciding factor as much as asking, 'What is the outcome at the end of the day?' If both methodologies deliver the same outcome, why would not you allow the two methodologies to co-exist? That is what we still do not have an answer to.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:38): Senator Abetz, I indicated before that I am not in a position tonight to assess the quality of the evaluation of the doctor's work. It is one thing to have employers, government departments and some trainees provide endorsements and indicate that they were happy with the training. It is another thing to conduct a thorough evaluation.

The quality of the survey conducted by the SRCC in evaluating how to achieve best outcomes, a component of that being what trainees particularly feel that they want or benefit from, is certainly a relevant factor. But I am not at the moment in a position to evaluate the quality of the endorsements you refer to with respect to the doctor's package. What I am prepared to say is that, as far as I am aware, the SRCC conducted an evaluation on the question of how delivery should occur. A component of that was a survey of what training employees thought they would best benefit from, and that indicated that they valued face-to-face time.

In terms of delivery of training though, I would ask you to consider the areas that I referred to in part previously. I am certainly aware of changes in counselling training where a move away from full online delivery has been seen as appropriate. So in theory you could be a trainer of counsellors who previously provided online training and who, if you are not prepared to change your practice, will no longer be able to deliver training to counsellors who would need to be endorsed to provide counselling.

Similarly with mediators, whether they are industrial mediators or operating in other areas, there is a requirement that at least a certain level of training delivery be provided face to face. This is not a new issue. Certainly if the doctor had been providing competent training I cannot understand any reason why he would not determine to adjust his package to be able to deliver training under the new guidelines.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:40): We have canvassed this issue at some length, and I have done so at estimates with questions on notice and even in the open Senate because,
as I have said before, the employees and employers for whom this Dr Culvenor provided training said it was exceptionally good. He did have a component of face-to-face and practical experiences, which is what made his methodology so good. The online training was just something I introduced as a separate component. I thought Mr Rudd was delivering laptops. I could have mentioned that in the censure motion today as another failure by the government, but when you have such a wealth of examples to draw upon you forget some of them. In relation to the laptops in schools, why on earth was that seen as such a dynamic, brand new idea in 2007 and something that was going to revolutionise education? Indeed, it was part of the education revolution. That is how the NBN is being sold—people can learn online. But now, all of a sudden, they cannot for work health and safety training. It unfortunately does not mesh with the government's other propaganda in relation to these schemes of the NBN, laptops for every student et cetera.

Let's move on. In terms of HSR training, if someone is working on an offshore rig and has to go to training, are they still paid their full pay and allowances?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:43): I direct Senator Abetz to provision 72(4), which indicates that:

Any time that a health and safety representative is given off work to attend the course of training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:45): I thought that would be the answer. Can the government explain the public policy reasoning for somebody being paid danger money whilst that person is ensconced in a metropolitan hotel receiving training? How do we justify that that person, who is no longer in any danger, is going to be paid danger money for appearing at a training course that—surprise, surprise!—will be five days of face to face in a nice hotel? Why would these workers be paid danger money in those circumstances?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:45): Senator Abetz obviously has some different experiences in the delivery of training of this character. I can certainly recall from my past some not particularly pleasant non-city-based training venues. That is an aside. The rationale behind the provision is that there be no disincentive for employees to engage in training.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:45): So people are paid danger money in recognition of the particular dangers they face on a, one would imagine, day-to-day basis. Where is the incentive, then, to get rid of those dangers for which they are remuneratively compensated? It does seem as though certain people, should they wish to, could rort the scheme. If their job is on an oil rig clearly they will not be doing their training on the oil rig, therefore they will need to be accommodated somewhere, undoubtedly in a hotel, and one would imagine the training would take place there as well and they would get substantial benefits.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:46): Perhaps I need to elaborate a little further so that Senator Abetz understands the differential experiences that are covered here. I am thinking myself of some examples from the retail industry where, for instance,
someone undertaking health and safety training would potentially forgo a shift penalty for work they do at particular hours if they were to not carry out their regular work but go off and do training at another venue. You are talking about people who might ordinarily work a Saturday but the training is conducted Monday to Friday. They would lose, as Senator Abetz is suggesting, their regular income if they were to participate in training and that would not be appropriate.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:47): As I understand it the health and safety representative in this regime would be elected at the workplace and such a person would need to be trained within three months of gaining the position. Can you confirm that to be correct? If that is the case, what obligation would there be on the employer to go through the cost of retraining a new representative if that person were to resign as the health and safety representative having just been trained?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:50): These types of requirements have existed in some state jurisdictions for some time. I have just checked with the officers from the Commonwealth's point of view—and certainly from my own experience I have never been apprised of such mischief occurring.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:51): So it will never occur—thank you very much. Businesses that go through the responsible task of getting independent and professional advice on their workplaces—from people who have had more than just five days training, who do a full assessment and then a regular reassessment of the workplace because the employer is concerned about work health and safety issues—would be incurring a double whammy. So did the government consider the benefits of providing exemptions to those businesses that seriously engage independent, professional advice in relation to these types of issues? There are bodies that provide that sort of advice and do assessments. Indeed, I have been to some businesses in Queensland,
in fact in Dr Emerson’s electorate, as I recall, where the employer does that and has done for a number of years. He now finds that, having regularly expended all that money, he will now have to send an employee for a five-day training course at extra expense to his business. He is now contemplating dropping the independent, professional assessments that he was getting annually, because it is one or the other: one that he will have to do under this legislation or the other that is not a legislative requirement.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:53): I will take you to the bill’s objects, specifically to clause 3(1)(b):

(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety;

Under this regime it will be the workers’ right to determine whether they wish to have representation. That said, though, I have sought from the department advice as to whether, to their knowledge, any exemption regime has ever been raised as a policy issue or been presented by any of the stakeholders consulted. I must admit that it is the first time it has been suggested. That is perhaps because essentially all of the parties engaged in this process have accepted that the fundamental objective is to give workers the right to representation in relation to their health and safety.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (20:55): Has an analysis been done on the potential cost to employers of this training? It is five days that the employee will not be in the workplace producing goods at Senator Madigan’s foundry or whatever it might be and so will not be producing products to sell. That would be a very real cost to the business. Has any assessment been done of the consequences of that as a total figure?

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (20:56): Whilst I can indicate that the issue and the potential costs associated with it would have been covered in the regulation impact statement, I cannot identify for you at the moment whether there was a specific item to which we can refer. I can indicate though that, if you look at this issue jurisdiction by jurisdiction, you will see that those costs have been borne by industry for quite some time—for longer than I can even recall—in some jurisdictions, as opposed to others.

Question put:

That the amendments (Senator Abetz’s) be agreed to.

The committee divided. [21:01]

The Chairman—Senator Parry

Ayes ...................... 29
Noes ...................... 37
Majority ............... 8

AYES

Abetz, E
Back, CJ
Birmingham, SJ
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Fisher, M
Joyce, B
Macdonald, ID
McKenzie, B
Parry, S
Scullion, NG
Williams, JR

NOES

Arbib, MV
Bilyk, CL
Bishop, TM
Brown, CL
Brown, RJ
Cameron, DN

CHAMBER
Third Reading

Senator JACINTA COLLINS: I move:
That these bills be now read a third time.

Bills read a third time.

Corporations (Fees) Amendment Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator CORMANN (Western Australia) (21:06): This government is so bad and so incompetent that even when they do something that is right in principle they still manage to find a way to stuff it up. This government knows how to do the wrong thing when they are trying to do the right thing. This government knows how to stuff something up that really should not be a problem—something that should be quite right by going through proper process. The Corporations (Fees) Amendment Bill 2011 is about allowing ASIC to levy cost recovery fees on participants in licensed financial markets in its role as a market supervisor. Currently ASIC levies these fees on market operators such as ASX.

