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SITTING DAYS—2012

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- BRISBANE  936AM
- CANBERRA  103.9FM
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- MELBOURNE 1026AM
- PERTH     585AM
- SYDNEY    630AM

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FORTY-THIRD PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

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

Senate Office holders
President—Senator Hon. John Joseph Hogg

Deputy President and Chair of Committees—Senator Stephen Shane Parry

Temporary Chairs of Committees—Thomas Mark Bishop, Suzanne Kay Boyce, Douglas Niven Cameron, Patricia Margaret Crossin, Sean Edwards, David Julian Fawcett, Mark Lionel Furner, Scott Ludlam, Gavin Mark Marshall, Bridget McKenzie, Claire Mary Moore, Louise Clare Pratt, Arthur Sinodinos and Ursula Mary Stephens

Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans

Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy

Leader of the Opposition in the Senate—Senator Hon. Eric Abetz

Deputy Leader of the Opposition in the Senate—Senator Hon. George Henry Brandis SC

Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig

Manager of Opposition Business in the Senate—Senator Mitchell Peter Fifield

Senate Party Leaders and Whips

Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans

Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy

Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz

Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC

Leader of The Nationals—Senator Barnaby Thomas Gerard Joyce

Deputy Leader of The Nationals—Senator Fiona Nash

Leader of the Australian Greens—Senator Christine Anne Milne

Chief Government Whip—Senator Anne McEwen

Deputy Government Whips—Senators Carol Louise Brown and Helen Beatrice Polley

Chief Opposition Whip—Senator Helen Kroger

Deputy Opposition Whips—Senators David Christopher Bushby and Christopher John Back

The Nationals Whip—Senator John Reginald Williams

Australian Greens Whip—Senator Rachel Mary Siewert

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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

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

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

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

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

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

(7) Chosen by the Parliament of South Australia to fill a casual vacancy (vice M. J. Fisher, resigned 15.8.12), pursuant to section 15 of the Constitution.

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—C Mills
# GILLARD MINISTRY

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<tr>
<td>– Minister Assisting the Prime Minister on Digital Productivity</td>
<td>The Hon Julia Gillard MP</td>
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<tr>
<td>– Minister Assisting the Prime Minister on Asian Century Policy</td>
<td>Senator the Hon Stephen Conroy</td>
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<td><strong>Minister for Social Inclusion</strong></td>
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<tr>
<td>– Minister Assisting the Prime Minister on Mental Health Reform</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>– Member for the Public Service and Integrity</td>
<td>The Hon Gary Gray AO MP</td>
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<tr>
<td>– Minister Assisting the Prime Minister on the Centenary of ANZAC</td>
<td>The Hon Warren Snowdon MP</td>
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<tr>
<td>– Cabinet Secretary</td>
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<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td>(Deputy Prime Minister)</td>
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<td>– Minister for Financial Services and Superannuation</td>
<td>The Hon Wayne Swan MP</td>
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<tr>
<td>– Assistant Treasurer</td>
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<tr>
<td>– Parliamentary Secretary to the Treasurer</td>
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<td>(Leader of the Government in the Senate)</td>
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<tr>
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<td>The Hon Greg Combet AM MP</td>
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<tr>
<td>– Minister for Small Business</td>
<td>The Hon Brendan O’Connor MP</td>
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<tr>
<td>– Parliamentary Secretary for Industry and Innovation</td>
<td>Senator the Hon Kate Lundy</td>
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<tr>
<td>– Parliamentary Secretary for Higher Education and Skills</td>
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<td>– Minister for Broadband, Communications and the Digital Economy</td>
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<tr>
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<td>The Hon Tony Burke MP</td>
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<tr>
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<td>Senator the Hon Penny Wong</td>
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CHAMBER
Thursday, 22 November 2012

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

BILLS

Low Aromatic Fuel Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:31): I am very pleased that this chamber is finally able to debate the Low Aromatic Fuel Bill 2012, because unfortunately, despite the very serious and sustained efforts to end it, petrol sniffing is still persistent in some areas of Australia.

Over the past 20 years it has been the subject of reports, coronial and other inquiries and research projects. The impact of petrol sniffing on Aboriginal and Torres Strait Islander individuals and communities is very well documented and well known. The petrol-sniffing inquiry, in fact, was one of the first committee inquiries that I participated in in this place back in 2005-2006. The committee recognised that the situation with petrol sniffing in Australia was dire, and since that inquiry I am very pleased that there has been considerable movement on this issue.

We do now have a petrol-sniffing strategy and we have seen great progress all over Central Australia in dealing with this problem. There are very good programs that are supporting communities in their goal to eradicate petrol sniffing. Most fuel stations in the targeted areas have switched to low-aromatic, non-sniffable fuel or, as it is known, Opal fuel, resulting in a 94 per cent drop in petrol sniffing. That is according to the government's assessment of the success of the program.

But, unfortunately, there is still petrol sniffing occurring, and there are recurring outbreaks. One example that CAYLUS, which is the Central Australian Youth Link Up Service, spoke to Lateline about when they were presenting submissions and evidence to the latest inquiry, the inquiry into this bill, is:

There was one outbreak that sort of spread like wildfire through the Western Desert, which was 12-year-olds, the average age was 11 or 12. A kid came in and showed other kids how to do it and off it took.

When it was managed to be stopped in one community, one of the kids went to the next community and started it up there, and there were another 12 kids sniffing there. It took a couple of months of serious work by a lot of people to bring that one back under control.

As I said, that was some of the evidence that CAYLUS gave to the inquiry.

This occurred because, unfortunately, sniffable fuel is still readily available in some places. These outbreaks are very closely linked to gaps in the rollout of a non-sniffable fuel. These gaps exist because up until now we have relied on suppliers signing up to this process voluntarily. Currently, the government designates target areas under the strategy for non-sniffable fuel use, and then works and lobbies petrol station owners to have Opal or non-sniffable fuel replace regular unleaded fuel. Of course communities and service stations can also receive Opal on request, and this is part of the strategy for rolling it out. However, where petrol suppliers fail or refuse to collaborate, the problem of petrol sniffing and its associated horrors is more likely to occur; in communities close to those petrol stations that refuse to engage with supplying Opal fuel, you can track outbreaks.
CAYLUS provided an example from my home state of Western Australia where, up until the rollout of Opal in Laverton, the owner of one particular service station there had been refusing to stock Opal for a number of years. Fortunately, there was a change of ownership and the new owners agreed to stock Opal. That has had a dramatic impact in reducing the number of sniffers. The association between dealing with petrol sniffing and the rolling out of Opal is very clear.

We have been gathering evidence on this for quite some time. The Senate Community Affairs Legislation Committee inquiry into this bill has clearly documented the success of the rollout of the Opal fuel program. But it has also shown firsthand that the categorical rejection of Opal fuel by a small minority, with what some witnesses called a 'pig-headed response', is where we have been struggling. As I have articulated, that is where we have the gaps. This is why we believe that it is very important that the government have the power to mandate the use of low-aromatic fuel. We believe it is essential, because we absolutely need that power to be able to plug these gaps in the sniffing strategy.

As of February this year, there were at least eight, and possibly more, retailers who have consistently refused to stock low-aromatic fuel. Evidence collected by CAYLUS suggests that these refusals have resulted in further sniffing incidents. We heard about those during the Senate inquiry.

According to CAYLUS, there have been areas of concern in Papunya, Lake Nash, Tjitjikala, Alice Springs, Kintore, Ti Tree, Canting Creek and a number of other places. These are the current places where we understand—the evidence has come in over the last six months—that there have been sniffing outbreaks. For example, Lake Nash is very close to a pub over the border in Queensland, Urandangi, which stocks sniffable fuel. That is, sniffable fuel is run into Lake Nash, which is trying really hard to deal with issues around petrol sniffing. Because cars can carry it across the border, it is really easy to bring it into Lake Nash. Because petrol sniffing does not contain itself within state borders, there needs to be a national approach to mandating fuel supply in designated zones rather than leaving it up to individual states and territories, as the federal government has previously proposed. We believe that it is essential to have a nationally coordinated response.

The Senate inquiry heard evidence to this effect from the Warlpiri Youth Development Aboriginal Corporation, who said:

Warlpiri families come and go across state borders so, for maximum impact, we would like to see this legislation applied to Western Australia, Queensland and South Australia as well as the Northern Territory. We know that Opal fuel has proven effective but, unless the sale of Opal is mandated, and across the broader region, there is a real danger of sniffing outbreaks and devastating consequences. The evidence I have heard for over seven years now clearly shows that controlling access to sniffable fuel can have, and does have, a significant impact on the ability of communities to prevent harm coming to their young people. Organisations in Central Australia, health and drug services, and individuals from affected communities have all voiced their support for this particular legislative approach, and that was very clear through the inquiry process but also from sustained lobbying over a number of years. This has been on the cards for a long time because we know there have been significant gaps in the strategy.

I am not for one minute at all trying to run down what has been achieved so far. It has been an outstanding program of success. It is
one of those programs where we can all stand really proudly and say that there has been multiparty support for this and it has been a success. So why not capitalise on that success? We are almost there in dealing with this problem of petrol sniffing.

Although we have had this comprehensive program provided, there are gaps. We know that Opal fuel on its own cannot achieve the stamping-out of petrol sniffing. We know that it has to be part of a comprehensive approach. It is absolutely crucial, because it buys time in order to get in with youth diversionary programs and the other support programs such as drug and alcohol support programs. We know that it is successful but we also know that, unless we deal with these areas of outbreak associated with sniffable fuel, we will continue to undermine that success.

As has been articulated to the Senate inquiry and to me personally, the gains achieved to date through the rollout of Opal fuel are critical and crucial, but they are also fragile. We currently have a generation of children in much of the region who have grown up free of a sniffing culture. However, due to what we believe are the irresponsible decisions of some retailers, the sniffing culture appears to be once again rearing its head in some sites. We know from hard experience that sniffing, once established in an affected community, can rapidly spread. It is an epidemic we do not wish to relive. Again, that was evidence from CAYLUS during the Senate inquiry.

Though the provision of low-aromatic fuel is not on its own a solution, it is absolutely critical to a holistic approach. CAYLUS has had long experience in the field—and I think senators who have had any dealings with CAYLUS will know that they are one of the most respected youth services in Central Australia and that they have played a critical role in dealing with the issue of petrol sniffing. As CAYLUS said:

We were doing this before Opal, and we would try all the other measures. You could start a youth program in a community and you would get a lot of the sniffers to stop but not all of them. But once you have Opal in a community the sniffing stops and then the youth programs can really go because they are not competing against people who are off their faces all the time.

The importance of Opal has been clearly demonstrated. All it has lacked is the final part to ensure that the petrol-sniffing strategy has the capacity to proceed in the face of consistent denial from the petrol station owners. As Andrew Stojanovski, who was awarded the Order of Australia Medal for his work at Yuendumu in setting up the Mount Theo Petrol Sniffing Prevention Program, told the committee:

Opal is a solution that governments and communities can readily implement. Its use in Central Australia has really taken the pressure off communities and provides a breathing space where community workers can actually focus on programs that address the personal and social issues underlying petrol sniffing. When sniffing is rife in a community it is near impossible to do this, the power, violence and dysfunction caused by sniffing is too overwhelming.

This is why I have introduced this bill as a private member’s bill—because we have spent so long working in a collective effort to address the issues of petrol sniffing. This is the element that the communities have said is missing from the strategy. They have been lobbying for a long time for this. We have had three Senate inquiries. The Senate inquiry in 2009 found that the Opal program was overwhelmingly successful but it identified this gap and said that if retailers were refusing to stock Opal fuel or low-aromatic fuel the government should proceed to mandate the stocking of Opal fuel.

This is why I am bringing this bill to the chamber. The government has not brought it
on. There is overwhelming support. I was lobbied very heavily by the communities in Central Australia, who need this vital element to make sure that they can control petrol sniffing in their communities. This is also a very powerful tool. The communities have also been lobbying heavily for this so that they can then implement their other youth programs, the diversionary programs, and work to really address the underlying causes of petrol sniffing.

This bill will give the minister the power to mandate low-aromatic fuel and make it an offence to supply regular fuel in these places. It will also give the minister the power to create fuel control areas by legislative instrument, which will give the minister the capacity to tailor the measures to the particular community—after consulting them.

Consultation and flexibility are at the heart of these measures because this bill is about helping communities affected by petrol sniffing by complementing the existing strategies and programs. Consultation has been a very big part of the development of this bill. I believe this has been an effective process. We developed the bill in consultation with and with feedback from communities. We made sure it got referred to a Senate inquiry. The overwhelming number of submissions to the Senate inquiry supported this bill and very strongly endorsed this approach. We have taken on board the feedback from the Senate inquiry and subsequently will amend the bill. We have consulted again on those measures. We have talked to as many of the stakeholders as we possibly can and, as I said, we have received overwhelming support for these measures.

I will discuss the purpose of the amendments in the committee stage, but I want to acknowledge the many people who participated in the Senate inquiry. We were pleased to see the proper process of consultation and committee inquiry work here—the idea being that, when you bring a bill to the Senate, it goes off to inquiry, you get feedback and you make amendments in response to that feedback. So, where a bill is not perfect, in response to very sensible review and comment you can make amendments that reflect the feedback from the community. I stress again: this bill has the strong support of Aboriginal organisations, health organisations, community organisations, individuals and communities. They want the minister to have the power to mandate the supply of low-aromatic fuel because it is absolutely critical to dealing with the scourge of petrol sniffing.

I have been in communities and seen for myself the impact that taking away sniffable fuel has. As CAYLUS said, it provides the window of opportunity for people to get in and deal with the other, underlying causes of petrol sniffing. During the committee inquiry, some of the concern was that, if you take away sniffable fuel, people will switch to other forms of substance abuse. The evidence in fact does not support that. The evidence supports the idea that this does provide a window of opportunity to give youth in particular another chance to address those underlying causes and have sufficient diversionary programs so that these youths can move completely away from substance abuse.

When petrol stations just pig-headedly refuse to stock Opal fuel, this bill gives the government or the minister, after they have carefully consulted, the capacity to say, 'You know what? You really need to stock non-sniffable fuel.' As the evidence to the committee inquiry overwhelmingly demonstrated, when people can get access to sniffable fuel and run that into communities, that is where you get petrol-sniffing
outbreaks. Again, the evidence overwhelmingly shows that that is the case. Once somebody starts petrol sniffing in a community, it is very easy to get other kids sniffing, and then it moves on to other communities.

As I said, this bill has the overwhelming support of the community organisations that we have consulted. We have consulted them extensively and, under the bill, the minister will be required to consult as well. So it is not as if this is something that the minister can apply willy-nilly to the states and territories in Australia. The minister will need to consult under this bill. It is the missing piece to finally dealing with petrol sniffing, which can so devastate our communities. Petrol sniffing has largely occurred in Central Australia, but it does occur elsewhere and it is increasingly occurring in the north of the Northern Territory and in Western Australia around Warburton, Laverton, which I have already discussed, and in some places in the Kimberleys. We need the minister to have the power of mandate where we see this sort of thing happening and where service stations are simply refusing to stock Opal. It is not good enough that these pig-headed service station owners can undermine the effectiveness of what is such a good program—where Australia can rightly hold its head up high and say, 'We took action to address this issue.'

Amendments will be circulated in the chamber and will be discussed in the committee stage. I very strongly commend this bill to the chamber. It is that final link in addressing the issues around petrol sniffing, and it has the overwhelming support of the community. I am absolutely and totally convinced of that.

Senator CROSSIN (Northern Territory) (09:50): I rise to add my contribution to this debate on the Low Aromatic Fuel Bill 2012. I recognise Senator Siewert's passion and endeavours in this area but might use my opportunity this morning to also correct some of her statements.

Petrol sniffing has been around in the Northern Territory for many, many decades. When I arrived at Yirrkala in 1981—and I have spoken about my experience in that community many times in this chamber—I saw firsthand the impact of petrol sniffing. That was over 30 years ago. In fact, in 1983 my husband specifically had a group of 15 post-primary boys in his class who were all petrol sniffers. It was a specific educational strategy that we designed at Yirrkala School to try and stop those boys from sniffing and to get them re-engaged in education. It was very difficult—extremely difficult—because there were no designated youth programs; there were no low-aromatic fuels back then. It was not until the 1990s that avgas was introduced across the Top End, specifically in Maningrida, I think. Chris Burns owes his doctorate to the research he did into avgas and its impact on petrol sniffing. Then, of course, it was not until 2005 that BP finally came up with the low-aromatic fuel that we now call Opal.

So a solution that would actually turn off the tap here has only been around since 2005, and that then led to the first Senate inquiry being initiated in 2006. Petrol sniffing is not just confined to Central Australia—not at all. I have lived with and am related to Indigenous families in north-east Arnhem who have watched their adolescent children diminish mentally, drastically, over the years to the point where they are chronically mentally ill. It saddens those families. It saddens me.

The other thing I want to say, Senator Siewert, is that this is not the last chapter in this book. This is not the last rung in the saga
of petrol sniffing, because what we still need to do is have rehabilitation places right throughout Central Australia, the Top End and probably in Queensland and WA that cope with those adolescents and young adults who are mentally ill as a result of petrol sniffing. I know, for example, that the families at Yirrkala struggle because there is no rehabilitation facility in Gove and the ones in Darwin are completely inadequate. We know that in a place like Gove this bill will be very hard to implement because of the town and the situation there. At Jabiru we will have the same problems and similarly in Katherine. So there will be a need to embark on a lot of concentrated work and effort which goes to education, consultation and negotiation in order to get this bill implemented. There are still many years ahead of us to make sure that we do turn off the tap to regular unleaded petrol and just roll Opal out in remote communities.

The other rung that we will need to look at is extending the youth programs. If I had 20 minutes I could spend my whole time singing the praises of the Central Australian Youth Link Up Service and the fantastic work that people like Blair McFarland, Tristan Ray and their co-workers have done in highlighting the impact of youth services, combined with diminishing the reliance and dependence of youth on petrol for sniffing. That is a fantastic youth service and they work really well with people like the Mount Theo mob and Susie Low, but they are also confined to Central Australia. It would be my dream to give CAYLUS enough funding for them to become the Northern Territory youth link-up service, not just the Central Australian Youth Link Up Service, because I think they have the capacity to extend the work they do right up the Stuart Highway and right across the length and breadth of the Northern Territory.

I am surprised that there has not been a call to ensure that, as we mandate low-aromatic fuel in petrol stations, we also mandate the funding for an expansion of CAYLUS, so that as we turn off the tap and do not give young men, particularly, a reason to sniff this fuel we also provide them with the alternative. It is fine to have a bill in here for low-aromatic fuel to turn off that tap, but what I also want to see is the other side of the scales being balanced and the additional funding being provided so that an organisation can expand and provide these young people with an alternative.

There are a number of amendments that clearly need to be made to this bill in order for it to be passed. But let me be very clear that this Labor government has worked laboriously and closely with stakeholders to introduce voluntary compliance of suppliers with using low-aromatic fuels. Success in Indigenous health policy takes time, and the voluntary rollout of the low-aromatic fuel Opal over time has made a 70 per cent difference to the plight of petrol sniffers in Australian communities. So we know it works. This bill is about trying to take the next step.

We have worked hard to introduce Opal in areas around Australia. In 2005 the first Petrol Sniffing Strategy was announced; however, the plan was only partially implemented by the then coalition government. Since 2007, when we came into government, we have worked closely with the private sector, with governments at all levels and with NGOs to address those gaps and to achieve implementation of a successful Petrol Sniffing Strategy program. The manufacture and distribution of Opal in Central and Northern Australia has been a story of spectacular success. It has improved Indigenous health by curbing the detrimental curse of petrol sniffing across many of the communities, so in 2009 we expanded the
supply and uptake of Opal fuel across the gulf region of Queensland, the East Kimberley and the Top End. Since then, the success has been echoed across many regions.

I do not have time to go through some of the evidence that was presented to the third and most recent inquiry conducted by the Senate Community Affairs Legislation Committee. I had been involved in the first two; I missed this one because I had other engagements in the Territory at the time. The inquiry on low-aromatic fuel took evidence from people like Donna Ah Chee at the Central Australian Aboriginal Congress, who said that the rollout of Opal fuel in Central Australia 'demonstrates what supply-side strategies can achieve'. There was also evidence from Susie Low at Mount Theo, from the NPY Women's Council, and from Andrew Stojanovski, whom Senator Siewert talked about. So there is clearly evidence about this strategy and how it works.

As of July this year, there are 123 sites receiving low-aromatic fuel throughout regional and remote Australia. And since July this year the Department of Health and Ageing have conducted a procurement process to establish increased production and storage of low-aromatic fuel in various places in remote Australia. So a lot of work has been done and is being done. The committee heard that the low-aromatic fuel storage and distribution facility in Darwin is expected to be completed before the end of 2013. That will ensure that there is ready access to supply to roll it out across the Top End, not just in Central Australia.

I am keen to try and wind up my remarks this morning, because I know we want to get through all of the speeches in the second reading debate, move the amendments and get this bill passed. But I clearly say in support of this legislation that I think it is time that we move on ensuring that distributors in the Northern Territory turn to Opal, and only to Opal. I think there is much discussion and there is much work still to be done. While the voluntary scheme is in place, we know that there is still a lot of work to be done to ensure that distributors switch to Opal and do it confidently and competently. We know that plenty of education work will need to be done to ensure that people have confidence in knowing what the difference between regular unleaded and Opal is. Of course, there is no difference except for the smell, but that education will need to occur. There will be a need to fund and extend those youth programs right around the Territory. My dream would be, as I said, that the Central Australian Youth Link Up Service becomes the Northern Territory youth link-up service.

So this is not the final chapter in the book; this is another chapter in addressing petrol sniffing. There is still a lot more work to be done. There are a lot more education programs to be rolled out, youth programs to be rolled out and work to be done with distributors. But it is another step along the way to ensuring that young Aboriginal lives are not destroyed because the only end of their day is to stick their nose in a can of petrol and sniff it. So we in this government need to play whatever part we can to prevent that occurring and to save one more person's life from spiralling dramatically downward to a tragic ending where they either become mentally ill or die, and this parliament needs to grasp any opportunity it has to prevent that from happening.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (10:01): I rise to again contribute to the debate on the Low Aromatic Fuel Bill 2012, a private member's bill introduced by Senator Siewert. I will probably be somewhat critical of the government and of
the Greens today, for a number of reasons that will become evident during my contribution, but I would like to start by saying that I would commend all sides of this place for their motivation. There is no question that the government is well motivated—I do not really understand the backflip of this morning—and I know that Senator Siewert is very well motivated in regard to the introduction of this legislation. I know that Senator Crossin, Senator Moore, Senator Siewert, I and others have been part of committees in the past that looked at this issue, before the committee that looked into this legislation, and we have all been very frustrated. We have had committee discussions. We made a recommendation after a committee inquiry in 2009 that someone act to introduce some legislation. I suspect that Senator Siewert’s introduction of this legislation was a function of all of that frustration, but I think I should put on the record that I admire the motivation of all in this matter.

Of course, we are motivated by a very, very damaging substance. I can remember, as a very young bloke, hearing only a couple of times about people sniffing petrol, but it is really not a part of life for those who live conventionally in mainstream Australia. But it is just so damaging. I have been very fortunate, like Senator Crossin, to have spent some of my past living in remote parts of the Northern Territory and have viewed the damage that is caused by this otherwise innocuous substance that helps a car go. It is very damaging to communities and families, because the nature of the substance is that there are quite a spectrum of reactions when people are under the influence of petrol; it affects different people in different ways. Unlike with things like alcohol and other substances of abuse, where there is a general body weight indicator, for some reason—it is unknown, and not a lot of work has been done on it—some people hit this sort of psychotic state and you cannot speak to them or communicate with them. These are otherwise quite ordinary people. Yes, they have had some challenges and they are self-medicating; but, notwithstanding that, quite ordinary people behave in the most unexplainable ways, and it is just so destructive.

It covers a spectrum. At one end, they simply need petrol to sniff, so they will humbug, they will break things, they will hurt people or they will hurt themselves until you give them some more petrol or access to more petrol. That is extremely damaging to a community and to a family. The tragedy at the other end of the spectrum—I almost hesitate to remind the chamber—is shown by the circumstances where an 18-year-old petrol sniffer followed a group of young boys and girls, between the ages of six and nine, down to a billabong. He was in such a psychotic state that he waded into the billabong, grabbed an eight-year-old girl, and sodomised her and drowned her simultaneously. Imagine the psychotic state where that would happen. You can imagine the community’s sense of grief and lack of understanding of how this could possibly happen in the community.

These are the sorts of events that we have, I think, managed to ameliorate substantially. It did not come because of some miracle in this place or legislation; it came through the miracle of technology—the miracle of Opal. I would have to commend the previous government and commend Tony Abbott for his leadership in saying to BP, ‘We wish to develop a fuel that doesn’t have the nasty bits that make you high—a non-aromatic or low-aromatic fuel.’ That was done by BP, and I have to say that in my time in this area I have never seen such a change literally overnight. There were people whom I did not recognise. I knew they were sniffers; I would have
vague conversations with them, but they were never going to make much sense. They changed into people whom I met for the first time—really wonderful people who had come out of the smog. I think it had a fantastic influence. It was expanded by the Howard government. I would also like to commend the current government, who have taken up that strategy and pursued that with the same vigour. I would also commend Warren Snowdon. He has certainly been very passionate about the continued rollout, and I know he shares the frustration of this place and the commitment to ensuring that we get it right.

The Central Australian Youth Link Up Service has been mentioned often in here, as it should be. If I could build on the other compliments that Tristan Ray and Blair McFarland have had, for me as a very practical person—and I know Tristan and Blair would understand—they provide minute feedback about what works and what does not. I know they run a great link-up service.

They are able to tell me forensically what is actually happening out there in the communities. They can say that to a person. They can say, 'There are eight people now, but four of them actually went last time in the football round that went over hundreds of kilometres. We now know as a consequence that there are another seven more. Four live here and three live here.' Such is the nature of their intelligence network on the ground that it gives us the capacity to be able to deal quite forensically with this issue which is so very important.

Despite the fantastic work of the previous government, this government, the innovation of BP and the rollout of Opal at a cost of between $23 million and $28 million over forward estimates over years, we are now, tragically, seeing substantial leaks in the system. We have reports now from CAYLUS on the spectrum of people engaging in petrol sniffing and the horror that comes with it. In an incident in the last couple of weeks, an 18-year-old petrol sniffer stabbed an eight-year-old boy in the head. It was not good. It was not just a poke. I do not want to go into the details, but this never would have happened otherwise. We have seen these communities rise up with people free of that stuff and it has now just started to come back. I share the frustration. We have to get this right.

One of the reasons that it has started to come back is the recalcitrance of a number of petrol stations. The government and the opposition have done all sorts of things. We have all worked together to support initiatives. One of the initiatives of the current government is to ensure that we provide a petrol station that only sells Opal across the road from one that does not. I wrote to the then Northern Territory Chief Minister and said, 'Don't let any Territory cars fuel up at this service station.' The Commonwealth agreed. We have gone to every possible length within the law to lever people who are not playing the game into doing so, but because there are leaks in the process that is always going to be the case. That is why it is absolutely essential that we get this right.

We have had a careful look at this legislation. I approached Senator Siewert and said we would support her in a bill that did pretty much what this bill is doing. Sadly, for whatever reason, Senator Siewert decided pretty shortly afterwards that the Greens would move it on their own. I had a private meeting with Minister Snowdon. He was frustrated. He believed that the way forward was, in fact, for the states and territories to legislate because it was more effective legislation and we need it to be part of a national framework. I was convinced that
was probably the way to go. He had some frustrations. The flavour of government changes. We have the coalition in power in the Northern Territory, Western Australia and Queensland, while South Australia is Labor—but that might have been a bit of challenge. Certainly, in terms of this particular legislation, I think there has to be a better way.

This legislation came through a very comprehensive committee process, and once again I would like to commend the wonderful Senator Moore for traipsing around the countryside and taking evidence in all sorts of places from all sorts of people and for a wonderful report. A significant part of that report was recommendation 6, which, in light of the preceding five other recommendations, recommended that the current bill not proceed.

I know we will hear from the other side about it being all workable or whatever it is going to be. We will be listening carefully to that, but we certainly will not be supporting this legislation for a couple of pretty significant reasons. We do not think it is going to work because it effectively relies on corporation powers. I can tell you right now, without naming any players—and I know Senator Siewert indicated this in her report—that, whilst there was no evidence given that they were not all covered by the Corporations Act, there is in fact a place that is a partnership and not a corporation power that would not be caught under this. I also got some legal advice about how convoluted but easy it would be for an organisation to change status to escape those sorts of processes. Whether you become a sole trader or a partnership, you are simply not going to be caught under this legislation. So there will still be leakage.

There has to be a better way, and I think the better way is through framework legislation. There is legislation in the Northern Territory. It was put in by the previous Labor government, and I commend the government. A lot of work went into it. It not only deals with petrol but with all volatile substances. That is the Volatile Substance Abuse Prevention Act 2005. When the new Northern Territory government came into power, I had better access so I said, 'We have had this piece of legislation, but in the context of petrol it has not been used.' I will not go into the intricacies of it—there is no mischief. There are further amendments required. I have spoken to the new minister. They have sought advice on a new amendment and I understand that new amendment is going to be introduced to enable these things. This is an act that does not rely on the corporations powers. This is an act that enables us to forensically take a lease on a petrol station. I am not sure you can draw a moving line around one person, but this is the closest piece of legislation to doing that. It is ultimately as flexible as you can get it. We can actually effectively prohibit the sale of a particular product in a particular area for a particular amount of time. Nobody wants legislation smashed for a long time. I very much commend this legislation to this place.

There is another matter, and it is not my word you have to take on this. Sadly, as I have indicated, there have been a number of deaths associated with volatile substances. The coroner at a West Australian coronial inquest said:

The Volatile Substance Abuse Prevention Act of 2005 (NT) has been an effective tool in the NT for ensuring that chronic solvent users who are at risk of severe harm undergo suitable treatment at appropriate facilities.

The coroner went on to recommend that.

In similar circumstances, a South Australian coronial inquest recommendation was that the South Australian minister for health
consider introducing legislation before the South Australian parliament similar to that encompassed with the Northern Territory Volatile Substance Abuse Prevention Act 2005.

For those who are concerned about moving forward on this, I can provide some hope to this place. I know we are in opposition but, because this is such a bipartisan issue, I spoke yesterday to the Labor minister in South Australia, and they are engaged in assisting me and others in having a look at this framework in the Northern Territory. If they have any amendments to it, we will seek to provide that information to the Northern Territory government, and they could include those in their amendments. I have spoken to the office in Queensland and they are also engaged in ensuring that they can provide some feedback on the framework. Sadly, I missed a call from WA's Peter Collier last night, but I spoke to his adviser on this matter and hopefully we will be speaking today. Substantially this is not just a matter for the Northern Territory. I think it is a good framework that will work. The reason I was talking to them today was not because I needed to tell you all that today. I actually thought I would be coming in today and saying: 'Sorry, Rachel, but, as I have already indicated to you, we are not supporting this. We think there are some flaws in it. But we are not giving up. We're off and working. We're off doing some practical things, talking to people and getting some things done.' But, sadly, we have come in here this morning and heard this. I heard about it at 20 past eight when Minister Snowdon rang me. I am not saying he was tardy about that, as I understand that must have been pretty much when either he heard or he changed his mind. It was hard to know from our conversation.

But, given the fact that the minister had told the Northern Territory government that they were not supporting the proposed act and asked me not to support the proposed act, I was very surprised to hear this morning from Minister Snowdon that the government was in fact supporting this proposed act and was not opposing it and moving in another direction. This backflip goes against the report recommendations, after the excellent work done by Senator Moore, Senator Crossin, Senator McKenzie and Senator Smith—who are in the chamber—and Senator Siewert. To me it really beggars belief that, on this very important issue on which we have had such a bipartisan approach, we have suddenly had a backflip. I am a bit cranky about it. I do not know the detail and I do not know what happened.

Senator Siewert may be able to throw some light on it when she makes her contribution in the committee stage. I know that our First Australians will be dying to hear what the issue was that they were traded off against. There is no other reason apart from such a deal that I would have got a phone call this morning—at 'two minutes to midnight'—telling me: 'Oh, by the way, we've just changed our mind completely on this. Come and get a briefing from someone,' someone who did not even know the Corporations Act seemed to appear in it. It was all pretty pathetic. So it is obvious to me that you have done a deal and I think the Greens need to come clean. They have to put their hands up and say, 'This was part of the deal.'

We know—and I say this without mischief—that this is a second-class solution. We have a first-class solution, in the volatile substances act, and we should not offer a second-class solution to our First Australians because we have done some grubby deal about something. I do not know about it. Perhaps the Greens would let us know. Perhaps it is not grubby—some deal on Malaysia or tax—but who would know?
But these circumstances cannot be interpreted in any way other than: 'We're going to do a backflip.' I have to say to those on the other side that you do have a bit of form on this. Perhaps that is the way of things. I have forgotten how long ago it was that I was in government, and I am not really sure, but perhaps that is the way. Scrapping immigration policy because it would be popular—but not necessarily in our national interest—might have been one of the things. Just the other day, we had the supertrawler issue. There was a bit of a Twitter go, so it was 'We'll just change our mind on that.' Poor old Joe over here, who just the day before had been saying, 'Absolutely not; we've got to protect good science,' had to roll up here and then say—

The ACTING DEPUTY PRESIDENT (Senator Cameron): Senator Scullion, you know that you should address—

Senator SCULLION: Sorry, Senator Ludwig—it was a term of affection. Of course, we have been stuck since then. We saw it again with the carbon tax. I am sure that the Prime Minister said, 'There will be no carbon tax under the government I lead,' because that was popular and that was what people wanted to hear. But, with what they delivered, again, it is the Greens corner that seems to have this commonality. Every time the government stroll into the Greens corner, they suit their own purposes of staying in power but they lose sight of looking after Australians.

In this case, this place has been pretty good. I am very proud of how we have all dealt with this matter in a bipartisan way, given the challenges that face our First Australians. I am very proud of the way we have gone about doing that. But, as has been shown historically, inevitably behaviour will out. Today we are faced with something upon which we could have had a first-class solution that everybody agreed to. In fact, the committee made this recommendation:

The committee recommends that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation …

That recommendation is before us now. But this legislation is only enabling legislation. You may believe that this legislation will make some changes tomorrow. It will not. But the thing that saddens me most, and it is a great sadness—and we have all been dragged into this reluctantly, I suspect, including the minister—is that for the first time we are definitely using the interests of our First Australians as currency in some grubby trade-off. I think the Greens should come clean and tell us exactly what that trade-off is.

Senator Milne: Mr Acting Deputy President, I rise on a point of order. I object to the use of the term 'grubby trade-off with our First Australians'. I think that is really an offensive way to discuss what is going on in the Senate.

The ACTING DEPUTY PRESIDENT: Senator Scullion, I think you are reflecting on the Greens and the senators in the Greens party. I think you should withdraw.

Senator SCULLION: I want to speak to the point of order, if I may.

The ACTING DEPUTY PRESIDENT: Sure.

Senator SCULLION: I was actually reflecting on the outcome. As I said, I think it is a grubby deal, the deal that was done. I was not saying that the Greens did a grubby deal.

The ACTING DEPUTY PRESIDENT: Senator Scullion, I do not accept that. You should withdraw.

Senator SCULLION: I withdraw. I believe the Greens should come forward and
tell us what the deal was. Was it that uncharitable word I used? They need to come forward on this. We will not be supporting this legislation for two reasons: firstly, it will not work and, secondly, it is a part of a particularly unsavoury deal.

**Senator MOORE (Queensland) (10:22):**
The one thing that keeps this chamber together is the consideration of the welfare of our community, and I object to what Senator Scullion said. Senator Scullion and this side of the chamber have worked very closely together in a shared commitment to ensure that our First Australians receive strong services in our community. We share that. In terms of the process around the Low Aromatic Fuel Bill 2012, this is not the first time that the Senate's community affairs committees have considered the issues around petrol sniffing. In fact, we have had three inquiries on the issue. Everybody acknowledged that there needed to be action. Everybody acknowledged that the use of Opal fuel was one of the key strategies that was going to make a genuine difference.

In 2006, the first inquiry looked at hope in our communities, and the stunning title of the report was, *Beyond petrol sniffing: renewing hope for Indigenous communities.* One of the recommendations from that committee inquiry was a call for people to work together to ensure that Opal fuel was available across the areas of need. We called on state and territory governments to work with the Commonwealth to ensure that Opal fuel was available and used so that those communities were protected.

In the limited time I have I am not going to talk about all the other recommendations that we have had from our inquiries year in, year out. I acknowledge the reverence with which Senator Scullion refers to our committee and refers to the recommendations that we make. But, as we in this chamber all know, we make lots of recommendations and they are not all acted upon. In terms of the work that we do in our committee, I think that we would have had strong policy if governments of all flavours had taken up every single recommendation of every single community affairs committee inquiry of which I have been a member but, to my sorrow, that has not happened. What happens is that committees work together. They look at issues and bring forward recommendations for governments of all flavours, and decisions are made and work continues around them.

In terms of petrol sniffing, in 2006 we said that there needed to be coordinated work into the future to look at the way that Opal fuel could be developed, distributed and used effectively in the communities. Then we move forward to 2009, when the committee again looked at the issue of petrol sniffing across Australia. There were very encouraging issues that came forward in 2009. I know other senators talked at length about the wide range of issues that work together, including the importance of community empowerment and diversionary programs, but the petrol-sniffing strategy in which Opal fuel is key continued to be a major plank of work across the parliament to ensure that petrol sniffing was addressed.