The coalition supports the principle of cost recovery that the bill seeks to introduce, but the government have got the process completely wrong. They always get the process wrong, and whenever they get the process wrong they end up in a situation that is a complete stuff-up and that puts people on the wrong side of bad public policy. We have seen it with the carbon tax, we have seen it with the mining tax and we see it with this bill. With the mining tax there was no consultation whatsoever and of course it ended up in tears, and because it ended up in tears the government had to come up with secret deal after secret deal after secret deal, covering up everything else they were doing in order to hide the consequences of their incompetence.

On this occasion the government wants the Senate to pass this bill without actually knowing what the government is going to do in practice. The government wants to impose cost recovery on all market participants, but it does not want to tell us how it will go about it. There is no detail whatsoever. The government clearly is putting the cart before the horse. We are very concerned that much of the detail required to implement the objectives of this bill will be contained in regulations that are yet to be drafted. It should be noted that only after the bill was first introduced did Treasury issue a consultation paper on the design of an appropriate fee structure. The deadline for
the Treasury consultation was 23 September 2011. To this day we do not know what the detail is going to be of the fee structure that the government intends to impose on stockbrokers and on all the other market participants that will have to pay these fees.

So the government wants the Senate to give it a blank cheque. Quite frankly, given the terrible track record of this government, given the demonstrated track record of incompetence, the Senate should be very, very sceptical about giving this bad government a blank cheque. Whatever this government has touched has turned to mud. That is exactly why the opposition will be moving an amendment to defer this bill until after the government has tabled the associated regulations. We do not trust this government. The people across Australia do not trust this government. This is a government that has a track record of broken promises, of incompetence, of bad decisions. So we want to see the detail before we are prepared to pass this legislation.

This is a view that is echoed by a lot of market participants in the context of the recent House of Representatives Standing Committee on Economics inquiry. Mrs Mitchell from RBS Morgans said:

… the timing of the bill was unusual, given there was so much still to be settled.

We suggest that a consultation process should see its natural course before this bill is passed.

That is proper process 101, but this bad, incompetent Gillard Labor-Green government would not know proper process if it fell over it. Whatever this government does is bad process. Remember the secret deal with the three biggest miners in the Prime Minister's office, excluding all of their competitors, doing a dirty little deal behind closed doors, giving them a competitive advantage and making it harder for smaller local miners to compete with them? That is the modus operandi of this corrupt government. This government does not go through proper process, and of course it is people across Australia who invariably have to pay the price for it.

Here we go again. The government wants this parliament to give it a blank cheque. Here is a government that wants the Senate to pass the bill and says: 'Trust us—we're from the government. We'll sort out the detail later.' We should not trust this government, because this government has not given us any reason whatsoever to trust it. Again and again it has deceived the Senate and it has deceived the Australian people. The government always struggles to get the detail right, which is why we should be so careful about passing legislation like this until we have seen the detail. Coalition members of the economics committee raised a series of issues with this proposal, with this bill, which must be addressed before this legislation is dealt with. There needs to be proper checks and balances in place to ensure that the fees imposed will actually be for cost recovery only.

We know that this is a government that is very wasteful. We know that this is a government that is addicted to spending. We know that this is a government that is always casting around for more cash. We know that this is a government that has introduced 19 new or increased taxes—ad hoc tax grab after ad hoc tax grab. We know that this is a government that comes up with new multibillion-dollar tax grabs and spends more money than it expects to collect from that tax before it has even started collecting it. So we know that this government does not know how to manage money. We know this government does not know how to live within its means. We know that this government has delivered four successive deficit budgets. We know that the Labor
Party has not delivered a surplus budget in more than 20 years.

People across Australia know that every time the Labor Party gets hold of the treasury bench it stuffs up the Australian budget. People across Australia know that every time the Labor Party has a period in government the coalition has got to come back and fix it up. People across Australia know that the Labor Party talks about surplus budgets. People across Australia know that the Labor Party is long on rhetoric but short on delivery when it comes to sound fiscal management.

So, when it comes to a bill like this, which is about imposing cost recovery, and the government is not prepared to give us the detail on how it proposes that that cost recovery will operate in practice, we are naturally suspicious. We are naturally suspicious because we have a job to do for the Australian people. We have to scrutinise what this government does, because this government invariably has its hands in the pockets of people across Australia. It is a government that has its hands in the pockets of businesses across Australia, and it is going to have its hands in the pockets of every single stockbroker across Australia. That is okay; we accept the principle of cost recovery, but it has to be done right, it has to be done fairly and it has to be done in a way that we can properly scrutinise before it is to proceed.

There need to be effective governance and accountability arrangements in place to ensure that cost recovery measures are contained over the long term. There has to be some discipline around this because—I say it again—this is a government that is addicted to spending. This is a government that has a track record of waste and mismanagement. This Labor Gillard government has a track record of spending more than it raises. This is a government that does not know how to live within its means. So, if you give this government what effectively is a blank cheque, of course there is potential for very serious consequences.

Furthermore, consideration should be given to the cumulative effect that the multiplicity of new regulation is having on the efficiency of Australia's financial markets. As well as being a high-spending and high-taxes government, this is also a government that continues to push more and more red tape on Australian business. It continues to impose more red tape, making business and the Australian economy less efficient and less productive. This government really can be summed up in the description that Ronald Reagan once made of economic policy by government: if it moves, tax it; if it keeps moving, regulate it; and, if it stops moving, subsidise it. That is what this government is all about: if it moves, tax it; if it keeps moving, regulate it; and, if it stops moving, subsidise it. That is the economic policy of this Labor Gillard government. Of course, that is not the way things should be happening in Australia.

This bill proposes to change the chargeable matters in the Corporations (Fees) Act 2001 to allow ASIC to impose cost recovery fees on Australian licensed market participants. Currently ASIC levies these fees only on market operators—that is, ASX, as the sole operator. The bill will allow ASIC to spread these fees across market operators and market participants such as stockbrokers and derivative traders. Following the decision to allow competition in the market for trading in listed shares, the government in the 2011-12 budget provided funding to ASIC to develop market integrity rules and a regulatory framework for the new competitive market. This funding was conditional on it being cost recovered from industry, and the total funding allocated to ASIC for this project was about $30 million over five years. ASIC subsequently
developed market integrity rules which will come into effect on 31 October 2011. On 4 May 2011, Chi-X was granted an operating licence as an additional market operator in competition with ASX, but as yet the structure of the fees has not been determined.

That is the whole point that the coalition wishes to make today. We should not be asked to pass judgment on this legislation until we have seen the detail of how it is expected to operate, because this is a significant shift in the way cost recovery is to operate in Australia when it comes to the licensed financial markets. As such, we should be given an indication of how this is to operate before we are asked to pass judgment. The fact that Treasury only issued a discussion paper asking people for their views on how this should operate after the legislation was introduced shows you that this government does not really know how to follow proper process in sequence. This is what gets this government in trouble again and again, and this is what gets the Australian people in trouble, because a bad government makes bad decisions and imposes unfairness and inequity because it has not gone through a proper, open, transparent and inclusive process in the course of its decision making.

Over the last four years, we have seen that again and again. We have seen the government cut corners. We have seen the government rush to make announcements because it is desperate for more cash. Because this government has been the worst spending government in the history of Australia, because this government has delivered the biggest deficit on record in the history of the whole Commonwealth for the last 110 years and because this government for ever and ever comes up with one new spending decision after the other—it makes all these promises which sound good on the surface but are not funded—the government has to come up with one new tax and revenue measure after the other.