In 2009, our committee was so frustrated by the continued lack of clarity around what was happening with Opal fuel. In fact it was that committee that, in 2009, recommended that there should be a process across governments to look at mandating the use of Opal fuel. It is there in our recommendations—I believe it was recommendation 5. In 2009, to my disappointment, we did not get that recommendation taken up immediately. But the issue continued to be discussed, and all of us who are interested in this area continued to work with communities and
community organisations. One of the things that was on the agenda the whole time was frustration that there continued to be so much misinformation perpetrated by a range of individuals. We have never been able to actually find someone to talk to who raises these issues about the damage that Opal fuel can do to cars and the fact that it would be difficult to have financial advantage if you used Opal fuel in communities. These things continued to happen. We noted that in 2009 and we said that there needed to be changes into the future.

Senator Siewert, in putting forward her bill, referred to the recommendations of the 2009 committee inquiry. She said that there had been a lack of action. She said that we know things have continued to happen but we need something to cut through to address the frustration that we all share about the fact that we have a tool that we know works. There is no debate about the fact that the use of Opal fuel reduces petrol sniffing in communities. No-one even argues that point. It is clear and it is documented; the evidence is there. The issue with which we continued to struggle is the fact that, seemingly, we could convince some people in the business community that the use of Opal fuel was something that should be part of their business model and that working in Aboriginal communities where there could be danger had with it in many ways a community responsibility to provide the services that would best suit their communities. That was something with which we were struggling.

As people have pointed out in this debate, there continues to be ongoing work with the federal and state governments to move towards agreements to ensure that they can maintain the positive steps that they have taken up till now. I think one of the reasons for putting this legislation forward is to give that a bit of impetus and to say, as we have to in many cases when governments need to work together: 'Get a move on. This needs to be done.' There needs to be an urgency about the process because, while we are waiting and discussing and reviewing, people continue to have the horror of petrol sniffing in their communities. That was the evidence we had before our committee, and no-one denies that.

Communities sat before us, telling us about the horrors of petrol sniffing—the fact that, with all the efforts that have happened
up to now, there are still outbreaks of sniffing—and that people continue to have that awful virus that seems to spread so quickly and everyone has been struggling to find out what stimulates it and how it continues. As long as there is petrol available in the community, petrol that allows the sniffing to happen, sniffing will happen.

The legislation that is before us is not perfect. In fact, I cannot remember a single piece of legislation placed before this place that has ever been perfect, so we continue to look at how things evolve and how we can make things better. What we are asking the government and the parliament to do is to take this step as one step along the road: to maintain the discussion, to maintain the debate, to maintain the commitment. When that happens, we can genuinely say that we have made a difference. We are not imposing this; we are engaging in it. We are responding to the need that has been put before our committee, before each of us individually. Everyone who is part of this debate has been working with communities and is dealing with people on a weekly and monthly basis.

I reject that this is something that is being rushed through. I think we have waited, I think we have encouraged continuing action and I think that this is one step that parliament can take to address the issues that we all know about. If we do not take this step, I am wondering how much longer we do have to wait.

Senator SMITH (Western Australia) (10:31): I am also pleased to have this opportunity to speak on the Low Aromatic Fuel Bill 2012. As a member of the Senate Community Affairs Legislation Committee, at the outset of my contribution I would like to say how grateful I am for all those who have taken the time to make a contribution to the committee's inquiry on this important subject and add my commendation to those of other senators on the work of CAYLUS, the Central Australian Youth Link Up Service, which gave a very fulsome presentation to the committee over numerous days and was quite instrumental in making sure that the committee had an opportunity to hear from those most affected by the damaging consequences of petrol sniffing.

On a more personal note, the issue brought to the fore for me the central role that women will play in resolving many of the social issues we confront in Indigenous communities, but also the very important and urgent need to make sure that young Indigenous males across Central Australia and my home state of Western Australia have the necessary support and encouragement to avoid the temptation of petrol sniffing.

Petrol sniffing is a problem that has bedevilled areas of Northern Australia since the 1950s. Since the 1980s there have been a number of inquiries and solutions proposed to address petrol sniffing and its harmful, indeed tragic, social consequences. The most significant step at a Commonwealth level came, I am pleased to say, in 2005 when the Leader of the Opposition, Mr Tony Abbott, was the Minister for Health and Ageing. Mr Abbott's passionate, genuine and ongoing commitment to the welfare of Indigenous communities is well known to most Australians. In March 2005, as health minister, he worked with industry to commence the rollout of a form of low-aromatic fuel, more commonly known as Opal, across parts of Central Australia that had been identified as areas with particularly high instances of petrol sniffing.

Opal was developed by BP Australia and is a form of unleaded fuel that contains low levels of aromatic hydrocarbons. That means that a petrol sniffer will not be able to obtain...
the high from this form of fuel that they would from regular unleaded petrol. Opal fuel is produced by BP's facility in Kwinana, in my home state of Western Australia, but other petrol-retailing companies have agreed to distribute it through their own retail outlets.

The Howard government committed $42.7 million over five years to make Opal available to more and more communities throughout Central Australia. The Howard government invested a total of $55.2 million over four years on its whole-of-government Petrol Sniffing Strategy. And I join with Senator Scullion in commending also the efforts of the Rudd and Gillard Labor governments for the continued rollout during their tenures. As at 1 July this year, there were 123 sites across regional and remote Australia that were receiving low-aromatic fuel, and 67 of those sites were within zones identified as high risk for petrol sniffing activity. Focusing on my own state of Western Australia, the East Kimberley region has been identified as an area with a significant petrol-sniffing problem. In Western Australia there are 26 sites currently receiving low-aromatic fuel, with a further 18 sites targeted for rollout in the near future.

I am disappointed and saddened to say that only yesterday we heard of a firsthand account of the dangers and perils of petrol sniffing, when a 13-year-old boy unfortunately had almost 40 per cent of his body burnt after setting himself alight while sniffing petrol. The boy is believed to have inflicted the injuries on himself when his family found him sniffing in a shopping centre car park in South Hedland—and South Hedland is a place where I spent much of my youth, as my father was a police officer there in his early years. The boy was subsequently flown to the Princess Margaret Hospital. This incident points to the fact that this is a recurring issue.

But, while it is a recurring issue, I want to remind all of us that we must acknowledge the success of the low-aromatic fuel initiative. Universally it is accepted as having made a valuable and significant contribution to reducing the incidence of petrol sniffing. In the committee's report, I am pleased to say, we take some time to draw attention to the fact that the introduction of Opal has been significantly successful. In our report we mention:

The story of the manufacture and distribution of low aromatic fuel in central Australia, to substitute for sniffable fuel, is a story of spectacular policy success. It is a rare and precious achievement in the challenging field of Indigenous health policy. The initiative has involved a partnership between the private sector, including both large and small businesses, governments at all levels, non-government organisations, and Indigenous communities.

This statement in this latest report is consistent with previous findings. People will be familiar with the fact that the committee concluded in its 2009 report that 'the supply of Opal fuel has been a resounding success in helping to reduce petrol sniffing'.

I think it is fair to say, and I echo the comments of other senators, that the majority of submissions have noted the success that has been achieved to date with the voluntary rollout of low-aromatic fuel. I would like to draw specific attention to the contribution of Mr David and Mrs Margaret Hewitt, who have been activists in Indigenous communities and have committed themselves for a very long period of time to supporting the work of Indigenous communities.

Mr and Mrs Hewitt in their submission to the committee noted:

… the introduction of the Opal low aromatic fuel has had the biggest single positive impact on the
health and welfare of Indigenous people in the 48 years of our work in remote regions.

What we are being asked to deliberate on today is not the suitability or the appropriateness of low-aromatic fuel as a means of containing petrol sniffing but instead what is the most appropriate legislative mechanism to deal with recalcitrant fuel suppliers across Central Australia—and, I might add, other parts of our country—that for reasons perhaps best known to themselves are not yet able to commit themselves to the introduction of Opal fuel. It is the legislative mechanism that requires our careful deliberation.

The committee's report as a result of its most recent inquiry found that the Commonwealth's efforts to communicate to outlets the benefits of selling low-aromatic fuel during the last 3½ years have not yet yielded great success. It was interesting to note that some of those who presented to the committee said they had never been asked about the possibility of supplying Opal fuel through their outlets. That suggests to me that the problem may not be outlets refusing to stock Opal, as some of the commentary around this issue has suggested, but at least in some instances it is a case of operators not having access to the information about the benefits or some of the assistance available to them in terms of moving from regular unleaded petrol across to Opal fuel.

My concern and the concern of other coalition senators in relation to the current bill is that, whilst it has honourable intentions, it has overlooked some important issues and may produce unintended consequences. Firstly, the Commonwealth government is already working with state and territory governments to address some of the issues outlined in the committee's report. There is goodwill from all parties and a determination to work through the issues cooperatively and comprehensively. To simply impose Commonwealth legislation now would merely bring that process to a halt.

I share Senator Scullion's suspicions about what might have motivated a change in the last 24 hours in regard to the government's consideration of and attitude to this private member's bill. I think it is worth reflecting that the minister, Mr Snowdon, has said previously how wrong this proposed approach would be. On ABC back in February of this year Mr Snowdon said the Commonwealth legislation as proposed in this bill:

… creates, I think, a potential legal minefield.

Again, he said:

If the Northern Territory government had in its mind that it ought to regulate it could, as could a Western Australian government, as could the Queensland government.

In July of this year he also said the same to his state ministerial colleagues, as reported by the Australian:

He told the ministers it was difficult to see how a commonwealth ban on unleaded fuel—which he has previously described as a "legal minefield"—would have a greater impact on addressing petrol sniffing and state and territory legislation.

So what we are dealing with at the moment is a situation where, by the government's own admission, the proposition before us is not a worthy one—or at least is a second-class one.

The Greens say that the constitutionality of their bill is underpinned by the corporations power. The problem with that approach is that some of the bodies involved in the rollout of Opal fuel maybe unincorporated traders. As a result, the bill may be creating a loophole through which traders within petrol-sniffing zones can go on selling regular unleaded petrol—the opposite outcome to the one the bill seeks to
remedy. Furthermore, what is contained in this bill will not do anything to actually address supply issues. BP’s capacity to produce Opal fuel will not simply be increased as a result of passing legislation. Storage facilities for the distribution of the Opal fuel will not magically appear merely because this parliament passes a piece of legislation. Even the Greens who have authored this bill appear to have acknowledged this point. It is right there in the Greens minority report, which says:

This bill introduced by the Australian Greens does not in itself cause anything to take place. I do not doubt for a moment the sincerity of the Greens' intentions in terms of what they have brought to the Senate, but I do question the merits of passing legislation in this place when even its proponents admit it will not cause anything to take place. Australia needs to make sure that its legislative approach is focused on getting outcomes. I am not convinced that this bill passes that simple test.

But there is a better way. There is already a process of discussion and negotiation under way between the Commonwealth and the relevant state and territory jurisdictions to deal with many of the issues that were raised during the committee's inquiry into this bill. For instance, I know that my coalition colleague Senator Scullion has met with the recently elected Chief Minister of the Northern Territory to discuss this very issue. During the committee's inquiry I actually raised the idea of replicating some of what the Northern Territory has done and fostering a coordinated approach across other state jurisdictions. That would seem to me to be a solution far preferable to additional Commonwealth legislation in this circumstance.

The indication in the Northern Territory is that the new Country Liberal Party government will be open to further amending the Northern Territory's volatile substances act to deal with this issue. There is no reason why that approach could not then be replicated in other relevant state jurisdictions. I am confident that the coalition government in Western Australia will be speedy in its response to this important issue. I acknowledge that sometimes the Commonwealth may be forced to legislate when states actively refuse to address a critical issue. That is not the case in this issue. No-one is denying that action must be taken. I think there is merit in allowing a solution based on state and territory legislation to proceed. It will allow for a more flexible and better targeted approach. All of us in this place want to see the supply of Opal fuel expanded and the problem of petrol sniffing eliminated. However, I do not feel that this bill will achieve that in the most effective way and in fact risks the creation of other difficulties. That is why I am opposed to it.

In this debate I think it is important to acknowledge that the commitment to improving the lives of Indigenous Australians is genuinely a matter that transcends party politics. We hear a lot of talk in this place about bipartisanship. Sometimes that is opportunistic but, fortunately, this is not one of those times. During my six months as a senator for Western Australia I have been struck by the genuine commitment of all my Senate colleagues to improving Indigenous lives, especially those in remote communities.

The hearings that the Community Affairs Legislation Committee held in regard to this specific bill were a powerful demonstration of that commitment, and I am grateful to senators from all parties on that committee for their efforts. Here was an example of the
Senate and its committee process working at their best. Yes, there is now a discussion about the best way forward on this critical Indigenous social issue; however, I want to make it clear for the record that what is at issue merely amounts to a question over the best route, not the ultimate destination.

The coalition agrees with the need to stop petrol sniffing but believes this bill will be ineffective on the issue and that the issue is best handled at a state and territory level. In the Northern Territory many will be aware that the Territory's Volatile Substance Abuse Prevention Act—which could be enabled in other jurisdictions, with minor amendments—does enable supply of sniffable fuel to be banned in certain areas. This act could form framework legislation in other states, allowing effective anti-sniffing measures that better reflect local circumstances and differences amongst different Indigenous communities.

The Community Affairs Legislation Committee recommended the bill not proceed. It recommended that the act should not rely on the corporations power. It recommended that ongoing coordination with state and territory governments to prevent supply issues with Opal should be pursued. It also suggested that a review of Opal production and distribution subsidies should be more closely undertaken. The bill before us relies on the corporations powers. This means that any sole trader, partnership or other trading entity would not be covered. We know from the current situation that one point of leakage is enough to allow sniffing outbreaks in large surrounding areas. I think we are all agreed on that significant point. Therefore, a bill that does not cover every trader in the area would be all but ineffective.

Our alternative is a simple one but a highly effective one. The Northern Territory's Volatile Substance Abuse Prevention Act can, subject to minor amendment, be used to tackle the problem. Under this act a group of 10 or more residents of a locality or a community council could seek to prevent supply of a particular substance, including petrol, in that location. In the Northern Territory the department of health would then lead a process that would take account of interested parties' contributions to develop a management plan that would be able to specify restrictions on supply and use of regular unleaded petrol and other sniffable substances at that location.

This approach is worthy not least because it is one that has been advocated by coroners in other jurisdictions. This approach was endorsed in a Western Australian coronial inquest into a tragic circumstance. That inquest said:

... the Volatile Substance Abuse Prevention Act 2005 (NT) has been an effective tool in the Northern Territory for ensuring that chronic solvent users who are at risk of severe harm undergo suitable treatment at appropriate facilities.

In similar circumstances in South Australia an inquest recommendation stated:

That the Minister for Health consider introducing legislation before the South Australian Parliament similar to that encompassed within the Northern Territory Volatile Substance Abuse Prevention Act 2005 ...

Senator Scullion has been actively working with the Northern Territory government to bring about this solution. I am sure that other senators, including me, from Western Australia, can use their energies and motivations to ensure that other jurisdictions follow suit in a speedy and effective manner.

It is very clear that what we have seen in the last 24 hours is a step back from what
would have been a highly effective first-class solution to a less than perfect solution that unfortunately could compromise the future welfare of young Indigenous Australians. In conclusion I again would like to congratulate the committee on their deliberations. I also congratulate CAYLUS for its work in fostering the development of young people across our Indigenous communities.

Senator MILNE (Tasmania—Leader of the Australian Greens) (10:49): I rise today to wholeheartedly support the Low Aromatic Fuel Bill 2012, which is currently before the Senate. This is an excellent bill that Senator Rachel Siewert needs to be congratulated for. She has shown tremendous leadership on this issue, and her commitment has been long running, from her first speech, which I had the pleasure of listening to, back in 2005. She spoke then about the scourge of petrol sniffing and the need to deal with it. I congratulate her on that and on her participation in the initial petrol-sniffing inquiry, in 2006. She has continued to lead on this issue, always consulting with Australia's Indigenous people and always listening to their responses. It was Senator Siewert who initiated the 2009 Senate inquiry to follow up on the 2006 report. It was those inquiries that prompted the government's first comprehensive petrol-sniffing strategy, which did include a voluntary rollout of the low-aromatic fuel. She has now consistently followed that rollout, visiting communities, talking to stakeholders through the estimates process, and she has continued to push for a better outcome for the communities that could benefit from the broader rollout of Opal fuel and a ban on sniffable fuel. I really congratulate my colleague. As I have just said, it has been seven years in the Senate to the point where we now have a bill before us that I think ought to be supported by the Senate. I think it demonstrates what can happen when you have no one party having all the power and there is a capacity to negotiate outcomes, in which case you get outcomes for the community.

I heard Senator Scullion speaking in a most derogatory manner earlier suggesting that there had been some trade-off of the interests of Australia's Indigenous people. Nothing could be further from the truth. The Greens have had at the forefront of all our work in the Senate, always, the interests of Australia's Indigenous people. I just want to go through that for a moment.

It was my former colleague Senator Bob Brown who worked very hard to have Indigenous recognition as part of the opening of the parliament every day. That is a real improvement and recognition. It was in our agreement with the Prime Minister that we try to secure recognition in Australia's Constitution for Australia's Indigenous people. Furthermore, all our work trying to protect James Price Point, trying to secure substantial new cultural heritage listings, has always been to protect not only the environment but also the cultural aspects. The Burrup Peninsula is another place where we have worked very hard to protect the cultural heritage of Australia's Indigenous people when it has been set upon and undermined by the gas industry in Western Australia—something that is supported by the coalition at every turn, I might say, which destroys that heritage that is so precious to us.

Another example is that during the negotiation of the Carbon Farming Initiative I was very keen to make sure that one of the earliest methodologies we recognised in carbon farming permits was savanna burning, because Australia's Indigenous people in the Northern Territory have very important knowledge and skills. Getting that change to savanna burning not only is good
for the planet in terms of reducing greenhouse gas emissions but also is actually providing money and employment to people living in Indigenous communities.

So the Greens at all times try to work for better outcomes for Indigenous people. I remind the Senate that it was the Greens who stood strongly opposing the Northern Territory intervention. We believed it was bad for Indigenous people, and we still do. We also stood up and opposed the so-called Stronger Futures legislation, which the government introduced, because we think it provides weaker futures for Indigenous people. I very proudly stood in the courtyard here with a number of Aboriginal and Torres Strait Islander leaders saying that this Stronger Future legislation would be a disaster for them. So I will not have on the record anywhere a suggestion that the Greens are not acting in the best interests of Australia’s Indigenous people when we are informed by those people of what they want.

And that is the key point on which Senator Scullion is wrong. It is the communities themselves who are asking for this legislation, and it is ridiculous to suggest that a better process would be to go and talk to each of the states and territories and try to negotiate with them to legislate, because that is a recipe for never getting an outcome. Anyone who has been into a community and seen the appalling outcomes of long-term petrol sniffing knows not only that it can kill but that it damages internal organs, the brain and the nervous system. People who sniff petrol can become disabled and ultimately die. It does not just damage the health of the individual; it leads to family breakdown, domestic violence, community breakdown, vandalism and all sorts of shocking outcomes in communities. I think everyone recognises that if we can get rid of petrol sniffing we can at least enable people in Aboriginal communities to take up other opportunities for a positive engagement with life—with education, culture and music and so many wonderful things that can be achieved.

So I am wholeheartedly supporting this legislation. The scourge of petrol sniffing is still with us, because of recalcitrant petrol stations that refuse to stock non-sniffable fuel. This bill gives the minister the power to declare areas where it will be an offence not to supply non-sniffable fuel. It enables the minister to target suppliers in relation to specific communities that are being devastated by sniffing, and I am wholeheartedly in favour of giving the minister that power. To Senator Smith, who just suggested that this will not provide an outcome, I say: what other outcome do you want than to give the minister the power to go in and make it an offence not to sell this low-aromatic fuel?

This is actually providing an outcome. A talkfest with the Territory is never going to get you an outcome, because we see what goes on at COAG year in, year out. COAG is a great big black hole where the states frustrate action on a whole range of issues. What we want here is action to actually deal with the issue—the final piece of the jigsaw to deal with the issue of petrol sniffing and to end it. I cannot understand the mentality of petrol station owners who are prepared to exploit people and deliver horrendous outcomes in Aboriginal communities for their own benefit. But, since the mentality exists and there are recalcitrant petrol station owners, then something has to be done. I think it would be a thing to celebrate in this parliament if all political parties could join together and say: ‘Let's do it. Let's just close this last gap in relation to this particular issue and let's give young Aboriginal people and their communities the chance that we want them to have.’
Anyone who has not been in the communities may have seen the film *Samson & Delilah*. If ever you want to see what is going on in communities, have a look at that film and come away and tell me that it is now not time to actually deal with this issue. It is essential that we deal with the issue. Let's do it. I do not think there is any justification in saying, 'No, this isn't the right mechanism.' Giving the federal minister the power is the right mechanism. I congratulate my colleague and again say that one of the real benefits of a parliament where outcomes have to be negotiated—where one party cannot just deliver something and have it rubber-stamped—is that you get collaborative outcomes. Senator Siewert’s work over seven years in this place has finally led to a collaborative outcome whereby we are going to see, I hope, this legislation passed and the Greens able to legislate—with the government, it would seem—an outcome that will close that gap of disadvantage in relation to petrol sniffing in Australia's Indigenous communities.

I think it is a very positive step. So much is said about the way parliament behaves or does not behave. This is an opportunity for the Senate to show that we can demonstrate the leadership that is so essential and that is being asked for. That is the critical thing that is being asked for by Indigenous communities saying, 'Help us to do what we need to do to end petrol sniffing.' The Greens are very pleased to respond to that by saying: 'Yes, we will help you. Yes, we will legislate.' I again congratulate my colleague Senator Siewert for doing just that.

**Senator BACK** (Western Australia—Deputy Opposition Whip in the Senate) (10:59): I appreciate the opportunity to contribute to this debate and to congratulate those who are involved. Certainly, as I look around the chamber, the contribution over a long period of time by Senator Siewert must be recognised, as must that of Senator Scullion and also Senator Crossin.

Mr Acting Deputy President Bernardi, you would have thought that this would have been a fine opportunity to demonstrate the very best elements of the combined roles of federal, state, territory and local governments and the private sector in trying to resolve this horrific issue. But, as we know in the case of the Low Aromatic Fuel Bill 2012, should it actually be passed, it is only ever facilitation legislation anyhow and will not achieve its goals. I, too, recognise Senator Siewert's passion over time for this particular area. But initially, if I may, I acknowledge the work of the then Minister for Health in the Howard government back in 2005, Minister Tony Abbott, who first introduced the concept of this low-aromatic fuel. The package, along with negotiations with the BP company on this occasion, also included activities to support communities and to engage in youth diversion programs, rehabilitation, policing, communication and education strategies. It remains today, as we know, critically important that we do have that broad approach in trying to solve this issue.

From a straight epidemiological point of view, the fact that there has been a 70 per cent average reduction in the incidence of petrol sniffing and the fact that in areas where there is no provision of regular unleaded petrol that it is even more effective—up to 94 per cent—are wonderful stories and must be supported. But what this shows is the need for the engagement of different sectors at different levels.

Let me give you an instance: at a local Aboriginal community level back in 2004-05, what would the capacity of that community have been to go to the fuel majors and say, 'We need the introduction of a low-aromatic fuel'? Their capacity would have been zero, and the capacity of local...
government in those areas equally zero. Even a state or a territory would not have had that capacity. So here was an example, quite correctly at federal level, where the then Minister for Health was able to go to the senior management of the fuel industry—the fuel majors; on this occasion, the BP company—and convince them of the need for what would have been an incredible cost to change a regular unleaded product into a low-aromatic fuel.

That is a prime example of where we did need the intervention of the federal government at a level senior enough and persuasive enough to be able to get an international fuel major to change the composition of its fuel. And so there is a prime example of where federal government intervention is needed. But, equally, in this particular instance it is patently obvious that the most effective roles will be those of the states of Western Australia, possibly Queensland and South Australia, and especially the Northern Territory to enact legislation to give effect to a solution that will work.

It was only in July of this year that the minister for Indigenous health, Minister Snowdon, was urging the states and, presumably, the Territory to tackle petrol sniffing by matching the Territory's legislation that relies on community involvement and tougher policing powers to tackle volatile substance abuse. That is the appropriate role for the federal minister; it was in July, it was yesterday and why it is not today seems unusual to me, and I think it deserves explanation.

At that time in July, Mr Snowdon was favouring the approach driven by local communities. He told ministers that it was difficult to see how a Commonwealth ban on unleaded fuel, which he had previously described as a legal minefield, would have a greater impact on addressing petrol sniffing than state and territory legislation. I have heard nothing in the debate this morning to cause me to understand why Minister Snowdon would have a different view today, 22 November, to that which he had at the time these comments were made, and I will come back to some of his other comments.

The Senate Community Affairs Legislation Committee report itself recommended that the bill not proceed—not proceed!—for several reasons. One is not relying on the corporations power, and my colleague Senator Smith eloquently made the point that so many fuel retailers would not fall under corporations law. Maybe sole traders and maybe partnerships would not fall under the jurisdiction of corporations law. We know, as the committee itself said, that there are different definitions of fuels to which legislation applies. The committee said that there is a need—and I agree—for ongoing coordination with state and territory governments to prevent supply issues. And I wish to come back to supply issues; having in fact been a fuel distributor and retailer in one of Australia's states, it is an area of which I do have some understanding. A further recommendation of the committee was that there should be a review of Opal, the low-aromatic fuel, production and distribution subsidies, to which I will also refer.

So we have the committee saying that the legislation at federal level is not appropriate. We have the minister saying that it is appropriately a state and territory issue. Until yesterday, the Labor government were of the view that it was properly a state and territory issue. Until yesterday, the Labor government were of the view that it was properly a state and territory issue. I do not know why there has been this change of heart, and it needs to be explained to this chamber—again, because this legislation is only facilitating legislation and of itself will not have the desired effect. I emphasise again, as others have in this
chamber—and it would be no different for any reasonable-minded, thinking Australian—that we should be able to grasp and complete the study of this exercise and remove regular unleaded petrol from sale.

The position of the coalition is simply this: first of all, the bill itself will not stop sniffing, for the reasons that I mentioned. You have only got to have a sole operator or a partnership and the legislation does not apply to them. In the light of the preceding matters, the Senate Community Affairs Legislation Committee recommended that the current bill not be proceeded with. As a consequence, we would say that this is the wrong instrument, that it is inappropriate to use a Commonwealth arm of the law. In fact, I repeat what Minister Snowdon said in February this year—that the Commonwealth legislation creates 'a potential legal minefield'. Let us avoid the potential legal minefield and let us come up with a solution that will actually work. There is a better, more effective way.

I know that, only in the last few days, Senator Scullion, who has responsibility in this area from the coalition's point of view, has been in contact with the ministers or their senior executives in each of the states of South Australia and Western Australia, and of course with the Chief Minister in the Northern Territory and the Minister for Health and Alcohol Policy, to move all of this forward. So we are all working in concert. There is nobody working at variance with our end objective. We simply plead for a circumstance where we can bring this home, where we can give effect to this particular legislation and make sure that we eliminate petrol sniffing.

The bill does not address the Opal fuel supply and subsidy issues cited in the committee report. The committee itself recommended—and this is recommendation 4:

... that there be further examination of the wording of the explanatory memorandum, consultation and exemption clauses, to ensure that fuel manufacturers are properly included, and the bill does not have unintended consequences—

Senator Siewert: Read the amendments!

Senator BACK: Thank you, I will pay particular attention to the amendments, Senator Siewert. Recommendation 4 continues:

in the event of supply bottlenecks or disruption— of supply. Recommendation 5 says:

The committee recommends that the Australian government conclude as soon as practical a subsidy review that covers production of up to 100 million litres per annum of low aromatic fuel.

Where does the funding come from for this particular exercise? As most people would be aware in Australia, about one-third of the cost of all retail fuel is fuel excise tax and GST. So, in a typical $1.50 per litre price that somebody might pay here in Canberra, about 38c of that will be fuel excise tax and 13.6c is GST—totalling 51.74 per cent. So more than a third of the actual retail price does go to government in some form or another. So there certainly is adequate funding to be able to give effect to this, and that should not be, and has not been, presented as a barrier.

I now come to a well-understood point in most areas for people associated with the emergency services—and I would see addressing the issue of petrol sniffing as being in that category of emergency—and that is that problems are best solved closest to where the affected people are. Unfortunately—much as we think the federal government and everything it does is important and that Canberra is the seat of power as it relates to this area—the simple fact of the matter is that we are a Federation
of states and territories, and it has been my experience, especially in the emergency services area, that the more remote you are from where decisions are made the less effective the outcomes of those decisions will be.

This provides us with a tremendous opportunity in my view for locals to own the issue. That is why I plead for a continuation of the process, where the matter is dealt with at state and territory level, so that they have ownership of the problem and can then drive it through to local communities. We know of course that the areas that are the subject of the proposed legislation at the moment are those in which the highest concentration of petrol sniffing occurs. But then, as has been recorded this morning again by Senator Smith, we had the regrettable circumstance only recently in Port Hedland in Western Australia—which of course is well outside the area of this proposed jurisdiction—where a young person suffered burns to 40 per cent of his body because he was apparently trying to obtain fuel for this sniffing. So we have got to come up with a wider solution, one which will actually expand beyond the high-concentration areas to pick them all up. I plead again for a situation in which we drive this to the local level, where there is the greatest demand and the greatest impetus for this to happen.

We all know, and those of us who are associated with local and small communities do know, that when those communities own the issue they also own the solution and they commit to its implementation. Where they see that issues are related to remote decision-making, they will turn off and they will not have that sense of ownership, which I think all of us would agree is required in such circumstances.

We have had recently some wonderful contributions, in my view, from Aboriginal women especially who are providing leadership in this country. I wish to reflect on them for a moment because it comes back to the point I was just making about local ownership, local responsibility and local determination to solve problems. Initially I go to the text of a letter from a Kimberley Aboriginal elder, Rita Augustine, which was sent to then Senator Bob Brown. She makes some wonderful points which I would like to repeat. She said:

We are proud of our history of caring for this country over thousands of years. The country tells us who We are. It gives us strength and determination. But now we face great challenges; not only about our country and our culture, but about our survival as Indigenous people.

Whilst not all the comments made were in relation to the question of petrol sniffing, so many of her comments are relevant to this debate. She speaks of the need to face up to our own challenges, and to build a better future for our children, our people, our culture, and our country. Whilst I was not going to refer specifically to Dr Bob Brown, to whom she had written this open letter, as a result of Senator Milne's comments a few moments earlier I think it is reasonable that I do so. She said:

Dr Brown, it is hard for us to understand why you think it is necessary for you to speak on our behalf, about our country, our culture, and our futures.

The only thing We need saving from, is people who disrespect our decisions and want to see our people locked up in a wilderness and treated as museum pieces.

We are a living people and a living culture. We have faced severe change over the last 200 years, and most of it has been far beyond our control.

All of us in this chamber would agree that the issue that is before us now, that of the impact of petrol sniffing on young people,
certainly has been beyond the control of that community of people. She went on to say:

I am an old woman now and I have witnessed and lived the despair and hopelessness of many Kimberley Aboriginal people.

She reflects on watching ‘children grow up in despair, die before they are 50, or even worse, take their own lives before they get to their 20s’, a very, very passionate statement. She also speaks of the need for her own community in that particular case to be the ones to actually make their decisions.

In the same theme, I would like to go very briefly to the farewell speech last week, on 14 November, in the assembly in Western Australia by the member for the Kimberley, Mrs Carol Martin—I think, the first Aboriginal lady in the Western Australian parliament. Whilst her speech was very comprehensive and wide ranging, she made a plea, in the same context of what I am saying. She said:

The Department of Indigenous Affairs is my bugbear forever. It is a colonial structure that is still in place in this day, in this age and in this country where Aboriginal people are given second-class service.

Get rid of it, please. … Give Aboriginal people the rights of citizens like any other citizens.

She made that plea. I do not think it is any coincidence that it is Aboriginal women who are the ones who speak so eloquently for the Aboriginal community.

My final comment in relation to this are the comments and the quotations of Northern Territory minister Alison Anderson, who is one of the nation's most senior Indigenous politicians. Rebuking her own people earlier this month—which was widely publicised—for relying on welfare, she said that they need to grow up and stop resorting to the 'dangerous conversation of endless complaint' and that she 'despaired at the reluctance' of some of her community to take available jobs. She was talking of people in Yirrkala not being prepared to drive the 20 kilometres to Nhulunbuy 'to earn excellent money in the mine and the processing plant there'. She went on to reflect the loss of adults. She said that there were 'less than half' as many adults per child as for the non-Indigenous population,' and she asked: 'Where are the missing adults? There is no way to put this gently: they are dead.'

In conclusion, I say that there is unanimity in this chamber on the solution of this problem. I plead that we come up with a solution that works, that we drive ownership of the issue to where it can actually be addressed—and in this case, legislatively, that is correctly the states and the territories—so that they own that problem, they own that responsibility and they get financial support from the federal government. If there is a further need for communication between the federal government and, for example, fuel majors, that is appropriately the role of federal government instrumentalities. The issue is state. The issue is territory. The issue is local. Please can we have a solution that reflects the locality of the issue?

**Senator McKENZIE** (Victoria) (11:19):

It is with a heavy heart that I rise to speak on the bill before us today, the Low Aromatic Fuel Bill 2012. The intent of this bill is to change the Corporations Act to mandate the use of the low-aromatic fuel known as Opal in some areas, to prevent petrol sniffing—a terrible problem in our Indigenous communities. Other senators have spoken eloquently today and at other times on the problem that petrol sniffing is for our First Australians. The bill aims to ensure that communities with serious petrol-sniffing problems can contain and hopefully turn their situation around—and I do not think anybody in this chamber disagrees with the intent of this legislation as stated.
There are 123 sites in remote Australia selling Opal fuel, and a substantial increase in this number is foreshadowed. That is a positive step. Opal fuel is produced by BP and it has very low levels of aromatic hydrocarbons. Hydrocarbons are the chemicals which give sniffers their high. They are also the same type of molecules as those used in spray cans, which is what some young people use in other areas.

There are often tragic consequences for the sniffers, for their communities and for those who love them, and it is a particular tragedy when young people are petrol sniffers. However, some petrol stations within this area refuse to sell the low-aromatic fuel, and that goes to the crux of this bill. The Greens are attempting to go it alone on solving the issue of dealing with the remaining retailers in remote Australia who are selling regular unleaded petrol rather than Opal fuel. Senator Scullion made very clear his desire to work collaboratively with the Greens on coming up with a legislative solution to this scourge of our society.

I come from Victoria, where we do not have a large Indigenous population, and I had only heard about petrol sniffing; I had not experienced it. I was not part of the Senate Community Affairs Legislation Committee when they went to remote Australia and heard directly from the communities, but I did go and see the movie *Samson and Delilah* and was very challenged by what I saw. It follows the lives of two Indigenous teenagers, one of whom becomes a petrol sniffer, with tragic consequences. In the last scenes, the young woman, in order to save the man she loved, drove the car out into the bush and drained the petrol onto the ground so that there was no way of getting back, in order to get him away from the substance that was changing him so significantly and as a way of recovery and rehabilitation. I think that film took the issue out into the wider community.

The community affairs committee conducted the inquiry into the bill. They travelled to Alice Springs to see and hear firsthand from some of the stakeholders with intimate knowledge of this issue, and it was not the first time the committee had done that. I would like to place on the record my thanks to all those who contributed to the inquiry, who submitted, appeared and participated in any way, and the secretariat staff who worked so hard to put it all together under the leadership of Senator Moore and Senator Siewert, who are great advocates in the community affairs committee space for our First Australians.

The committee made a number of recommendations which included that this bill not proceed, and the Greens submitted a minority report. There were specific details around why the bill should not proceed, and one of them was that the legislation should not rely on the corporations power. Another was that different definitions of fuels to which the legislation applies should be addressed, and I note that through an amendment that has been addressed. Ongoing coordination with state and territory governments was also recommended to prevent supply issues with Opal. That goes to the crux of some comments I will go to later and the modus operandi, I guess, of the Greens in continuing to ignore and be frustrated by the fact that state governments exist in our Federation. The committee also recommended a review of the Opal production and distribution subsidies. I understand where the Greens are coming from when you look at the excellent results from the rollout of the Opal fuel. I appreciate the interest of Senator Moore, Senator Siewert and many others in this issue and I acknowledge that there is bipartisan support for ensuring a positive solution for affected
communities. A solution that works around this issue is always going to be cross-jurisdictional.

The original rollout of Opal fuel and the development of the Petrol Sniffing Strategy was the initiative of the Howard government under the leadership of Tony Abbott as the then minister for health. The initiative was implemented through collaboration with industry and with some incentives to ensure that industry took up the opportunity to sell a product that would have such a positive benefit out there in Indigenous communities. The package also included activities to support communities—youth diversion, rehabilitation, policing, communication and education strategies. I am pleased to say that, as a result of that and of ongoing initiatives by the current government, Opal fuel is now available in 106 sites across Australia. This is a great step forward and one that not just the coalition but all Australians can be pleased with.

The results speak for themselves. Research indicates that where Opal fuel has been introduced it has been effective in reducing sniffing by, on average, 70 per cent. The result has been even better in areas where there are no retailers selling regular unleaded petrol, with a 94 per cent average reduction. So we know it works, leading to some fantastic results out there in communities. Although Opal fuel is subsidised, the savings to communities and individuals, in health care and otherwise, from Opal fuel are significant.

The community affairs committee heard from Mr Andrew Stojanovski, who spent 11 years in remote Aboriginal communities in the Northern Territory working on petrol-sniffing issues and was awarded the Order of Australia Medal for his work. He told the committee in his submission:

Up until Opal was introduced in Central Australia I expected that I would spend my career working on petrol sniffing, community by community ... Over my career the best I could hope for using this approach would be to eradicate sniffing in four communities over a period of forty years. It would have been a long and slow process. He also said that, following all of his hard work, the introduction of Opal had not only changed the reality for Indigenous communities and petrol sniffers and those who love and care for them but also changed his life and how he saw his contribution to this problem.

The South Australian Centre for Economic Studies has found that there would be a $780 million benefit in shifting from regular unleaded petrol to Opal fuel in the area of their analysis. You will have heard from my colleagues here today about the Central Australian Youth Link Up Service. The service told the community affairs committee:

We consider the low aromatic fuel rollout to have been a great success to date. It has completely changed the focus of our work. Fantastic! So we know the strategy works. It is a very impressive story from a Canberra policy sense and from a community sense out there on the ground.

No-one is arguing that we do not need to solve the problem and no-one is arguing with the fact that decreasing access to regular unleaded fuel assists with the problem. However, the bill before us today relies on the corporations powers under section 51 of the Australian Constitution. As such, it will have no effect on unincorporated traders. This means that any sole trader, partnership or other trading entity will not actually be covered, and there are a few petrol stations around our nation that are so constructed in the way they have set up their businesses.

We know from the current situation that one point of leakage or availability of regular
unleaded petrol is enough to allow sniffing outbreaks in a large surrounding area; there is a black market in unleaded petrol in these areas. So it is a serious flaw that only certain traders and petrol stations are actually going to be covered. There are some traders who will stock and sell regular unleaded petrol—and we have seen that growing. That indicates that, if they see a commercial advantage in restructuring their businesses to continue to do so, they are going to do it. So the bill will end up being ineffectual as a result. The committee heard that there are even a number of traders who falsely believe that Opal fuel results in performance impacts and has a negative effect on engines. So there is a real issue around education. The belief in performance impacts has been proven to be untrue, but it is still up to traders to make their own decision on whether they choose to sell Opal. So the bill, which does not cover every trader in the area, will be all but ineffective. As this bill will apply only to incorporated traders, as I have said, there will still be regular unleaded petrol available from any petrol station trading as a sole trader or partnership or under another business model. In addition, a service station that has so far refused to stock Opal for whatever reason would only need to change its corporate structure to continue to sell regular unleaded fuel. The committee came to that same conclusion, recommending:

… that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power.

Yet here we are today.

Perhaps the Greens could consider looking to the state governments, who have jurisdiction over these sorts of issues, to help find some constructive solutions. But I note Senator Milne's comments during this debate around the black hole of COAG and the disrespect that is continually shown to state governments and any collaboration that COAG or the state governments seem to do in developing national cooperative approaches that take into account the fact that they are separate entities. I look to Senator Waters's issues around the EPBC Act and state governments coming together with a framework on how we are going to go forward on dealing with environmental issues. I think the disrespect for the COAG process and the states as a consequence is the modus operandi for the Greens and does not always deliver the best policy solutions, as Senator Back outlined in his contribution with respect to localism. Similarly, Senator Scullion commented on the Northern Territory legislation that could be used as a framework for going forward. A further recommendation of the committee was, in fact, just this:

… that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of low aromatic fuel to ensure that there is agreed and coordinated action to address petrol supply.

I am really looking forward to the committee stage of this bill to ensure that we have actually consulted with state and territory jurisdictions and to establish what form that consultation has taken. It is inappropriate to use Commonwealth law in an area which should be governed by state and territory law. Commonwealth legislation will be open to challenge and will apply only to incorporated traders, as I have already gone over.

The coalition has been seeking to address this issue. The Deputy Leader of the Nationals and coalition shadow minister for Indigenous affairs, Senator Scullion, has made very clear his intent to work collaboratively with the Greens and with the government on issues of improving the plight of our First Australians and to seek a
bipartisan solution, because that is the only
solution that is going to work going forward. Senator Scullion himself met with the
Northern Territory Chief Minister, Terry
Mills, as recently as 23 October to discuss
petrol sniffing and associated issues. It was
agreed that the Northern Territory's Volatile
Substance Abuse Prevention Act could be
used to stop the sale of regular unleaded
petrol in certain areas, and the Chief Minister
agreed that Senator Scullion could go on to
discuss appropriate amendments.

So in the Northern Territory, where this
problem plays out in communities most
keenly, the wheels are already in motion to
deploy the legislation against petrol
sniffing—legislation, Senator Siewert, that
will actually work. Under this approach, a
group of 10 or more residents of a locality or
a community council could seek to prevent
supply of a particular substance, including
petrol, in that location, which goes back to
Senator Back's comments on communities
taking control of their area. The Greens are
right: in a previous contribution, Senator
Milne, I think, said again that communities
are screaming out for this issue to be
addressed, but they are not screaming out for
this bill and this approach.

Senator Siewert: Oh, yes, they are.
That's where you're wrong.

The DEPUTY PRESIDENT: Order,
please! Senator Siewert, could you not shout
across the chamber.

Senator McKenzie: I will continue to
outline the Northern Territory approach. The
Northern Territory Department of Health
would then lead a process that would take
count of interested parties' contributions to
develop a management plan that could
specify restrictions on the supply and use of
regular unleaded petrol or other sniffable
substances in that community. Senator
Scullion has also written to the other states
involved to propose that they consider
adopting similar legislation. State and
territory legislation based on the Northern
Territory's can be more targeted and more
flexible, will be more legally robust and will
actually be a solution that provides
confidence to those communities on the
ground to take action when they experience a
problem, instead of Commonwealth
legislation being thrust upon them from
Canberra.

The coalition has been proactive about
developing a long-term, effective solution to
this problem and has been attempting to
work with both the government and the
Greens—unfortunately, as of this morning,
to no avail. Even the Greens themselves
acknowledge that the bill would be
ineffective. As they said in their minority
report in the community affairs inquiry
report:
The bill introduced by the Australian Greens does
not in itself cause anything to take place. It is
enabling legislation.

My concern, and the concern of the coalition,
is that the Greens' decision to go it alone on
the legislative approach to the scourge of
petrol sniffing has meant the imperfect bill
before us today. Petrol sniffing will not be
stopped by this bill, not because of a lack of
good intent in the bill but because it uses the
wrong legislative mechanism to achieve the
outcome. The Greens and Labor know this. I
go back to my commentary on traders and
how they will structure their businesses if
there is a commercial advantage in doing so.
We all know that they are capable of doing
that.

Labor, as part of its opportunistic deals
with the Greens, changed its mind. We do
not know what the deals are; we just know
that we are now debating this bill before us.
Minister Snowdon changed his mind and
now this bill is before us. It would be
fantastic if the community and the Senate
understood the price of getting this legislation onto the agenda this morning for debate with the government support. I guess we should not be surprised, because evidence based, effective policy for this government is shelved for political expediency, something we have seen time and again. We are here in the second-last week of our sitting year with another backflip as we have seen a political fix occur. I hope the details are going to be outlined somewhere. We have a couple more speakers. I hope that a little gold nugget will come forward. We saw it with the supertrawler, we saw it on live cattle exports, we saw it with the excising of the migration zone and we saw it with the carbon tax. With science and evidence based policy, a legislative approach that uses mechanisms that will work is shelved for short-term political gain.

My strong desire, in terms of addressing this problem, was that the Greens would choose to use being highly effective with this Labor government, rather than this strategy, to get the bill on the agenda and get the government's support. The Greens chose to mobilise their highly effective e-campaigners—the 76,000 that changed the minds of Minister Ludwig and Minister Burke. They could mobilise them to get consumers and industry to get behind them by running their businesses and purchasing the products that will lead to long-term and effective change in Indigenous communities as Opal becomes the only fuel sold. I am not sure what really happened in the past day or so to change the government's mind. Obviously, the bill is being done. I wish that the— (Time expired)

Senator BOYCE (Queensland) (11:39): Petrol sniffing has apparently been around or known of since about 1951, but it was not until the 2000s that action was taken. Certainly, Senator Rachel Siewert, who was instrumental in getting the first inquiry held, deserves congratulations on doing that, as do many organisations, such as CAYLUS, and many elders, particularly the women, in rural Aboriginal and remote communities that pushed for something to be done about the scourge of petrol sniffing. As a member of the community affairs committee I have been involved in two of the three petrol-sniffing or low-aromatic fuel inquiries that the committee has held. It has been very instructive to visit communities and to see what is being done and what cannot be done because of the problems not just with petrol sniffing but with chroming and glue sniffing, with the substitution of marijuana, or ganja, for petrol when it is not available.

We are looking at a more serious problem and an underlying and complex problem around why petrol sniffing happens. Just recently the ABC reported that there had been an outbreak of petrol sniffing in Tennant Creek, with 10 young people sniffing petrol. It is really a very serious issue. Some of the things that have happened have certainly improved the situation, and the development of Opal fuel by BP is one that needs to be lauded and celebrated. In itself Opal fuel, the low-aromatic fuel, has made a major difference to the number of petrol sniffers.

Part of the original inquiry that sought to push the introduction of low-aromatic fuel said that youth programs needed to be established in many of the communities where petrol sniffing happened because it was a result of loss of self-esteem, it was a result of boredom and it was a result of lack of cultural connection. On the second inquiry that the committee held, we went to a number of remote communities, met people undertaking youth work programs and saw that there were some benefits beginning to develop.
I must admit the one thing that has concerned me in many cases in regard to the sorts of programs that we as governments—federal, state and territory and even local—impose on Aboriginal communities is that we do not have a component to try and build local social and community capacity. We tend to still have the situation, which was obvious in one community we visited, where the youth worker leaves after a few months, as they are expected to do when their contract expires, and the program stops. I am very happy to accept that someone with a degree in youth work is probably far superior at setting up a youth development program than someone without a degree. But I certainly know of many communities throughout Australia where locals have seen a need and simply filled it, perhaps not as expertly as someone with a degree. But what we are not doing is giving communities the sense that they are in control of their own destinies and that they are the ones who should be working out how to fill the gaps.

The other consequence of petrol sniffing and other substance abuse is that in many cases in some of these communities we have a semi-literate generation of young people who are not able to assist their own children with their education. They do not see the benefits of education and do not support education for their children, which, of course, creates an ongoing problem that may yet affect another generation. It has really become a serious problem that needs very complex solutions and I congratulate all those who are working in the area to try to develop some of those solutions.

I note, in the outline accompanying the amendments to the Low Aromatic Fuel Bill that have been provided to us today, that the government says:

The Government recognises the devastating impact of petrol sniffing on young lives and the importance of action to reduce the incidence of petrol sniffing and its impact on families and communities. In this context these Government amendments are in keeping with the Bill’s object to reduce the potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in certain areas from petrol sniffing. The amendments also provide clarity on a number of technical issues to facilitate the clearer administration of the Bill.

If this is true, I cannot imagine that anyone would have any concerns with this bill. But when you get a virtually rewritten bill, with 25 substantial amendments attached to it, 10 minutes before the debate begins, with no notice to the coalition, naturally one suspects a rat. I noted that Senator Siewert interjected a number of times during speeches, saying, 'Read the amendments.' This was in terms of some of the coalition's objections to this bill. The amendments do in fact include a change so that instead of the bill saying 'a corporation must not supply regular unleaded petrol in a low-aromatic fuel area' it now says 'prohibiting the supply of regular unleaded petrol in a low-aromatic fuel area'. If this had been discussed and gone through with the coalition and if it had been suggested that this was a good way to get around objections to the Corporations Act not covering sufficiently the concerns and the organisations that are involved in ignoring the low-aromatic fuel position, that would be fine. But, of course, we have nothing except those words written on a piece of paper and Senator Siewert interjecting, 'Read the amendments.'

As I think everyone in this place knows very well, Senator Nigel Scullion has been at the forefront of trying to ensure that low-aromatic fuel is available throughout the Northern Territory, and many others in this place have been keen to ensure that low-aromatic fuel is available in my own home state, particularly in areas of Western Queensland where it currently is not available and in the APY Lands. This is not
just a problem for Indigenous communities, but the main areas of concern have been in Indigenous communities, and that is where the change to low-aromatic fuels has made a very large difference. If in fact those amendments overcome the objections that were made by all parties when this bill was before the committee, then certainly let's look at them; let's consider them. However, given that there are currently negotiations going on with the states and territories and given that this bill appears to say that the minister will only legislate if states and territories do not, surely the best way to go ahead with this is through negotiation and discussion.

As I said, if the bill would do what the government now says it would do, let's have a proper look at it. Let's certainly look at going ahead with the legislation if it will reduce the incidence of petrol sniffing and therefore the devastating impact of petrol sniffing. We have no problems with that, but why would these amendments simply be rushed into the chamber with no discussion with the coalition, who I think both the Greens and the government know have strong concerns in this area about reducing and then eliminating petrol sniffing? Certainly it would be our strong intention to go ahead in that way, and the government and the Greens certainly owe it to us to sit down with us and look at this. Also, they should be talking to the communities and the state and territory governments involved. Without their involvement, it is a ridiculous proposition to suggest that this bill should simply be passed because the government and the Greens say: 'You don't need to read the amendments. You just have to accept our word that they do exactly what we say they do.' This is certainly not acceptable to the coalition but we are certainly open to discussion on the topic.

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

PETITIONS

Indigenous Australians

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

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

The petition of the undersigned shows:

We are opposed to The Stronger Futures in the Northern Territory legislation because it extends many of the provisions of the Northern Territory Emergency Response Act 2007 (NTER) and consolidates the top down, punitive approach that is already adversely impacting on the legal and human rights of Indigenous Australians. We urge the Federal Government to abandon this legislation and develop strategies based on trust and respect which will promote collaboration with the Aboriginal people of the Northern Territory in decision-making relating to their future.

Your petitioners ask that the Senate: vote against The Stronger Futures in the Northern Territory Legislation.

by Senator Rhiannon (from 10 citizens).
Petition received.

NOTICES

Presentation

Senator Moore to move:

That the Community Affairs Legislation Committee be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:

(a) on Monday, 26 November 2012, from 4.15 pm; and
(b) on Thursday, 29 November 2012, from 4.30 pm.

Senator Bilyk to move:

That the Senate—

(a) urges the Australian people to remember those who perished and suffered as a result of the Ukrainian Famine 1932-33 (Holodomor), as a
reminder that we should always respect the freedoms bestowed upon us; and
(b) joins with the Ukrainian World Congress and the Australian Federation of Ukrainian Organisations in calling on Australians to acknowledge the International Day of Remembrance on the last Saturday of November, gazetted by the Ukrainian Government in respect of those who suffered and perished in the great famine of 1932-33.

Senator Hanson-Young to move:
That the Senate—
(a) notes:
(i) that it is not illegal to arrive in Australia to seek asylum, and
(ii) previous attempts by the Australian Greens to have the use of the term 'illegal' in reference to asylum seekers ruled as out of order in Senate debate; and
(b) calls on parliamentarians to refrain from using the misleading and inaccurate term 'illegal' when referring to asylum seekers.

Senator Wright to move:
That the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 28 March 2013:

The value of a justice reinvestment approach to criminal justice in Australia, with particular reference to:
(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;
(b) the economic and social costs of imprisonment;
(c) the over representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill health, cognitive disability and hearing loss;
(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;
(e) the methodology and objectives of justice reinvestment;
(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;
(g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;
(h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America;
(i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and
(j) any other related matters.

BUSINESS
Leave of Absence
Senator McEWEN (South Australia—Government Whip in the Senate) (11:52): by leave—I move:
That leave of absence be granted to Senator Xenophon for today, on account of parliamentary business.

Question agreed to.

Senate Temporary Orders
Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:52): I move:

That the following government business orders of the day be considered from 12.45 pm today under the temporary order relating to non controversial government business:
No. 5 Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012
Superannuation Auditor Registration Imposition Bill 2012.
No. 6 Tax Laws Amendment (Clean Building Managed Investment Trust) Bill 2012.
No. 7 Tax Laws Amendment (2012 Measures No. 5) Bill 2012.
No. 8 Corporations Legislation Amendment (Derivative Transactions) Bill 2012.
Thursday, 22 November 2012

SENATE

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No. 9 Personal Liability for Corporate Fault Reform Bill 2012.

No. 10 Superannuation Legislation Amendment (New Zealand Arrangement) Bill 2012.

No. 11 Freedom of Information Amendment (Parliamentary Budget Office) Bill 2012.

No. 12 Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012

Courts Legislation Amendment (Judicial Complaints) Bill 2012.


No. 14 National Health Security Amendment Bill 2012.

Question agreed to.

Rearrangement

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:52): I move:

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

(a) general business notice of motion no. 1049 relating to the Australian Labor Party and trade unions; and

(b) orders of the day relating to government documents.

Question agreed to.

Rearrangement

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:53): I move:

That the Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012 may be proceeded with before the Environment and Communications Legislation Committee reports.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Hanson-Young for today, proposing the disallowance of the Migration Amendment Regulation 2012 (No. 5), postponed till 6 February 2013.

General business notice of motion no. 1041 standing in the name of Senator Hanson-Young for today, relating to anti-homosexuality legislation, postponed till 28 November 2012.

BILLS

Environment Protection and Biodiversity Conservation Amendment (Prohibition of Live Imports of Primates for Research) Bill 2012

First Reading

Senator RHIANNON (New South Wales) (11:54): I move:

That the following bill be introduced: A Bill for an Act to amend the Environment Protection and Biodiversity Conservation Act 1999, and for related purposes—Environment Protection and

Question agreed to.

Senator RHIANNON: 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 RHIANNON (New South Wales) (11:55): I move:

That this bill be now read a second time.

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

Leave granted.

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

Leave granted.

The speech read as follows—

This bill, the Environment Protection and Biodiversity Conservation Amendment (Prohibition of Live Imports of Primates for Research) Bill 2012 amends the Environment Protection and Biodiversity Conservation Act 1999 to disallow the import into Australia of live primates for the purposes of research.

The bill does not ban the use of primates for research per se – which is a separate issue that requires rigorous examination. There are three government funded facilities in Australia that breed primates for research. Permits for the importation of live primates have been neither sought by these facilities, nor issued since 2009.

Nor does the bill provide a blanket ban on the importation of primates for other purposes such as zoos.

This bill thus formalises current practice whereby primates have not been imported for research purposes to Australia for many years.

It also ensures Australia does not participate in the unethical trade of wild-caught primates used in experimentation for the research industry.

Australia is signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which commits to ensuring international trade in flora and fauna does not threaten their survival. All non-human primates are listed as CITES specimens, and as such wild-caught animals may not normally be traded.

Australia's National Health and Medical Research Council's (NHMRC) policy on non-human primates for scientific purposes also states that "whenever possible investigators obtain non-human primates from National Breeding Centres".

The global wildlife trade is recognised as one of the biggest threats to biodiversity conservation, and the major trade in nonhuman primates – as live, as body parts or as meat – presents a significant risk to their conservation in the wild.

The illegal and unsustainable trade in primates is "increasingly recognised as an urgent threat to conservation" and is described as a "conservation crisis". One of the main sources of nonhuman primates to meet global demand is Southeast Asia. Since the 1970s Indonesia has been a major exporter of monkeys.

When India and then Bangladesh banned primate exports in the late 1970s, Southeast Asia became "a major hub of wildlife trade". With its concurrent highest rate of tropical deforestation on the planet, the loss of its biodiversity is described as "an impending disaster".

The list of threats causing decimation of the world's wild primates is a long and bleak litany which includes the trade in monkeys to supply the booming biomedical and pharmaceutical research industry.

Around the world an estimated 100,000 to 200,000, nonhuman primates, or monkeys, are used in experiments every year, and tens upon tens of thousands of monkeys are traded around the world to meet the research industry demand. According to US Department of Agriculture figures, in the US alone the use of nonhuman
primates in experiments rose from 57,518 in 2000 to 71,317 in 2010.

There is considerable clinical evidence that much animal-based research correlates poorly with the human response. This is confirmed by scientific reviews that show correlations between the results of animal experimentation and human outcomes is negligible, expensive and unnecessary. Most animal experiments do not translate to clinical trials, are not validated, minimally cited, and use methodologies that render findings as unreliable.

For example, Bailey's 2005 scientific critical review on research using animals came to the conclusion such findings "have little or no predictive value or application to human medicine."

Matthews' 2008 paper in the Journal of the Royal Society of Medicine points out that much of the claimed value of animal research is anecdotal rather than quantitative and that there are "relatively few quantitative studies of the predictive abilities of animal models". Where such studies do exist in toxicity testing, "the data provided by these studies is typically incomplete, ambiguous, and subjected to inadequate or incorrect analysis." However "the evidential weight of animals models that emerge are at best inconclusive, and sometimes wholly misleading."

The Medical Research Modernization Committee, a health advocacy organisation comprised of medical professionals and scientists, found in their 2006 critical review that "human data has historically been interpreted in light of laboratory data derived from nonhuman animals. This has resulted in unfortunate medical consequences."

The 2006 autoimmune, multiple scleroses and leukaemia drug trial at Britain's Northwick Park hospital where 6 young men suffered multiple organ failure after taking a new drug shown to be safe at a 500 times greater dosage in monkeys, is one such example.

In 2002, the House of Lords Select Committee on Animals in Scientific Procedures stated "the formulaic use of two species in safety testing is not a scientifically justifiable practice, but rather an acknowledgement of the problem of species differences in extrapolating the results of animal tests to predict effects in humans." The Committee also concluded "that the effectiveness and reliability of animal tests is unproven" and that "the reliability and relevance of all existing animal tests should be reviewed as a matter of urgency."

A 2004 UK survey by Europeans for Medical Progress found 82% of general practitioners "were concerned that animal data can be misleading when applied to humans."

Safer Medicines, a British patient safety organisation of doctors and scientists articulates the growing questions from a safety perspective: "whether animal testing, today, is more harmful than helpful to public health and safety" with "alarming evidence that animal tests fail to protect us" in areas from strokes, to AIDS, cancer, autoimmune diseases and more.

Knight's 2007 review on animal experiments found published experiments on chimpanzees, as the species most closely related to human primates, have been shown to generate data of "questionable value" and to make insignificant contributions to cited research – with in vitro studies, human clinical and epidemiological studies, molecular assays and methods, and genomic studies contributing most to the development of combating human diseases.

Not surprisingly, this is because chimpanzees' phenotype, that is their morphology and biochemistry, is markedly different to humans.

Yet with the progressive banning of testing on chimpanzees around the world, the research industry has turned to smaller nonhuman primates that are even more removed from the human phenome. This is despite cheaper and more scientifically reliable and valid methodologies and technologies already existing and being used by more and more laboratories around the world.

The Greens urge government, regulators and research institutions to practice these sophisticated and humane research methods. These include genomics, proteomics, nanotechnology, phage display, microdosing, microfluidic chips, epidemiology, autopsies, computer modelling deducing toxicity based on chemical structure of compounds, more thorough
world research databases, and tissue and cell in vitro research such as the Ames Test.

Australia has not permitted the import of live nonhuman primates for research since 2009.

From 2000 until 2009 the CITES database records Australia permitted the live import of 331 Pig-tailed macaques from Indonesia for research. These are listed as Vulnerable to extinction on the IUCN Red List of Threatened Species.

In the same period Australia also permitted the live import of 71 Owl monkeys for research "breeding purposes". This species is also listed on the IUCN red list as "although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival." The IUCN also notes concern that large numbers of these South American species are used in research, and that the issue of wild-caught Owl monkeys "should be monitored to understand the effect on populations."

During 2000-2009 250 long-tailed macaques were also imported into Australia for research purposes. These monkeys are noted on the IUCN red list as suffering declining populations, and a CITES meeting in 2011 expressed as "imperative" a reassessment of the species was needed, given the trapping, laundering and largely illegal trade of massive numbers of wild caught long-tailed macaques to support the pharmaceutical industry and its researchers.

The European Commission states that the majority of Asian (Old World) monkeys traded for the global research are not bred in western facilities but are born to wild-caught captive monkeys in Asian facilities. The IUCN Primate Specialist Group's Ardith Eudey described these as "lucrative operations ... [that] may serve to 'launder' wild-caught monkeys" to sell as captive-bred to the research industry, and which "appear[s] to have resulted even from legally protected areas".

More than half of the 70 species of primates in Southeast Asia are found in Indonesia, which "features prominently on the list of source countries for both domestic and international trade," and it is from here Australia sourced most of its primates for research until the last importation in 2009.

In 2009, a BUAV (British Union Against Vivisection) undercover investigation confirmed the IUCN's and other scientists' concerns, revealing Indonesia's "official" ban on the export of wild-caught primates for research (in line with its CITES obligations) is a farce.

Monkeys were shown suffering high levels of cruelty during their capture, confinement and transportation, with an endpoint destination of experimentation in the world's laboratories.

BUAV also found Indonesian wild-caught monkeys are coded as "captive-bred". Monkeys wild-living on islands, such as Australia's source island - Tinjil Island - are also coded as "captive-bred" because the whole island is described as a "breeding facility".

The investigation also revealed monkeys trapped in inhumane conditions by villagers who view them as pests and ready income. Baby monkeys are taken from their trapped parents who were often killed rather than being released back into the wild. Mother monkeys are sometimes shot with air rifles forcing them to flee and drop their infants. Monkeys are chased by dogs to be entangled in nets or ropes which often strangled the trapped terrified animals.

The monkeys, including the infants, are then kept in filthy, crowded and barren concrete pens with metal grid floors lacking fresh air or sunlight, many with no access to water or food. In one primate breeding and supply facility infants were kept in small empty pens with smooth walls, no perches and only a wire ceiling, from which the scores of babies would hang frightened in the absence of safe shelter.

Monkeys are then transported around the world, sometimes kept in transit for days, packed into crates too small to stand up in, suffering the noise, inadequate ventilation and extreme temperature fluctuations. If there are transport delays, there is often insufficient food and water.

One UK primate import company alone had a mortality rate of nearly 19% of its delivered monkeys, all from Indonesia, during 1988-1991.

In the 2001 May Budget estimates, it was stated that the three Australian primate breeding
facilities were established, among other reasons: "to remove the necessity to import these animals into Australia; and to protect these species in the wild by breeding them in captive colonies"

This bill if passed, would confirm in law that Australia does not support the cruel and inhumane primate trade for experimentation and that Australia will not participate in practices leading to the extinction of primates in the wild.

This is a small but important step.

The Greens support the global scientific 3R principle for the use of animals in research – replacement, refinement and reduction. We support the call by leading scientific researchers and medics, and by important organisations such as Humane Research Australia, for legislators and regulators to support a more methodologically sound and effective science that transitions away from the 19th century practice of animal experimentation to the more sophisticated and credible modern methods of biomedical research already being used with more accuracy and success today.

I commend the bill to the Senate.

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

Leave granted; debate adjourned.

COMMITTEES

Environment and Communications
References Committee

Reporting Date

Senator McEWEN (South Australia—Government Whip in the Senate) (11:56): At the request of the Chair of the Environment and Communications References Committee, Senator Birmingham, I move:

That the time for the presentation of the report of the Environment and Communications References Committee on the protection of Australia's threatened species and ecological communities be extended to 28 February 2013.

Question agreed to.
Senate on Thursday, 22 November 2012, from 6 pm.

Question agreed to.

BUSINESS

Withdrawal

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:56): I move:

That general business order of the day no. 13, relating to the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010, be discharged from the Notice Paper.

Question agreed to.

MOTIONS

Stretton, Major General Alan, AO, CBE

Senator McEWEN (South Australia—Government Whip in the Senate) (11:57): At the request of Senators Crossin and Scullion, I move:

That the Senate—

(a) notes:
(i) the passing of Major General Alan Stretton, AO, CBE,
(ii) the outstanding work and service of Major General Stretton, as head of the National Disaster Organisation, in coordinating the recovery of Darwin after Tropical Cyclone Tracy, which devastated the city on Christmas Day of 1974, as a remarkable achievement which averted much suffering,
(iii) the admiration in which Major General Stretton was held by the Australian community and that he was awarded Australian of the Year, an Officer of the Order of Australia and a Commander of the Order of the British Empire as well as many other honours, and New South Wales ’Father of the Year’, and
(iv) Major General Stretton’s distinguished military career over 38 years, including active service in World War II, Korea, Malaya and Vietnam;
(b) recognises his contribution to the Australian community, and, in particular, to the people of Darwin and the Northern Territory; and
(c) extends its sincere condolences to his family, particularly his children Virginia, April and Greg, and friends and colleagues of Major General Stretton.

Question agreed to.

Whistleblower Legislation

Senator MILNE (Tasmania—Leader of the Australian Greens) (11:57): I move:

That the Senate calls on the Government to fulfil its 2007 election commitment to the Australian people by introducing a public interest disclosure bill in the first sitting week of 2013 to comprehensively protect whistleblowers.

Question agreed to.

Homosexuality

Senator HANSON-YOUNG (South Australia) (11:58): I move:

That the Senate—

(a) notes:
(i) homosexual acts were decriminalised in Victoria in 1981 but that convictions prior to that date can still appear on a Victorian person’s police record, and
(ii) that the United Kingdom (UK) recently enacted legislation to expunge historic convictions for homosexual acts which were imposed prior to the decriminalisation of homosexuality in the UK; and
(b) calls on all Australian states and territories to enact legislation that expressly purges convictions imposed on people prior to the decriminalisation of homosexual conduct.

Question agreed to.

Endangered Species

Senator WRIGHT (South Australia) (11:59): I move:

That the Senate—

(a) expresses deep concern about the upper Spencer Gulf population of the giant Australian cuttlefish (Sepia apama) which has catastrophically declined from a high of over 200 000 individuals in 1999 to less than 10 000 individuals in 2012; and
(b) calls on the Gillard Government to urgently reassess whether or not the upper Spencer Gulf population of this species is eligible for listing under the Environment Protection and Biodiversity Conservation Act 1999.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (12:00): Mr President, I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator JACINTA COLLINS: In 2009 this species was assessed by the Threatened Species Scientific Committee as not being eligible for listing. They considered the Spencer Gulf population was not a distinct species and that estimates of size are an underestimate. The committee also considered the Spencer Gulf population is subject to variation influenced by seasonal environmental conditions. The Department of Sustainability, Environment, Water, Population and Communities continues to monitor the issue.

The PRESIDENT: The question is that the motion be agreed to.

The Senate divided. [12:05]

(The President—Senator Hogg)

Ayes.................9
Noes.................40
Majority.............31

AYES

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

Hanson-Young, SC
Milne, C
Siewert, R (teller)
Whish-Wilson, PS

NOES

Back, CJ
Bishop, TM
Brown, CL

Bilyk, CL
Boyce, SK
Cameron, DN

Cash, MC
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Furner, ML
Hogg, JJ
Ludwig, JW
Madigan, JJ
McEwen, A
McLucas, J
Parry, S
Pratt, LC
Ryan, SM
Smith, D
Sterle, G
Thorpe, LE

Colbeck, R
Cormann, M
Edwards, S
Faulkner, J
Fifield, MP
Gallacher, AM
Kroger, H (teller)
Lundy, KA
Marshall, GM
McKenzie, B
Moore, CM
Polley, H
Ruston, A
Singh, LM
Stephens, U
Thistlethwaite, M
Williams, JR

Question negatived.

Senator WRIGHT (South Australia) (12:07): Mr President, I seek leave to make a very short statement.

The PRESIDENT: Leave is granted for one minute.

Senator WRIGHT: I would just like to remind the chamber what this motion was about and what we were asking the chamber to agree to. The giant Australian cuttlefish is a magnificent marine creature which is found in South Australia's Upper Spencer Gulf. It has a unique breeding season at Point Lowly. It is the only one of its kind known in the world, and tourists from all over the world come to view this unique phenomenon.

There has been a catastrophic decline in the numbers of the giant Australian cuttlefish, from a high of over 200,000 in 1999, to over 125,000 following an assessment done just three years ago, to 10,000 now. The causes are not known but further industrialisation is planned for this area. The South Australian government has not been taking sufficient action. We have called on the Gillard government to urgently reassess whether this precious species should
be eligible for listing under the Environment Protection and Biodiversity Conservation Act. Unfortunately, the chamber did not support that motion.

**International Energy Agency**

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

That the Senate—

(a) notes the report by the International Energy Agency (IEA), Energy Policies of IEA Countries: Australia 2012 which concludes:

(i) Australia’s carbon price scheme is ‘an example of the standard of leadership that the IEA has been calling for so that the energy sector can be protected from sudden and vacillating climate policy that paralyses investors and disrupts energy markets’,

(ii) Australia’s implementation of carbon pricing marks ‘the first major fossil fuel energy resource rich economy to take the most cost effective mitigation measure’,

(iii) the design of the emissions trading scheme 'fits well' with the IEA's findings on lessons from international experience, with the exception of the free permits and cash given to coal fired generators,

(iv) supplementary policies to the carbon price are required to successfully make a transition to a low carbon economy, and welcomes the establishment of the Clean Energy Finance Corporation, and

(v) further incentives should be introduced to increase energy efficiency, covering new buildings and refurbishment of existing building stock, and notes 'much more work' is required on improved fuel efficiency; and

(b) urges the Government to adopt world's best practice by implementing the IEA’s recommendation for the removal of free permits for coal fired generators and the phase out of over generous allocations.

**The President:** The question is that the motion moved by Senator Milne be agreed to.

The Senate divided. [12:10]

(The President—Senator Hogg)

Ayes .............................. 9
Noes .............................. 39
Majority ......................... 30

**AYES**

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

**NOES**

Back, CJ
Bilyk, CL
Bishop, TM
Brown, CL
Cash, MC
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Furner, ML
Hogg, JJ
Ludwig, JW
Madigan, JJ
McEwen, A
McLucas, J
Parry, S
Pratt, LC
Ryan, SM
Smith, D
Sterle, G
Thorp, LE

**Native Title: Pilbara Region**

**Senator SIEWERT** (Western Australia—Australian Greens Whip) (12:08): I move:

That the Senate calls on the Federal Government to urgently investigate the serious claims made about Fortescue Metals Group regarding its actions in relation to the Solomon mine site and the Yindjibarndi community and its influence on the Native Title and heritage processes in the Pilbara.

Question negatived.
Middle East

Senator STEPHENS (New South Wales) (12:15): I seek leave to amend general business notice of motion No. 1,057, relating to the Middle East.
Leave granted.

Senator RYAN (Victoria) (12:15): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator RYAN: This motion was only circulated in the chamber immediately before housekeeping, and it was only emailed to all parties at 11.53 this morning, so it is fair to say that the usual courtesies were not applied to these amendments. The coalition will support the motion moved by the Labor Party. I note yesterday in question time that Senator Bob Carr said he would have preferred a motion that would be supported across the chamber. The coalition would like the same but would not compromise with those who qualify their condemnation of the violence of Hamas with the criticism of a nation simply defending its civilians. It is disappointing that yesterday Labor could not support a simple, unqualified and unconditional condemnation of the rocket attacks upon Israel orchestrated by Hamas, because there is a very simple truth: if the rockets from Hamas stop, there is no need for Israeli action.

Senator STEPHENS (New South Wales) (12:17): I move the motion as amended:
That the Senate—
(a) welcomes the ceasefire between Hamas and Israel and urges all sides to adhere to it;
(b) commends Egypt's leadership role in brokering this agreement, supported by the efforts of the United States, the United Nations Secretary-General and other regional countries;
(c) supports a two state solution to the Israeli-Palestinian conflict – a solution based on the right of Israel to live in peace within secure borders internationally recognised and agreed by the parties and reflecting the legitimate aspirations of the Palestinian people to also live in peace and security within their own state;
(d) condemns the terrorist attack on a bus in Israel on 21 November 2012, which injured more than 20 people, and expresses sympathy to those affected by the attack; and
(e) calls for any public demonstrations or rallies in Australia to be peaceful, and not target private businesses or individuals.

I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator STEPHENS: I just want to respond to the comments made earlier about lack of consultation. As the minister said yesterday, he has had a general view that a uniform, unanimous motion from this parliament was the preferred position. Work has been going on, and of course we have all followed the details of what has been going on overnight and the achievement of a ceasefire. This motion, as amended, now reflects the current situation. I apologise to the opposition if the process was not actually as they had expected.

Senator MILNE (Tasmania—Leader of the Australian Greens) (12:18): I seek leave to move an amendment to the amended version of the motion as circulated. The amendment would replace the word 'aspirations' with the word 'rights', in paragraph 3 of the amended motion. So it would read:

3. Supports a two-state solution to the Israeli-Palestinian conflict—a solution based on the right of Israel to live in peace within secure borders internationally recognised and agreed by the parties and reflecting the legitimate rights of the Palestinian people to also live in peace and security within their own state;

Leave not granted.
Senator MILNE (Tasmania—Leader of the Australian Greens) (12:19): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MILNE: I am very distressed to think that the Senate would not recognise the rights of the Palestinian people to also live in peace and security within their own state. Australia has been elected to the UN Security Council. We have an obligation to be even-handed. If we want to be a respected middle power on the Security Council we have to be even-handed.

In terms of this motion as it currently reads, we agree with all of it. We do condemn the attack on the bus in Tel Aviv overnight. We condemn the rocket attacks from Gaza into Israel. But we also condemn the bombings and blockading of Gaza by Israel. Why is it that the government and the opposition cannot bring themselves to acknowledge the devastating harm done to the Palestinian people by Israel with the continued bombing and blockading? The Palestinian people have rights, not just aspirations, alongside the people of Israel. So, whilst we support each element of the amended motion that Senator Stephens has moved, it is the omission from the motion that raises concern.

The PRESIDENT: The question is that the motion be agreed to.

Question agreed to.

COMMITTEES

Environment and Communications References Committee

Report

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (12:21): On behalf of the Chair of the Environment and Communications References Committee, Senator Birmingham, I present the report of the Environment and Communications References Committee, Operation of the South Australian and Northern Territory container deposit schemes, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator KROGER: I move:

That the Senate take note of the report.