We were promised a few years ago by the former Prime Minister Mr Rudd a comprehensive root-and-branch reform of our tax system—a once-in-a-generation opportunity for a root-and-branch reform of our tax system. We were promised a reform that would make our tax system simpler and fairer. But of course all we have had from this government is one lazy, ad hoc tax grab after the other. That is why, whenever the government comes into this parliament with a proposition to raise more cash, this parliament has a responsibility to scrutinise very carefully what the government is up to.

On this occasion, the government does not want to tell us what it is up to. It wants to say to us, the parliament, to us, the Senate, representing people from across Australia: 'Just trust us. We are the Gillard government. We know what we're doing. Just give us a blank cheque.' Well, that is not the way the Senate should operate, in particular on this occasion, because we have a terrible government. We have a terribly incompetent government. We have a government with a track record of failure, broken promises and incompetence. There is absolutely no way that the Senate should pass a bill like this without knowing what is actually going to be in the detail. That is why, on behalf of the coalition, I will be moving an amendment to the second reading. It will be:

That further consideration of the bill be an order of the day for the third sitting day after the government publicly releases a final draft of the regulations dealing with the proposed financial market supervision cost recovery arrangements.

I would have thought that was an eminently sensible amendment. A government that was not in a desperate rush for more cash to cover up its many black holes and areas of wasteful spending would have the time to go through proper process. But not this
government. This government cannot go through proper process. This government cannot wait until it has done its homework because this government needs to get this legislation through as quickly as possible so that it can start collecting the cash. That is exactly what the government did in the context of the mining tax. It did a dirty little deal, negotiated exclusively and in secret with the three biggest multinational, multi-commodity miners and excluding all of their competitors. It did a deal in which those three big miners who were sitting around the table would end up not paying any tax, which puts a very serious question mark on the revenue estimates that the government has published in its budget papers.

When we asked for the underlying assumptions, the government said to us: 'Don't you worry. We are not going to give you those. You know why? They are commercial in confidence. We can't possibly give you the assumptions underlying the mining tax revenue estimates because they are commercial in confidence. Do you know why? They were provided to us by BHP, Rio and Xstrata. So the three miners that designed the mining tax are the ones who gave us the assumptions that helped us estimate the mining tax revenue. We can't possibly give it to you because they tell us they are going to pay tax and if you had a chance to look at these assumptions and scrutinise them you might actually be able to find out that they are not going to pay any tax at all.'

This is the track record of this government: stuff up followed by cover up. It is for these reasons that there is absolutely no way that on legislation like this, which involves the government collecting money from people out in the marketplace, that we would under any circumstance be prepared to give this government a blank cheque. It has demonstrated again and again that it cannot be trusted. That is the fundamental problem with this government.

This government is a government that cannot be trusted. This government is a government that is led by a Prime Minister who went to the last election and told the Australian people, 'There will be no carbon tax under the government I lead.' Of course, we know what has happened since then. This government is led by a Prime Minister who knifed Mr Rudd about 15 months ago. This is a government that is led by a Prime Minister who has now knifed a Speaker of the House of Representatives in order to look after her own political self-interest. This is a government that is led by a Prime Minister who will do anything, anything whatsoever, to hold on to political power irrespective of the national interest. This is a government that is led by a Prime Minister who cares only about keeping the keys to the Lodge. That is why, whenever a government led by this Prime Minister puts forward legislation, the Senate should be very careful. On behalf of the coalition, I move:

At the end of the motion, add: 

"and further consideration of the bill be an order for the day for the third sitting day after the Government publicly releases a final draft of the regulations dealing with the proposed financial market supervision cost recovery arrangements".

Senator IAN MACDONALD (Queensland) (21:26): I want to participate in this important debate on the Corporations (Fees) Amendment Bill 2011, which is yet another piece of legislation that requires very careful scrutiny. But Mr Acting Deputy President Cameron, you called me Senator Ian Macdonald, so before I start I will indicate to those people who might be listening that I understand the name Ian Macdonald and 'parliament' have been in the news a bit tonight. A number of friends and
acquaintances have rung me and said, 'What have you been doing? We have heard on the radio that the police are investigating ex-parliamentarian Ian Macdonald.' I just want to say to anyone who might be listening to this debate, lest they might tune out when they hear Senator Ian Macdonald speaking, that I am not the Ian Macdonald who is currently being investigated by—I am not sure who it is—the police or ICAC. The Ian Macdonald referred to is a former Labor minister in the New South Wales parliament. At one stage in our earlier careers I was the federal minister for fisheries and the other Ian Macdonald was the minister for fisheries in the New South Wales government. I want to make that clear lest acquaintances or people listening to this debate might think that I am the Ian Macdonald who has been referred to.

Having got that aside, it is important that this bill is fully debated. I indicate that what is in the bill is almost inconsequential; it is hardly controversial. But I rise to support the amendment that has been moved by my colleague Senator Cormann. The fact that Senator Cormann has moved the amendment should attract attention and support because Senator Cormann has done a fabulous job looking after the assistant treasurer portfolio on behalf of the opposition. He will do a great job after the next election in that role in government. That in itself should be enough to gather support for this.

I am concerned that this bill imposes fees but does not tell us anything about them. It says that the way it is done and the amounts involved will be dealt with by regulation after parliament has risen for the Christmas break and before parliament returns. Under this government it will not be early in the new year. This government seems to be averse to parliamentary sittings. This is the shortest period of parliamentary sittings in any financial year that I can recall in the long time that I have been in parliament. It is just a disgrace. For some reason, this government does not seem to want parliament to sit, and when parliament does sit, it curtails debate, in conjunction with the Greens. The Greens and the Labor Party ensure that debate is not appropriate.

Tonight, in the next 20 minutes, we have to deal with this bill, the amendment put by Senator Cormann and four other bills. I have asked before, ‘Why can't we deal with some of these bills on Monday, Tuesday and Wednesday of next week?’ The parliamentary calendar that was set nine months ago provided that this parliament would sit Monday, Tuesday and Wednesday of next week. As far as we all know, that is what the arrangements are at the present time: we are going to be here for the next three days. But nobody knows what we are going to do because the government manages this parliament so poorly that they do not have an agenda for the next three days. So why aren't we dealing with this bill and the other bills in the full fullness of time in the next three days that we have available?

I have heard rumours around the traps—perhaps Senator Siewert from the Greens can confirm this for me—that the government and the Greens have done another shady deal, another dodgy deal, to shut parliament down next week so that the Greens and the Labor Party can wander off to Durban and wander around the world stage and say, ‘Aren't we great—we're the first country to ruin our economy by putting in a nationwide carbon tax at $23 a tonne.’ You can be assured that when they say that they will be strutting around thinking how great they are, their lefty mates will all be clapping and applauding. You can be assured that the economic rulers in China, Japan, the United States, Europe, Korea and India will all be sitting there saying: ‘Good on you Greens; good on you Labor Party. Here is a major
competitor of ours. This Australian economy was tremendous. They used to have a manufacturing industry that was better than ours,' but thanks to the Greens and the Labor Party we are shutting down the Australian manufacturing industry and sending Australian jobs to India and China.

As I understand it, that is why we cannot debate this bill next week when we are scheduled to sit—because the Greens and the Labor Party want to go and wander around the world stage at the next climate change conference in Durban. I wish them well in their endeavours. In fact, I predict that the Prime Minister will come back from Durban and say: 'Look, we brought this carbon tax in good faith. We took the word of all of these other countries—China, India, the United States, Russia—that they were going to impose a carbon tax. But we have now been to Durban and we find that that is not going to happen. So, look, we have come back to Australia and we will ask forgiveness. We will say, "Although we have passed the carbon tax, we are not going to implement it for a little while.' With that, the Greens will have an enormous fight with them and then Ms Gillard will say: 'I am fighting with the Greens. We had better go and have an early election.' I have wandered off the subject a bit, but there is my prediction. We will see.