Senator RUSTON (South Australia) (12:22): I rise to speak on the Environment and Communications References Committee report on container deposit schemes. The intention of this inquiry was to investigate the pricing and revenue allocation practices of the beverage industry in South Australia and the Northern Territory, which are the only two states in Australia where the CDS exists. The South Australian scheme is 35 years old and well established, and the Northern Territory scheme is brand new. As such, the South Australian community is largely accepting of this system of legislation. But I would just like to put on record that other states should be very, very careful before they consider going down this path, because there may well be better options available to achieve disposal outcomes.

I draw the attention of the Senate to a success story on this sort of management that does not have the overly burdensome requirements of the two container deposit schemes investigated in the inquiry. The success story to which I refer is the drumMUSTER, with 20 million containers safely disposed of since 1999. This scheme has been dedicated to helping farmers and chemical users keep their land free of waste. The plastic and steel from which these products are made is recycled and diverted away from landfill into new products. There have been pretty amazing results of this Industry Waste Reduction Scheme
agreement. More than 25,000 tonnes have been diverted from landfill—465,000 cubic metres of uncompacted waste, enough to fill more than 120 Olympic-size swimming pools. That is 276 road trains packed to the top—almost 10 kilometres of road trains. If the waste were put into cotton bales it would be 110,000 bales. Laid end to end, that is enough containers to go from Brisbane down to Sydney, past Melbourne, across to Adelaide, past Perth and up to Broome, stopping at Kununurra—more than 8,200 kilometres.

The drumMUSTER is run by AgStewardship Australia Limited, an organisation established and developed to implement stewardship programs that reduce and manage waste for the Australian agricultural sector. AgStewardship Australia is rightly proud of what the drumMUSTER has achieved. The organisation is supported by the National Farmers Federation, CropLife Australia, Animal Health Alliance Ltd, the Veterinary Manufacturers and Distributors Association and the Australian Local Government Association. It has come a long way since the 4c per litre or kilogram was introduced. Today, 97 chemical manufacturers and 452 collection agencies or councils are taking part at 762 collection sites across the country. Since 1999, their programs have diverted more than 75 per cent of packaging that would have otherwise gone into landfill and has safely disposed of approximately 340 tonnes of unwanted chemicals. Most are managed by local councils at waste management sites and transfer stations and others by community groups, charities or even organisations like rural firefighters.

Because it is not overly bureaucratic, the drumMUSTER fits the different needs of a range of groups taking part. That is also a major reason the drumMUSTER has grown over time and continues to develop in individual ways. As the chairman of AgStewardship, Lauchlan McIntosh, has said, everyone from farmers, resellers, manufacturers and local councils have made the scheme efficient. Local governments are a key partner, recognising that the collection of the drums for recycling reduces landfill, besides providing a useful service for the taxpayers. The drumMUSTER has achieved a highly desirable outcome without the need for regulation. I know this is a foreign concept for many of those opposite, who see regulation as the answer to most problems. But the drumMUSTER has adapted in the flexible ways that government regulation just cannot do. I know the Greens in particular have an ideological hatred of agricultural chemical companies, yet it is by partnering with these firms that there has been proper disposal of unwanted chemicals. Research indicates that almost every farmer in Australia is aware of the drumMUSTER program, with more than 60 per cent having indicated that they have used the program.

Twenty thousand containers is a lot of drums. If more processors become involved, then hopefully we will end up seeing more and getting greater flexibility in our recovery rates. The challenge obviously is to get more sites. Overall, though, schemes such as the drumMUSTER mean a better stewardship of land, which is crucial to the health of the environment and to long-term prosperity. The CEO of AgStewardship Australia, Karen Gomez, who grew up in my home state of South Australia, attributes the success of the drumMUSTER to their pragmatic approach of owning and solving their own problems.

I commend AgStewardship Australia for what they have done so far and hope their example can pave the way for a concept of stewardship to replace some of the more outdated methods of regulation that currently exist. AgStewardship Australia sets a great example of taking responsibility for your
own problems. By being proactive, this sector has saved itself a huge amount of time, money and angst. I would suggest that there is a lesson in this for all industry sectors: take responsibility for yourselves and you might avoid the burden of government intervention.

Senator WHISH-WILSON (Tasmania) (12:27): I am very disappointed in Senator Ruston's analysis of the container deposit scheme. She completely misunderstands the whole reason we had a Senate inquiry in the first place. To my knowledge, 20 million agricultural containers are not consumed outside the home by individuals and left lying around as rubbish, which was exactly the reason container deposit schemes were set up around the world in the first place.

I totally agree that anyone who uses a beverage container should be responsible for the disposal of that container. Unfortunately, human nature tends to intervene. No matter what fines and infringements we place on people—and I am sure Senator Ruston, coming from one of the cleanest states in Australia, would agree— they do not seem to work. We still get litter and we still get rubbish—and unfortunately that rubbish and that litter ends up not only in our environment but in our waterways and our oceans, and it breaks down into millions of pieces and finds its way into our sea life. Studies all around the world are now showing the ingestion of plastic from things such as plastic containers as far as the plankton food chain.

We know from packaging that 50 per cent of beverages in containers are consumed outside the home. It was fascinating to me, going to South Australia recently, to see how well kerbside recycling is working with container deposit schemes. South Australia—Senator Ruston's home state—achieves some of the highest recycling rates in the world: 84 per cent of containers consumed outside the home are recycled. This is a key point. We have kerbside recycling, and that is fantastic; nobody disagrees with that. But that is for containers consumed inside the home. I must say, my vineyard does not use chemical drums, because we are organic. I am a Green, but there are also non-Green people who are organic. I will make this point very clear: 20-litre drums of chemicals are not considered rubbish that people take to barbecues with them.

I have never seen someone turn up at a barbecue with a 20-litre drum of chemicals. I have never seen someone go to the football or a rock concert and dispose of a 20-litre drum of chemicals. It is an entirely inappropriate comparison to make and it shows a complete lack of understanding of our rubbish problem in this country.

It is not just Australia, Senator Ruston, that has implemented container deposit schemes. They have been successfully implemented all around the world. In fact, they started in the US to solve exactly this problem. How do we go from A to B and stop people from littering? We cannot. What we can do is work on the incentive that human nature responds to by putting a value on the rubbish that people leave lying around. Human nature lets us down on the left hand because people unfortunately litter when they are not supposed to and, on the right hand, people are prepared to go out and collect the rubbish. Why are they prepared to collect that rubbish? It is because there is an economic value on it. It is called a market based instrument. It is putting a price on pollution. It is using a market system. It is the most efficient system we have for solving our rubbish problem and it is a market based system. If you want to start sledging and throwing around comparisons about people who are on the left or the right and talking
about regulation, that is using a market and a price signal to solve the problem. It is a very different point to what the senator was trying to make about the Greens being heavy on regulation. This is, in fact, not a regulation in the strictest sense of the word; it is an incentive. It is not a tax, as the Food and Grocery Council tried to make out. It is a levy that provides an incentive for people to do the right thing.

Let us talk about South Australia. I was very pleased to go there and see how proud they are of the container deposit scheme in their own state. Eighty-four per cent of all beverage containers are recycled. The Food and Grocery Council and other lobby groups for the beverage industry tried to make out that the packaging covenant, a co-regulatory approach that relies on volunteer agreements, is the best way to go. They could not provide any evidence as to how much packaging was consumed outside the home and how much of that was recycled, because their statistics relied on kerbside recycling, not rubbish outside the home. That is what container deposit schemes were set up for and that is what we were looking at in the inquiry.

It was also interesting for me to note that a state that was so proud of its scheme was surprised when the inefficiencies in that scheme were highlighted by a number of the key players. It is a lot worse in the Northern Territory, where a new scheme has been implemented and a large number of inefficiencies exist. I went to the Northern Territory and I sat and watched people stand in the sun and the dust for an hour with their children waiting to get their cans and bottles counted because people inside the depot were having to split 24 different ways every single container that came into their depot. It took people over an hour and a half to get their money before they left. That is a very inefficient system. All the participants we spoke to in the chain, including the beverage companies who own these supercollectors, agreed that the systems were inefficient and could be done much better.

In terms of rolling out a national scheme, yes, I agree with Senator Ruston: every state should take note of the existing schemes in the Northern Territory and South Australia. They should most definitely take note of what can be done better and what can be done more efficiently. There is absolutely no doubt from the Senate inquiry into container deposit schemes that we can do them a lot more efficiently. The use of new technology, only recently evident in both South Australia and Northern Territory recycling depots, will significantly reduce costs of the schemes.

It is also my view, and the view of the Greens, that beverage companies should not be part of this scheme. They should not be supercollectors. There is an inherent conflict of interest for companies that are fundamentally and ideologically opposed to using container deposit schemes being part of the system. It is like putting the fox in charge of the henhouse. There is no incentive whatsoever for them to improve the schemes. We believe that the inquiry has proven there has been profiteering in the South Australian scheme by Coca-Cola. That has been outlined in our dissenting report.

So, yes, future state schemes or a national scheme should be aware of the container deposits schemes in South Australia and the Northern Territory. There are things they need to know and there are significant ways we can improve the schemes. But the one thing that the EPA in South Australia and most South Australians I talked to, who are very proud of this scheme, pointed out is that in its environmental aim and objective—that is, increasing recycling and removing rubbish from outside the home—it is highly effective. Eighty-four per cent of all beverage containers sold in that state are
recycled because of the scheme, because of this market based instrument that puts a price on plastic pollution and gives people an incentive to get off their backsides, pick up bottles and cans, and take them back to the depot. If they will not do it, kids will. Nearly everyone I saw at the depots in South Australia and in the Northern Territory were children with their parents. It is children making money. It is the Boy Scouts, church groups and community groups profiting from a scheme that distributes that income around the state.

It also provides a fantastic opportunity to aggregate other forms of waste. The South Australian container deposit scheme has revolutionised recycling in that state, and I believe it will do so for every state that adopts such a scheme. The packaging covenant at the moment does not provide an integrated scheme for integrating waste, particularly things such as e-waste and other types of waste that we saw being brought in by the same people who were there to cash in their containers. It could also be rolled out around this country by using private investment at no cost to the beverage companies and at no cost to the taxpayer. We believe there is a market solution to this right around the country. We also believe that new technologies that are being trialled will allow the schemes to run very efficiently and very cost-effectively. There is no doubt in my mind at all from my visits to South Australia and the Northern Territory that this could revolutionise the way we recycle in Australia.

I certainly like the reports that Boomerang Alliance have put out on a Tasmanian based scheme creating 300 new jobs with seven depots around the state. Hopefully, given all the awful garbage that I have seen lying around the Tamar River in the last two weeks, which we have done media on, we could also improve our recycling rates and take plastic out of our rivers and oceans where we know it is damaging marine life. It is the biggest source of pollution in our oceans. *(Time expired)*

**Senator BIRMINGHAM** (South Australia) *(12:37)*: I am delighted to have learned from listening to Senator Whish-Wilson that you and I, Senator Ruston and Senator Farrell live in some type of litter and recycling nirvana. Where we are is obviously heaven on earth compared to everywhere else—and it is. It is a wonderful place to live, as we know. But I am not convinced that everything we have heard from Senator Whish-Wilson by any means stacks up to the most basic of fact checks or proofing. Firstly, seeing as Senator Whish-Wilson decided to dedicate the first part of his speech to responding to Senator Ruston, I might dedicate a little bit of time to responding to Senator Whish-Wilson before I reflect on the report of the inquiry that I was pleased to chair.

Senator Whish-Wilson claimed in one part of his speech that this type of scheme is the most efficient system we have but then in a different part of his speech that it was a very inefficient system. There was a complete contradiction even within the same speech. Throughout this inquiry, in much of what we heard from Senator Whish-Wilson's questioning, his approach was to question the inefficiencies in the systems of container deposit legislation in place.

He claimed that it was a market based system, not a regulation but an incentive. That is really quite remarkable, I think, for anybody. It is not regulatory, not a regulation? This is a system where the state government legislates to require that a 10c deposit be paid to anybody who returns a certain type of container to a certain type of place. That sounds very much like regulation to me. There is no variance in the price. The
state government legislates that it be 10c. It is a fixed price. There is no market in terms of recognising that some of the products returned—say, aluminium cans—are worth an awful lot more than some of the other products returned. Some of them have greater value to recycling than other products.

Senator Whish-Wilson also claimed that evidence provided 'has proven profiteering by Coca-Cola'. Of course, I have not seen the minority report put down by Senator Whish-Wilson. I look forward to reading that and seeing how he has demonstrated and proven his claim of profiteering through the scheme by Coca-Cola. I think anybody with a relatively simple analysis of what occurs in the food and beverages grocery sector would acknowledge that it is a pretty competitive sector. They would acknowledge that at the retail level retailers fight for market share and at the wholesale and manufacturing level there is equally a fight for market share that occurs to maximise profits but to maximise profits in the most effective way—by maximising your sales and margin combinations.

I do not think through this inquiry we saw any credible evidence to support the claim of profiteering through these schemes. If anything, analysis undertaken at all manner of levels indicates that these schemes cost. They come at a cost. There is a merit based argument that can be made about the treatment of litter and the benefits of recycling, and I acknowledge those merit based arguments. We should acknowledge, though, that much has changed since the South Australian scheme was first enacted in the 1970s. Kerbside recycling did not exist then. In fact, very little of the recycling activities that we see today existed then. The scheme was tackling a very different problem to those that we look at today.

In talking about Tasmania, Senator Whish-Wilson suggested that if such a scheme were implemented there it could create hundreds of new jobs. Yet he claims that it all comes at no cost. You do not create new jobs in a sector like this without there being some cost application to fund those jobs.

Senator Whish-Wilson interjecting——

Senator BIRMINGHAM: 'It does not cost the taxpayers.' It costs the consumers—that is right, Senator Whish-Wilson. It costs the consumers, because the costs will be passed through to the consumers, who will pay more——

Senator Fifield interjecting——

Senator BIRMINGHAM: and who in large part are the same people as taxpayers. Thank you, Senator Fifield. Consumers, taxpayers, Australians, Tasmanians—whoever they are—will end up footing the bill through higher costs.

This inquiry did not, however, seek to take on board the merits of having a container deposit scheme or not. It really was a narrow inquiry that looked very much at the operation of the South Australian and Northern Territory schemes and some of these claims of profiteering that I think were firmly rebuked. The inquiry made some clear recommendations, though. In terms of claims of price impacts, anybody who decides to go down this path in future at a national or a state level should make sure that, just as was the case when the GST or the carbon tax was introduced, there are tests so that anybody who makes false claims as to the price impacts can be held to account for making such false claims. In terms of return rates of products, there should be transparency to give confidence and in terms of disputes that may occur within the scheme, there should be some clear dispute resolution mechanisms.
I particularly want to highlight the last recommendation of the report, which relates to the treatment of small containers—containers of less than 100 millilitres in size—that require refrigeration. I urge the South Australian and Northern Territory governments to exempt them. Perhaps the best known of these types of containers are the small Yakult products. They are consumed in the home, they have to be kept refrigerated and they will be captured through kerbside recycling without a container deposit scheme being in place. The committee has recommended that they be treated just as a litre of milk is treated because they are consumed, by and large, just as a litre of milk is consumed—that is, they should be exempt from the schemes. I would urge the South Australian and Northern Territory governments to look at that because it is placing an unfair cost burden on a number of small companies who produce these products. With that, I commend the report to the Senate.

Debate interrupted.

**BILLS**

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012

Superannuation Auditor Registration Imposition Bill 2012

Second Reading

Debate resumed on the motion:

That these bills be now read a second time.

Senator CORMANN (Western Australia) (12:45): The coalition will not oppose these bills. In fact, the coalition strongly supports the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012 and thinks that we should have been dealing with this a long time ago. People across the superannuation industry who are focused on the best interests of their members and people across the superannuation industry who have been exploring opportunities for mergers to achieve efficiencies and benefits of scale which can then flow through in terms of lower fees and higher net returns have been waiting for some time for this bill to be passed by the parliament.

The coalition have been indicating for months that the government had our support. Of course Minister Shorten, the Minister for Financial Services and Superannuation, has known for months that he had our support to get this bill through the parliament, yet he has not progressed it in an appropriately timely fashion. This measure has broad support; is very sensible and does the sorts of things that we all agree with—which is ensure that super fund trustees can make decisions on mergers based on whether they make sense and whether they are appropriate in the best interests of members rather than be prevented, because of tax considerations, from making decisions that otherwise make sense. Instead of pressing ahead with that, Minister Shorten thought he was going to be a bit clever, which is what this government always does. He thought he would slip something in that is somewhat controversial. He put together two bills that have nothing to do with each other.

We have the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012, which provides capital gains tax relief for merging superannuation funds, and we have the Superannuation Auditor Registration Imposition Bill 2012, which, consistent with the terrible track record of this government over the past five years, seeks to impose further red tape on a sector of the superannuation industry—self-managed super funds—which this government fundamentally dislikes. This government has an ideological dislike of self-managed
superannuation. This government does not like those Australians who are working hard and saving hard to help achieve a self-funded retirement. It is always looking for ways to come up with more hurdles, more red tape and more costs and to make it less attractive for people across Australia to work hard and save to achieve a self-funded retirement. The second bill, which we are opposed to, is attached to the first bill for no reason other than that the minister and the government know that, because of our strong support for the first bill, attaching the second bill to it and making a package will force our hand so that we eventually roll over and let something go through that otherwise would not attract our support. That is a very bad and very dishonourable process. People across Australia need to understand what this government is up to.

Over the last five years, this government has given us more than 21,000 new regulations. This government is choking our economy in red tape. The Superannuation Auditor Registration Imposition Bill 2012 is a very insidious part of that agenda by this government because it is targeting those Australians who are doing the right thing, who are doing everything they can to achieve a self-funded retirement, which ultimately helps take pressure off the public purse.

It is quite extraordinary that, despite our publicly indicated support for the best part of this year, the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill has not come before us until the second last week of the sittings. To go through a bit of detail, capital gains tax considerations can be a barrier to the merging of superannuation funds, even where that merging otherwise make sense and would deliver benefits to fund members. Whenever superannuation funds merge, this will typically trigger a capital gains tax event, which leads to capital gains and/or losses being applied to those assets being transferred. When a merger takes place and the assets have been transferred, the merged fund is typically wound up; however, when the merged fund comes to an end, any previous capital or revenue losses that existed at that time will be foregone. Capital losses can be used to offset present and future capital gains tax liabilities. Revenue losses can be offset against current-year income.

This bill permits the rollover of both revenue gains and losses in addition to capital gains or losses to the receiving fund. Due to the prevailing economic and financial market conditions in late 2008, a temporary taxation relief measure was passed in the form of loss relief and asset rollover to assist the superannuation industry and, through the industry, relevant fund members. However, the relief provided in that legislation was time limited to 1 October 2011. We not only supported at the time the relief that was provided but have indicated in the past that the time limited nature of that relief was going to be a problem. So we supported the tax relief for merging super funds at the time as a sensible measure to ensure that otherwise sensible mergers of superannuation funds were not prevented based on taxation considerations. The truth of the matter is that, if there are significant capital gains tax implications from a merger, then that in itself can prevent a merger from going ahead that otherwise would make sense. Any loss of revenue in that context is largely academic and theoretical because it would not otherwise be realised. If the capital gains tax implications were significant, a merger would not occur and the revenue would not be realised in any event.

This current bill is temporary, this time for mergers that occur on or after 1 October 2011 and before 2 July 2017. We are very conscious of the fact that across large parts
of the sector, including, I might add, the not-for-profit industry super funds sector, a lot of people have been waiting for the parliament to deal with this legislation. I place on the record that the only person that is to blame for the delay is Minister Bill Shorten himself. No other person can be blamed for the fact that this legislation has been delayed until today. As well as having delayed it, he has put the passage of this legislation—this legislation which makes a lot of sense—at risk, by attaching to it the Superannuation Auditor Registration Imposition Bill, a bill that is clearly somewhat controversial.

Schedule 2 of the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill introduces a new registration regime for auditors of self-managed superannuation funds. Currently SMSF trustees are required to appoint an approved auditor to audit the financial reports and operations of the fund annually. This bill introduces a new definition of an approved SMSF auditor. It sets out who may apply for registration and the requirements that they must meet. It sets out the necessary ongoing obligations of SMSF auditors, including needing to meet a range of continuing professional development requirements and complying with a range of competency and independence standards. It allows ASIC to create a register of approved SMSF auditors in addition to a register of disqualified SMSF auditors. It allows ASIC to charge relevant fees—here we go again—including in relation to the application to be an approved SMSF auditor and for the compulsory competency examination. It provides ASIC with the power to determine and set competency standards for all SMSF auditors. It provides powers to the ATO to monitor SMSF auditors' compliance with relevant standards and refer any non-compliant SMSF auditor to ASIC.

Registration processes are to commence from 31 January 2013.

You are getting the gist—there is a whole lot of additional bureaucratic involvement on top of the already quite burdensome arrangements that are in place so far, all of it at a cost that ultimately will have to be passed on to those people who have chosen, or will choose in the future, to manage their superannuation affairs through a self-managed super fund because in their judgement this gives them more control and more options to manage their own financial affairs as they work towards retirement.

Minister Shorten's approach to the SMSF sector more generally, which is egged on by commercial interests in other parts of the industry, has been consistent all the way through. He is trying to make it harder for people to manage their superannuation affairs through self-managed super funds because he does not like people managing their affairs through self-managed super funds. He would much rather have people invest their superannuation funds perhaps with an industry super fund. As well as his bad track record when it comes to imposing additional red tape, consistent with what the Labor Party in government has done more generally, he also has a bad track record in relation to the taxation of superannuation. In the first four budgets, and in the most recent Mid-Year Economic and Fiscal Outlook, the current government has imposed more than $8 billion in new taxes on superannuation, through a range of measures, including by reducing concessional contribution caps from $50,000 and $100,000 down to $25,000 across the board, by changing the definition of income and doing a whole range of things that always looked like a bit of fiddling at the margins, but always with a significant revenue sting in the tail.
In the House of Representatives, the coalition moved amendments to excise schedule 2 from the superannuation bill. We were also opposed to the associated auditor registration bill. The coalition did this because we see the registration regime as being yet more red tape and cost to the financial sector, which is ultimately passed on to consumers and to those Australians saving to achieve self-funded retirement. Under the new regime, new registration fees are set to not exceed $1,000. However, there is no detail in the legislation, with the actual fee to be determined by regulation. We put up those amendments in the House. Sadly, they did not succeed. Given the approach and attitude that the Greens have taken in relation to this whole issue, we understand that these amendments would not succeed in the Senate either, because the Labor-Greens alliance government is a high-taxing and high-red-tape kind of a government. Consistent with that general attitude of the Labor-Greens administration, that is the approach that they have taken to this particular bill.

This is exactly the position that Minister Shorten wanted the Senate and the coalition to be in. The government wanted us to be in a position where we would feel so strongly about the importance of the capital gains tax relief provisions that we would have no choice but to ultimately roll over on the other aspects of this package of bills. And that is exactly what is going to happen. In recognition of the importance of the capital gains tax relief measures to the superannuation industry and to the people in relevant superannuation funds, we will not be insisting on those amendments again in the Senate, but we do however restate in the strongest possible terms the coalition’s opposition to unnecessary red tape being imposed by this government.

At the next election, people will have the opportunity to make a choice. They can continue with this high-spending, high-taxing, big red-tape government which is taking Australia in the wrong direction by making us less competitive internationally and reducing productivity growth—or they can opt for a change of direction. They can choose a coalition government which would be serious about living within its means, which would be serious about spending less, which would be serious about taxing less and which would be serious about cutting red tape instead of adding red tape. A coalition government would deliver $1 billion worth of savings for business per annum through cutting red tape. These savings would flow through the Australian economy to consumers through lower costs and charges. As a government we would spend less, tax less, cut red tape and reduce the level of sovereign risk—which has been rising because of the constant chopping and changing by this government—by being more predictable. If we were successful in doing all that, we would grow our productivity more strongly and grow our international competitiveness instead of reducing it. In doing so, we would end up growing our economy more strongly than it otherwise would have grown. A more strongly growing economy would not only improve our prosperity as a nation, it would also lead to better superannuation returns. Guess what? That would also lead to more revenue for the government—without the need for all these new and ad hoc Labor Party and Greens taxes.

That is the choice the Australian people will have in front of them sometime next year. They can choose to continue in the current direction. That direction has included more than 26 new or increased taxes and more than 21,000 new regulations, regulations which are choking business and
making the delivery of goods and services more expensive than it needs to be. That direction has seen significant new sovereign risk generated through this government's constant chopping and changing.

This government hates success and hates people who aspire to be successful. It is a government which does not like people who are doing everything they can to achieve self-funded retirement—which is the right thing to do. Surely we want to see as many Australians as possible achieve a self-funded retirement. But this is the bad direction this government has been taking Australia in—our productivity growth is slowing and our international competitiveness has been going down. Ultimately that imposes a cost on our economy and on the people of Australia. There is a better way—the coalition way. Under a coalition government, pieces of legislation such as this one, which massively increases red tape, would not be on the agenda. A coalition government would focus on cutting red tape rather than indiscriminately continuing to add to it week after week and month after month.

The coalition will not oppose this package of bills on the basis that we strongly support the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill—certainly we support the schedule 1 provisions which provide tax relief for merging superannuation funds. We are concerned about schedule 2, the self-managed superannuation funds auditor registration provisions, and the second bill. However, in the interests of providing certainty to superannuation funds that may be considering fund mergers which make sense other than for the capital gains tax implications of those mergers, we will not be opposing the package of bills. We do reserve the right in government to revisit the additional red tape the government has imposed through the self-managed superannuation provisions I have talked about.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:04): Thank you, Senator Cormann, for that ringing endorsement of Minister Shorten and his work on this very important piece of legislation. I commend the bill to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Pratt) (13:05): No amendments to the bills have been circulated. Before I call the parliamentary secretary to move the third reading, does any senator wish to have a committee stage on the bills to ask further questions or clarify further issues? If not, I call the parliamentary secretary.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:05): I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

Tax Laws Amendment (Clean Building Managed Investment Trust) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator CORMANN (Western Australia) (13:05): The Tax Laws Amendment (Clean Building Managed Investment Trust) Bill 2012 follows on from a previous bill implementing the Gillard Labor government's budget measure to double the withholding tax on managed investment trusts from 7½ per cent to 15 per cent—having only very shortly before reduced it to...
that level. That is yet another example of the constant chopping and changing by this government over the last few years, generating increased levels of sovereign risk.

Because of their excessive spending, the government are constantly chasing their tail, constantly casting around for more cash. Over the last four budgets, the government have spent $172 billion more than they have raised in revenue—despite more than 26 new or increased taxes and despite the fact that those four Labor budgets have benefited from Australia's best terms of trade in 140 years. Despite the best terms of trade in 140 years and despite 26 new or increased taxes, the government were not able to balance their books, they were not able to live within their means and they accumulated $172 billion worth of deficits. That is why they are constantly looking for opportunities to come up with more cash.

A lot of the government's tax measures are ad hoc and ill considered, and of course there are flow-on consequences. One of its budget measures was to double the withholding tax on managed investment trusts. Not only the coalition was concerned about this; on this occasion, quite surprisingly and quite uniquely, even the Greens were concerned about the high-taxing ways of the Labor Party. The government had a problem—Houston, we have a problem. Essentially they did not have the numbers to get their budget measure through the parliament, and so in the end they did a deal with the Greens where the Greens said, 'As long as you give us a lower tax rate for the particular category of investment and infrastructure that we are interested in'—namely, what are described as investments in environmentally efficient infrastructure—we will go ahead with the rest of it and you can have your increased tax despite all the implications for the sovereign risk profile of Australia; we are not too worried about that—all we want is a lower tax rate for the sorts of investments that we are interested in'.

The bottom line is that we are very sceptical about the motives for this bill. The bill seeks to implement the deal that the Labor Party entered into with the Greens to facilitate passage of the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill, and we are very sceptical about the motives for that deal and about the effectiveness of this bill. However, given that the bill does not increase a tax for a change, given that it does introduce a tax cut even although it is for a very narrowly defined asset class, the opposition will not be opposing it. In fact, we are always supportive of tax cuts—we just think that the government should have reconsidered its approach to taxation on managed investment trusts more generally.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:09): I thank Senator Cormann for his contribution and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Pratt): As no amendments to the bill have been circulated, I call the parliamentary secretary to move the third reading unless any senator requires that the bill be considered in committee.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:10): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Tax Laws Amendment (2012 Measures No. 5) Bill 2012

Second Reading

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

Senator CORMANN (Western Australia) (13:10): The opposition is concerned that this government, based on its track record, has been very bad for Australia's productivity growth—though it is keen to maximise my productivity today. The coalition does not oppose the Tax Laws Amendment (2012 Measures No. 5) Bill 2012. Labor has, sensibly, taken our very constructive suggestions on board and amended this bill in the House of Representatives to remove the original schedules 3 and 4. The original schedule 3 introduced a new compliance regime for gaseous fuels, with yet again more red tape. The schedule regarding gaseous fuels was strongly opposed by us because it was more onerous and stricter than the current Excise Act's obligations on conventional fuel sellers and others obliged to collect excise. Consistent with Labor's approach to government administration, there was yet again a significant increase in the red tape burden, especially for small businesses handling LPG.

This government is in love with red tape, to the point where it has given us more than 21,000 new regulations over the last four or five years. I have to reflect on a commitment that the then Leader of the Opposition, Kevin Rudd, made in the lead-up to the 2007 election, which was that in government he would have a one-in, one-out red tape policy—for every new bit of red tape that came in, one bit of red tape would be taken out. We have had from this government more than 21,000 new pieces of red tape, and guess how many pieces of red tape have been removed from the statute books in that same period? Given that Mr Kevin Rudd said that the policy was that for every new piece of red tape in one would be taken out, you would assume that for the more than 21,000 new pieces of red tape that have come in we would have had about 21,000 pieces of red tape being removed. Not so—in fact, the number of regulations that have been removed from our books in that same period is fewer than 100. The government has a bit of catching up to do, and we are very pleased that on this occasion it has taken our very strong suggestion on board, which was not to proceed with schedule 3 because, quite frankly, it introduced yet again some completely unnecessary additional red tape which was going to be costly to administer for no obvious additional benefits.

Another commitment from this government was that every change to legislation would go through a proper and robust cost-benefit analysis, through a best practice regulation process, through a regulatory impact assessment, through the Office of Best Practice Regulation. Every time there is a contentious change that is likely to breach the requirement of the Office of Best Practice Regulation that there be a proper assessment of the costs and benefits, what happens? The relevant minister, like Minister Shorten, is very good at this: writing to the Prime Minister and getting himself a note that he does not have to comply. He gets himself an exemption whenever there is the risk that a particular change is obviously so burdensome that it would not pass a proper cost-benefit analysis. Of course, what this government have been doing is exempting themselves from the process that they themselves have instituted in order to ensure that this sort of stuff does not happen.

But I am getting distracted, so let us just go back to the bill at hand. The original schedule 4 clarified the rules about blending
of fuels. This schedule has also been withdrawn after a discussion with the government about the increasing compliance costs involved in schedule 3.

As stated, the government has seen sense and so the coalition will not oppose the bill. The bill, as it stands, includes schedule 1, which changes the tax offset for expenditure on conservation tillage. This amendment will facilitate access to the offset. The current tax legislation requires the eligible seeder equipment to comprise a cart and tool. The definition of 'eligible no-till seeder' will be amended to ensure that an eligible no-till seeder can comprise either the tool alone or the tool and cart in combination.

Schedule 2 closes a mature-age worker tax offset. The offset is closed off for taxpayers born after 30 June 1957. This is a tax increase for this group of Australians and is a budget measure from the most recent budget. The new schedule 3 introduces a new deductible gift recipient entity. The Diamond Jubilee Trust Australia has been established to raise funds for the commemoration of Her Majesty Queen Elizabeth II's Diamond Jubilee. The new schedule 4 tightens the wine equalisation tax producer rebate. It closes a loophole that allows for double dipping of the rebate by some producers, and this change is actually supported—and I have to put this on the record—by the Winemakers' Federation of Australia.

So schedules 1, 3 and 4 as they currently appear in the bill are supported. Whilst we would not have undertaken the changes in schedule 2, it is a budget measure that will not be opposed; and, as such, the coalition will not oppose the bill.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:16): I thank Senator Cormann for his support for this legislation, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Pratt) (13:17): As no amendments to the bill have been circulated, I call the parliamentary secretary to move the third reading unless the Senate requires that the bill be considered in committee.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:17): I move:

That this bill be read a third time.

Question agreed to.

Bill read a third time.
market mechanisms should they deem that to be necessary.

The goal is to enhance the integrity and safety of the derivatives markets in particular and the financial system as a whole. The coalition is pleased that this bill was amended in the House so that, for matters relating to the energy sector, the Minister for Resources and Energy has to be consulted prior to the making of regulations, the mandating of derivatives or consenting to an ASIC rule. In doing so, the government heeded the recommendation of the Joint Committee on Corporations and Financial Services’ inquiry into this bill, which recognised the real and genuine concerns of the electricity sector in that regard.

With those few words, the coalition will support this bill.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:19): I am pleased that Senator Cormann again spoke—even more briefly than on previous occasions! I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Pratt) (13:19): As no amendments to the bill have been circulated, I call the parliamentary secretary to move the third reading unless the Senate requires that the bill be considered in committee.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:20): I move:

That this bill be read a third time.

Question agreed to.

Bill read a third time.

Personal Liability for Corporate Fault Reform Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator CORMANN (Western Australia) (13:20): The Personal Liability for Corporate Fault Reform Bill 2012 is part of the process to introduce sensible reforms to the laws imposing liability on a director for acts or omissions of their companies. We do not oppose this bill; it was Peter Costello, of course, who began the hard work to introduce reforms to this area of overregulation. It was a coalition government that tried to bring some sensible reform to this area of Commonwealth law.

The Corporations and Markets Advisory Committee reported to the then Treasurer in September 2006. That committee recommended a principled and consistent approach to personal liability across the various jurisdictions. This was taken up by COAG and is reflected in this bill.

The reform aims to harmonise the imposition of personal criminal liability for corporate fault across Australian jurisdictions; to remove regulatory burdens on directors and corporate officers that cannot be justified on public policy grounds, and there should be more of that; and to minimise inconsistencies between Australian jurisdictions.

Given that the changes have been agreed through a COAG process and are supported by stakeholders as an improvement to the status quo, the coalition do not oppose this bill. We do believe that more work needs to be done in relation to laws which reverse the onus of proof and/or impose strict liability, but that might be a debate for another day.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability
Thursday, 22 November 2012

and Urban Water) (13:21): I thank Senator Cormann for his contribution to this debate and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Pratt) (13:22): No amendments to the bill have been circulated. Before I call the parliamentary secretary to move the third reading, does any senator wish to have a committee stage on the bill to ask further questions or clarify further issues? If not, I call the parliamentary secretary.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:22): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Superannuation Legislation Amendment (New Zealand Arrangement) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator CORMANN (Western Australia) (13:23): As I have told you, the government really wanted me to work hard today to make up for lost time! The Superannuation Legislation Amendment (New Zealand Arrangement) Bill 2012 enacts the trans-Tasman retirement savings portability agreed between the governments of Australia and New Zealand in 2009. The bill provides for the continuation of market integration between Australia and New Zealand by allowing retirement savings to be transferred between APRA-regulated superannuation funds and KiwiSaver accounts. The coalition of course strongly support closer economic ties with our friends and neighbours in New Zealand, and, as such, we support this bill.

We are a little disappointed that the government did not seek to extend the provisions in the deal and in this legislation to those Australians with self-managed superannuation, but I refer back to my comments there on a previous bill. This is clearly a government that does not have much time for those Australians who, every day, work very hard to make sure that they save to achieve a self-funded retirement. That has been consistent across many of the government's actions, where they really have been targeting those Australians that perhaps they perceive to be too successful rather than encouraging that sort of success and that sort of approach to retirement savings.

But, coming back to the bill at hand, the arrangement on trans-Tasman retirement savings portability was signed with New Zealand on 16 July 2009. While New Zealand have acted promptly on the agreement—they clearly have a very good government over there—and their legislation received assent on 7 September 2010, it has taken the Gillard Labor government two years to bring a relatively simple bill before this parliament. Labor seem unable to progress even non-controversial bills in a timely fashion.

The exclusion of self-managed superannuation funds from the agreement does concern us. However, given the agreement in this form was signed by New Zealand, we will support the legislation. A future coalition government will consider an expansion of the agreement at a future time to include self-managed superannuation funds, in consultation with our friends in New Zealand.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:25): Once again I
thank Senator Cormann for his contribution and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

**Third Reading**

The **ACTING DEPUTY PRESIDENT** *(Senator Pratt)* (13:26): No amendments to the bill have been circulated. Before I call the parliamentary secretary to move the third reading, does any senator wish to have a committee stage on the bill to ask further questions or clarify further issues? If not, I call the parliamentary secretary.

**Senator FARRELL** (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (13:22): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**Freedom of Information Amendment (Parliamentary Budget Office) Bill 2012**

**Second Reading**

Debate resumed on the motion:

That this bill be now read a second time.

**Senator BRANDIS** (Queensland—Deputy Leader of the Opposition in the Senate) (13:26): I am delighted to rise to speak in this debate because, among other things, both this bill, the Freedom of Information (Parliamentary Budget Office) Bill 2012, and the next bill, the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012, are bills that arise from either initiatives of the opposition or, in the case of the latter, initiatives jointly developed in a bipartisan spirit by the government and the opposition.

As I and my colleagues have pointed out many times before, this opposition is a very policy-creative opposition. We are constantly putting new ideas on the table and we are delighted when the Labor government sees the wisdom of adopting our ideas. One of the ideas which the opposition initiated and which the government has seen the wisdom of adopting is the introduction of a parliamentary budget office, which was effected some while ago. This bill is consequential upon that initiative.

The Parliamentary Budget Office commenced operation in July. Its functions are to prepare election policy costings at the request of authorised party representatives and Independent members of parliament, and to prepare policy costings outside the caretaker period at the request of individual senators and members. In addition, it will initiate its own work program in anticipation of client requests and provide formal contributions on request to relevant parliamentary committee inquiries.

The PBO is an exempt agency under the FOI Act so that its services can be provided on a confidential basis. However, there is no specific exemption of documents related to PBO requests that may be held by departments and other agencies, which may therefore not be protected against release under the FOI Act. The purpose of this bill is to amend the FOI Act to provide an exemption for information held by departments and agencies that relates to a confidential request to the Parliamentary Budget Office. It also provides that an agency is not required to give information as to the existence or nonexistence of a document where it is exempted under the new provisions.

There has been much discussion in recent months about the coalition’s use of the Parliamentary Budget Office for the costing of policies. In all the public debate so far, it seems to have been overlooked that, as I said at the beginning of this contribution, the idea...
of a parliamentary budget office was an idea that had its genesis in the coalition.

In May 2009, the then Leader of the Opposition, the Hon. Malcolm Turnbull, first called for the establishment of the Parliamentary Budget Office, modelled on the US Congressional Budget Office. That measure was initially opposed by the Labor government. In June 2010, the current Leader of the Opposition, the Hon. Tony Abbott, renewed the opposition's call for the creation of a parliamentary budget office. A private senator's bill to create the Parliamentary Budget Office was introduced into this chamber by former Senator Guy Barnett in June 2010. On 24 June 2010, the Senate referred the establishment of the Parliamentary Budget Office to the Senate Finance and Public Administration Committee for inquiry and report. The review was interrupted by the calling of the election a few days later. Subsequently, the establishment of a parliamentary budget office became a coalition election commitment.

After the election, the initiative was embodied in the agreement between the government and the Independents, the government having seen the wisdom—after having resisted for so long in the previous parliament—of the opposition's initiative. The agreement between the government and the Greens of 1 September 2010 committed the government to establishing the Parliamentary Budget Office within 12 months. And the irony will not have escaped you, Madam Acting Deputy President Pratt, that, although the Parliamentary Budget Office was created as a result of an agreement between the Australian Labor Party and the Greens, the one political party in this country which was not a party to the agreement—that is, the coalition parties; the Liberal Party, in particular—was the party from which the idea originally arose.

The government dragged the chain on introducing the enabling legislation to the parliament. So the shadow Treasurer, Mr Hockey, took the initiative and introduced his own private member's bill in August 2011—the government having failed to honour its commitment to the Independents in this, as in other, respects. That forced the government to the table with its own legislation two days later. The government sought to negate Mr Hockey's bill by bringing in its own bill to the second reading vote first. The government's bill is, in many respects, inferior to the coalition's proposal, so the coalition proposed a large number of amendments to improve the operation of the PBO and to strengthen its powers. In the end, the government's unamended bill passed the parliament.

Let me pause to reflect on that and summarise the sequence of events. An initiative announced as long ago as May 2009, in a previous parliament, by the previous Leader of the Opposition was resisted throughout the previous parliament by the government. Because of the unusual circumstance of a hung parliament, and for no other reason, the Labor Party then committed to create a parliamentary budget office. Had there not been a hung parliament, there is no possibility that the Labor Party would have gone along with it. The Labor Party then dishonoured that commitment by refusing to introduce the legislation that it had promised to introduce and only did so when forced by an initiative of Mr Hockey in 2011 to do so—and then it sought to introduce a proposal significantly inferior to the coalition's proposal and fought every step of the way against amendments which would have improved the operation of the Parliamentary Budget Office. We can see from that sequence of events the depth and sincerity of the Labor Party's commitment to this beneficial measure!
Nevertheless, the Parliamentary Budget Office is now in the process of becoming operational. A key consideration has been to ensure that processes and protections are in place to ensure that requests to the Parliamentary Budget Office made prior to the issuing of the writs for an election can be kept confidential.

The PBO identified three steps which are required to ensure that it is a locked box. The first was to issue government protocols concerning the engagement between Commonwealth bodies and the Parliamentary Budget Officer. Those protocols are now government policy. Among other things, they outline the responsibilities of the heads of Commonwealth bodies and of their staff in engaging with the office and establish procedures to ensure the consistency and confidentiality of information provided to and by the PBO. The second step was to issue a memorandum of understanding between the Parliamentary Budget Officer and the heads of Commonwealth bodies in relation to the provision of information and documents. The MOU provides for the open exchange of information and outlines the roles and responsibilities of each party. The third step was the legislation which is now under discussion, the Freedom of Information Amendment (Parliamentary Budget Office) Bill. As I said before, this bill will exempt all material provided to the PBO from freedom-of-information laws.

We in the opposition of course take a more expansive view of freedom-of-information laws than the government; nevertheless, we are persuaded that, in certain circumstances, the protection of confidentiality in a process such as this is a more important policy consideration than freedom of information. The Parliamentary Budget Officer's work could not be carried out effectively if its clients did not enjoy a degree of confidentiality. So, for that reason, we agree with the government that this is a necessary measure. Once the bill is passed, the coalition will finally have confidence that the confidentiality of any policy submitted to the Parliamentary Budget Office for costing, up until the signing of the writs for a general election, will be fully preserved.

It pleases me to speak on behalf of the coalition in supporting the last legislative step in a legislative scheme first proposed, as I said before, by the opposition as long ago as May 2009 and resisted by this government every step of the way.


Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Pratt) (13:37): As no amendments to the bill have been circulated, I call the minister to move the third reading unless any senator requires that the bill be considered in committee.

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) (13:37): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012

Courts Legislation Amendment (Judicial Complaints) Bill 2012

Second Reading

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

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (13:37): As I said at the beginning of the debate on the previous bill, this is another initiative adopted by the government in collaboration with the opposition, whereas the previous bill was in fact an opposition initiative.

This bill, the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012, is fairly characterised as a joint initiative of the government and the opposition. It had its genesis in work that the former member for Denison, Mr Duncan Kerr—now Mr Justice Kerr of the Federal Court of Australia—undertook during the last parliament. I think it is appropriate to put on the public record that Mr Kerr approached me as the opposition spokesman and suggested that together we propose a series of measures that would deal with an evident gap, or lacuna, in the Constitution—that is, the failure of the Constitution to provide a mechanism for applying the test of fitness in a case of judicial misbehaviour. Mr Kerr and I worked on this proposal, and I should say in respect of Mr Kerr—or His Honour, Justice Kerr, as he now is—that the initiative and the work primarily came from him; but it was a collaborative process, as he has been good enough to acknowledge on many occasions.

At present, the only legislative provision dealing with judicial complaints is that to be found in section 72 of the Constitution, which provides that justices of the High Court 'shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity'.

As I said a moment ago, section 72 provides no mechanism for an inquiry as to how misbehaviour or incapacity is to be proved. Until this bill, there was no statutory structure to fill that gap. Section 72, I am pleased to say, has only been invoked once in the 111 years of Commonwealth history. I think it is a great tribute to the integrity of our judiciary that only once in more than a century have there been issues concerning the integrity of a federal judicial officer that were so serious that the provisions of section 72 were invoked. The one exception, I am sorry to say, is in relation to a former member of this Senate, the late Lionel Murphy, who died before the processes could be concluded.

As I said earlier, the bill was developed as a result of a joint initiative by Mr Kerr and me, in consultation with the chief justices of the Federal Court and the Family Court, and with the Chief Federal Magistrate. At present, informal processes exist in each of the courts for handling complaints about judicial officers and are exercised by the chief justices and the Chief Federal Magistrate, but those processes are informal and have no statutory or official basis. With the increasing size of the courts—indeed, there are now more than 100 federal judges and 62 federal magistrates—there is a perceived need to have in place a statutory structure for dealing with complaints to ensure that participants in the processes are immune from suit.

The bill also proposes that documents arising in the consideration and handling of a
complaint against a judicial officer should be exempt from the operation of the Freedom of Information Act. The complaints to be dealt with under the amendments proposed by the bill—in addition to 'proved misbehaviour or incapacity', in the words of section 72 of the Constitution—concern those about the performance by a judge of his or her judicial or official duties. They do not concern complaints about matters in cases that are capable of being raised on appeal.

The framework itself for the handling of complaints is non-statutory, to provide for the appropriate level of flexibility. Less serious matters may be dealt with by discussion, while more serious matters may call for the establishment of a conduct committee, which may comprise non-judicial members, and possible reference to the Attorney-General. Very serious matters would be referred directly to the Attorney-General for consideration under section 72 of the Constitution and the procedure proposed to be established under the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012. For matters not warranting removal procedures, the Chief Justice may take any measures reasonably necessary, including temporarily restricting a judge to non-sitting duties.

As I said at the beginning of my remarks, this bill initially had its genesis in an initiative of the Hon. Duncan Kerr, in the previous parliament. It provides a standard mechanism to assist the parliament in its consideration of the removal of a judge or magistrate from office under the Constitution. The Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 establishes a parliamentary commission by resolution of each house to investigate specified allegations of misbehaviour or incapacity of a specified Commonwealth judicial officer.

The commission would consist of three members appointed on the nomination of the Prime Minister after consultation with the Leader of the Opposition. At least one member of the commission will be required to be a former Commonwealth judicial officer or a former judge of the supreme court of a state or territory. Serving Commonwealth judicial officers are ineligible for appointment. The commission may engage counsel, staff and consultants. The role of the commission would be to inquire into allegations and gather information and evidence to present to parliament. It would conduct its investigations in an inquisitorial rather than an adversarial manner. It would have the power to require witnesses to appear at a hearing, take evidence on oath, conduct hearings in private, require the production of documents or other items, and issue search warrants. It would then provide a report to parliament through each of the parliamentary Presiding Officers.

The bill does not provide for a standard of proof that the commission would consider needed to be met before reporting to parliament. Section 72 of the Constitution leaves it to parliament to decide for itself what it considers to be 'proved misbehaviour or incapacity', and the view that Mr Kerr and I took after consultations was that the interpretation of that phrase should be left to parliament alone, the purpose of the judicial commission being essentially a fact-finding one. Serving and former Commonwealth judicial officers would be exempted from the application of the commission's coercive powers in order to preserve judicial independence. The Commonwealth would be liable for the reasonable costs of legal representation of a judicial officer under investigation.

The bills were referred to the Senate Legal and Constitutional Affairs Legislation
Committee, which reported on 2 August. Several amendments were proposed, principally the amendment excluding serving state and territory judges from membership of the commission and an amendment to require greater security in record keeping—quite a lively topic in another context at the moment, where Federal Court files have mysteriously gone missing. The relevant amendments were made in the other place.

These bills provide for formal processes for procedures that currently would likely be conducted in a similar way, albeit without any explicit statutory framework or guidance. Establishing a framework for the parliament to act on the question reserved for its consideration by section 72 of the Constitution will assist in promoting a transparent and effective complaints-handling mechanism and, as I said before, in filling the gap which section 72 of the Constitution leaves open.

In closing, I want to thank the Hon. Duncan Kerr for the intelligent and collegial manner in which he approached this important issue and the spirit of cooperation and friendship he showed towards me in developing these proposals with the opposition.

Senator HUMPHRIES (Australian Capital Territory) (13:47): I want to make a few brief remarks about the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 and the Courts Legislation Amendment (Judicial Complaints) Bill 2012 as well. I served on the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the legislation, and a variety of views were advanced at that time to the committee about various aspects of these bills which I think are worth reflecting on. It is important to make clear that this legislation is an attempt to fill an important gap, as Senator Brandis said, in the current process needed to deal with the removal from office of a judge appointed under a federal jurisdiction. That gap is largely filled by these bills but not, in a sense, entirely filled. There are issues which this legislation does not deal with and which, in a sense, are deliberately left unaddressed by this process because, at the end of the day, this process is one that is resolved by the decision of the parliament. It is the parliament—that is, the two houses jointly agreeing on the removal of a judge—that ultimately resolves this process. The processes of parliament are matters for each parliament as it comes along, and it is important that we acknowledge that some parliaments may take different views from those of other parliaments about these matters.

The case of Justice Lionel Murphy was one which gave rise to very considerable concerns about the process used by the parliament. There were two parliamentary commissions that that process gave rise to, and it was the subject of great political debate at the time. These bills provide an avenue for those processes to be at least partially depoliticised and for the process to be laid out in advance, but we should not imagine that the passage of these bills prevents a different process being used in particular cases.

The legislation does not define what 'misbehaviour or incapacity', in the terms of section 72 of the Constitution, actually means. That was an issue, of course, which very much concerned the parliamentary processes and the committees that the parliament appointed in respect of Justice Murphy, and those issues are not resolved here, for good constitutional reasons: those matters are matters of interpretation, they are used in the Constitution and clearly one parliament cannot define what those words mean. It is always open to the courts
themselves to determine what those words might mean. It is also, as Senator Brandis pointed out, unclear what standard of proof should be applied in addressing the question of a judge’s putative misbehaviour or incapacity: should it be the civil or the criminal standard?

But I think it is important to remind the Senate today that it is essential to have a process to address these issues, because one of the cornerstones of Australian democracy is that we have a separation of powers. It is important that there be some definition around the process that the parliament uses to decide when, how and whether to remove a judge from office. It is important that this process be above reproach to the extent it possibly can be and that Australians therefore have confidence that, should the Australian parliament take the decision to remove a federal judge or perhaps a federal magistrate from office, this will be done on the basis that that person is genuinely incapacitated or has clearly misbehaved in a way which is difficult to dispute.

I reaffirm to the Senate the concerns Senator Boyce and I raised in additional comments to the Senate committee report about the exclusion of serving judges from membership of the commissions, and I direct senators to those comments.

Another matter I wanted to touch on briefly is the question of the application of the judicial complaints bill to the High Court. As I understand the terms of this legislation, it sets out the process whereby a head of jurisdiction is able to establish a conduct committee to investigate complaints received by them in relation to a judge who is a member of the particular court of which that head of jurisdiction is the leader. That process then determines what kind of assessment is made before the parliamentary process kicks in with respect to the assessment of the misbehaviour or incapacity of a particular member of the judiciary.

A conduct committee established under the judicial complaints bill is made up of two judicial members and one non-judicial member. The judicial members would generally be of equal or greater seniority than the judicial officer being investigated. I welcome very much here the concept that, although it is judges judging other judges, there is a non-judicial member of this conduct committee so that a sense of community values is introduced into the debate about whether the person should be removed.

The bill requires the conduct committee to ultimately report to the head of jurisdiction, recommending whether the complaint should be dismissed, whether it warrants consideration by the parliament and possible removal from office through that process, and whether the head of jurisdiction should deal with the matter under their powers of management of the court in some less drastic way. I think that is all very sensible. If allows the court, to some extent, to self-regulate but it does not remove the capacity of the parliament to consider a matter where it feels that a person may warrant removal from their office.

The process, however, does not apply to the High Court of Australia. There are good constitutional reasons why an act of this parliament should not constrain the conduct of the High Court with respect to the removal of judges and their own processes of consideration prior to parliamentary consideration of that question. But it does seem to me to be open to the government to take the matter up with the High Court as a matter of negotiation. As is the case with the parliament, it would be up to the court to decide what it might do in circumstances where it came to the attention, for example,
of the Chief Justice that a member of his or her court had engaged in behaviour which would call into question the capacity of that person to continue to serve in that role. I suppose it is open to the High Court to decide what process it might use in those circumstances.

The point of this legislation is to set in place mechanisms for dealing with these issues well before the point at which an actual case of alleged incapacity or misbehaviour arises. The point is to establish a process that is above reproach and that allows the court to address that issue preemptively, in a way that does not derogate from the capacity of the parliament to take steps to remove a person considered to be incapacitated or to have misbehaved, but still allows a measure of self-regulation by the court. Although, quite rightly, this should not be a matter for this parliament to regulate, I respectfully suggest it is still a matter that the High Court could and should consider in terms of pre-emptively setting up a process that might be used. If I may use this platform, I respectfully suggest to the government that it address that question with the High Court for the same reasons it has bought forward this legislation to deal with this issue in the lower courts.

It is clear that these mechanisms will be invoked only on rare occasions. We should all be thankful for the fact that, as Senator Brandis pointed out, it is extremely rare that officers appointed to serve on our federal courts have displayed behaviour which brings their conduct into question and that these sorts of provisions are only very occasionally considered by the parliament. It is important for us not to allow the process to be sullied by the day-to-day circumstances of a particular judge's alleged misbehaviour or incapacity. It is important to set out benchmarks at the earliest possible stage to ensure that these processes are dealt with in an effective way well before the point at which a particular instance might give rise to them.

I want to commend both Justice Kerr and Senator Brandis for the hard work that obviously went into developing an effective process here. I hope that the fruit of their work never needs to be used by the parliament, but I am grateful for the fact that, with this legislation passed, there will be a mechanism in place to deal with those circumstances if they do arise. The mechanism is a robust one which I think is likely to serve the parliament well.

There is further work to be done in connection with particular courts, and I hope that the parliament will be apprised of that work as that legislation comes forward. I commend these bills to the Senate as worthwhile developments.

Question agreed to.

Bill read a second time.

Third Reading

The PRESIDENT (13:59): As no amendments to the bills have been circulated, I call on the minister to move the third reading, unless any senator requires that the bills be considered in the committee as a whole.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:00): I move:

That these bills be now read a third time.

Question agreed to.

Bill read a second time.

QUESTIONS WITHOUT NOTICE

Corruption

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate)
My question is to the Minister for Foreign Affairs, Senator Bob Carr. Given the minister's extensive dealings with foreign heads of government, does he agree that a head of government can create a climate that is conducive to corruption, through their choice of ministers and a lack of diligence as the custodian of ministerial probity?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:01): I am delighted to answer the question, and I thank the senator for it. I do not know as a general rule, but I can only speak about my 10 years heading a government in New South Wales, during which time I can assure the Senate that there was never a single finding of lack of probity or propriety against me or my ministers—not one. Moreover, there was not even an allegation in all those question times over 10 years—all those question times in the bearpit of the New South Wales parliament, regarded as the toughest in Australia. There was not even from the state coalition in opposition all those years, day after day of question time, a single allegation against me on the grounds of probity or propriety.

Senator Fifield: Mr President, a point of order on relevance: my question was very specifically in relation to whether the choices of minister by a head of government help to create a climate which is conducive to corruption.

Senator Chris Evans: Mr President, I rise on the point of order to make the point that the question, in my view, did not actually go to the minister's responsibilities as the Minister for Foreign Affairs in this chamber and if the opposition seek to use question time to try and smear people, rather than direct questions on policy to the minister, they will get the sort of reply they are getting.

Senator Brandis: Mr President, on the point of order: the question was about 'the minister's extensive dealings with foreign heads of government'. That was the entire premise of the question.

The PRESIDENT: I am listening to the minister's answer and he does have 57 seconds remaining. I do draw the minister's attention to the question and the minister has now got 56 seconds.

Senator BOB CARR: In dealing with foreign heads of government, I naturally reflect the experience I had as head of government for 10 years, so that is there, and, as I said, not a finding in 10 years, not even an allegation from the state coalition, which sat there every question time never making an allegation of impropriety—not one.

Senator Fierravanti-Wells: How can you say that? You know that is not true. You know that is not true, Bob.

Senator BOB CARR: I might say the senator over there was making a grovelling apology for inaccuracies she relayed to the Senate. She got up yesterday to do it and I have never seen a more grovelling or embarrassing apology from the senator there: 'Oh, Mr President, I'm sorry I said this. Oh, I got this wrong.' I didn't even read her speech, so goodness knows what other inaccuracies would come to the surface if anyone actually read it. (Time expired)

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (14:05): Mr President, I ask a supplementary question, and I am glad the minister enjoys this line of questioning. If the minister were asked by a foreign government, in his capacity of foreign minister of Australia, to vouch for the integrity of each minister he chose to serve under him as the Premier of New South Wales, would he do so?
The PRESIDENT: I believe it has got to relate to the minister's portfolio. I will give you a chance to rephrase the question to make it in order, Senator Fifield.

Senator FIFIELD: Mr President, my question was very specifically in relation to if Minister Carr were asked a question by a foreign government, in his capacity as foreign minister, as to whether he would vouch for the integrity of those he chose. Would he do so? Mr President, people who have served as ministers in government, state and federal, do not cease to exist. They engage in business activities and not-for-profit activities, in Australia and around the world, and it is quite probable that the foreign minister would be asked about the integrity of these individuals at some point by foreign governments.

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

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:07): I think this is testing my ingenuity. I can report to the Senate. No wonder they got him to ask it after her performance yesterday, when she had to back off and apologise and withdraw. I might say, Senator, that I accept your apology. Because it was given with a teary-eyed regret, it would be un gallant of me not to.

The PRESIDENT: Senator Bob Carr, I have asked you to address the question in so much as it applies to your portfolio.

Senator BOB CARR: Mr President, I was providing some background observations to the Senate because I cannot see how it applies to my portfolio. I have had many discussions with heads of state and heads of government, and in all these discussions Australia's reputation as a place of good governance has been reinforced implicitly and sometimes explicitly. I think all senators can unite in pride at the reputation that this country has for good government. That is my best effort to relate that jumbled and muddled and embarrassing question to any matter I have dealt with. But I do hope that questions continue to be as well researched and as tested by the Leader of the Opposition— (Time expired)

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (14:08): Mr President, I ask a further supplementary question. Can the minister advise the Senate if he thinks that it is appropriate for someone who led a government whose ministers are subject to investigation by the Independent Commission Against Corruption to serve as the face of Australia to the world? Or would it be more appropriate for the foreign minister to stand aside until corruption investigations into the government he led are concluded lest foreign governments question the seriousness with which the Australian government views allegations of corruption in public office?

The PRESIDENT: I will rule again that the minister can answer that question only in so much as that part of the question which relates to the portfolio.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:09): It is just as well that they have George, a qualified lawyer, to advise them on this question. Imagine how bad they would be if George were not there drafting it. I just want to say that, in respect of the ICAC inquiry proceeding in Sydney at the present time, I have not been called, and I draw the attention of the Senate to the observations made about my record and my time by counsel assisting. I do not think that I can help beyond that, but any time that the senator wants a tutorial from me based on years of experience in the New South Wales
parliament, so highly regarded by the Senate, I am happy to provide it to him.

Senator Fifield: Mr President, I raise a point of order in relation to relevance. The question to Minister Bob Carr related to whether he felt that his role—

Government senators interjecting—

The PRESIDENT: Just wait a moment, Senator Fifield. Order on my right!

Senator Fifield: Thank you, Mr President, I have a point of order on relevance. The question to Senator Bob Carr was very specific as to whether he felt that his role as Australia's face to the world was compromised by the fact that ministers in his government are currently being investigated by the Independent Commission Against Corruption. Australia seeks to advise foreign governments in relation to corruption issues, and they quite rightly look to how the Australian government deals with allegations of corruption and how seriously it takes them.

The PRESIDENT: There is no point of order. The minister is answering the question. The minister has 19 seconds and, as I said at the outset, the minister needs to respond to the question in so much as it applies to the portfolio.

Senator BOB CARR: Senator Thistlethwaite is an expert in water safety. This is useful because we have just witnessed a man drowning. Help is at hand. I suppose this is vaguely relevant in that there is— (Time expired)

Murray-Darling Basin

Senator McEWEN (South Australia—Government Whip in the Senate) (14:11): My question is to the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, Senator Conroy. Can the minister explain to the Senate the significance of the final Murray-Darling Basin Plan announced today?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:12): I thank the honourable senator for her question and note her longstanding interest in the health of the Murray-Darling Basin. After more than 100 years of disagreement, the Gillard government has today presented a final Murray-Darling Basin Plan. The government had committed to delivering a plan that restores our rivers to health, supports strong regional communities and sustains food production. Such a plan has now been delivered by Minister Burke.

The government has accepted the Murray-Darling Basin Authority's recommendation to return 2,750 gigalitres of surface water to the environment. It sets up a mechanism which allows governments to improve environmental, social or economic outcomes on the proviso that improving one outcome does not sacrifice others. Importantly, the government has also committed to provide an additional $1.77 billion to relax key operating constraints and to allow an additional 450 gigalitres of environmental water to achieve greater environmental outcomes. This will be done through projects designed to ensure that there is no social or economic downside for communities.

For decades the Murray-Darling Basin has been treated as though it ended at state borders. It does not, and consistent mismanagement has seriously degraded the health of the whole system. Only a national plan was going to address the many problems that fragmented administration brought. That is what this government has delivered today in this plan. (Time expired)
Senator McEWEN (South Australia—Government Whip in the Senate) (14:14): Mr President, I ask a supplementary question. Can the minister advise what this final plan means for the environment?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:14): The foundation for this reform is unequivocally and unapologetically to restore the river system to health. Wherever possible we have chosen the pathway that is sensitive to basin communities. The plan will deliver vital additional water to the basin, including some 40,000 hectares of iconic vegetation such as the river red gums. The plan will result in the Murray mouth being open for more than nine years out of 10. This will flush an average of two million tonnes of salt from the basin each year, significantly improving water quality and preventing land degradation. The plan will also result in a 33 per cent increase in the potential for large breeding events in the Macquarie Marshes.

Senator McEWEN (South Australia—Government Whip in the Senate) (14:15): Mr President, I ask a further supplementary question. Can the minister advise the Senate what this final plan means for the basin communities and industry?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:16): As I said, the government has sought to minimise the impact on communities without compromising the health of the system. The plan will ensure strong regional communities and sustainable food production with a vibrant irrigation industry. To help bridge the gap to the sustainable diversion limits set in the Basin Plan, the government will spend $5.2 billion on irrigation infrastructure. This will increase irrigation productivity and provide valuable employment benefits during construction. New trading rules will reduce or remove water trade barriers, making it easier for irrigators to realise the value of their water licences. Improvements in the basin environment and water quality will benefit many businesses, such as flood plain farming, tourism, boating and fishing. (Time expired)

Economy

The PRESIDENT: Senator Cormann.

Senator CORMANN (Western Australia) (14:17): Thank you, Mr President.

Government senators interjecting—

Senator CORMANN: I did promise that I'll be back.

Senator Cameron: You're no Arnold Schwarzenegger, that's for sure!

Government senators interjecting—

The PRESIDENT: Order! Ignore the interjections, Senator Cormann.

Senator CORMANN: Just delivering on my promises. Mr President, my question is to the Minister for Finance and Deregulation, Senator Wong. Can the minister confirm that the government's actual underlying cash balance for the months of July and August 2012 was a deficit of $7.4 billion?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:18): Can I first welcome the senator back. And, yes, we did notice he was gone.

Opposition senators: You missed him!

Senator WONG: Yes, I did miss him.

The PRESIDENT: Order! Address the question.
In fact I think Senator Bernardi accused me of experiencing relevance deprivation. There might have been a shadow of truth to that.

Opposition senators interjecting—

That is the nicest thing I have said about Senator Bernardi in a couple of years, Mr President!

Order! Just address the question, Senator Wong.

It is the case that I released on Friday, 16 November the monthly financial statements. The underlying cash balance for the period to 31 August 2012 was a deficit of $7.4 billion. I note that, compared to a budget profile of a deficit of $7 billion, the fiscal balance was a deficit of $5.2 billion compared to a budget profile of fiscal balance year-to-date for 2012-13. I would also make the point that these statements are compared against the budget profile, not against the midyear review. Obviously July and August statements are set against the May budget profile. In fact, the statements are consistent with the midyear review handed down last month, reflecting the further revenue write-downs and weakening global economic conditions since the budget was handed down in May. Senator, I cannot recall the exact number in the question, but I suspect, given my answer, it was probably about right.

Senator, I ask a supplementary question. Given the Treasurer and this minister for finance delivered a massive blow-out in the deficit for the last financial year—$43.3 billion, it was four times larger than the $10 billion deficit predicted before the last election—and the government's cash position this year is already worse than it has been on average over the last four financial years, I ask again: why would anyone trust Labor's promise of a surplus in 2012-13?

We have put out our budget; we have put out our midyear review; we have taken billions and billions of dollars worth of savings to recognise the importance of fiscal discipline, to adhere to our fiscal strategy and to do what we said we would do in terms of public finances. By contrast, those opposite beat their chests about fiscal...
discipline but they never actually demonstrate any of it themselves. Who can forget? We have the shadow Treasurer, beating his chest, doing his best quasi-Terminator routine—Senator Cormann, I think you do a lot better—saying, 'We've got to end this culture of culture of entitlement; we've got to end it,' beating his chest overseas about the ending of the culture of entitlement. Confronted by a baby bonus save that the government has put in place responsibly, suddenly he likens it to the one-child policy in China! That is the sort of hypocrisy over there.

(Time expired)

Murray-Darling Basin

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:23): My question is to the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, Senator Conroy. I refer to the Murray-Darling Basin Plan released by Minister Burke today. Can the minister confirm that the plan does not guarantee delivering 3,200 gigalitres back to the environment? And can he confirm that it is true that there is a high probability that significantly less water might be returned and that the impact of the further 1,700 gigalitres of groundwater impact is completely unknown?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:24): I thank the senator for her question and longstanding interest. At the risk of repeating myself, after 100 years of argument across this country, we have now put forward a plan. We have accepted the Murray-Darling Basin Authority plan and, yes, I can confirm that this is a plan that is committing to delivering a restoration to the health of our rivers at the same time as supporting strong regional communities and sustaining food production. I can confirm that the government has accepted—

Senator Milne: Mr President, I rise on a point of order. This is a very serious issue and people need more than just the brief read out again. I asked for a yes or no answer about whether or not the minister could confirm that the plan does not guarantee delivering 3,200 gigalitres back to the environment. Yes or no, Minister, and what is the impact of groundwater?

The PRESIDENT: The question was broader than that. I believe the minister is answering the question. I cannot instruct the minister how to answer the question. The minister has one minute 22 seconds remaining to answer the question.

Senator CONROY: I can confirm, again, that the government has accepted the Murray-Darling Basin Authority's recommendation to return 2,750 gigalitres of surface water to the environment. This sets up a mechanism which allows governments to improve environmental, social or economic outcomes on the proviso that improving one outcome does not sacrifice the other. As I have already said, the government is committed to providing an additional $1.7 billion to relax key operating constraints and allow an additional 450 gigalitres of environmental water to achieve greater environmental outcomes.

I think the points I have made are very clear, very clear indeed, and I am not sure I can offer a lot more on that particular issue than confirming exactly what I have said. I will get some information for you and hopefully have it by the time you ask your next question on the groundwater issue.

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:26): Mr President, I ask a supplementary question. I thank the minister for acknowledging he has
no idea what a further extraction of 1,700 gigalitres from groundwater is going to do to the 3,200 gigalitres promised, but I ask: given the plan is based on delivering considerably less water than the science says is needed to save the Murray-Darling Basin, to save the magnificent red river gums and the Coorong, will the government confirm that this plan is actually a political exercise, not one based on science, not one based on climate predictions or a concern for the environment and that in fact the government is now condemning the river and its communities to a very uncertain future? (Time expired)

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:27): I think the good senator is inviting a debate rather than seeking information. We will have plenty of opportunity, I am sure, in the near future to do that. In terms of groundwater, I am still chasing some information for you on that. But let me be very clear about this: this government is committed to getting an outcome that is balanced—balanced between regional communities and the health of the Murray-Darling Basin. We have set out unashamedly to restore that health. So I disagree with the premise of your question when you assert that this is purely a political outcome.

The answer to the question of groundwater is, hopefully, going to arrive in a moment. Yes! For decades the Murray-Darling Basin has been treated— (Time expired)

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:28): Mr President, I ask a further supplementary question. I notice the minister obviously did not get the brief from Minister Burke saying that you cannot compromise on fundamentals, and that goes particularly for science, but I ask the minister: can he confirm that the plan represents another example of the government and opposition getting together against the environment, and that is about to happen again on 7 December at the COAG meeting, where once again political expediency and the interests of the Business Council will triumph over any commitment to a healthy environment?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:29): I utterly reject the premise of that question. I utterly reject it. It is absolutely just wrong. The authority on groundwater sustainable diversion limits et cetera used the available groundwater models and, in areas where these were not available, a CSIRO developed resource risk assessment method which uses estimates of recharge and scales back recommended limits on use based on an assessment of the level of connectivity, the geology and the quality of data to allow access only to a fraction of the estimated recharge so that the resource is not being mined. I am sure that is very clear to all senators.

Prime Minister

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:29): My question is to the Minister representing the Prime Minister, Senator Evans. Is the minister aware that last night, in an interview with Tony Jones on the ABC’s Lateline, his colleague Mr Bill Shorten was asked:

If the AWU were to set up a slush fund, effectively a re-election fund today which called itself a fund for training and workplace safety, would that be legal?
Mr Shorten replied:

Well, you can't use members' money to engage in the re-election of officials. That would not be appropriate. … But you cannot ever use members' money for purposes other than the advancement of the industrial interests of the members.

Does the minister agree that it would not be appropriate to use members' money to engage in the re-election of officials and that it is wrong to set up a slush fund to do so?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:30): I did see Lateline last night, although I have not seen a transcript of it, so I would not want to comment on exactly what Mr Shorten said. But it seemed to me that his comments were absolutely on the mark in the sense that he was commenting on the question of whether or not members' money could be diverted for the purposes of a campaign expense of officials seeking election. Quite clearly that is not permissible. But if he then goes on to suggest that somehow persons who were not officers of the union, or were not responsible for the operation of the account, are somehow responsible for that, that is clearly a nonsense.

I think Mr Shorten made the very obvious point about the use of members' money. As a former union official, many, many years ago, I was always taught by my secretary that you absolutely had to ensure that members' money was used only for the advancement of the members and you ought to be able to stand up at a general meeting of the union and defend any expense incurred. That has always been a principle that the vast majority of trade union officials have adopted, operating inside their unions.

It is absolutely correct for Mr Shorten—

Senator Fierravanti-Wells: Not everyone got the memo.

Senator CHRIS EVANS: That is correct, Senator.

Honourable senators interjecting—

The PRESIDENT: When there is silence on both sides we will proceed. Senator Brandis is waiting for the answer to be continued.

Senator CHRIS EVANS: I was making a point and then Senator Fierravanti-Wells interjected to make the point that she thinks there have been examples where that principle has not been followed, and, quite frankly, from what we have seen inside the HSU, that is right. No-one is more disappointed about that than other members of the labour movement. (Time expired)

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:34): Mr President, I ask a supplementary question. Given that Ms Gillard admitted in a formal interview with the partners of Slater & Gordon on 11 September 1995, shortly before her sudden departure from that firm, that she had indeed set up a 'slush fund'—her own words—for the very purpose of funding union elections within the AWU, why is it acceptable for the Prime Minister's own conduct, by her own admission, to fall short of the minimum standards of probity demanded by her own Minister for Employment and Workplace Relations?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:35): Senator Brandis, in his attempt to muck-rake again, seeks to confuse two issues. I made it clear when I referred to what Minister Shorten said yesterday. For the record, I will quote what the Prime Minister said in relation to these allegations, back in November:
My role here was that as a lawyer I provided advice on the incorporation of an association. I was never connected with the operation of any fund, never connected with the operation of any fund. I was not an office bearer of the association, I was not involved in its activities, I was not involved in any bank accounts it may have held, I was not an official of the AWU, I was not in charge of the conveyancing file. So you are effectively asking me why didn't I report to authorities things I did not know.

What Senator Brandis seeks to do is deliberately mix the two issues. What Minister Shorten said about the use of members' money for re-election is absolutely correct.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:36): Given the Prime Minister's long and notorious history of making false and misleading statements, how can the Australian people have confidence in the trustworthiness and integrity of someone whose own conduct, by her own admission, falls short of her own government's minimum standards of acceptable behaviour?

Will the Prime Minister make a statement to the House of Representatives next week, as the member for Dobell, Mr Craig Thomson, did, to give a full and truthful explanation of her role in this affair?

Senator Wong: I thought the era of personal denigration was over.

Senator Fierravanti-Wells: She started it, Penny, as a deliberate campaign—you, Roxon and Plibersek.

Honourable senators interjecting—

The PRESIDENT: Order! There are two people calling across the chamber at each other; let's get that straight. It is completely disorderly.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:37): Again, this complete denigration—this smear campaign—that Senator Brandis seeks to pursue does him no credit. I quote what his leader, Mr Abbott, said on 6 October:

I hope that after the nasty personal politics of the last few months, in particular, we can focus on how do we actually build a better country.

That was Mr Abbott expressing the opposition's views about nasty personal politics. They come in here today and try to smear up Minister Carr on the basis of his time as Premier—I do not know how many years ago, but a very long time ago. Then they come in and try to smear up the Prime Minister. This is an opposition with nothing to contribute to public policy in this country. They are so low that they cannot see over the ditch they have dug for themselves.

Senator Brandis: Mr President, I seek leave to table the transcript of an interview between Ms Julia Gillard and Mr Peter Gordon, the managing partner of Slater & Gordon—

A government senator: It is already on the public record.

Senator Brandis: which is already on the public record, indeed, and which was shown to the government before question time—in which Ms Gillard admits that she created a slush fund with the AWU.

The PRESIDENT: Is leave granted?

Senator CHRIS EVANS: Provided Senator Brandis guarantees that it is a real document and not one that has been fixed up, yes.

Senator Brandis: Thank you. I table the document, Mr President.