For those listening to this debate who may not understand the processes of legislation, primary legislation such as we are dealing with now, the Corporation (Fees) Amendment Bill, comes through this parliament and is discussed—if you get a chance; I think I am going to be the only speaker here. Because of the guillotine imposed by Labor and the Greens, few other people will be able to participate in debate on this bill. The primary legislation is voted on by parliament after discussion—in this case, truncated discussion. Regulations that follow from the bill are legislative instruments that have the force of law, in the same way as bills passed by parliament. Regulations are done by public servants and signed off by a minister and then become law. There is no opportunity for the elected representatives of the people of Australia to have a say on those regulations. Sure, they can be disallowable instruments, which means that 14 sitting days after parliament resumes next March or whenever the Labor Party deems to call this parliament back together, you can move to set them aside, but by that time they will be in place. Once you have these regulations in place, particularly where fees are involved, they are practically impossible to undo.

We do not know, the Labor Party cannot tell us—I hope that in the Committee of the Whole they will be able to indicate this—what the fees are going to be, how the fees are going to be levied and exactly who is going to pay. Is it going to be the same fee for stockbrokers as for other financial advisers? In the Committee of the Whole we will probably ask those questions, and I will be interested to see if we get an answer. No matter what the answer is, we will not really know until the regulations come before us sometime in the never-never.

While I do not want to impugn the integrity of the minister at the table, I do repeat a concern that most Australians have, and that is this. We have a Prime Minister who solemnly promised there would be no carbon tax under the government she led. That same Prime Minister, within 12 months of making that solemn promise, on the eve of an election broke her word. She in effect told a lie. So it does not really matter what the ministers of the Labor government tell us. It does not matter what they say in this parliament or anywhere else. Who could believe them? Who could have any confidence in the truthfulness of anything they might tell us in this debate or elsewhere? We have the evidence before us.
that this is a government, a series of ministers, led by a Prime Minister who simply cannot be trusted. That is my concern about this bill. These regulations are to be drafted, as I said, some time into the never-never.

As I think Senator Cormann said in his principal speech on this bill, we cannot trust the Labor Party with money. To support that claim can I remind those people who may be listening to this debate that when the coalition took over government in 1996 from the last profligate Labor government we found to our surprise that there was a deficit of some $96 billion. The Labor government in the past had run up a debt on behalf of Australian taxpayers of some $96 billion.

In the next four, five, six or seven years the Howard-Costello Liberal-National Party government, through good financial management, actually got together sufficient money to pay off that $96 billion debt that the Labor Party had run up and that they expected every Australian to pay off. The Howard government did, by careful management, pay off Labor’s last debt of $96 billion. It was not always popular, it was not always easy; it was very difficult—I was there. More than that, we actually put aside some $60 billion for a rainy day. Not only did we pay off Labor’s $96 billion debt but we put aside in different funds—in the Future Fund, in the education fund—some $60 billion so that future governments would never again have to run up deficits. Within two short years not only had the then Rudd Labor government blown the $60 billion in credit but they had started to borrow again. Here we are after just four short years of a Labor government and we now have a gross government debt of over $200 billion—

The DEPUTY PRESIDENT: Order! The time for consideration of this bill and four other related bills has expired.

Question put:
That the amendment (Senator Cormann’s) be agreed to.

The Senate divided. [21:44]
(The President—Senator Hogg)

Ayes ...................... 32
Noes ...................... 36
Majority ................ 4

AYES
Abetz, E
Back, CJ
Birmingham, SJ
Bushby, DC
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Humphries, G
Joyce, B
Macdonald, ID
Mason, B
Nash, F
Ronaldon, M
Scullion, NG
Williams, JR

Adams, J
Bernardi, C
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Fisher, M
Johnston, D
Kroger, H (teller)
Madigan, JJ
McKenzie, B
Parry, S
Ryan, SM
Sinodinos, A
Xenophon, N

NOES
Arbib, MV
Bilyk, CL
Bishop, TM
Brown, CL (teller)
Brown, RJ
Cameron, DN
Crossin, P
Di Natale, R
Evans, C
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Lundy, KA
McEwen, A
Milne, C
Polley, H
Rhiannon, L
Siewert, R
Stephens, U
Thistlethwaite, M
Waters, LJ
Wright, PL

PAIRS
Boswell, RLD
Boyce, SK

Conroy, SM
Collins, JMA
PAIRS
Heffernan, W Carr, KJ
Payne, MA Farrell, D

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

Third Reading
The PRESIDENT: The question now is
that the remaining stages of the bill be
agreed to and the bill be now passed.

Senator Williams: Mr President, I raise a
point of order under standing order 185 (i):
A senator shall acknowledge the chair on entering
or leaving the chamber.
I have noticed all week, Mr President, that
some do not do that and I refer specifically to
Senator Bob Brown. I have watched Senator
Brown all this week come into this chamber
and exit this chamber without
acknowledging the President, or the person
in the President's chair representing the
President, at all. I think it is demeaning, I
think it is disrespectful to the President and I
ask you to call on
Senator Brown and some
of his colleagues to abide by that standing
order and show proper respect to the
President.

The PRESIDENT: Senator Williams,
you are raising a point of order on matters I
have not been witness to this week. For the
benefit of all honourable senators, I draw
their attention to the standing orders and the
appropriate respect which needs to be shown.

Senator Bob Brown: On a point of
order, Mr President: I ask Senator Williams
to withdraw that offensive statement.

The PRESIDENT: Senator Bob Brown,
there is no point of order.

Senator Williams: Bring it on, Bob!

Senator Bob Brown: On a point of
order, Mr President: I do not know what he
has had for dinner, but he should not be
shouting across the chamber like that. I ask
you to bring Senator Williams to order and
to get him to behave decently.

The PRESIDENT: Senator Bob Brown,
there is no point of order.

Senator Bob Brown: On my point of
order, Mr President: if you are ruling that
interjections are not disorderly, then let that
stand.

The PRESIDENT: I am not ruling that
at all. I am just saying, Senator Bob Brown,
that there is no point of order. Interjections,
as everyone knows, are disorderly and do not
help the conduct of business at this hour of
the night.

Question agreed to.
Bill read a third time.

Auditor-General Amendment Bill
2011
Personal Property Securities
Amendment (Registration
Commencement) Bill 2011
Competition and Consumer
Amendment Bill (No. 1) 2011
Broadcasting Services Amendment
(Review of Future Uses of
Broadcasting Services Bands
Spectrum) Bill 2011

Third Reading
The PRESIDENT: In respect of the
Auditor-General Amendment Bill 2011, the
question is that amendments (1) to (10) on
sheet 7163 moved by Senator Ryan be
agreed to.

Question put.
A division having been called and the
bells being rung—

Senator Bob Brown: As Senator
Williams took a point of order, Senator
Joyce just crossed the chamber without
bowing and scraping. I ask you to call him to order.

The PRESIDENT: Senator Bob Brown, I was engaged in other matters. I did not witness it. I have reminded senators of the standing orders.

Senator Joyce: Mr President, it was rightly pointed out by Senator Bob Brown and I accept the admonishment. I now will cross the chamber and properly, as I should, acknowledge the chair. Now that he has pointed this out, I expect him to respect the same ruling himself.

The PRESIDENT: Senator Joyce, there is no point of order. That is not a matter for debate.

The Senate divided. [21:57]

(The President—Senator Hogg)

Ayes....................32
Noes....................36
Majority.............4

AYES

Abetz, E
Back, CJ
Birmingham, SJ
Bushby, DC
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Humphries, G
Joyce, B
Macdonald, ID
Mason, B
Nash, F
Ronaldson, M
Scullion, NG
Williams, JR

Adams, J
Bernardi, C
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Fisher, M
Johnston, D
Kroger, H (teller)
McGahan, JJ
McKenzie, B
Parry, S
Ryan, SM
Sinodinos, A
Xenophon, N

NOES

Arbib, MV
Bishop, TM
Brown, RJ
Crossin, P
Evans, C
Feeney, D
Gallacher, AM

Bilyk, CL
Brown, CL (teller)
Cameron, DN
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC

Ludlam, S
Lundy, KA
McEwen, A
Milne, C
Polley, H
Rhiannon, L
Siewert, R
Stephens, U
Thistlethwaite, M
Waters, LJ
Wright, PL

PAIRS

Boswell, RLD
Boyce, SK
Heffernan, W
Payne, MA

Conroy, SM
Collins, JMA
Carr, KJ
Farrell, D

Senator LUDWIG: I table an addendum to the explanatory memorandum relating to the Personal Property Securities Amendment (Registration Commencement) Bill 2011.

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

The PRESIDENT: The question is that the remaining stages of the Auditor-General Amendment Bill 2011, the Personal Property Securities Amendment (Registration Commencement) Bill 2011, the Competition and Consumer Amendment Bill (No. 1) 2011—Senator Fifield on a point of order.

Senator Fifield: Mr President, I rise on a point of order. The opposition may well be voting differently on different bills. I ask that they might be put separately.
The PRESIDENT: Which bills? If you can indicate to me which bills then I will put those bills separately for you.

Senator Fifield: The Auditor-General Amendment Bill 2011. Could we commence with that one?

The PRESIDENT: Is that all?

Senator Fifield: At this stage.

The PRESIDENT: The motion that has been put on the record requires me to put these bills together unless you can identify for me which bills to separate and the you vote a different way.

Senator Fifield: Mr President, I shall do so. I recognise that we are in that twilight zone that is the government's guillotine. It is indeed a peculiar circumstance where senators have to indicate how they are going to vote before they have actually voted.

The PRESIDENT: The determination of this chamber, not my determination, was that there was a certain procedure to be followed upon certain stages being reached during the evening. That resolution determines that I should now put the remaining stages of the bills that I was just reading out. If there is some reason that would cause people to vote differently then I need a reason to be able to separate those out. That is reasonable.

Senator Fifield: I can indicate that the opposition will be voting differently on the Auditor-General Amendment Bill 2011 to how we will be voting on the other bills, but I do note Senator Macdonald's point that we do not know what the additional information tabled by Senator Ludwig is. Who knows? It may have some dramatic and profound impact on our current intention in relation to the Personal Property Securities Amendment (Registration Commencement) Bill 2011.

The PRESIDENT: In which case, Senator Fifield, I will put the Auditor-General Amendment Bill separate to the others and I will deal with that bill first. The question is that the remaining stages of the Auditor-General Amendment Bill be agreed to and the bill be now passed.

The Senate divided. [22:06]

(The President—Senator Hogg)

Ayes ...................... 37
Noes ...................... 31
Majority ............... 6

AYES

- Arbib, MV
- Bishop, TM
- Brown, RJ
- Crossin, P
- Evans, C
- Feeney, D
- Gallacher, AM
- Hogg, JJ
- Ludwig, JW
- Marshall, GM
- McLucas, J
- Moore, CM
- Pratt, LC
- Sherry, NJ
- Singh, LM
- Sterle, G
- Urquhart, AE
- Wong, P
- Xenophon, N

NOES

- Abetz, E
- Back, CJ
- Birmingham, SJ
- Bushby, DC
- Colbeck, R
- Edwards, S
- Fawcett, DJ
- Fifield, MP
- Humphries, G
- Joyce, B
- Macdonald, ID
- Mason, B
- Nash, F
- Ronaldson, M
- Scullion, NG
- Williams, JR

- Adams, J
- Bernardi, C
- Brandis, GH
- Cash, MC
- Cornmann, M
- Eggleston, A
- Fierravanti-Wells, C
- Fisher, M
- Johnston, D
- Kroger, H (teller)
- Madigan, JJ
- McKenzie, B
- Parry, S
- Ryan, SM
- Sinodinos, A
PAIRS
Carr, KJ Heffernan, W
Collins, JMA Boyce, SK
Conroy, SM Boswell, RLD
Farrell, D Payne, MA

Question agreed to.

The PRESIDENT: The question now is that the remaining stages of the Personal Property Securities Amendment (Registration Commencement) Bill 2011 be agreed to and the bills be passed.

Question agreed to.

Bills read a third time.

ADJOURNMENT

The PRESIDENT: Order! I propose the question:

That the Senate do now adjourn.

Sydney Cricket Ground

Senator FAULKNER (New South Wales) (22:11): Speaking on ABC radio in the early 1930s, a famous Sydney Cricket Ground member declared: 'Breathes there a man with a soul so dead that he never heard of the Sydney Cricket Ground.' That SCG member was none other than the Australian journalist and bush poet A. B. 'Banjo' Patterson. The Sydney Cricket Ground has changed a great deal since Banjo attended his first cricket matches there in the 1870s and became an SCG member in 1885. The rifle range and cycle track are gone, but the playing surface, the Members' and Ladies' stands and many of the gardens remain.

Next year marks a significant milestone for the Sydney Cricket Ground. When the Australians take on India in the second test on 3 January 2012 it will be the 100th test match played at the ground. The SCG will join Lord's and the Melbourne Cricket Ground as one of only three grounds in the world to host 100 tests.

It was a cricket-loving colonel from the 11th North Devonshire Regiment—Lieutenant-Colonel John Richardson—who instructed his troops to clear the sand hills and scrubland behind the Victoria Barracks on the south-eastern fringe of colonial Sydney for a cricket ground. The original Garrison Ground was constructed in the 1850s and was used for practice and minor
club fixtures, supporting other more established grounds in the vicinity at the Domain, Hyde Park and the Albert Ground in Redfern. The first recorded cricket match on the new ground was between the Garrison Club and the Royal Victoria Club. Garrison won.

The ground became known as the Civil and Military Ground when Colonel Richardson associated himself with the East Sydney Cricket Ground. When he and his troops departed from New South Wales in 1870 to fight in the Sudan, responsibility for the ground was assumed by the New South Wales Regiment and eventually changed hands to the New South Wales Cricket Association in 1875. In January 1876, the colonial government of New South Wales transferred responsibility of the ground to a trust appointed by the Minister for Lands. That trust—now known as the Sydney Cricket and Sports Ground Trust—has been in continuous existence for 135 years.

In 1877 the ground was renamed the Association Ground and on 25 October the newly renamed ground hosted the Civil Service Challenge Cup, played between the Government Printing Office and the Audit Office. No-one knows who won. The official inauguration match for the ground was played in February 1878 between Victoria and New South Wales. Controversially, there was a one-shilling admission charge; with one shilling extra for the grandstand and lawn. Many cricket-goers at the time opposed the charging of admission fees to watch their beloved game.

There was more trouble at the ground the following year when the infamous 1879 Sydney riot erupted during a match between New South Wales, led by Dave Gregory, and Lord Harris's touring Englishmen. Irate spectators invaded the pitch when Victorian umpire George Coulthard dubiously gave New South Wales's star player Billy Murdoch out. The pitch was invaded a number of times during the game—one invader was Banjo Paterson—and as a result play was abandoned for the day. When play was resumed after the Sunday rest day, Lord Harris's men crushed the locals by an innings and 41 runs. Edmund Barton, later to become Australia's first Prime Minister, umpired in that match.

In 1878 the only sizeable buildings at the ground were the grandstand, a wooden pavilion and a number of small refreshment stands. In 1894, as the ground continued to grow and develop, it was renamed again—it was to be known as the Sydney Cricket Ground.