Vocational Education and Training

Senator MARSHALL (Victoria) (14:39): My question is the Minister for Tertiary Education, Skills, Science and Research, Senator Evans. Can the minister advise the Senate on the importance of ensuring that
everyone has the opportunity to access training pathways and qualifications?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:40): I thank Senator Marshall for the question, particularly as it is the first one I have received about policy issues of concern to Australians. Qualifications are a passport to a better job, a higher pay packet and a secure future. We know that unskilled jobs are disappearing from the economy. The future for Australia is high-skill, high-wage jobs. We know we cannot compete globally in low-wage, low-skill jobs—and we do not want to. We want to make sure people in our community get the chance to access highly skilled, rewarding jobs.

That is why this government has focused its investment in education and training, and we are continuing to invest in those areas, because we know that is where the future of the nation lies. We will invest in the next four years more than $15 billion in programs to support skills and training. That is compared with $9 billion in the last four years of the Howard government—a massive increase in investment. We have made an agreement with the states that will not only see that investment but also reward funding if they continue to drive reform. We know that many of the states, or at least three of the states—New South Wales, Queensland and Victoria—are ripping money out of their training systems. That is actually undermining the training effort in this country. Victoria has taken $300 million out of the TAFE system. The Queensland government is threatening to close half the TAFEs, and the New South Wales government is sacking 800 TAFE teachers.

We are making it very clear that we will not be allowing the states to get away with this. We will hold them to their promises about maintaining the training effort. Funding under these agreements that we have signed with them will not be forthcoming unless they honour their commitments that they will maintain their investment in the future of skills in this country. It is vital that they do so. (Time expired)

Senator MARSHALL (Victoria) (14:42): I thank the minister for the answer and ask a supplementary question. Is the minister aware of reports that school based training is being wound back in some states, denying access to training and skills to thousands of people?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:43): Reports today of the impact of the Victorian government's cutbacks in education and training are very concerning. We understand that schools are cancelling the vocational education opportunities available to their students. The Victorian schools have been hit by a double whammy. They have had the support for their vocational programs, funded through the education department, cut. They are getting rid of coordinators and the funding that has allowed schools to offer the training. And the cuts to TAFE that they have made are seeing TAFEs unable to offer the services to support the schools that they have in the past. So we are seeing a dual attack by the Victorian government on vocational education in schools. Those schools that are not headed for higher education are not going to get the access to vocational training that they used to get. The Victorian government has to be held to account for undermining the opportunities for those young people to get a skill and to get a better job. (Time expired)
Senator MARSHALL (Victoria) (14:44): I thank the minister for that answer and ask a further supplementary question. Can the minister advise the Senate on the consequences of state governments withdrawing their investment in skills and training?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:44): There are consequences of this attack on the role of vocational education in this country for the individual, for employers and for the nation. The individuals, the young people of these states, will not get the opportunity to gain skills which will lead to work. So, many of them will not get employment opportunities, because employers want skilled workers. Employers will not get skilled workers, because many of the young people will not receive the training they otherwise would have received. And the nation will suffer because our productivity will be restricted by the lack of skills in the economy. So there are three ways in which the nation will lose out as a result of these attacks on funding of TAFEs.

We have to make sure the states continue to invest, and the Commonwealth is not going to reward them for ripping money out of TAFEs, closing campuses and denying young people the chance to learn a skill or a trade that will allow them to have a better future. We are not going to put up with it, and the states are on notice.

Asylum Seekers

Senator CASH (Western Australia) (14:45): My question is to Senator Lundy, the Minister representing the Minister for Immigration and Citizenship. I refer the minister to the government’s announcement yesterday of the expansion of onshore processing for unlawful arrivals by an additional 700 detention beds, including the reopening of the Pontville detention centre and thousands of additional community places under the bridging visa program. What is the additional cost of the new measures announced yesterday?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:46): The underlying principle of no advantage is the most important recommendation of the Houston expert panel, and this principle provides that people who arrive in Australia by boat should not receive an advantage, in terms of receiving a permanent visa, over those who are waiting—

Senator Cash: Mr President, I rise on a point of order and I refer to the sessional standing order on relevance. Whilst I appreciate that the minister has been going for but a few seconds, she is either reading the wrong brief or cannot answer the question. I did not ask about the Houston report. I did not ask about the no-advantage test. I have asked quite specifically: what is the cost of the new measures announced yesterday?

Senator Jacinta Collins: Mr President, on the point of order: I think we are about 16 seconds into the answer, and Senator Lundy is obviously describing what she has been asked to cost and should be allowed to continue with her answer.

The PRESIDENT: I believe the minister has still one minute and 44 seconds remaining to answer the question. At this stage I am listening to the answer of the minister, and the minister needs to continue with the answer. There is no point of order.

Senator LUNDY: I think it is incredibly important to place these questions in context and, as I was saying, the no-advantage test is incredibly important. Consistent with no
advantage, just as people who are on Nauru and Manus Island do not receive work rights, people on bridging visas in Australia will also not have the right to work, and they will still be subject to potential future transfer to Nauru or Papua New Guinea at a date when increased capacity becomes available.

Prior to their release from detention, people granted bridging visas—even those subject to the no-advantage principle—undergo a needs assessment to determine their level of support in the community. People will then be provided with support under the Asylum Seeker Assistance Scheme—

Senator Cash: Mr President, I again raise a point of order in relation to the Senate sessional order on relevance. Whilst I appreciate that the minister is merely the acting minister, again the minister is either reading out the wrong brief, which she does on a regular basis—

The PRESIDENT: Order! That is not a point of order.

Senator Cash: Well, I would ask you, Mr President: I have asked a very simple question; it is in relation to the additional costs of the government's announcement yesterday. It is a very simple question.

The PRESIDENT: Order! That is arguing the point. The minister has 53 seconds, and I do draw the minister's attention to the question.

Senator LUNDY: As I was saying: prior to their release from detention, people granted bridging visas, even though subject to the no-advantage principle, undergo a needs assessment to determine their level of support in the community, and people will then be provided with support under the Asylum Seeker Assistance Scheme and, if necessary, the community assistance scheme.

The costs of these arrivals and of implementing the Houston report were included in the MYEFO—

Opposition senators interjecting—

The PRESIDENT: Senators, you are asked to hear the answer. I cannot hear the answer because of the interjections on my left. I believe that the answer was about to be given.

Opposition senators interjecting—

The PRESIDENT: No—the answer that you—

Opposition senators interjecting—

The PRESIDENT: Order! Order! It is very hard if there are continuous interjections to get the answer that is coming forth.

Senator LUNDY: Those across the chamber who bothered to listen heard that I just said that the cost of the higher number of arrivals and implementing the Houston report were provisioned for in the MYEFO. In fact, the funding includes a provision for some IMAs to have their protection claims assessed while living in the community on bridging visas and receiving basic accommodation assistance, which I am very happy to go through in detail—

Senator Brandis: Mr President, on a point of order: you have directed the minister to the question once. We have been very patient. She has eight seconds to go. We acknowledge that a minister is entitled to provide context, but she was asked only: ‘What is the cost of the measures announced yesterday?’ An answer on what is in the MYEFO arising from the Houston recommendations is not a response to the question, ‘What is the cost of the measures announced yesterday?’ Mr President, there is no time for any more context. We are asking for the cost of the measures announced yesterday.
Senator Chris Evans: Mr President, on the point of order: that is a complete nonsense. If the opposition were not shrieking during Senator Lundy's answer, trying to drown her out, they would have heard her address the cost of the community assistance scheme, and the costs that were provided in the MYEFO for dealing with assessing claims while people are living in the community. She was absolutely directly answering the question. And they probably could not hear the answer for the shrieking and abuse coming across the chamber while Senator Lundy was genuinely answering the question.

The President: Order! There is no point of order. I have been listening to the minister's answer. The minister is answering the question. The minister might not be answering it in the form or the way that was desired by the person asking the question, but the minister is answering the question. The minister still has eight seconds to continue the answer.

Senator Lundy: As I saying, provision was made in the MYEFO in the supplementary bills passed by the Senate on 19 November for the operational costs associated with these clients.

Senator Cash (Western Australia) (14:52): Mr President, I ask a supplementary question. Does the minister agree with the comments of her left Labor colleague Senator Doug Cameron that the government's decision to process onshore will lead to an underclass being created in Australia? If members of caucus have no confidence in the government's border protection policies, how can the government expect the Australian people to?

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:52): People will be provided with support under the Asylum Seeker Assistance Scheme and, if necessary, the Community Assistance Support Program. It is not a generous allocation but it is an appropriate allocation, which means they can obviously provide for their basic needs. As we have with other people on bridging visas, the government will monitor their wellbeing and mental health.

The government accepts that it is a difficult situation for them, just as it is a difficult situation for the 42 million displaced people around the world who do not have the chance to come to Australia by boat. The use of homestay arrangements is one of the available accommodation options and will continue to be used. Any eligibility for public housing is determined on a state-by-state basis and we will engage comprehensively with the states and territories. (Time expired)

Senator Cash (Western Australia) (14:53): Mr President, I ask a further supplementary question. Has the government revised its estimate of the expected number of monthly arrivals for the remainder of this financial year? If so, what is the new estimate?

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:54): It does not matter how many times Senator Cash asks the same question, the answer remains the same: the provisions were made for this in the MYEFO and the bills that passed the Senate on 19 November, and the supplementary bills are for the operational costs associated with these clients. There is no more information than that. It was explored previously through the course of those bills and Senator Cash is aware of that.
Repeatedly, we have questions coming across the chamber—

**Senator Brandis:** Mr President, I rise on a point of order. You may or may not have noticed that both the primary question and the second supplementary question asked for an amount, and the minister has not mentioned a figure once in either of those answers. The second supplementary question asked whether there had been a revision and, if so, what it was. That is as specific a question as it is possible to ask.

_Opposition senators interjecting_—

**The PRESIDENT:** Order! Senator Brandis, halt. There are people on your side who are overriding what you are saying. I cannot hear you.

**Senator BRANDIS:** I said 'has there been a revision and what is it' is as specific a question as is possible to imagine. The minister should be directed to answer it.

**The PRESIDENT:** I cannot direct a minister how to answer the question, as I have said previously. I believe the minister has 26 seconds to address the question and I ask the minister to address the issue.

**Senator LUNDY:** As I said, the provision was made in MYEFO and I am happy to say it again and again. The operational costs associated with these new arrangements have not been separately identified, hence I am not able to provide the actual figure that the opposition is demanding. But included are adjustments that were made in estimates for the care and management of irregular maritime arrivals.

**Intellectual Property Rights**

**Senator MADIGAN** (Victoria) (14:56): My question is to Senator Lundy, the Minister representing the Minister for Industry and Innovation. Minister, many businesses are investing in proprietary software as part of new product development. However, the laws that protect this type of property rely on civil action which is often beyond the reach of many manufacturers. In light of the recent Victorian example, when an employee of a small regional manufacturing business removed proprietary software as part of a demand for the proprietors to sign over control of their business, and the employers had no recourse in criminal law, thereby leaving the business without its intellectual property and unable to deliver product without taking expensive and time-consuming civil action, does the government recognise that there is a need to put in place tougher laws, possibly even criminal sanctions, to help protect manufacturers from the theft of intellectual property?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:57): With increasing automation of the manufacturing processes, software is becoming—and in fact is for many, many businesses—a critical asset for manufacturers and of core value to their company. On the basis of the information provided by Senator Madigan, I am not able to comment on the applicable law and whether or not it provides a remedy in this situation, and it would not be appropriate to provide legal advice on the options available in such a situation. But, to the extent that the theft of the software involved an exercise of a copyright right, criminal offences may be applicable under the Copyright Act 1968. There may be general criminal law offences that also have some application to the circumstance you describe.

The government has implemented a number of initiatives that assist businesses to protect their data and software. The Defence Signals Directorate has published detailed cybersecurity guidance for management to
help advise them on the prevention of loss and theft of information assets in the first place. This is a very comprehensive guide. It comes in the form of an information pack to business, and this is an excellent opportunity for me to reinforce to businesses in Australia that, if they do not have the DSD advice on protecting their information assets, then I suggest they get it because this kind of occurrence is of great concern and it is a growing problem. There is also information available on the business.gov.au website that advises businesses on how to protect information and systems from misuse by employees and contractors, and that may also be of some assistance to the business that Senator Madigan described. (Time expired)

Senator MADIGAN (Victoria) (14:59): Mr President, I ask a supplementary question. Can the minister explain why legislation is in place to provide retailers with recourse to criminal sanctions for the most minor acts of shoplifting whilst manufacturers who may be subject to the theft of tens of thousands of dollars in property, such as proprietary computer code, only have recourse to expensive and time-consuming civil law, with no certainty of recovering either their property or legal expenses?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (15:00): As I mentioned in my first answer, without knowing further details, I am not able to point to particular sanctions that may apply under the Copyright Act. They may have some relevance in that regard. If the circumstance is of a criminal nature, a criminal offence may also apply.

I think it is necessary to get more detail about what actually occurred before I am able to provide any advice on a particular type of remedy that might be available. Whilst it may be too late, unfortunately, for the firm concerned, this type of incident does underscore the importance of businesses taking measures to prevent the loss of data and software and to protect it adequately, especially when the viability of the very business depends on it.

Senator MADIGAN (Victoria) (15:01): Mr President, I ask a further supplementary question. Given that civil sanctions and remedies are not a financially realistic means for many small enterprises to protect their investment in new intellectual property, would the government consider reviewing the present civil actions and remedies to better protect both small enterprise and taxpayer investment in innovation through the general grant schemes now in place?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (15:01): Relying on changes to civil remedies alone is not the whole answer to this kind of business risk. Apart from the cost of legal proceedings, this kind of event can cause significant damage to a business. So focusing on prevention is still going to be a really important part of the response.

Even in relation to patent infringement, the government is not contemplating introducing criminal offences. This is because of the complexity of determining patent infringement and validity. In addition, the complex issue of whether the patent has been infringed must be decided beyond reasonable doubt in the criminal system rather than in a civil test of the balance of probabilities. Finally, the threat of criminal prosecution for patent infringement may deter further innovation. So all of these issues become a complex part of what is a very challenging problem but one to which
businesses are right to turn their minds.

(Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Asylum Seekers

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (15:03): I have an answer to a question without notice asked by Senator Brandis yesterday, and I seek leave to incorporate my response.

Leave granted.

The answer read as follows—

On 22 November 2012 Senator Brandis asked:
I refer the minister to comments by Mr Richard Britten, the Police Commissioner of Nauru, reported in the Fairfax press today indicating that the Nauruan authorities wished to pursue wilful damage and riot charges against two Iranian asylum seekers to answer for their alleged role in the riot at the processing centre which caused $25,000 worth of damage. Can the minister confirm that the Australian government agreed to the men's request to be voluntarily returned to Iran without having to answer for their alleged crimes?

Response:

The Department has not facilitated the removal of anyone who was charged with any offence on Nauru.

Law enforcement matters are an issue for the Nauruan Government.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Asylum Seekers

Senator Cash (Western Australia) (15:03): I move:

That the Senate take note of the answer given by the Minister for Sport (Senator Lundy) to a question without notice asked by Senator Cash today relating to detention centres and asylum seekers.

I rise to take note of answers given by Senator Lundy to questions asked by me in question time today. A number of my colleagues noted the irony in the statement that I have just made to the Senate: ‘I rise to take note of answers’—because what we have witnessed today is, quite frankly, one of the worst displays of a minister not answering questions in this Senate.

It is a very serious situation when the government makes an announcement, like the government did yesterday, that it is having to expand the detention facility because the detention network in Australia has officially broken under the Gillard Labor government; and, when asked very specific questions about just how much these additional onshore facilities are going to cost the Australian taxpayer, the minister was actually dumbfounded. Not only was she dumbfounded; she actually read from the wrong brief.

Australian taxpayers have a right to know just how much more of their money this government is going to rob them blind of to pay for what is now being heralded—even by the press, I have to say; and that is saying something—as possibly the greatest policy failure we have seen since Federation. Australians have witnessed over 30,000 people arriving in Australia in only a four-year period because of a gross dereliction of duty by this Labor government. We have now spent in excess of $6 billion of taxpayers' money because of the gross incompetence of those opposite.

Under the former Howard government, who stopped the boats—you cannot deny that; our policy stopped the boats and we reduced the number of people coming here to zero—Australians were paying $85 million a year for detention networks in Australia. The
Australian taxpayer is now paying in excess of $6 billion. And only recently, on Monday, the Senate was asked to appropriate an additional $1.67 billion of taxpayers’ money because this government just cannot get it right.

Today, after the government has made the announcement that it is again changing its policy in relation to detention, we ask what is it going to cost? You have made an announcement that you are going to open an additional 700 beds. You are going to reopen Pontville in Tasmania. You officially announced yesterday that you are now sending thousands of asylum seekers, not refugees, into the community. It needs to be very clear to Australians that refugees are not being sent into the community; asylum seekers are being sent into the community. There is a fundamental difference: these people have not had their claim actually verified. The government has admitted it will be sending thousands of asylum seekers into the Australian community and it cannot tell the Australian taxpayers how much it is going to cost them. It is $6 billion to date. Part of that is the additional $1.67 billion that this Senate appropriated on Monday. I can tell you, when we are back here in February, I do not know how much this government will be asking for anymore. We are already up to $6 billion, but I will put money on it that it will be at least another billion dollars of taxpayers’ money.

Why do we say that? Because the minister was unable to tell the Senate whether or not the government had actually revised the number of estimated monthly arrivals. Currently, the government has budgeted for 450 arrivals per month. That is what the Australian government has said is its budget for this financial year. We are currently experiencing over 2,000 people arriving per month. That is the equivalent of the QE2 arriving at Christmas Island fully laden every single month. Two thousand people per month are arriving in Australia. Over 10,000 people have already arrived in this financial year alone. The government only budgeted for 5,400 people arriving. This is without a doubt the grossest dereliction of duty Australians have ever seen in relation to this portfolio area. (Time expired)

Senator CROSSIN (Northern Territory) (15:09): I rise to make a contribution to this debate in which we have heard a number of severe inaccuracies in the contribution just made by Senator Cash.

Senator Cash: Please tell me what they are.

Senator CROSSIN: Senator Cash, month after month, as I chair the Senate Legal and Constitutional Affairs Legislation Committee and as we sit in that committee three times a year at estimates, you sit alongside us at the table. On the day when the Department of Immigration and Citizenship is before us, you hear its representatives when they usually—almost nine times out of 10—begin their contribution by explaining to us what is happening in the world when it comes to the movement of people seeking asylum and the movement of people who are refugees. There are push and pull factors, the former secretary Andrew Metcalfe said, time and time again. So, standing in this chamber and making the comment that under the Howard government you single-handedly stopped the boats is an absolutely incorrect statement. We know, for the record, that the evidence will show that movement of people around the world seeking asylum stops and starts for many reasons.

We also know that, if you go back and have a look at the record, it will show that when TPVs were introduced the number of people who were seeking asylum in this country spiked because of the nature of the
TPVs, which totally prevented family reunions. So, once the man or even the woman arrived in this country, their partner or their family had no choice but to get on a boat to join them, because they were not going to get here any other way. So please go back and look at the figures and accurately reflect what happens.

We stand in this chamber every single day having a debate about what is going on with the refugee policy in this country simply because you have failed to endorse wholeheartedly the Houston committee report and the 22 recommendations it made. So, yes, people will still keep arriving. Yes, the costs were included in the budget appropriation bills debate that you were part of last Monday—the cost is there in the MYEFO. But the essential element we need to understand and people listening need to understand is that, as a way of moving forward, this Prime Minister and this government got together three eminent people in this country and set up an expert committee headed by Angus Houston, the former Chief of the Defence Force, a person that your government appointed as the Chief of the Defence Force.

Those three people came up with a report that had 22 recommendations. They clearly said that the situation needed all of their report to be endorsed, that all of the fundamental propositions they put together needed to be endorsed as a package. But what do you across the chamber do? You want to cherry-pick and pick the eyes out of it. You do not want to endorse the Malaysia agreement, which was their pre-eminent recommendation. You want Nauru, but you do not want Malaysia. You want to do offshore processing, but you do not want to do it in a way that is going to comprehensively deal with this problem. One minute you want TPVs, but you do not want bridging visas. So I sit opposite you and listen to your contribution, Senator Cash, but—try as hard as you may, day after day—I still cannot get a handle on exactly what the policy of the coalition is. What is it that you fundamentally want?

Senator Brandis: The Howard government policy.

Senator CROSSIN: You want offshore processing, so you want Nauru? You have got Nauru. You want TPVs. We offered you the chance to have an independent inquiry into whether or not TPVs were effective. We did not rule them out. On the table we put a negotiating chip: here's TPVs—let's have a joint look at whether they are effective or not. You ruled that out. You do not want to give the Malaysia agreement a try. You want to tow back the boats to a country that is not going to accept your boats. You want to tow the boats back to somewhere, but you cannot tell the people of this country where you would tow the boats back to—because Indonesia sure as hell is not going to have them. So where are you going to take these people back once they get halfway to Australia and they are on a rickety boat? You do not have a policy. Your policy is that you just want to keep playing politics with people's lives. (Time expired)

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (15:14): I have to say it is fairly nauseating to get lectured by those on the other side, particularly Senator Crossin, on picking policy. Can you imagine that—getting lectured by them about picking policy? It is now some 14 weeks—over three months—since Nauru opened. This is one successful policy of the Howard government. We say, 'Congratulations on accepting one policy out of a trilogy of success.' But remember that, to get a car, or anything, to move forward, you need three things to happen: the handbrake needs to be off, there needs to be
air in the tyres and there needs to be petrol in the tank. If you fail on one of those three things, there is no movement. If you fail on two of them, I suspect there will be no movement either. It is a little bit like having a trifecta bet, going up to the bookie and saying, 'One of them came home; can I have my money.' It is just not going to cut it.

This is not some academic report that is suggesting, 'If you do all of these things, it'll be a miracle; that's never been tried.' We had a policy that ended up with us having absolutely no boats: temporary protection visas, offshore processing and turning the boats back where it is safe to do so. This has been tested. Three months ago, the government accepted one of our policies. What has happened? What are we going to measure it on? What about how many people have arrived? Since that date the policy has not worked, because we have had record numbers of people. We have had over 2,000 people a month. More people than the QE2 carries are arriving on Christmas Island every month. You have to say, 'I don't think this is really working for me.' If the intention was to stop people, clearly that policy has not worked. Since 14 August, 7,716 people have arrived.

So the government have tinkered around a bit and said, 'I know: instead of temporary protection visas'—which we need, as they are a clear disincentive—'we will call them bridging visas.' But they are not actually even a bridging visa; they are a new type of bridging visa. They are a recurring bridging visa, which basically means we are not waiting for some particular thing to happen. It is a bit like going to the chemist for a script. You are going to get one every time. You do not even have to turn up. So they are a special sort of bridging visa, a Clayton's bridging visa—the bridging visa you have when you do not have a bridging visa. This basically means you can stay forever. But not only do you have a reasonable expectation under those circumstances of permanent residency—which one might understand is quite reasonable if you are a refugee—but these are not even refugees. They are asylum seekers that now have the little green pad of a recurring 'I'll stay forever' bridging visa.

The whole idea of this package of policies was as a disincentive package. We sympathise with the 14½-odd million people who seek a migration outcome or a movement outcome on this globe; of course we do. But we have also decided that we would like to have them move in an orderly way. We have a list of people who are priorities set by the UNHCR, primarily from the Horn of Africa. These people are in the most horrendous circumstances. We do not want people to get on boats, so we must create and stick by a significant disincentive package. So how can it possibly be a disincentive when we muck about with this by saying, 'We don't want to offend people—we have to keep the Greens happy, and there are a couple of people in this electorate we want to keep happy—so what we'll do is talk about a new bridging visa which does absolutely nothing as a disincentive'? What is the acid test? What do they think about that? They have come in droves—7,000 people in three months, which is just unthinkable. When we were in government, we would have just given the game away, and it seems that that is exactly what this government has done. All it does is spend money on more accommodation, borrowing more money to set more people up—because we have no chance of stopping them.

So all we have done is give up. We are not even investing our hard-earned dollars; the government has broken the economy's back to the extent that we borrow everything we spend. So all its investment simply goes into dealing with its lack of grunt and its lack of
capacity to make a disincentive package; to stick with that disincentive package; to ensure that people do not get on the vessels; to assist those people who are the most vulnerable and, according to the UNHCR, need to be provided with assistance as soon as possible; and to ensure that the family reunion processes associated with that are given absolute priority. That is what this government should be doing, and it has failed.

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (15:19): I rise also to contribute to the taking note debate about asylum seekers. As we all know, this is an issue that generates a highly charged political debate, and obviously it is something that those opposite continue to seek to make political mileage out of. It is time that those opposite realised that this is an ongoing challenge that many governments have faced, and they need to do away with the political point-scoring. It does not help. It does not help the issue, it does not help the Australian community and, in the end, it does not help the coalition. The people listening out there to what you have to say on this issue do not agree with you and are not listening to you. The Australian community want their political leaders to work together on this issue. We know that is what they want. They want us to work together and stop the political point-scoring.

To address the asylum seeker challenge, the federal Labor government are getting on with the job of trying to break the people-smuggling business model, because that is what needs to be done. The Minister for Immigration and Citizenship, Mr Chris Bowen, announced yesterday, on 21 November, that another group of 100 Sri Lankan men have been sent home. This is the ninth involuntary removal this month and the largest return to Colombo so far. This takes the number of Sri Lankans who have been returned involuntarily since 13 August this year to 426. When voluntary returns are included, a total of 525 have been returned home. The minister has also announced, as those opposite would be aware, that people who arrived by boat post 13 August and future arrivals will have the no-advantage principle applied to their cases onshore, even if they are not transferred offshore for regional processing.

I want to look back to earlier in the year when the political impasse over asylum seekers could not be broken and the parliament voted down measures to stop the tragedies at sea, so the government created the independent expert panel. This panel was set up to provide the government with a report on the best way forward for our nation to prevent asylum seekers risking their lives on dangerous boat journeys to Australia. This panel was made up of retired Air Chief Marshal Angus Houston, Professor Michael L'Estrange and Mr Paris Aristotle. The Expert Panel on Asylum Seekers then released its report containing 22 recommendations on the policy options available to government. In presenting this report, Mr Houston said that the panel had proposed a way forward that it believed would address the challenges that Australia faced over the short, medium and longer term.

The panel's report highlighted that, from late 2001 to June of this year, 964 asylum seekers and crew had been lost at sea, with 604 of these people having lost their lives since October 2009. The report made a number of important points regarding regional cooperation and the regional cooperation framework. The Houston report highlighted that it is fundamentally important that we achieve a regional cooperation framework as a central focus. The report also outlined a number of elements that were required to achieve genuine regional
cooperation, including domestic policies that enjoy broad based support and are sustainable over time. (Time expired)

Senator SMITH (Western Australia) (15:24): I also rise to take note of answers to questions asked by Senator Cash. Senator Crossin's contribution to this debate was in part correct: the world has most definitely changed. We have moved from a border protection policy that was well managed and controlled under the Howard government to one that is poorly managed, ill-conceived and causing no end of disaster for our borders. Senator Moore likes to suggest that people do not agree with the coalition's attitudes. Nothing could be further from the truth. What the community wants is clear and decisive action in regards to border protection policies. They want border protection policies that work. They know what they want because they were able to see them under the previous, Howard government. These are not bridging visas; these are bandaid visas—a belated and botched attempt, creating yet another policy failure by this Labor government.

You would not want to be a supporter of the Australian Labor Party this morning and wake up to read the attitudes of Australia's leading newspapers. Just to reflect on a few of them, under the headline of 'Flawed law won't stop boat people', the Daily Telegraph says:

The Labor government's policies toward asylum seekers were mistaken from the very first minute they were put in place, and they continue to be dogged by mistakes to this very day.

The Age has 'Labor's descent into agony excruciating to see' and states:

It might have been less painful for Labor if the government had just embraced John Howard's hard asylum-seeker policy in one fell swoop. Instead it has been an excruciating crawl back to the Coalition days. Each change cuts into the souls of some in the ALP …

The Australian newspaper, under the headline of 'Demise of Pacific non-solution', said:

Five years of backflips, bad judgment, half-baked proposals and piecemeal border protection steps culminated yesterday in Immigration Minister Chris Bowen running up the white flag on Labor's half-hearted Pacific solution.

Dennis Shanahan's comments in the Australianian on the subject were headlined, 'Admit it, the model has been broken'.

Trying to choose the most outrageous of this Labor government's failures is an almost impossible task, there are so many examples of bungles, backflips, waste mismanagement and maladministration. Each one would have proven a major embarrassment for any other government, including previous Labor governments. However, for the Rudd-Gillard government it is par for the course. Perhaps nothing better demonstrates the incompetence of this government than its utter failure to manage Australia's borders. I would just like to put it in some perspective, similar to my colleagues Senator Scullion and Senator Cash but taking a more local and more Western Australian flavour.

As senators would know, I take a very keen interest in the Great Southern region of Western Australia. The largest town in the Great Southern is the City of Albany, which is where I have a regional electorate office. According to the latest statistics from the Australian Bureau of Statistics, the population of Albany is 26,644 people, almost 30,000. Under the Rudd-Gillard Labor government, over 30,000 people have arrived in Australia by boat. It is worth reflecting on the fact that it took 186 years for the City of Albany to get to almost 30,000 people. It has taken but five years for this government to get to 30,000 illegal immigrants. A couple of weeks ago it was my pleasure to host the shadow minister for immigration, Scott Morrison, in Albany,
where he held a very successful public forum to discuss some of these matters.

What a powerful demonstration of this government's ineptitude these numbers represent—more people having arrived on this government's watch than are people currently living in Albany, the Great Southern region's largest population centre. In the five years this government has been in office, 30,000 people have arrived. Half that number, or 15,000, have arrived this year alone. We now have an average of 2,000 people per month arriving in Australia by boat. The Prime Minister said 10 years ago, when she was immigration spokesman for Labor under Simon Crean, 'Another boat, another policy failure.' I am not given to agreeing too regularly with what the Prime Minister has to say, but on that score she is absolutely correct.

Quite apart from the cost in human misery, there is the financial cost. The cost blow-outs from Labor's border protection failures now top $6.6 billion. This year alone, since the budget was announced in May—the same month I came to this place—the blow-out has been $1.7 billion, but there is nothing temporary about it. If 30,000 people have turned up under this government, 15,000 of them this year—

(Time expired)

Question agreed to.

Murray-Darling Basin

Senator HANSON-YOUNG (South Australia) (15:29): I move:

That the Senate take note of the answer given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to a question without notice asked by the Leader of the Australian Greens (Senator Milne) today relating to the Murray Darling Basin Plan.

The questions that Senator Milne were asking were in relation to the amount of water to be returned to the river system under the new plan unveiled by the Minister for Sustainability, Environment, Water, Population and Communities, Tony Burke, this afternoon. The main question was very clear: is it true that under this plan there is no guarantee for 3,200 gigalitres of water to be returned to the system? The answer to that was that that was right and it was correct. So there is no guarantee that even that amount, which is far short of what science says we need in order to achieve the best fighting chance for the River Murray, is going to be guaranteed. When you factor in the massive extraction of groundwater from the system—1,700 gigalitres of water—you see that the sum total in terms of what is returned back to the river is negative. We are not seeing a plan that will save the river—far from it, as this plan is a plan for the big irrigators. We saw after Minister Burke made his announcement, at the National Press Club this afternoon, that the national irrigators could not wipe the grins and smiles off their faces. They think all their Christmases have come at once. They have managed to convince the Labor government to cosy up with the coalition and to pass a plan that is not in the best interests of the river or its future and definitely not in the best interests of my home state of South Australia.

The plan has been massively compromised, as even the Australian Conservation Foundation are saying today, while making the point that the plan as signed off by the minister today will only deliver 57 per cent of the ecological target that it is required to meet under the current Water Act. It fails to do even what the act asks of it. It is not going to put the river on a trajectory for a healthy future. It is not going to save the Lower Lakes and South Australia's Coorong. It is going to ensure that in years to come, when we are back in drought, South Australia will continue to miss out. We know that this plan is not a
plan for drought years. The minister has said that this plan will only deal with the water when it is available in an average year, when average flows are available. Of course, there has been no factoring of climate change into this plan. So there are absolutely no guarantees that this is a plan that will save the River Murray, the majestic river red gums, the Coorong and Adelaide's drinking water in years to come. The plan is not even going to take place until 2019.

So far from it being a historic announcement made by Minister Burke today, what we see is a plan that the national irrigators, the National Farmers Federation and the coalition cannot help but smile about. It is exactly what Barnaby Joyce was after. Rather than this government taking the opportunity to reform the system for the future to ensure that we protect our environment, that we look after the watering of our majestic river red gums and to do what is needed to save South Australia's iconic Coorong and that we protect the quality of Adelaide's water supply, we see the government missing the opportunity and missing the boat and instead falling in line with Tony Abbott, Barnaby Joyce and the big irrigators. It is a missed opportunity, but the plan does not take effect until 2019, so there is something that can be done, and the minister should take back the plan, fix it up and ensure that the Water Act is actually strengthened so that it is able to deliver the reforms that are needed. This debate has been happening for decades and we know that this system's water has been so massively overallocated. People have been used to being able to use massive amounts of water, amounts they should not have been able to have access to if that water were being fairly shared. (Time expired)

Question agreed to.

COMMITTEES

Environment and Communications References Committee

Legal and Constitutional Affairs Legislation Committee

Government Response to Report

Senator WONG (South Australia—Minister for Finance and Deregulation) (15:35): I present two government responses to committee reports as listed at item 13 of today’s Order of Business. In accordance with the usual practice, I seek leave to have the documents incorporated into Hansard.

Leave granted.

The documents read as follows—

Commonwealth Government response to Environment and Communications References Committee report

The capacity of communication networks and emergency warning systems to deal with emergencies and natural disasters

November 2012

INTRODUCTION

The Senate Environment and Communications References Committee tabled its report, The capacity of communication networks and emergency warning systems to deal with emergencies and natural disasters on 23 November 2011. The report contains six recommendations. The Commonwealth Government response to each of the recommendations made by the Senate References Committee, are provided below.

While the Commonwealth has a national coordination role, primary responsibility for the protection of life, property and the environment rests with the states and territories, who are the first responders to emergencies in their jurisdictions. Therefore, state and territory emergency management agencies have full autonomy in relation to: (i) whether and when to issue an emergency warning, (ii) which delivery mechanisms to use to disseminate the emergency warning, and (iii) the content of the warning. Individual states and territories choose which
warning technologies to adopt and when to activate them in accordance with the specific circumstances of an incident.

All states and territories have disaster or emergency plans that include a communications component for the dissemination of rapid onset emergency warnings to the community. At the Commonwealth level, the Bureau of Meteorology (the Bureau) issues warnings and watch notices via the broadcast media, HF Radio and Fax, recorded telephone and the internet, directly to the public for weather warnings (such as severe thunderstorm, high sea, flood and tropical cyclone warnings) and, in conjunction with Geoscience Australia, also issues tsunami warnings. Warnings issued by these agencies also inform the warning messages that state and territory control agencies disseminate to the public.

The states and territories are also responsible for the communications systems within their jurisdiction. The Commonwealth’s role is to support public safety operations by, inter alia, making adequate provision of spectrum for use by agencies involved in the defence or national security of Australia, law enforcement, or the provision of emergency services, including for use by other public or community services.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

2.11 The committee recommends that interoperability of narrowband voice communications between federal, state and territory emergency service organisations is achieved as soon as practicable and that all services attending major incidents be compelled to maintain a common emergency communications platform to ensure seamless real time communication from and to the Incident Controller.

Commonwealth Position: Supported

The Government supports this recommendation, noting all jurisdictions are moving towards mobile radio networks that support real time and seamless communications.

The Attorney-General’s Department (AGD) through its membership on the National Coordinating Committee for Government Radiocommunications (NCCGR) is working with the states and territories to achieve improved narrowband voice communications interoperability within the indicative time frame set out in the Council of Australian Governments (COAG) endorsed framework. This work includes achieving consensus amongst all jurisdictions on technologies and Standard Operating Protocols that will assist with moving towards fully interoperable radio networks and operating procedures. The Government understands that the COAG endorsed framework does not prescribe a single technology for jurisdictions (and agencies within them); rather that each jurisdiction as part of their current and future procurement cycles considers technologies that will enable voice communications interoperability with other Emergency Service Organisations (ESOs) throughout Australia. Accordingly, relevant Commonwealth agencies are in the process of planning to transition their voice communications to systems that will be interoperable with state and territory ESOs operating within spectrum harmonised for government use in the 400 MHz band.

Recommendation 2

2.50 The committee recommends the Commonwealth Government allocate sufficient spectrum for dedicated broadband public protection and disaster relief (PPDR) radiocommunications in Australia.

2.51 The committee further recommends that any allocation of broadband spectrum to emergency service organisations (ESOs) for PPDR must be provided on the basis of interoperability amongst Australian ESOs and with ESO counterparts overseas.

Commonwealth Position: Noted

The Radiocommunications Act 1992 states that the object of the Act is to provide for management of the radiofrequency spectrum in order to:

(a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum;

(b) make adequate provision of the spectrum:

(i) for use by agencies involved in the defence or national security of Australia, law
enforcement or the provision of emergency services; and

(ii) for use by other public or community services;

(c) provide a responsive and flexible approach to meeting the needs of users of the spectrum;

(d) encourage the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided;

(e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum;

(f) support the communications policy objectives of the Commonwealth Government;

(g) provide a regulatory environment that maximises opportunities for the Australian communications industry in domestic and international markets;

(h) promote Australia’s interests concerning international agreements, treaties and conventions relating to radiocommunications or the radiofrequency spectrum.