In the very early part of last century it was not only great cricketers or football players who were drawing crowds to the SCG. In 1903 and 1904, Sydney was going through a cycling boom—crowds flocked to the SCG to watch African-American world cycling sprint champion Major Taylor train and compete. Major Taylor adjusted to the oddly shaped cycle track around the ground and was so enamoured with the city, and its adoring residents, he named his daughter, born during his stay in the harbour city, Sydney. Overseas cricketers of the calibre of Brian Lara and Graeme Swann, among many others, have followed the same tradition. The SCG has seen many legendary sporting feats as well as many painful failures—not just in cricket but in many sporting codes. It served as a barracks in two world wars.

In cricket, Australia has enjoyed a winning advantage at the SCG. We have won 54 tests, lost 28 and drawn 17. The pre-eminent cricket statistician Ross Dundas has been compiling some fascinating statistics about the length of the 99 test matches played at the SCG. Only one SCG test—played in 1885—lasted two days. Actually it
lasted 7 hours and 32 minutes. Twelve tests had three days play, 32 tests had four days play, 45 tests had five days play, seven tests had six days play and two tests had seven days play—the timeless tests of 1924 and 1928. There are a few more records of interest. The lowest total scored in tests at the SCG was 42 by Australia against England in 1888. The highest total was India's 7-705 declared in 2004. The highest individual score was RE Foster's 287 in 1903. The highest batting partnership was Sid Barnes and Don Bradman's 405 in 1946. Three hundred and eighty-five batsmen have scored ducks in 99 tests. The best bowling figures in an innings was England's GA Lohmann's 8-35 in 1887. The SCG does not yield its records lightly!

The bowler to have taken most test match wickets at the SCG was Shane Warne—64 wickets. Adam Gilchrist took the most dismissals as a wicketkeeper—52, with 45 catches and seven stumpings. Greg Chappell took 19 catches, the most by any fieldsman. Allan Border and Steve Waugh jointly hold the record for the most tests played at the SCG—both played 17 tests—with Allan Border the record holding captain, with 11 tests.

Mr President, I know the staff and the SCG Trust are working hard to ensure a fitting celebration of January's milestone. It will be an important occasion for cricket lovers and Sydneysiders. For my part I have been a face in the crowd for every day of 48 of those 99 tests. Tonight I acknowledge all those who have given so many of us so many great memories over so many years.

**Novita Children's Services**

Senator EDWARDS (South Australia) (22:20): They were very fine words from Senator Faulkner about the SCG. It was nice to reminisce with him. The organisation I rise to speak about tonight is pertinent in light of Australia's recent pledge of $50 million to the Global Polio Eradication Initiative, which seeks to eliminate the remaining global cases of polio. It is known as Novita Children's Services. I have a personal connection with this disease. My father, Brian, contracted polio in 1951 and was nursed back to health by a beautiful young nurse named Elaine. They fell in love, they married and, as they are still together after 60 years and six sons, it would be difficult to say that polio had not changed my father's very full life!

This organisation was established much earlier, back in 1939. The Crippled Children's Association of South Australia was established to care for the children in South Australia who were diagnosed with polio. From its initial £2,000 annual grant, Novita, as it is now known, provides essential therapy, equipment and family support to more than 2,000 children and through broader work with families and communities it has a direct impact on more than 10,000 South Australians. Novita is one of South Australia's pre-eminent children's charities. It is a world leader in research, development and the provision of quality services to children living with physical disabilities including cerebral palsy, muscular dystrophy, acquired brain and spinal injuries, spina bifida and multiple disabilities such as intellectual, visual or hearing impairments, communication difficulties and other medical conditions.

Novita's core business is to provide early childhood services, child and adolescent services, regional services and an inclusion support program. These services are delivered by a team of highly trained occupational therapists, physiotherapists, psychologists, speech pathologists and family liaison coordinators. They are delivered in partnership with children, their families and their communities and are
tailored to the individual child, allowing for a more responsive and flexible program of support.

I would like to draw attention to some of the specific services and programs that Novita delivers. Its services are delivered free to eligible children in their home, at kindy or childcare and at schools right across metropolitan Adelaide. Importantly however, Novita has not forgotten children in the country. Its regional services team provides therapy, equipment and support to children and their families across regional South Australia in towns such as Clare and Balaklava in the Wakefield electorate and even as far away as Broken Hill. They visit regional areas up to four times a year for two or three days to provide information, resources and support to local therapists and information and training activities on a range of topics. They also offer telephone contact between visits.

The Home Interaction Program for Parents and Youngsters, or HIPPY as it is known, is a home based parenting and early childhood enrichment program. Under the guidance of a local Novita coordinator, HIPPY comprises weekly activities that parents and children work through together with the support of home tutors. Following the successful establishment of HIPPY at Mansfield Park in 2010, Novita successfully commenced two additional HIPPY programs in the northern Adelaide suburbs of Salisbury North and Davoren Park, in the Wakefield electorate, in 2011. Novita now provides HIPPY programs to 260 disadvantaged families across these three Adelaide suburbs. Not only does it deliver services critical to improving the quality of life for children living with a disability it also supplies equipment essential to assisting with mobility, speech, play and everyday activities in order to empower these children to connect with their worlds.

Last financial year Novita spent more than $14 million assisting children, and this year it has already delivered 1,650 pieces of equipment. In order to do this Novita undertakes, with the assistance of staff, volunteers and a tireless auxiliary, a large amount of fundraising. This adjournment speech coincides with one of Novita’s largest fundraising events, the West End Mighty River Run, which finishes tomorrow, on 25 November. This year 34 boats will form a flotilla in the cruise for a cause, along the Murray River, from Waikerie to Goolwa. This event features the culmination of dozens of fundraising activities held by the 22 participating crews. Each year hundreds of people line the river banks to watch the flotilla and many more boats joining in at river towns en route.

As we head into the festive season it is important to mention Carols by Candlelight, held at Elder Park in Adelaide. It attracts up to 35,000 people, as Senator McEwen, sitting opposite, would know. Novita is one of the charities that benefit from the proceeds raised. This year it will be held on 18 December, and I encourage Adelaideans to enjoy a night of festive cheer and to support not only Novita but the Cora Barclay Centre and the Women’s and Children’s Hospital.

Aside from providing services directly to children, Novita has a strong history of research and draws on this to provide high-quality services. Core areas of research for the organisation are clinical research associated with conditions like cerebral palsy, technical research like contributing to wheelchair standards and research into the impact of disability and ageing.

Novita completely changes lives, not only those of the children but also those of the parents. The freedom that Novita delivers to the carers of these children is a noble thing. I remember the joy and excitement I felt when
my children spoke their first words and took their first steps. I can only imagine how much more profound that moment would have been after thinking that my child might not have been able to do those things. This is the life-changing impact Novita has on thousands of South Australian children.

In conclusion, I would like to commend Novita on the outstanding work it does with children. This is reflected in the meaning of the organisation's name. Novita is derived from two Latin words: nova, meaning new, and vita, meaning life. This goes to the core of what this organisation does for children living with a disability in South Australia: it provides them with new life.

West Papua Forestry

Senator MADIGAN (Victoria) (22:28): Today I moved a motion calling on the government to do three things: engage in dialogue with the Indonesian government and work with the West Papuan people towards the establishment of a free state of West Papua, offer whatever support was required for the organising of a free and democratic election, and support the West Papuan people's request for UN recognition. I did not hold out much hope that it would receive overwhelming support but as this has been a policy of the Democratic Labor Party since the time West Papua was forcibly incorporated into Indonesia it is something the party feels strongly about and is determined to pursue.

This morning Senator Di Natale proudly held up the Morning Star flag of Free West Papua to the media and announced the Greens would support the West Papuan people in the celebration of what they consider to be their independence day, 1 December. In fact, Senator Di Natale moved a motion in the Senate several minutes before mine calling for the Senate to note these facts and calling on the Minister for Foreign Affairs to express to the Indonesian government that they should not continue with any human rights violations against the West Papuan people. He spoke of how the West Papuan people will, next week, celebrate their unofficial date of independence, 50 years since the West Papuan community first raised the Morning Star flag and sang their national anthem. He stated that the conflict between the West Papuans and the Indonesian military is escalating in West Papua. He mentioned that people were arrested and detained and that a number of people remain in prison at this time. He advised us that a number of people were killed during the Third West Papuan People's Congress, where people were seeking their right to determine their own future. He went on to state that the Greens, protectors of the down-trodden, want the Australian government to take a leadership role and express in the strongest possible terms to Indonesia that Australia will not tolerate any human rights abuses—in fact, any violence—on the West Papuan community. He ended stunningly on a high note proclaiming that if a motion is not an appropriate way for dealing with issues of foreign policy then he wanted to know what is.

Naturally, I was more than pleased to support the motion by Senator Di Natale, even though it was not as direct as I would have preferred. I showed my support and moved across to sit beside the Greens, a photo of which will probably become a collector's item in the years to come. Unfortunately, the motion was defeated, but undaunted I prepared to move mine, knowing I would have the support of the party who have so often held themselves out as the champion of the oppressed. I spoke briefly on the motion, reminding senators that the peoples of West Papua were entitled to pursue the right to live in a free and
democratic society. I reminded the house that Australia had rightly supported this right for other people around the world and had recently supported the people of Libya, who fought to obtain the right to live under a freely elected government of their choice. I reminded the senators of the lessons we have learned from the tragedy of East Timor and the need to continue to support other nations, especially our neighbours, when they hold out a hand for assistance.

As I finished, Senator Di Natale rose to also speak on the motion. I settled back, sure in the notion that Senator Di Natale would speak in support of the West Papuan people and the need for us to uphold their rights for a free and democratic future. Surprise! Surprise! Not only did Senator Di Natale, on behalf of the Greens, fail to support the motion, he explained that, despite his tub-thumping speech on behalf of the West Papuan people—who, in his own words, face oppression, violence, imprisonment, human rights abuses and possible execution—that the Greens do not want to see a free West Papua, do not support independence for West Papua and, for that matter, believe it should be left to the West Papuans to decide for themselves. There was no explanation as to how these people, who have been oppressed for decades, would achieve this feat—possibly the Greens would support NATO air cover in the manner that assisted the Libyan people to achieve their freedom, or maybe a Greens fact-finding mission. Needless to say, my motion seeking support for the West Papuan people was defeated. It is a shame. I did not realise that all I needed to do was call for the West Papuans to rise up alone and, unsupported by their neighbours, ask politely for self-determination.

As I said, this is an issue the DLP will pursue, but for now I will seek support elsewhere. Having been left a little dejected by the rejection of the self-appointed conscience of the federal parliament, I moved on to my second motion in support of the Tasmanian timber communities. I must admit that before today I did not hold out much hope that the motion would pass, despite support from the coalition. But once I knew the Greens were so adamant about allowing regional people the right of self-determination my confidence grew and I again waited to welcome the support of the defenders of community rights and of cultural heritage.

I spoke on the motion reminding senators of the connection these communities have with their environment, how they have grown to be identified with this environment and have formed, over generations, a cultural heritage which we should celebrate and respect. I asked the Senate to call on the government to pull back from the IGA until the concerns of these communities regarding the protection of their heritage have been adequately addressed. As I finished, Senator Milne rose to speak on the motion. As the senator is a Tasmanian, and obviously an advocate of the Greens' recently declared policy of people's self-determination, I felt sure she was there to wholeheartedly support the rights of the Tasmanian timber communities to determine their future and to safeguard their heritage. Surprise, surprise! Not only did Senator Milne, with Senator Di Natale's endorsement of self-determination ringing in our ears, fail to support the motion; she explained that the IGA is what the communities actually wanted. The senator explained that all it took to satisfy their needs for the protection of their cultural heritage was to throw enough money around that they will 'transition out of native forest logging'.

Naturally I had difficulty understanding how removing the industry that has been part of their community's culture since they first
began generations ago would assist the community to survive. After all, in the past there have been other communities who the government said would be better off if we poured lots of money into them and encouraged them to move away from their connections to their cultural heritage. I suppose if enough money were thrown at them many of the people who live in these communities could simply pack up and transition all the way to the mainland. After that, the mining, fishing and farming communities might also see the benefits of 'transitioning' and would be happy to become mainlanders. It would leave Tasmania rather empty, but I am sure the Greens could find someone to fill the vacancies.

Of course, the motion was defeated. I should say I appreciate the coalition's support for the rights of Tasmanian communities. Unfortunately the ALP-Greens government remains joined at the hip. On behalf of all these communities I will be pursuing their right to have their cultural heritage recognised. This is not a divisive issue. As with the right and proper recognition of the cultural heritage of the Indigenous members of the Australian community, this is an issue that should bring our nation closer together. When we hear that self-determination is right and proper for the West Papuan people but not for our own citizens we have a right to consider this a double standard. I was once told that blue is considered the colour of truth, red of passion and white of purity. Maybe now we can say the colour of hypocrisy is green.

Scanlon, Ms Kate

Senator SINGH (Tasmania) (22:37): I rise with sadness this evening to offer my condolences to the Scanlon family of the north-west coast of Tasmania for the loss of their daughter, Kate, who on Tuesday was the victim of a tragic train accident in India.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Defence

(Question No. 712 amended)

Senator Johnston asked the Minister representing the Minister for Defence, upon notice, on 23 June 2011:

In regard to the DLA Piper Review of Allegations of Sexual and Other Abuse (and related matters) in Defence:

(1) How many people lodged a complaint before 17 June 2011.
(2) What immediate feedback/reply was provided to each of these complainants.
(3) Did the feedback/reply include an immediate verbal response to these complainants, many of whom could be described as being highly traumatised in having the courage to bring to the attention of authorities their ordeals; if not, why not.
(4) To date, how many people have lodged a complaint since the 17 June 2011 deadline.
(5) How many staff have been assigned to look through these complaints both at DLA Piper and within the department.
(6) Who in the department is overseeing this review, and what is their role.
(7) What is the expected cost of this review.

Senator Chris Evans: The Minister for Defence has provided the following answer to the honourable senator's question:

Several of the following questions required detailed information regarding the operation of the external legal review being conducted by DLA Piper. Responses to those questions are based on information provided by DLA Piper.

(1) By 17 June 2011, the DLA Piper Review had received communications, either directly or referred by the Minister for Defence's Office, from approximately 1,100 people. Not all of the communications received by the Review contain 'complaints'. For example, some of the communications include general statements about the actions which the Minister is taking in relation to sexual and other abuse in Defence. DLA Piper has advised that some of the complaints received are not within the scope of the Review because they do not relate to sexual or other abuse in Defence.

(2) DLA Piper has provided the following advice in relation to this question:

The immediate feedback/reply which was sent to a person who contacted the Review depended on whether the person sent an email to one of the email mailboxes set up for the Review or called the Review's 1800 number.

The Review mailboxes received incoming messages 24 hours a day 7 days a week. From 10 May 2011 until Wednesday 15 June 2011 people who sent an email to a Review mailbox received an immediate automated response which said:

You have reached the email address for the Review of Allegations of Sexual and other Abuse in Defence.