The then Commonwealth Attorney-General, the Hon Robert McClelland MP, and the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, co-chaired a roundtable meeting on 10 May 2011 on the matter of public safety mobile broadband. The key outcome of that meeting was the establishment of a multijurisdictional high-level officials’ Public Safety Mobile Broadband Steering Committee to progress this work, led nationally by the Commonwealth Attorney-General’s Department and the Department of Broadband, Communications and the Digital Economy.

Membership of the Committee includes representatives of the following key national stakeholder groups, committees and agencies:

- the COAG Senior Officials Group
- the National Policing Senior Officers Group
- the National Coordinating Committee for Government Radiocommunications
- the Law Enforcement and Security Radio Spectrum Committee, and
- the Australian Communications and Media Authority (ACMA).

The Committee has analysed public safety mobile communications needs, developed models to meet those needs and collected information to assist the ACMA in its determination of spectrum requirements.

The Commonwealth has worked with the states and territories to develop a national implementation plan for a nationally interoperable public safety mobile broadband capability. In parallel with this activity, the Commonwealth has considered whether radio spectrum should be allocated and, if so, what the quantum of a possible allocation would be.

The Commonwealth announced on 29 October 2012 that it would make provision for 10 MHz from the 800 MHz band for the specific purpose of realising a dedicated, nationally interoperable public safety mobile broadband cellular 4G data capability.

The offer of the spectrum to the states and territories will be at a Public Interest Price and is conditional on factors including:

- the capability being nationally interoperable
- the states and territories funding all costs associated with designing, building, equipping, maintaining and operating the capability, and
- an agreement to provide reasonable access to state and territory networks by relevant Commonwealth agencies.

In terms of interoperability with counterparts overseas, this will be guided by the domestic approaches that those countries take as well as future outcomes of key fora such as regional radio harmonisation in region 3 (the Asia-Pacific region in which Australia sits).
Recommendation 3
3.63 The committee recommends that the Commonwealth Government together with national, state and territory emergency service organisations and radio and television broadcasters, develop a secure database of up-to-date contact details for key personnel to be used during an emergency.

Commonwealth Position: Noted

The Commonwealth, state and territory agencies and the ESOs all have media services and dedicated databases in place that perform this role.

The Australian Government will work with the states and territories, through the Australia-New Zealand Emergency Management Committee (ANZEMC) (formerly the National Emergency Management Committee), to effectively coordinate the maintenance of appropriate contact details in both emergency service and media organisations for use during an emergency.

Recommendation 4
3.69 The committee recommends the Commonwealth Government require guaranteed access to emergency call services for people with a disability at all times.

Commonwealth Position: Noted

The Government is a member of the National Forum on Emergency Warnings to the Community which has recently completed drafting the document, ‘Inclusive Communications Guidelines for Emergency Managers’. These guidelines, when finalised, will be used as a tool to help emergency managers understand the requirements to assist people with disabilities during emergencies. They are intended to be used in conjunction with each state and territory’s own policies and procedures.

The Government is aware that people who are deaf, hearing and/or speech impaired often have limited access to emergency services outside of the home as a result of not being able to access a teletypewriter to call the National Relay Service (NRS) dedicated emergency number 106. In response to this need, the Government included mobile access to text-based emergency services for people who are deaf, hearing impaired and/or speech impaired in the new NRS tender. On 15 August, the Telecommunications Universal Service Management Agency (TUSMA) issued a request for tender to identify and select a company(s) to provide the NRS for the next five years. The tender has now closed and a public announcement is expected in early 2013.

On 12-13 January 2011, the NRS experienced interruption for nearly 24 hours as a result of severe flooding in Brisbane where the NRS call centre is based. However, it should be noted that this interruption did not affect access to the 106 emergency number. Since that time, the Australian Communications and Media Authority (ACMA) has been working with the NRS service provider, Australian Communication Exchange (ACE), on lessons learnt and opportunities to better mitigate disruptions in the event of similar emergency situations. This has resulted in a number of new initiatives, including new redundancy strategies and software improvements, to better prioritise certain types of calls.

Recommendation 5
3.81 The committee recommends emergency service organisations in collaboration with television and radio broadcasters, the print media and other relevant organisations, use regular and ongoing public education well in advance of an emergency situation as an opportunity to teach the public about their responsibilities during an emergency and how they can appropriately prepare themselves for such an event.

Commonwealth Position: Noted

The Commonwealth notes this recommendation is directed at emergency service organisations, radio broadcasters, the print media and other relevant organisations. However, in a broader context, the Commonwealth and all state and territory governments are implementing the COAG National Strategy for Disaster Resilience 2011 (the Strategy).

The Strategy focuses on building disaster resilient communities across Australia, including educating people about risks and that disaster resilience is a shared responsibility. Aligned to this Strategy, the Commonwealth delivers education programs including:
School education resources and teaching aids including: the online ‘Dingo Creek’ interactive disaster preparedness and recovery game and related teaching material, the online ‘Digital Stories’ series where students who have been involved in disasters record their stories, recently released ‘DisasterMapper’, an online and Google Map based product to allow students to investigate disasters relevant to them or to their studies, and soon to be released ‘Before the Storm’ phone application (app), a teaching resource aimed at improving preparedness.

Ensuring disaster resilience is considered in the current national curriculum review for Australia.

Producing source materials for vulnerable communities including those of a non-English speaking background, such as the recent Pictorial Storyboards, and

Providing all these materials, together with a range of publication and brochure prototypes, available online at the national emergency website www.em.gov.au.

The recently released DisasterWatch phone app provides access to emergency and disaster information in a mobile device format derived from authoritative sources in the states and territories and agencies. The app also provides public educational information, such as how to prepare for various hazard events. More than 11,000 downloads of the app have occurred since its launch in December 2011.

Recommendation 6

4.33 The committee recommends the government consider granting public broadcasters priority access to fuel during times of emergency for the purpose of broadcasting emergency warnings and information, and in a way that does not impede the ability of emergency service organisations to access fuel.

Commonwealth Position: Noted

Australia’s state and territory governments have constitutional responsibility for planning and coordinating the response to fuel shortages within their territorial boundaries and have appropriate legislation and associated response plans in place to manage such emergencies.

Whilst every jurisdiction has legislation in place to address a liquid fuel supply emergency, not every emergency will trigger the use of that legislation. Many emergencies that include localised fuel distribution issues, but which do not include an overall fuel supply problem for the jurisdiction, are managed under general emergency response legislation rather than liquid fuel specific legislation.

As such, during an emergency within a particular jurisdiction, determinations about access to fuels, including for public broadcasters, will be a decision for the relevant state or territory government.

At a national level, the Liquid Fuel Emergency Act 1984 (LFE Act) grants the Commonwealth Minister for Resources and Energy the power, by legislative instrument, to identify a person or organisation as an essential user of fuel for the purpose of a national liquid fuel emergency. Declaration of a national liquid fuel emergency under the LFE Act remains a low probability event, as it would require a severe (i.e. prolonged and widespread) national shortage of fuel.

Government Response to the Senate Legal and Constitutional Affairs Legislation Committee Report on the:
Privacy Amendment (Enhancing Privacy Protection) Bill 2012
November 2012

Australian Government response to recommendations of Senate Legal and Constitutional Affairs Legislation Committee report on the Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Summary table of Government response to recommendations

The following tables summarise the Government’s response to the recommendations from the Committee’s report.

Of the Committee’s twenty one recommendations:

- 10 have been accepted in full;
• 10 have been accepted in principle; and
• 1 has been noted.

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COMMITTEE RECOMMENDATIONS

Recommendation 1

The committee recommends that the application of the exception in proposed APP 2.2(b) be clarified to make it clear that APP 2.1 does not apply where it is impracticable for the APP entity to deal with ‘individuals who have not identified themselves or used a pseudonym’.

Response: Accept

The Government notes the committee’s view that a clarification to the provision would be helpful to ensure that it is clear that Australian Privacy Principle (APP) 2.1 does not apply where it is impracticable for the APP entity to deal with individuals who are seeking to use a pseudonym. The Government will develop appropriate amendments to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (the Bill).

Recommendation 2

The committee recommends that to avoid confusion, the subheading to proposed APP 7.1 in item 104 of Schedule 1 of the Bill be amended to read ‘Use or disclosure’ or ‘Direct marketing’, rather than ‘Prohibition on direct marketing’.

Response: Accept

The Government acknowledges that amending the subheading of this section may be helpful in more accurately reflecting the substance of the provisions. The Government will develop appropriate amendments to the Bill.

Recommendation 3

The committee recommends that proposed APP 7.2 and APP 7.6 in item 104 of Schedule 1 of the Bill be amended to ensure consistency with the notification requirement in APP 7.3, and enable individuals the opportunity to opt out of direct marketing communications at any time.

Response: Accept in principle

The Government agrees that consumers should be able to opt out of direct marketing involving the use or disclosure of their personal information at any time. That is the practical effect of APPs 7.2, 7.3 and 7.6 although the point at which they are made aware of the opt-out requirements may differ depending on the relationship between the direct marketer and the consumer.

The Government notes that companies engaged in direct marketing under APP 7.3 will be required to give notice about an opt out mechanism in each direct marketing communication and should consider adopting this approach as good privacy practice. However, given the different forms and contextual nature of online direct marketing, and the likely future developments in this area, the Government’s preferred approach would be for additional practical level details to be covered by guidance issued by the Office of the Australian Information Commissioner (OAIC). In that respect, the Government notes that it has already accepted an Australian Law Reform Commission (ALRC) recommendation that the OAIC develop and publish detailed guidance about the new direct marketing principle (see rec 26-7), including some key aspects of proposed APP 7.2 and 7.6.

Recommendation 4

The committee recommends that proposed APP 8.2(b) in item 104 of Schedule 1 of the Bill be amended to require an entity to inform an
individual of the practical effect and potential consequences of any informed consent by the individual to APP 8.1 not applying to the disclosure of the individual's personal information to an 'overseas recipient'.

Response: Accept in principle

The Government notes that the provision already requires that information be provided to the individual about the effect of providing consent in these circumstances. The Government considers any further guidance on meeting this requirement would be best placed in guidance material issued by the OAIC. OAIC Guidelines could provide advice on the information to be given to the consumer so that they are clear that the consequences of providing consent in such circumstances are that the entity will no longer be responsible for the protection of their personal information by the overseas recipient, and what, if any, additional information should be provided where it is possible and practicable for the entity to know of other practical effects or potential consequences.

Recommendation 5

The committee recommends that the Explanatory Memorandum to the Bill be revised to clearly explain that an entity will be required to inform an individual of the practical effect and potential consequences of any informed consent by the individual to APP 8.1 not applying to the disclosure of the individual's personal information to an 'overseas recipient'.

Response: Accept in principle

Consistent with the Government’s response to recommendation 4, the Government will develop appropriate amendments to the Explanatory Memorandum.

Recommendation 6

The committee recommends that the Attorney-General's Department revise and reissue the Explanatory Memorandum to the Bill to clearly explain the enforcement-related functions and activities of the Department of Immigration and Citizenship, as justification for the classification of the 'Immigration Department' as an 'enforcement body' in item 17 of Schedule 1 of the Bill.

Response: Accept

The Government will develop appropriate amendments to the Explanatory Memorandum.

Recommendation 7

The committee recommends that the Attorney-General's Department revise and reissue the Explanatory Memorandum to the Bill to clearly explain the scope and intended application of the terms 'surveillance activities', 'intelligence gathering activities', and 'monitoring activities' in item 20 of Schedule 1 of the Bill.

Response: Accept

The Government will develop appropriate amendments to the Explanatory Memorandum.

Recommendation 8

The committee recommends that the provisions contained in item 82 of Schedule 1 of the Bill and for each Australian Privacy Principle which contains a 'permitted general situation' or 'permitted health situation' exception, a note should be added at the end of the relevant principle to cross-reference proposed new section 16A of the Privacy Act 1988 and/or proposed new section 16B of the Privacy Act 1988, as appropriate.

Response: Accept

The Government notes the committee’s views that the legislation could be more ‘user-friendly’ and that a cross-reference located in some of the APPs to the exceptions in clauses 16A and 16B may be appropriate. The Government will develop appropriate amendments to the Bill.

Recommendation 9

The committee recommends that the Attorney-General's Department revise and reissue the Explanatory Memorandum to the Bill to explain the intended scope and application of the 'diplomatic or consular functions or activities' exception set out in item 6 in the table to proposed new subsection 16A(1) of the Privacy Act in item 82 of Schedule 1 of the Bill.

Response: Accept

The Government will develop appropriate amendments to the Explanatory Memorandum.
Recommendation 10

The committee recommends that proposed new subsection 6Q(1) in item 69 of Schedule 2 of the Bill be amended to require an appropriate amount of time, such as 14 days, to have elapsed from the date of a written notice before a default listing can occur.

Response: Accept

The Government accepts the recommendation and will insert a requirement that at least 14 days must elapse from the date of the written notice before default information can be disclosed to a credit reporting body.

Recommendation 11

The committee recommends that the written notification in proposed new subsection 6Q(1) in item 69 of Schedule 2 of the Bill be amended to include a warning about the potential for a default listing by a ‘credit provider’ in the event that an overdue amount is not paid within a set period of time.

Response: Accept in principle

The Government agrees that further information should be provided to consumers about the consequences of failure to pay. However, the Government considers that the Credit Reporting Code of Conduct (CR code) is the most appropriate place to set out requirements on the information to be provided to consumers in the written notice required under 6Q(1). This will ensure that the written notice provides comprehensive advice on what matters must be included, for example additional information about credit reporting and how to obtain a credit report.

Recommendation 12

The committee recommends that proposed new subparagraph 6Q(1)(d)(i) in item 69 of Schedule 2 of the Bill be amended to reflect $300, or such higher amount as the Australian Government considers appropriate, as the minimum amount for which a consumer credit default listing can be made.

Response: Accept in principle

The Government agrees that the minimum amount for a default should be reasonable. The Government recognises that there are strong arguments proposed both for and against changing the current amount of $100. A regulation-making power is included in paragraph (d) of the definition to provide flexibility to vary the minimum amount to a higher level. The Government considers that economic modelling of the impact of changing the minimum amount for the listing of a default to $300 is necessary. The Government will consult with stakeholders on this issue in the development of the Privacy Regulations.

Recommendation 13

The committee recommends that the Office of the Australian Information Commissioner, in formulating guidelines under proposed new section 26V in item 29 of Schedule 3 of the Bill, include as a criterion the timeframe within which an individual’s ‘default information’ can be listed by a ‘credit provider’.

Response: Accept

The Government agrees that there would be benefit in providing further guidance around the timing of listing default information in the CR Code, and encourages the OAIC, in formulating guidelines under proposed new section 26V as to what should be included in the CR Code, to include as a criterion the timeframe within which an individual’s ‘default information’ can be listed by a ‘credit provider’. This will ensure guidance around the issue of reasonable timeframes within which a listing should be made is considered as part of the CR Code drafting process.

Recommendation 14

The committee recommends that the Office of the Australian Information Commissioner, in formulating guidelines under proposed new section 26V in item 29 of Schedule 3 of the Bill, include a requirement for credit providers to fully consider an application for financial difficulty assistance under the National Consumer Credit Protection Act 2009 before an individual’s ‘default information’ can be listed.

Response: Accept

The Government agrees that there would be benefit in providing guidance in the CR Code around the consideration of applications for financial difficulty assistance before listing default information. The Government notes that
this will only be relevant where a person has applied for hardship assistance prior to default.

**Recommendation 15**

The committee recommends that the Australian Government consider prohibiting the re-identification of 'credit reporting information' which has been de-identified for research purposes in accordance with proposed new subsection 20M(2) in item 72 of Schedule 2 of the Bill, and whether a proportionate civil penalty should apply to any breach of that prohibition.

**Response: Accept in principle**

The Government agrees that the risk of re-identification of previously de-identified personal information is an important issue. However, the Government considers that further evidence on the nature and scope of the risk of re-identification is necessary. The Government notes that the Commissioner will issue rules relating to the use of de-identified information for research purposes. The Government will review the situation 12 months after the Commissioner issues rules to determine whether additional measures dealing with the risk of re-identification are necessary.

The Government is aware of concerns expressed to the Committee that the provision may prohibit research currently conducted on credit issues in the community. In order to ensure that such research is permitted to continue, the Government will amend clause 20M to provide that research must be in relation to 'credit', rather than the narrower concept of the 'credit worthiness of individuals'.

**Recommendation 16**

The committee recommends that proposed new sections 20T and 21V in item 72 of Schedule 2 of the Bill be amended to:

- create an obligation for the recipient of a request to take reasonable steps to have the information corrected by the entity which holds the disputed information
- create an obligation for the entity which holds the disputed information to correct the information within 30 days, if satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading, and
- create an obligation for the recipient of a request to notify the individual about the outcome of their request if that request has been determined by another entity which holds the disputed information.

**Response: Accept in principle**

The Government accepts that all entities that hold information should correct it if found to be incorrect. This was the Government’s clear intention in drafting the correction obligations, including the notification requirements. The general quality obligation in 20S and 21U would operate to require the entity holding the disputed information to make the correction. However, the Government considers that the clarification recommended by the Committee would be useful, and that this kind of detail would be best placed in the CR Code.

**Recommendation 17**

The committee recommends that the regulations made pursuant to section 100 of the Privacy Act 1988 provide a mechanism for 'credit reporting bodies' and 'credit providers' who have received a request for the correction of an individual's personal information to note on the individual's credit file that a correction is under investigation, with the notation to be removed upon completion of that investigation.

**Response: Accept in principle**

The Government considers this to be an operational matter best dealt with in the CR Code. The matter could also be dealt with as part of education processes to inform individuals about exercising rights already available to obtain credit reports and request corrections. The Government considers that it is important that the suggested notation requirements do not add lengthy procedural steps which extend the length of time required, and add costs to, a process that is intended to be simple and user friendly.

**Recommendation 18**

The committee recommends that the Bill be amended to enable a 'credit reporting body' or 'credit provider' to correct an individual's personal information in exceptional circumstances, such as in the case of natural disasters, bank error, fraud, medical incapacity, and mail theft.
The Government agrees that certain exceptional circumstances should be considered by credit providers and credit reporting bodies when listing defaults or considering whether to correct information on an individual’s file. The Government considers that guidance relating to the consideration of exceptional circumstances could be dealt with in the CR Code. The Government considers it a matter for stakeholders to determine the kinds of exceptional circumstances that should be addressed and the way in which these matters should be addressed. As well as this, consumer education initiatives surrounding the Bill should make individuals aware of existing rights in relation to hardship variations, and any other National Consumer Credit Protection (NCCP) Act issues.

Recommendation 19
The committee recommends that the commencement date for the Bill remain at nine months after the Bill receives Royal Assent in order to provide certainty for all relevant stakeholders.

Response: Accept in principle
The Government agrees that a defined commencement date is necessary to provide certainty to stakeholders. However, recognising work to be completed prior to commencement, the Government considers that a period of 15 months is necessary to provide sufficient time for all necessary elements to be in place for an effective transition to the new privacy and credit reporting systems.

Recommendation 20
The committee recommends that before the Bill’s commencement date, the Office of the Australian Information Commissioner – in consultation with the Attorney-General’s Department, as appropriate – develop and publish material informing consumers of the key changes to privacy legislation as proposed by the Bill, and providing guidance to Commonwealth agencies and private sector organisations to ensure compliance with the new legislative requirements.

Response: Accept
The Government agrees that consumer education surrounding the changes to be made by the Bill is important and supports the OAIC’s plans to produce relevant guidance material.

Recommendation 21
The committee recommends that subject to the preceding recommendations, the Senate pass the Bill.

Response: Noted

BILLS
Privacy Amendment (Enhancing Privacy Protection) Bill 2012
Explanatory Memorandum

Senator WONG (South Australia—Minister for Finance and Deregulation) (15:35): I table an addendum to the explanatory memorandum relating to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.

DOCUMENTS

The Clerk: Documents are tabled pursuant to statute. Details will be recorded in the Journals of the Senate and on the Dynamic Red. Details of the documents also appear at the end of today’s Hansard.

COMMITTEES

Membership

The DEPUTY PRESIDENT (15:36): The President has received a letter from a party leader seeking variations to the membership of a committee.

Senator WONG (South Australia—Minister for Finance and Deregulation) (15:36): by leave—I move:

That senators be discharged from and appointed to committees as follows:

Community Affairs Legislation Committee—
Discharged—Senator Boswell
Appointed—
Senator McKenzie
Participating member: Senator Boswell
Community Affairs References Committee—
Discharged—Senator McKenzie
Appointed—
  Senator Boswell
Participating member: Senator McKenzie.
Question agreed to.

BILLS
Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Bill 2012
  Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012
  Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012
  Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012
  Assent
Messages from the Governor-General reported informing the Senate of assent to the bills.

MOTIONS
Australian Labor Party
Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (15:37): At the request of Senator Fifield, I move:

  That the Senate notes the challenges for good government posed by the culture of the Australian Labor Party and its special relationship with affiliated trade unions.

The subject matter of this motion raises issues of very grave concern to the Australian community. They are not matters that can be dismissed as being the ravings of hysterical people or, to use the phrase that the Prime Minister once used, of ‘nut jobs on the internet’. The terms of the motion address the Senate to the challenges for good government posed by the culture of the Australian Labor Party and its special relationship with affiliated trade unions.

This parliament has since its inception in September 2010 been consumed with scandal after scandal arising from within the trade union movement and touching upon Australian Labor Party members of parliament arising from that culture. In the early part of the parliament, we heard a great deal about the member for Dobell, Mr Craig Thomson, and his conduct as an official of the Health Services Union. Time and again, time beyond number, the Prime Minister defended Mr Craig Thomson. Time and again the Prime Minister was asked whether she had full confidence in Mr Craig Thomson and she said repeatedly, ‘I do have full confidence in the member for Dobell and I trust that he remains the member for Dobell for many, many, many years to come.’ It was only earlier this year, after findings concerning the behaviour of Mr Craig Thomson, including findings—not allegations but findings—by an exhaustive inquiry by Fair Work Australia, were published that the Prime Minister was shamed into excluding Mr Craig Thomson from the Labor Party caucus. The point I seek to make is this: both the presence within the Labor Party caucus and the continued protection of such a person by the Labor Party leadership, including by the Prime Minister herself, was only possible because of the relationship that exists between the trade union movement and the Australian Labor Party.

When at last the Prime Minister was shamed into excluding Mr Craig Thomson from the Labor Party caucus and abandoning her protection of him, it was not as if anything new had been learned, because what the Fair Work Australia findings
disclosed were the very allegations that the opposition had been making in the House of Representatives since the beginning of this parliament, and indeed which my colleague Senator Michael Ronaldson, initially, and my leader, Senator Eric Abetz, subsequently, had made in the previous parliament, in Senate estimates and in this chamber. So nothing new was learned. But at last, having sought to defend the indefensible for a period of years, the Prime Minister abandoned the member for Dobell.

We now know that Mr Thomson is a person of interest in a police investigation. In fact he is a person of interest in two police investigations—one initiated by the New South Wales Police Force and one initiated by the Victoria Police. Both of those police investigations were initiated after complaints made by me. When I made those complaints in August and September of last year, I was denounced for being on a witch-hunt. So fanciful was this 'witch-hunt' that already a man who was the Federal President of the Australian Labor Party, Mr Michael Williamson, has been arrested. Let me say that again: a man who was the Federal President of the Labor Party has been charged with serious crimes. So much for the assertions coming from those in the Australian Labor Party who are the protectors and guardians and custodians of its culture that the allegations I made, and others in the opposition made, were fanciful and without merit. We also know that Mr Craig Thomson continues to be, according to Detective Superintendent Dyson, who is in charge of the New South Wales Police investigation, a person of interest in that investigation. Where the investigation goes we will wait and see. We will abide the process. We will allow the process to take its course. But that process would not even have begun had the opposition, in the teeth of the most virulent criticism from the government, of both our motives and the substance of our concerns, not initiated it.

Unfortunately, the matter concerning Mr Craig Thomson is not the only matter of scandal with which this parliament has been concerned arising from the relationship between the Labor Party and the trade union movement and the culture which it promotes. I have many friends who are members of the Australian Labor Party, and all of us in this chamber, on a daily basis, deal professionally with Labor Party senators. I look across the chamber at the Labor Party senators I know—I see Senator Wong, Senator Bilyk, Senator Doug Cameron and Senator Brown—and I am sure they are all honest people. I am sure they are. I am sure those of my friends who are members of the Australian Labor Party are honest people, and I cannot bear to imagine how difficult it must be for them, as honest people, to be representing in parliament a political party of which they are undoubtedly proud but which is nevertheless home to a culture in which large sections of their party are controlled by people who are not honest, controlled by people like Mr Michael Williamson, who are accused of serious white-collar crime. It is not individual wrongdoing; it is a culture. It is a culture that allows such behaviour to occur, that nurtures it, in some cases encourages it and protects it, as Mr Craig Thomson was protected for years, including by the Prime Minister of Australia.

Turning to the Prime Minister of Australia, this parliament has increasingly this year been concerned with the scandal of the AWU and, in particular, the AWU Workplace Reform Association. When this story initially broke in the latter part of last year, as a result of the work of two intrepid journalist, Glenn Milne and Michael Smith, both of those journalists suffered serious professional consequences. Both of them were effectively dismissed from their news
organisations by a pusillanimous management as a result of threats from the highest levels of government made to their news organisations. But I am pleased to say that that pusillanimity, that cowardice by the management of some of the largest news organisations in Australia, has not continued. And increasingly the Australian public are coming to realise that the Prime Minister does indeed have serious questions to answer in relation to her role in and knowledge of the activities of the AWU Workplace Reform Association.

In her press conference on 23 August this year the Prime Minister said that these allegations were only being made by 'misogynists and nut jobs on the internet'—to quote her elegant language. Well, there is no misogyny in saying of a politician, 'You have done the wrong thing'. There is no misogyny in saying of a politician, 'We are concerned about the probity of your conduct'. There is no misogyny in saying of a politician, 'We doubt your integrity'. There is no misogyny in saying, 'There are certain matters that remain to be explained and we ask you to explain them to the parliament'.

The people who are examining the matters alleged against Ms Gillard include arguably the most distinguished and highly awarded investigative reporter in Australia, Mr Hedley Thomas—twice the winner of the Walkley award. Mr Hedley Thomas has pursued this issue in a diligent and tenacious and professional way, not to be deterred by the claims 'There's nothing to see here'. When I was a young man living Queensland, I was involved in politics peripherally at the time of the Fitzgerald inquiry. I remember hearing the same excuse in the mid-1980s from National Party ministers who ended their careers in prison. 'There's nothing to see here.' It is the same argument that we hear from Labor ministers, including the Prime Minister, today that we heard from the other side of politics in Queensland in the 1980s: 'There's nothing to see here'.

These are serious allegations. They are allegations now being pursued, appropriately, by the two national newspapers: the Australian and the Australian Financial Review. These newspapers represent both of the great newspaper groups in Australia: the News Limited group and the Fairfax group. So much for nut jobs on the internet. Until the government comes to terms with the fact that these are serious allegations, reaching the highest levels of government, impeaching the personal probity and integrity of the Prime Minister herself, then the government is not doing itself justice and it is certainly not doing the Australian people justice.

Earlier today, in question time, I directed a question to the Leader of the Government in the Senate, Senator Evans. I directed him to some remarks by Mr Bill Shorten—a former senior trade union official, well familiar with the affairs of the AWU, of course—on Lateline last night, when he said that it would be absolutely inappropriate to use members' money to fund or finance an internal trade union election and that to set up a slush fund to do so—because that is what he was asked about by Mr Tony Jones—would be quite wrong. Yet that is the very thing to which the Prime Minister herself admitted, in an interview conducted by the partners of Slater & Gordon with her on 11 September 1995, a redacted transcript of which was tabled by me in the Senate today.

Of course, in 1995 Ms Julia Gillard was not the Prime Minister. She was not even a member of parliament; she was a private citizen. She had a spot on the Victorian Labor Party Senate ticket, but she was a partner in the law firm Slater & Gordon. On 11 September 1995 an interview with Ms
Gilardi was conducted by Mr Peter Gordon, a senior partner of that firm, and Mr Geoff Shaw, the general manager of that firm. That interview was taped and it is the redacted transcript of that interview that I tabled today.

Let me pause for a moment to say that it is a very unusual thing for a lawyer of a law firm, let alone a partner of a law firm, to be required to undergo a formal tape-recorded interview by the senior management of that firm. That would only ever happen if the senior management of that firm had serious concerns about wrongdoing by the lawyer concerned—in this case, Ms Julia Gillard. She was asked about her involvement in the establishment of the Australian Workers Union Workplace Reform Association. She admitted that she was responsible for the incorporation of that association in Western Australia. Then she said this:

... every union has what it refers to as a re-election fund, slush fund, whatever ...

Lest it be thought that Ms Gillard was acting entirely on somebody else's behalf, she was asked by Peter Gordon:

PG: And to the extent that work was done on that file in relation to that, it was done by you?

JG: That's right.

PG: And did you get advice from anyone else in the firm in relation to any of those matters?

JG: No, I didn't.

Then we learnt that two pages immediately following that answer have been redacted. Astonishingly, we now learn that the file created at the time, containing all the contemporaneous documents relating to the incorporation of the Australian Workers Union Workplace Reform Association, has disappeared and cannot be located in the archives of the Western Australia Corporate Affairs Commission. We learn that the conveyancing file—which Ms Gillard admits that she was responsible for the conduct of—of a property in Melbourne alleged to have been bought with funds laundered through the AWU Workplace Relations Association has also gone missing and cannot be located.

We also learnt, most recently, that the Federal Court files in two matters in the Sydney Registry of the Federal Court, both bearing the name Ludwig and Harrison, in which Mr Bill Ludwig, the President of the Australian Workers Union, sued various people to recover and track down the moneys that had been laundered through the Australian Workers Union Workplace Reform Association, had also gone missing. And I received as recently as yesterday a letter from the Registrar of the Federal Court telling me that, despite exhaustive searches in both the Sydney and Melbourne registries of the Federal Court, those files could not be found.

If the Prime Minister thinks that, by continuing with her stonewalling denials, she can maintain the fiction that there are no more questions to be answered by her about this matter, this scandal, then she is kidding herself. What she ought to do is what Mr Craig Thomson did and make a statement to the House of Representatives next week, fully and truthfully explaining her role in these events.

Senator CAMERON (New South Wales) (15:58): I come to this debate with some experience of the relationship between the trade union movement and the Australian Labor Party. I am finding it very difficult, after listening to Senator Brandis's contribution, to see exactly how his contribution went to the issue that is before the chair. Be that as it may, there have been some great lawyers and some outstanding parliamentarians in the Senate, and I have to say, after that performance, Senator Brandis,
that you have a long way to go to be deemed a great lawyer. One of the great lawyers in this Senate was former Senator the Hon. Lionel Murphy, who went on to become a High Court judge, and he knew a bit about the law. Senator Murphy, back in 1972, had something to say about the role of the Attorney-General—and we have the shadow Attorney-General here, smearing and trying to set up a kangaroo court in the Senate against the current Prime Minister. This is what Senator Murphy said at that time, when he was talking about the conduct of Senator Greenwood. Senator Greenwood was trying to put legislation through this parliament that people should be tried on the basis of their known character. Luckily enough, the Senate had the knowledge and the wisdom not to put through that from the coalition. The then shadow Attorney-General, Senator Lionel Murphy, said:

The Attorney-General must rigidly exclude party politics. The Attorney-General—

And we have Senator Brandis, who wants to be the Attorney-General—

must act in the interests of all citizens…. One of his functions—

it was a bit sexist in those days—

is to determine whether proceedings should be instituted to protect a person facing a charge from prejudicial statements. It is part of the rule of law that persons should not be made the subject of prejudicial statements before their case is tried …

And we have seen plenty of prejudicial statements here from the would-be Attorney-General, Senator Brandis.

To suggest guilt is prejudicial …

You know that.

The publication of any matter indicating bad character on his part or otherwise disparaging an accused may be prejudicial …

It is not necessary to impute guilt. To disparage is enough.

And we have had nothing but disparagement from the coalition against the Prime Minister, who is not charged with any issue. It is about impugning her character and it is about going back to where they were in the late 1960s and early 1970s, where your known character, or what they believe is your character, should affect how the law is implemented.

We should never have Senator Brandis as an Attorney-General in this country if he is so devoid of understanding of the basic principles of the law. I am not a lawyer, but I can understand what Senator the Hon. Lionel Murphy was saying when he outlined these issues. It is not necessary to impute guilt. To disparage is enough. I ask the shadow Attorney-General to think about that. Think about what you are doing, as the would-be Attorney-General of this country, standing there disparaging the Prime Minister, without any evidence, without any basis of fact—

Senator Brandis: Mr Acting Deputy President, I rise on a point of order. Senator Cameron is reflecting on me. In taking the point of order, may I point out that it follows necessarily from what he is saying that no criticism of the probity of the conduct of any member of parliament by another member of parliament in the parliament would ever be allowed.

The ACTING DEPUTY PRESIDENT (Senator Ludlam): Senator Brandis, you know full well that that is a point of debate and not a point of order. Senator Cameron.

Senator CAMERON: I think that goes to the same position that Senator Brandis takes with his legal arguments—you know, misuse the processes of the Senate. It just shows again why Senator Brandis should actually go back and read what Lionel Murphy said in this place back in 1972.
I will leave that just for a minute, because I am not a lawyer. But it is actually nice being able to draw to the attention of the would-be Attorney-General of this country some of the basic principles of the law—some of the basic principles that are being trashed here. We have been through this time and again, and I would have thought someone who was standing up and foreshadowing that they wanted to be the Attorney-General of this country would have some basic understanding of the law and the principles that underpin the law.

I want to come to the proposition we have before us. It is about special relationships. No-one denies that there is a special relationship between the trade union movement and the Australian Labor Party. Why? Because the Australian Labor Party is a labour party—a party representing workers and labour in this country. It is the party that actually stood up for workers when WorkChoices was foisted upon the community during the Howard government. We are a labour party. There is a special relationship. The relationship between the trade union movement and the Labor Party is a root-and-branch relationship. If we stood here every time one of the big business mates of the coalition ended up in court on an embezzlement charge, we would spend a lot of time of the Senate talking about special relationships between corrupt businessmen and the coalition. We would be doing a lot of that.

You talk about special relationships. Let's look at special relationships in the coalition. Look at the special relationships of the lobbyists, who are now becoming a huge force, working away under the surface of the Liberal Party—the lobbyists who have both offices within the Liberal Party and operate as lobbyists. Senator Brandis should know this well, because it has been a huge controversy in Queensland, where Campbell Newman has had to face accusations that lobbyists are getting special privileges in Queensland.

Just look at some of these lobbyists. If you want to talk about the Australian Financial Review and how good the Financial Review is, I would draw your attention, Senator Brandis, to Pamela Williams's two articles back on Friday, 2 November and Saturday, 3 November. She talks about a growing number of top business executives getting phone calls from Santo Santoro—

Senator Brandis: Mr Acting Deputy President, I rise on a point of order. I direct your attention to the terms of the question before the chair, which is: 'That the Senate notes the challenges for good government posed by the culture of the Australian Labor Party and its special relationship with affiliated trade unions'. I accept entirely that a degree of latitude is involved in applying the relevance test to this debate. I accept entirely that it is perfectly in order for a senator to make comparisons between his side of politics and his political opponents—but only in the context of the question before the chair. I respectfully submit that because this is a debate about the Labor Party and the trade unions, not about the Liberal Party, Senator Cameron has trespassed beyond what could be regarded as relevant.

The ACTING DEPUTY PRESIDENT: Senator Brandis, as you yourself observed, these debates do customarily range fairly widely. There is no point of order.

Senator CAMERON: Let us go back to the Australian Financial Review, which was quoted by Senator Brandis, and this issue of special relationships, because this debate is about special relationships. I am happy to have a discussion about the special relationships the coalition lobbyists, who have relationships with big business, have with the Liberal Party, and that is a
legitimate issue here. Pamela Williams, who is a highly respected journalist, says:

It's the phone call a growing number of top business executives receive: Santo Santoro is on the line.

Santo Santoro, a former Liberal senator, is on the line. It goes on:

Santo is your man, they say, if you want something pushed in Queensland by a lobbyist …

But Santo Santoro is not just a lobbyist with rolled-gold cronies across Queensland's Liberal National Party. He is a political fund-raiser on a wider stage, too, personally backed by Opposition Leader Tony Abbott as a federal vice-president of the Liberal Party with the role of helping round up big-dollar donations for the party, ahead of the next federal election. … Which Santoro is it who lifts the phone? The political bagman for the federal Liberals, or the highly paid private lobbyist looking for a contract, who happens to be a party elder with the ear of Abbott and a speed dial in Queensland?

It says that Santoro's political lobbying business has almost tripled in size in one year, from 10 clients in July last year to 28 clients now. How has this happened? It has happened because there is a special relationship. There is a special relationship between Santo Santoro and the Liberal Party.

Is there any doubt that this would be a special relationship of some note, taking up two articles in the Financial Review? Let us go to some of Santo Santoro's clients. If you see the list of clients, and then you listen to the coalition defending a number of businesses around this country, you will see that there is quite a connection between the clientele of Santo Santoro and the arguments put up here defending businesses' rights in this country.

And then we have other special relationships. We have the special relationship that Nationals Senator Barnaby Joyce and the Deputy Leader of the Opposition, Ms Julie Bishop, have with Gina Rinehart. An article in Crikey, which refers to an article in the Age, says:

… Nationals Senator Barnaby Joyce tapped the taxpayer for $2,000 last week to attend the lavish wedding of a granddaughter of an Indian billionaire engaged in delicate negotiations with iron ore matriarch Gina Rinehart to buy two of her Queensland assets.