If this is your first contact with Review please read the attached Information Sheet which:

• Introduces the Review of allegations of sexual and other abuse in Defence
• Explains what the Review can do to protect your identity and the confidentiality of your information

QUESTIONS ON NOTICE
Once you have read the information sheet please fill in the attached forms and return them to us

- to tell the Review if you want your identity or information to remain confidential;
- to let us know if you would prefer to deal with a team member who is the same sex as you;
- to let us know the best way for us to get back to you to set a time to take your information.

You can call the Review on 1 800 424 991 2.00 pm – 9.00 pm Monday to Friday.

Attached to the email were the information sheet and the two forms referred to in the email with instructions on how to return the completed forms to the Review.

On Wednesday 15 June 2011 the automated response was changed to say:

You have reached the email address for the Review of Allegations of Sexual and other Abuse in Defence.

If this is your first contact with Review further details as to how to provide information to the Review will be forwarded to you shortly.

That message remained as the automatic email message until the close of the period for making allegations to the Review at 9.00 pm on the evening of Friday 17 June 2011.

The 1 800 number was staffed with lawyers from 2.00 pm to 9.00 pm Eastern Standard Time Monday to Friday from Tuesday 10 May 2011 to Friday 17 June 2011.

The lawyers staffing the 1 800 number were instructed on the background to the Review and on the sensitivities involved in taking statements from people who have been abused. These lawyers were provided with a script for taking calls on the 1 800 number. The lawyers who took calls on the 1 800 number adapted their feedback/reply to the caller according to the circumstances of the call.

The 1 800 number was set up so that if a call came in outside of the hours of 2.00 pm to 9.00pm Monday to Friday, or if all the rostered lawyers were engaged taking calls, then the caller was diverted to a detailed message which invited the caller to nominate an address and time and number for call back and - if they wished to speak to someone of their own sex - to say so in the message.

The Review Team discovered that the recorded message malfunctioned on some occasions and did not allow the caller to leave a message. This malfunction was repaired promptly on each occasion that this was discovered.

The recorded message facility had been tested satisfactorily Tuesday 10 May 2011 the day on which the DEFGRAM was issued inviting Defence personnel to contact the Review.

At 9.15 pm on Friday 13 May 2011 one of the Review team discovered that the voicemail looped the recorded message and did not allow the caller to leave a message. The DLA Piper IT team investigated over the weekend and identified a software problem. The problem was resolved on the evening of Sunday 15 May 2011. The telephone log indicates that there were no attempted calls to the 1800 number between the evening of Friday 13 - Sunday 15 May.

In these early days of the operation of the 1 800 number very few calls were coming to the 1 800 number.

No-one who spoke to one of the Review's phone roster staff in this early period of operation of the 1 800 made any mention of difficulties with the recorded message.

Around 2.40pm on Monday 30 May it was discovered that a phone which had been used for a 1 800 roster on the evening of Friday 27 May had not been taken off 1800 operation and was ringing without a rostered lawyer to take a call. This was remedied within the hour. From then until 17 June 2011, a staff member called the 1 800 each business day and left a test message. No problems were detected with the working of the recorded message facility.

Until the last week of the operation of the 1 800 call roster, almost all of calls to the 1 800 number during the 2.00pm to 9.00 pm Monday to Friday hours were taken as they came in.
Each caller who left a voicemail message with a return telephone number was called back at least once. Generally, a call back was made within two business days of a message having been left.

However, on Monday 13 June 2011, which was the start of the last week of operation of the 1800 number, there was a program about abuse in Defence on ABC television’s Four Corners program. That program included reference to the 17 June close of the period for people to provide allegations to the Review.

The next day, and for the remainder of that week, there was a surge in the number of calls to the 1800 number. In response to this surge in calls, the Review rostered extra staff to take calls on the 1800 number during the 2.00 pm to 9.00 pm periods and to return calls to people who had left messages. Review team lawyers returned calls to all persons who had left a message during the week 13-17 June by the end of that week. The last return calls by Review team lawyers were made around 10.00 pm on the evening of Friday the 17th after the 1800 number roster had ceased at 9.00 pm.

As at 10pm on 17 June 2011, the Review was unable to make contact with only three people. Of those, one person did not leave a return telephone number, another did not have a voicemail service on which to leave a message and the other person did not leave a message.

The Review Team does not leave messages because of the subject matter of the calls.

The Review has now made contact (whether by telephone, email or post) with everyone who contacted the 1800 number before and since 17 June 2011.

(3) The immediate reply/feedback to people who called the 1800 number during the hours of 2.00 pm to 9.00 pm Monday to Friday for most of the weeks of operation of the number included a verbal response with a lawyer taking calls or a verbal response by call-back to callers who left a message.

The immediate feedback/reply response to people who sent emails to a Review mailbox was the automatic email with the attachments as explained in the answer to Question 2.

The reasons why the Review did not arrange for people sending an email to a Review mailbox to get an immediate verbal reply included that: it was not practical to have staff available to read and assess all of the emails coming in to the Review mailboxes 24 hours a day, 7 days a week and to provide an immediate and informed verbal reply as soon as the emails came in; the emails coming into the mailboxes were reviewed each business day to identify any that appeared to need urgent action such as notification to the Australian Defence Force Investigative Service (ADFIS); at the same time as the Review was receiving calls and receiving emails, the Review was also considering what level of follow up and information-gathering would be appropriate and achievable in time for report by the end of July (which was the delivery date contemplated at the start of the Review).

The Review did take into account that some of the people contacting the Review would be traumatised.

However, the Review considered and formed the view that it was neither feasible nor appropriate to make telephone calls – immediate or otherwise - to all people who sent an email to the Review regardless of the circumstances. The Review decided that it should only make calls where it was appropriate to do so. In deciding whether it was appropriate to do so the Review took into account a number of considerations including: whether the person who sent the email is the (alleged) victim or is closely connected with the victim or is someone who claims to be a witness to abuse or to have heard second or third hand reports of abuse; whether the person has already provided enough information for the Review to be able to report on the allegation; whether the matter raised in the email is out of scope for the Review; how serious is the abuse alleged in the email; whether there is any indication that the person who sent the email is or may be distressed; whether detailed information about an allegation could be gathered most accurately, effectively and most conveniently for the informant by sending them a statement form with guidance on how to complete the form.
The concern that some of the people would be traumatised was also taken into account in the guidance given to lawyers involved in taking and returning calls to the 1 800 number. The background material provided to lawyers involved in calls and the script used in these calls were developed in consultation with Dr Susan Harris Rimmer who is an expert in communicating with victims of sexual assault. This script was also submitted to the Office of the Defence Force Ombudsman for comment.

The script for making return calls included contact numbers for counselling services organised by Defence. If a caller appeared to be distressed, the Review team lawyers provided those numbers to the caller.

The Review was concerned that if it took information from people before they had considered and decided whether they wanted to put restrictions on disclosure of their information, then it might not be possible to maintain confidentiality for their information.

The automatic email response and the documents attached to the automatic response were designed to provide a basis for people contacting the Review to make informed decisions about these matters. The process and the information sheet and the attached forms were developed in consultation with Dr Susan Harris-Rimmer. The attachments were submitted to the Office of the Defence Force Ombudsman for comment.

(4) As at 1 October, approximately 138 late new complainants have contacted DLA Piper since 9.00 pm on Friday 17 June 2011.

(5) DLA Piper has assigned 21 senior lawyers and approximately 46 junior lawyers and paralegals to the Review. The firm has also engaged one full time barrister to advise the Review and another barrister on a part-time basis to advise the Review. No Department personnel are involved in the Review's analysis of complaints.

(6) Dr David Lloyd, Defence General Counsel has day to day responsibility as Defence's primary point of contact for the Review.

(7) As at 1 October 2011, the DLA Piper Review is anticipated to cost in excess of $6 million.