So here we have a special relationship. We have Gina Rinehart actually flying out the Deputy Leader of the Opposition and Senator Barnaby Joyce to a wedding in India. I just do not understand this, but that is what happened. Gina Rinehart was in negotiations with one of these Indian billionaires to buy two of her properties. So what is being done, according to Crikey, is that she is getting added status. She says to Senator Joyce and to Ms Bishop: 'Jump in my jet. I'll fly you out to India, and you can stand by my side and I'll look pretty good. I've got these senior politicians on my side. It'll show how important I am.'

If ever there was ever a special relationship, that is it. And what did Senator Joyce say about this massive function he went to? He said he'd 'enjoyed a brief encounter with a Bollywood actor'. He didn't get any lessons! When you see Senator Joyce in action, you know the Bollywood actor didn't give him any tips. According to the article, he described the actor as 'India's Brad Pitt' and said, 'I must admit it was absolutely mind-blowing.' So here we have Senator Joyce out at the big shindig in India, flown out by the billionaire—a special relationship, a fantastic relationship. I do not know what he was supposed to be doing. Why would you have two coalition politicians in your jet going to an Indian billionaire's wedding? But there they were. Senator Joyce said it was mind blowing. I do not think he has ever recovered from that mind-blowing experience; it is getting worse every week! But there you go. Why would
he be at this billionaire's wedding? That is a special relationship, and we will just have to wait and see where that special relationship leads us.

Another person who had a 'special relationship' was former Senator Helen Coonan. Helen went off and left here and her seat was still warm when she became a director of Kerry Packer's Crown Ltd, on the payroll of Kerry Packer. That is fine; people can do that. But you cannot simply talk about special relationships without understanding—

**Senator Brandis interjecting—**

**Senator CAMERON:** You have to understand the special relationship of the coalition with all of these billionaires. You have to understand it. That is why they are in here defending the tobacco industry, the gambling industry and the healthcare industry. That is because there is a 'special relationship' between the coalition and big business. Make no mistake about it.

There are some weirder special relationships. Take Senator Mathias Cormann. What about his special relationships? Senator Cormann took a trip back in 2011 to the United States. It is on the public record. He said the purpose of the trip was to explore the United States's economic, fiscal and monetary policy and their approach to financial services and to deepen relationships in the US—it went on and on. What else did he say? He said: 'My visit to the US was an invaluable opportunity to develop contacts to draw on in the future.'

Let us see who he is drawing on. He is drawing on a mob called FreedomWorks. What are they about? They are major supporters of the Tea Party in America. That is why we see all this nonsense all the time from over the other side of the chamber. They went over at public expense to talk to all the loopy people from the Tea Party. Then they came back here and tried to behave every bit as loopily as the Tea Party in the United States. What else do FreedomWorks do? They sell high deductible insurance policies and tax-free medical savings plans to individuals at group discounts. So they are in the private health industry. They are really up to their necks in a whole range of things. One of their main funders is Philip Morris, the tobacco company. These are the types of people that Senator Cormann met over there.

**Senator Brandis interjecting—**

**Senator Cormann interjecting—**

**The ACTING DEPUTY PRESIDENT** *(Senator Ludlam):* Order, senators on my left! Senator Brandis was heard in silence through his contribution; Senator Cameron should be extended the same courtesy.

**Senator CAMERON:** FreedomWorks were also out there funding a campaign against legislation in the American House of Representatives to give rights to people who had contracted asbestos related disease—mesothelioma and that type of thing. These are the types of people that the coalition have a special relationship with. They went over there and talked to people who are trying to stop ordinary Americans getting any access to help, support and money to keep their families going after they have contracted asbestos. That is their approach.

They went to the Cato Foundation. They have a special relationship with the Cato Foundation. They have a special relationship with the Heartland Institute. They say they are a think tank. These are the climate sceptics in chief. They think that there is no global warming and no problem with the climate and it should all just be left alone. I think the Heartland Institute are crazy. I could go on. There is much more.

I have just come across this. I will keep this and I will come back some day and take
you on another walk through the special relationships that the coalition have with big business, with the climate sceptics and with all the nutters in the Republican Party in the United States, and you will say, 'Why do we listen to these people?' Senator Brandis, go and read the biography of the former—

(Time expired)

Senator FIERRAVANTI-WELLS (New South Wales) (16:20): Before I get into the substance of my contribution, I just want to share with the Senate that some senior shadows on the coalition side will be visiting China during the first week of December as guests of the Chinese Communist Party—they are Senator Brandis, Senator Johnston, Senator Scullion and Senator Bishop, along with Mr Morrison and Mr Truss. Just because they are visiting China does not make them communists, Senator Cameron. That is the fallacy in your argument. Indeed, I confess that I myself have visited Vietnam. I visited a number of people in Vietnam, but does that make me a communist? Absolutely not. Senator Cameron, would you describe me as a communist? I do not think so.

I will now move to a number of matters that address the motion before us. Before I do, I would like to pick up on some comments that Senator Bob Carr made today in answer to Senator Fifield. He stated that:

... there was not even an allegation in all those question times over 10 years—all those question times in the bearpit of the New South Wales parliament, regarded as the toughest in Australia.

Which rock are you under, Senator Carr? Did you not listen? Obviously you were not interested in listening to what I had to say yesterday as I reiterated allegation after allegation. Indeed, I only shared with the Senate a smattering of allegations in relation to what has happened in New South Wales. The issue here is for you to answer, Mr Carr. It goes to your very judgement. That is, it was under your watch that Eddie Obeid was made a minister in New South Wales. It was under your watch that people like Mr Macdonald continued to be ministers. What is coming out of New South Wales at the moment, speaking as a person from that state, is absolutely appalling. I am ashamed when I open the newspaper and read those things—the shocking revelations that are coming out of New South Wales and the ICAC hearings.

It is not just the coalition saying so. Kevin Rudd was on Q&A the other evening. He said earlier in the week that the whole future of the Labor Party could depend on cleaning up these matters. Let us not forget that it is the Sussex Street machine that gave us Eddie Obeid, that gave us Ian Macdonald, that gave us the stinking system of patronage, the culture that did really bad things in New South Wales under a series of governments, all of the Labor persuasion. It is the same Sussex Street machine that organised the political assassination of a Prime Minister in this country, an assassination in which the Prime Minister of today was complicit. It is the same Sussex Street machine that has given us political family upon political family, that gave us Karl Bitar and Mark Arbib. We all know their history in this place. This is the same Sussex Street machine which is today sustaining the Labor government in Canberra. That is the reality. New South Wales and Sussex Street and all their dirty machinations have put this woman into power and they are the ones sustaining her in power.

I am sorry that Senator Cameron is no longer in the chamber because he is absolutely right when he says that the people of western Sydney are sick and tired of this Labor government. They saw it for 16 years. They saw it under successive premiers in New South Wales—including you, Mr Carr. The gestation of the corruption that is now finding its way into the public with these
ICAC inquiries had at its heart a time during your government, Mr Carr, because you are the one—

The ACTING DEPUTY PRESIDENT (Senator Ludlam): Senator Fierravanti-Wells, I just ask that you refer to ministers by their correct titles.

Senator FIERRAVANTI-WELLS: Thank you—Senator Carr. Senator Carr, I would remind you—

Senator Williams interjecting—

Senator FIERRAVANTI-WELLS: Senator Bob Carr. I apologise to Senator Kim Carr, sitting across the chamber.

Senator Kim Carr: That's right! Another tearful apology is required here.

Senator FIERRAVANTI-WELLS: You will not get too many tears from me, Senator Kim Carr—don't you worry about that! I am no shrinking violet that gets into tears. Minister Carr had the hide to come into this place yesterday and tell us, in a answer to my question:

There was never a finding against the government I led on the grounds of corruption—never.

Maybe he did not stick around long enough. He continued:

Not once between 1995 and 2005; not about the government I led. Australia's record and that of New South Wales in the years I can speak for is exemplary.

Exemplary! Does he know what the definition of exemplary is? Of course he does not, because if he really knew the definition of exemplary he could never describe his government and what we are seeing in New South Wales today as exemplary.

I would remind Minister Carr that yesterday in this place I trawled through a whole series of allegations—the dates, the person who asked the question from the opposition. Let's airbrush that out of history.

Let's forget the time that you were Premier and all the things that happened, forget the time that you gave birth politically to the ministry of Eddie Obeid and others in this government.

The ACTING DEPUTY PRESIDENT (Senator Moore): Senator, I do not want to interrupt, but everything should be directed to the chair rather than directed at someone else in the Senate.

Senator FIERRAVANTI-WELLS: Thank you, Madam Acting Deputy President. Because Minister Carr obviously was not listening yesterday, let me repeat some of the issues that I raised yesterday again today. On 9 September 1999 there were questions asked of him by the then Leader of the Opposition, Mrs Chikarovski, in relation to the pecuniary interests disclosures of Labor powerbroker Eddie Obeid. She asked him:

… to explain why he—

Mr Obeid—

asserted yesterday that he held no shares in Hapgeti when the company's own annual returns—prepared by Mr Obeid's son—shows the Minister to be the sole registered shareholder?

It is pretty obvious. The documents are on the public record. What was then Premier Carr's response? He ignored the question. Mrs Chikarovski asked:

Is Mr Obeid lying or is he just incompetent?

Then Premier Carr's response was simply to ignore totally any mention at all of Minister Obeid, to basically bat off the question, to stonewall. Stonewalling was invented by Sussex Street. Therefore, the same tricks that have been used for many years—the stonewalling of these allegations in New South Wales—have now found their way into Canberra. That was one example, Minister Carr.

Let us go to 3 September 2002, when there were a whole series of allegations
surrounding then Minister Obeid in relation to the Oasis Liverpool development. Perhaps, Minister Carr, you have forgotten about the evidence that was given up to ICAC.

The ACTING DEPUTY PRESIDENT (Senator Moore): Senator, address your remarks through the chair.

Senator Fierravanti-Wells: Perhaps, Madam Acting Deputy President, Minister Carr has forgotten completely—it was somewhere in the dim, dark days—about the absolutely disgusting evidence that was provided at that time. But Minister Carr yesterday said that there had been no allegations made.

We get to 3 September 2002. Let us have a look at these allegations of attempted bribery by the Minister for Mineral Resources and Minister for Fisheries. Mr Brogden asked the then Premier Carr what steps he took to satisfy himself of the minister's innocence and the Premier said that he had full confidence in the minister, describing the allegations as false and reckless. Premier Carr's response was: 'The Leader of the Opposition would be the only one trying to breathe life into ludicrous allegations.' He completely bats it off as being ludicrous allegations; there was no response whatsoever. On that same day, we had other members of the opposition asking questions. We had Mr Brogden asking supplementaries. We had Mr O'Farrell asking questions on the same point. Indeed, Mr O'Farrell was reminding Premier Carr that Eddie Obeid:

… is the only Minister to have bought his place on the front bench by bankrolling backbench members of the Labor Party. He paid his way into the Ministry, and the Premier ought to reveal to this House the questions he asked the Minister for Mineral Resources, and Minister for Fisheries, Eddie Obeid, about his disclosures, what the ministerial Code of Conduct obliges the Minister to tell the Premier, and why the Premier continues to help a man who tells lies to this Parliament time and time again.

In the end, Premier Carr completely ignores the question. He does not ever respond to questions asked by the opposition. Mr Souris was asking questions in relation to some of the evidence that had been given and some articles that had appeared in the Sydney Morning Herald that morning and about asking Mr Obeid to stand down pending investigation. That was in September 2002.

On 23 October 2002, again Mr Souris from the opposition was asking questions. He said that Mr Obeid had given sworn evidence the week before to a parliamentary investigation looking into his pecuniary interests that he had had no business dealings since becoming a minister, which had been directly contradicted by further sworn evidence. Yesterday I put on the record a whole series of correspondence and indications that Mr Obeid had made to the clerk of the New South Wales parliament going to this very point. Mr Carr's response was, 'I believe the minister answered those questions fully in the Legislative Council today.' He completely batted it off.

On 19 November 2002, in relation to the Valhalla Stables lease, Mr Brogden asked questions of the Premier about a briefing note from the Director of the National Parks and Wildlife Service back in 1988, when Mr Carr was minister for the environment. That briefing note referred to the minister requesting that the service review the request of Eddie Obeid with a view to providing alternatively worded provisions that could meet the requirements of the lease. This related to Mr Obeid's Valhalla Stables snow lease development and so forth. Forget it—Mr Carr refused to answer, despite the specific questions that the opposition were asking and the specific allegations they were putting to him on that occasion.
We then come to 30 October 2003. Again, questions were being asked of the Premier in relation to the personal business interests of former ministers, including ministers Face, Allan, Whelan, Knight and Obeid. The Premier was asked whether he could give guarantees that none of his former ministers or parliamentary secretaries had used their positions to set up businesses or jobs to fund their retirements. Again, Premier Carr simply dismisses it—no issues, no research on the other side. There ain't anything happening that the opposition can get its teeth into. Then there was this classic comment from Premier Carr: 'I have often said that this is the period of best governance in the history of New South Wales.'

An opposition senator: That's what they thought!

Senator FIERRAVANTI-WELLS: That's what they thought—wonderful governance. What a great example of governance! And here is Minister Carr refusing to answer questions asked by the opposition in this place in relation to corruption conventions and the like. Goodness me—with a history like this in New South Wales, it is a wonder that he is not an expert in the field. I am sure that his meetings with all sorts of people in this area will be very interesting.

The issues before the ICAC inquiry at the moment go to the very heart of Mr Obeid's suitability to have remained in parliament, let alone be promoted to the ministry. They go to the question of the judgement of then Premier Carr, who promoted him to the ministry. They go to the very heart of the corruption over those years that saw a two-way protection racket. The question remains: who was protecting whom and why were they protecting them? How much damage is being done to Australia's good standing as a country and to New South Wales's good standing as a state in which to do business as a consequence of the evidence of serious corruption that is now emerging from the ICAC inquiry?

Mr Obeid and Mr Macdonald were both men that Mr Carr saw fit to include and retain in his ministry during the time that he was Premier of New South Wales, most especially in the case of Mr Obeid, whom he frequently and vociferously defended and protected when serious questions about his integrity were raised. This is what this is about. This is what the opposition's legitimate questioning of Minister Carr is about now. It goes to his judgement, just like the questions that are being asked of the Prime Minister about her time at Slater and Gordon go to her judgement, to her integrity. That is what it is about.

Minister Carr, it is wrong when you come into this place and assert that no allegations were ever put to you by any member of the opposition in New South Wales. That is blatantly wrong. What I have referred to today is only a small example of the many allegations over a long, long time in New South Wales put to you and other Labor premiers about issues going to corruption in New South Wales. It is my strong belief that, in the ICAC inquiry which is currently on foot, we will see ongoing revelations about those years in New South Wales. It really is very sad for the people of New South Wales that they daily see the decadence and the corruption that occurred for many years. If that is exemplary government—to use Minister Carr's words—I do not know what bad government is.

Senator McEWEN (South Australia—Government Whip in the Senate) (16:40): I too would like to contribute to the debate on this motion. What we have seen here from the opposition today is more muckraking, more negativity, more trawling over ancient
history, more sleaze and more personal vilification—all of those things that they specialise in, things that they have learnt from the opposition leader, Mr Tony Abbott. We notice that he has withdrawn from that sort of attack line at the moment, because he knows that it does not wash with the Australian public and he knows that the Australian public does not like it. So, instead, he sent out his attack dogs—the masters in sleaze, the gutter dwellers: Senator Brandis and Senator Fierravanti-Wells, and I know we are going to hear Senator Ronaldson making loud pronouncements, for sure, following me. We saw the same thing happen in question time. You would have thought that the opposition might use this general business time to debate something that is really important. I know, for example, that if I were in my home state of South Australia today, my constituents would probably be asking me questions about the Murray-Darling Basin Plan. That is the news story of the day. That is what is really important to people in my state—how the government has acted, after a long period of time and a long period of consultation, to introduce a plan that is genuinely going to support South Australia, that is going to restore our river to health and support our river communities. That is what is really important in South Australia. But, instead, we have got the opposition gutter dwellers here reading out excerpts from their favourite newspaper, the Australian, and reading out transcripts from the ICAC inquiry that is currently happening in New South Wales. I would not want the public to think that the opposition are actually doing any of their own research. They just recite what is already in the public sphere. Do not think they are smart or clever or anything like that; they just pick up on what is already being talked about out there.

It continues the opposition's long campaign of denigration of our Prime Minister. They have been doing that for a long period of time. I think they will wake up fairly soon to the fact that the Australian public do not like that either. Perhaps that is why they are turning their attention now to Australia's Minister for Foreign Affairs, Senator Bob Carr, one of Australia's most important public figures, who is engaged in some of the most important debates not just in this country but in the world. But what do they do? They come in here and trawl through the history of the New South Wales Labor Party and the New South Wales government in the 1990s. My goodness me!

This motion is about the relationship between the Labor Party and the trade union movement, and I am more than happy to talk about that relationship and about the culture of the Labor Party. The relationship between the Labor Party and the trade union movement has delivered great benefits for working people in Australia—for all Australians and their families—and that relationship continues to deliver benefits. I am going to trawl over a bit of ancient history myself in my contribution today by talking about what that relationship has delivered for Australians, because it is always worth reminding ourselves how important it is.

The Labor Party was formed as the legislative arm of the labour movement. It was formed so that issues of importance to working Australians could be prosecuted in the parliament.

Senator Williams: There are no shearers over there now.

Senator McEWEN: Yes, Senator Williams, the Labor Party certainly arose out of the great shearers' strike. We know that and we are proud of that history. We celebrate that history.
Unions are collectives, collectives formed to pursue the interests of their members—working Australians and their families. Together, the Labor Party and the unions have worked together for good in this country. I will outline some of the good things they have done, but first I wanted to say that I am very proud to be a member of a trade union. I have been a union member for many years. I am a member of the Australian Services Union and I was formerly a member of the Federated Clerks' Union. I have been a union delegate in my workplace, I have been a union official and I have been a union secretary.

I have worked with many union officials and, in my experience, most of them, like ordinary Australians everywhere, work very hard. They are honest, hard-working and committed people who use whatever talents, skills and opportunities they have to support other people in our community. If there are exceptions in the trade union movement, just as if there are exceptions in the employer community, amongst politicians or anywhere else, and if people are misusing members' funds, they should be subject to whatever processes are available. The issues should be investigated to determine whether there has been any wrongdoing and those responsible for any such wrongdoing should be punished.

But the opposition continues its smear campaign about union officials. It is all part of their plan to destroy unions. They do not like what unions stand for, they do not like collectivism, they do not like a fair go and they do not like to see working people and their families effectively represented. Unions stand in the way of the opposition's determination to implement a workplace relations system in which protections for workers are minimal and in which opportunities for bad employers to exploit people are maximised.

I was tempted to use my contribution to revisit the saga of Work Choices, to revisit the underlying extremism which fed Work Choices and to revisit the pathetic attempts by the coalition during that period in 2005 to try and hoodwink the Australian people by pretending that they actually cared about working Australians and that Work Choices was going to be good for working Australians. The people of Australia were not hoodwinked; they saw right through you. We saw the result of that in the 2007 election. I should also mention that Mr Abbott was front and centre during that industrial relations debate. We know that in his little heart—if he has one—he secretly harbours the hope that one day Work Choices will come back in some other guise. And he has a chorus of supporters over there who would also like to reintroduce it.

This motion gives us the opportunity to reflect on what unions and the Labor Party have achieved and I will outline a few of those achievements. As an example, did you know that we would not have paid annual leave had it not been for the trade union movement? It was one of the great early achievements of the union movement when the arbitration commission granted workers paid leave back in the 1930s. It started off at one week, went to two weeks and now the standard is four weeks. It was a long campaign by the union movement working with the Labor Party to introduce that basic right.

We would not have industrial awards and all the protections they include for working people had it not been for the trade union movement. Since 1904, we have had industrial awards to underpin pay and conditions for working people. We know that the opposition wanted to destroy those awards and still does. They have been dreaming about a free-range, no-protection kind of workplace relations system—
probably ever since the Labor Party was first created.

We can thank trade unions for penalty rates, penalty rates which compensate people who have to work unusual hours, longer hours or when other people are not working. We know that penalty rates were one of the things targeted by the opposition in Work Choices. They wanted to get rid of penalty rates altogether.

The union movement can also claim responsibility for maternity leave. For paid maternity leave we can thank the Australian Labor Party, who introduced the first paid parental leave scheme in Australia. Many of us in this chamber were early participants in the campaign to get parental leave included as standard in awards.

We can thank the union movement, together with the Labor Party, for universal superannuation in Australia—a fantastic achievement of a great government, the Keating Labor government. It took a long time to bring that in, too. The union movement worked with employers and government to bring it in as part of the Accord. I read somewhere today that Minister Bill Shorten has announced that investment in Australian superannuation has reached $1.5 trillion. That is a phenomenal investment in Australia's future. It is this Labor government which is working to increase superannuation savings for the Australian people and it is those people over there who do not like superannuation and who would like to get rid of it.

Another thing we can thank the union movement and the Labor government for is the pursuit of equal pay for women, something that I know you, Madam Acting Deputy President Moore, me and many other people on this side of the chamber have campaigned long and hard for. We were proud of the union movement—my union, the Australian Services Union, in particular—and the Labor government working together to bring about the pay equity case. That outcome of that case will be to deliver, for the first time ever, decent wages for those people in our community who work to support people with disabilities, who work with families in distress, who care for elderly people and who do all those sorts of jobs. Those jobs have always been undervalued because they have always been done mainly by women. The people in those jobs deserve the recognition that has now been delivered—delivered as a result of the equal pay provisions that this Labor government put into the Fair Work Act. I note that some 150,000 Australian workers, most of them women, are going to get pay increases of between 23 per cent and 45 per cent as a result of that.

Another great achievement of state and national Labor governments, working with the trade union movement, was the introduction of workers compensation schemes. These schemes provide income, support and rehabilitation services for people who have been injured at work. Those schemes would never have been introduced if it had not been for the long campaigns by the union movement to ensure that people who were injured at work through no fault of their own were compensated. We would not have sick leave if it were not for the union movement, which campaigned very hard to ensure that when people were sick they could still get some pay. Now we take these things for granted, but we should never be complacent about ensuring that these benefits are retained.

The union movement can be thanked for long service leave. It was the coal workers who went on strike in 1949 over the long service leave issue, and now of course long service leave is a universal entitlement and one that Australia is very proud of. It is a
rare thing in the developed world—indeed, anywhere in the world.

We can thank the union movement for redundancy pay for workers who lose their jobs through no fault of their own. If it had not been for the union movement we would still be in a situation where people could be made redundant or lose their jobs and have to walk away without any compensation. We know also that the Labor government introduced the GEER Scheme, which ensured that, where an employer had to make people redundant because the employer itself was broke, workers would not miss out on all of their entitlements and some would still be paid through a government funded scheme.

We can thank the union movement for other things, like shift allowances and uniform allowances and meal breaks and rest breaks. We can thank them for unfair dismissal protection—again something that the opposition hate. They hate the fact that working people have some redress in a court that is accessible and free in the event that they are unfairly dismissed by their employer. They are just some of the things that the labour movement has introduced, the unions and the Labor Party working together.

It is worth going through the history of Labor governments in Australia and highlighting a few of the other things that Labor governments have introduced. This is a debate about good government. Labor governments are good governments, and they are good governments because they have introduced measures like the ones I am about to mention. The Fisher Labor government in the early 1900s was the first to introduce a payment to mothers on the birth of a child—what we later called child endowment—and it was the first government to legislate for a national workers compensation act. The Scullin Labor government increased social services payments for people during the Great Depression so that people had a bit of an income to protect themselves through that terrible time. The Curtin Labor government in the 1940s introduced the widow's pension and increased child endowment, and it began funding public hospitals for the first time. The Chifley Labor government was the first to recognise the value of immigration and assisted people to come here to help build our great nation. It was the Chifley Labor government that began building the Snowy hydro-electric scheme, a typically visionary Labor initiative. It employed a lot of people and provided a lot of energy for the developing states of New South Wales and Victoria. The same government played a major role on the international stage by helping to write the Universal Declaration of Human Rights that has become the basis for protecting human rights throughout the world. A little bit of history from South Australia is that it was also the same government that helped create the Holden motor company, Australia's first car company—again, the kind of visionary Labor initiative that we are very proud of.

The Whitlam Labor government took our troops out of Vietnam and got rid of the White Australia policy—fantastic initiatives. It opened Australian relations with China, increased the age pension and brought in the Racial Discrimination Act. The Hawke Labor government brought in Medicare. Who over there wants to get rid of Medicare? All of them. The Hawke Labor government intervened in Tasmania to protect the Franklin River from damming—action I was very proud of. It also led efforts to protect the Antarctica from mining and exploration, yet another thing I was very proud of. They were great environmental initiatives from a great Labor government. Of course it also introduced the Sex Discrimination Act and the Equal
Employment Opportunity Act, which provided security for women in the workforce and paved the way for other antidiscrimination legislation that Labor governments have continued to pursue since that time. I have mentioned the Keating Labor government and superannuation. We should also remember that the Keating Labor government recognised native title through Mabo legislation and it helped to create the Asia-Pacific Economic Cooperation Forum. That great government freed up the Australian economy and brought us into the modern world and, again, it paid attention to issues such as sex discrimination as well.

While the opposition are using this debate to continue their sleaze and smear campaign against the Prime Minister and other members of the government and their campaign against union officials and are continuing to trawl over ancient history and read out bits of the Australian, Labor senators are taking the opportunity to highlight the value, the importance and the goodness of the labour movement in Australia, with that special relationship between Labor governments and the trade union movement. We have nothing to be ashamed of over here. Those opposite can sling as much mud as they like; we can proudly say that we have a lot to be proud of in the Labor movement in Australia, with that special relationship between Labor governments and the trade union movement. We have nothing to be ashamed of over here. Those opposite can sling as much mud as they like; we can proudly say that we have a lot to be proud of in the Labor movement in Australia and, while people are listening to this ridiculous debate and the contributions from those on the other side, perhaps they would like to take some time to remember that all of those things that I talked about today, all of those good things that have been implemented by the Labor movement, would have been opposed by those opposite. Have we heard any policy from them today? Have they come up with any alternative policies, any big picture stories, any good news? No, it is just another afternoon of negativity, mud throwing, sleaze and trawling around in the gutter, and now we will have a contribution from the ace gutter dweller, Senator Ronaldson.

Senator RONALDSON (Victoria) (17:00): I am sure my good friend Senator McEwen was not calling me some of those appalling names! But I will say this: I find it highly amusing that Senator McEwen has invoked the roots of the Labor Party to talk about Australian shearsers. There would not be one senator or one House of Representatives member who would know a shearer if they fell over one! There would not be one member of the Labor Party in either house, quite frankly, who knew what grease remover for hands was. You would probably know what hand moisturiser was, but you would not know what grease remover for hands was. There is no-one in this place with any understanding of Australian workers anymore; you are completely unrepresentative of Australian workers.

Nothing was better evidence of that, quite frankly, than a recent notice of motion put forward by the Leader of the Opposition in the Senate, Senator Abetz, in relation to Mr Craig Thomson. I will just read it, out of interest, so that everyone is acutely aware of it:

The Leader of the Opposition in the Senate (Senator Abetz), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 804—That the Senate—

(a) notes findings by Fair Work Australia that Mr Craig Thomson misused Health Services Union members' funds for sexual services, personal travel and entertainment and to secure a seat in the Federal Parliament; and

(b) condemns the misuse of union members' funds as found by Fair Work Australia.

You would have thought that a party that was protecting workers would have supported that, particularly in relation to the
misuse of union members' funds. Oh, no. Where was Senator McEwen when it came to this? Where were the rest of the Labor senators when it came to this? Where were their partners in crime, the Greens, when it came to this? They voted against a motion which condemned the misuse of union funds—the funds of the very same people they pretend to represent in this place.

Everyone knows that three-quarters of Labor senators are ex union bosses. That is a fact. It is an undeniable fact. Put that on the back of the motion today for the Senate to note:

... the challenges for good government posed by the culture of the Australian Labor Party and its special relationship with affiliated trade unions.

Then put that in some context: look at what they have actually done in the last 12 months—look at what they have done in relation to the misuse of union funds. So how are you protecting the workers? As I say, you would not know a shearer if you fell over one. You no longer represent Australian workers. The roots of the Australian Labor Party were torn up and thrown out years ago. You could not even find your way to Creswick, most of you people. You have absolutely no idea. You do not represent workers. You have not represented workers for a long, long time.

I found the discussion today about the Leader of the Opposition and the Prime Minister very, very interesting. Isn't it remarkable? What we saw today was that you are happy to throw the mud, but when legitimate questions are posed—and we noticed the arrival of Ralph Blewitt in the country the day before yesterday—about the behaviour of the Prime Minister of this country, all of a sudden it is mud-slinging.

But I want to take you back, as I mentioned the other day, to the genesis of the quite remarkable, dirty and vile attack on the Leader of the Opposition. I just want to, again, refer to Mr John McTernan, who, of course, was an adviser to the British Labour Prime Minister, Tony Blair. I just want those on the other side to listen to these comments. As I said the other day in this place, they were in an article by Mr Chris Kenny in the Weekend Australian and I just want those opposite to listen as I quote from that article:

In a column for Britain's Daily Telegraph in 2010, McTernan declared: "The Coalition has a problem with women."

Now where have we heard that before? Where did we hear that in the last month? Well, of course, we heard it coming from the Prime Minister and a large number of government ministers, and this was on the back of the McTernan tactics—the great mud-slinger of the Western world. And this article goes on:

He argued spending cuts proposed by the Conservative and Liberal Democrat Coalition in Britain were unpopular with female voters. "This gender gap is a real and pressing problem for (British PM David) Cameron," he wrote.

Last year another column on law and order issues was headed: "How many women today feel the Coalition—this is the British coalition—is protecting them?" And just in case you missed the angle, a few months later McTernan focused on women promoted in British Labour's reshuffle, turning it against Cameron: "The PM has a problem with women and he knows it."

Straight out of the McTernan manual was the attack on the Leader of the Opposition a month and a half ago—straight out of the McTernan manual for dirt and grubbiness and personal attacks. This man was brought into this position by the Prime Minister of this country to achieve what he has achieved in relation to an abuse of that office and indeed an abuse of her as a Prime Minister and an abuse of proper process. You on the
other side should be hanging your heads in shame, because you know exactly why he is in this country. You know he is in this country to denigrate the Leader of the Opposition and senior coalition members, and you sit there mute when you know exactly what has been done. There are some decent people on the other side who surely cannot countenance this sort of behaviour, and you should be standing up and saying you are not prepared to do it.

I will get back to the Prime Minister. The Prime Minister can run but she cannot hide in relation to the slush fund affair. There have been some quite legitimate questions posed by some in the Australian media. As I said the other day, the conga line of apologists will never pursue it, but there are those in the gallery—this gallery and other galleries—who have the intestinal fortitude to pursue these matters, and they have put on notice quite legitimate questions that this Prime Minister must answer. And she refuses to do so. If she has a realistic and real answer to those questions, then good; that will be the end of the matter. But you do not have a press conference for an hour on the back of one misplaced word—'trust' instead of 'slush'—without any warning at all about what the matter would involve and then walk away, refuse to say anything more and then hang your shingle on the back of that hour-long press conference based on the back of one misused word: 'trust' instead of 'slush'.

This Prime Minister has simply got to go into the House of Representatives next week and answer the questions that have been put to her. They are legitimate questions. There have been denials to date but there is new information and many, many people have now come out to confirm the alleged involvement of the Prime Minister. If they are wrong, then let us hear the Prime Minister say so personally, in the other place, and give a full, open and proper account of her involvement in the slush fund affair. The Australian people deserve no less and the other place deserves no less if, indeed, Ms Gillard's denials are found to be untrue. The onus is now on her to answer these questions.

This is a matter of trust, and the Australian people have lost trust in this Prime Minister. Indeed, one of the Prime Minister's own, Darren Cheeseman, made that quite clear earlier this year. Mr Cheeseman is the ineffective member for Corangamite. He is ineffective, ineffectual, but he is the member for Corangamite at this stage. What did Mr Cheeseman say about the Prime Minister? He told the Sunday Age earlier this year that, 'many rank-and-file MPs had concluded Ms Gillard's leadership was now "terminal"'. He then said, 'There's no doubt about it, Julia Gillard can't take the party forward.' And here is the telling comment in relation to trust, the telling comment in relation to where this Prime Minister is, and the telling words in relation to the requirement for the Prime Minister to come into the other place next week and put on record any denial of the allegations that have been made against her. This is what Mr Cheeseman said: The community has made its mind up on her.' What do you think he might have been referring to? I think he might have been referring to the trust issue. His view is that his community has lost trust in this Prime Minister. Trust is one of those fundamental hallmarks of leadership. Trust must be attached to a nation's leaders. Mr Cheeseman has made it quite clear that neither he nor his constituents trust this Prime Minister any longer.

I want to turn now to two separate matters which are, I think, causing enormous angst. The Little Creatures brewery, which is part of the Lion Group—
Senator Chris Evans: It's a very good drop.

Senator RONALDSON: I am glad you said that, because remarkably, that drop is not going to be brewed in Geelong. Nor, potentially, will $60 million be spent by the company; nor, potentially, will there be 100 jobs created, because the CFMEU and the AMWU are picketing the construction of the Little Creatures brewery. So you might enjoy a drop, Senator Evans, but you will not be enjoying a drop coming out of Geelong unless these two unions—against whom an injunction had been granted—allow the construction to continue. There will not be any of your favourite drop coming out of Geelong, Senator Evans.

The ACTING DEPUTY PRESIDENT (Senator Moore): I remind you, Senator, that those comments should be directed through the chair, not across the chamber.

Senator RONALDSON: Indeed, the last person I would call 'Senator Evans' would be you, Madam Acting Deputy President, I can assure you of that.

What was said by some of those who are actually trying to drive investment in Geelong? I will go to the Geelong Advertiser—a very fine paper indeed—of 30 October. The Geelong Chamber of Commerce was quoted in the Geelong Advertiser:

"It sends the wrong message to people who want to invest in Geelong," executive officer Bernadette Uzelac said. "We should be making things easier to do business and invest in Geelong and not harder."

What did the Geelong Advertiser editorial say in relation to this, following an intervention by the Premier of Victoria, Mr Ted Baillieu, who expressed his outrage at the behaviour of the unions? The editorial on 20 July said:

Premier Baillieu is right to air the same concerns we did in this space last week when we said we feared for the impact this dispute might have on would-be investors in Geelong.

The editorial went on:

This dispute has to end now. The longer it continues, the more negative impact on future investment it will have and, the more indifference will be shown to the spirit if not the letter of the law.

Developments like this brewery are very important for our community.

Industrial action like we are seeing in South Geelong—despite court orders—does not send a great message to any company looking to establish a business here.

You would think that the local members would have some comment to make about this, because those picketers were there this morning. So I will go through the comments made by the local members. The first was a hard-hitting comment from the member for Geelong, Ian Trezise. He is a charming fellow but, like Mr Cheeseman, highly ineffectual. He is quoted in the Geelong Advertiser on 31 October:

Member for Geelong Ian Trezise urged the company and the unions to sort out the issue as soon as possible.

That is an inspired intervention! But it is probably more inspired than two other interventions that have not been made. We have heard what the Geelong Advertiser has said about the risk to investment into the great centre of Geelong in regional Victoria. We heard what the Chamber of Commerce said about the potential impact of this union picket line, which was found to be illegal, on Geelong. We know that it is going to cost, potentially, a $60 million investment and 100-plus jobs, so one would think that two people in particular might have a comment about this. The first person would be Mr Darren Cheeseman, the current member for Corangamite. The second person, you might
think, would be the member for Corio, Mr Richard Marles. I will ask my colleagues to guess at how many comments were made by these two gentlemen in relation to the risk that Geelong faced. Who would like to have a guess?

Senator Fifield: This many!

Senator RONALDSON: 'Two,' Senator Fifield says.

Senator Fifield: No; this many!

Senator RONALDSON: None. You were right the second time, Senator Fifield. Not one single word was said, or has been said, by the member for Corangamite or the member for Corio in relation to a dispute which has been found to be illegal. It is a dispute that will potentially put at risk $60 million of investment and 100 jobs but there was not a word. Why do you think that might be? I will tell you why it is. It is because of that unholy alliance. The alliance between the Australian Labor Party and the Greens is an unholy alliance but there is an unholy alliance between the Australian Labor Party and union members who have turned out, in Geelong, to be nothing but thugs. As we saw with the Grocon dispute, they are nothing but thugs.

Where were Darren Cheeseman and Richard Marles when this was going on? Where were they standing up for investment in their own region? They go and talk the talk but they never, ever talk the walk in relation to looking after and supporting the region of Geelong. They have not said a word. And they have not said a word because of the unholy alliance between them and the union movement. They have effectively been silenced by a union movement that is so powerful it can change a Prime Minister. These two political wimps did not have the intestinal fortitude to make a single comment about this dispute.

You have heard what the Geelong Chamber of Commerce said and what the editorial in the Geelong Advertiser said. This required these two men to stand up for their region and it required these two men to tell the unions to back off and let the investment take place. And they were completely missing in action. They are still missing in action, because their obligation is to the Australian union movement. Their obligation, clearly, is not to those who elected them or those who are part of their wider constituency. And that is what Senator Fifield's motion is about today. It is about the fact that we are seeing, again, further proof about who owes whom, and it is not about the people of Geelong. (Time expired)

Senator MARSHALL (Victoria) (17:20): It is always fun to follow Senator Ronaldson!

Senator Ronaldson: I think you do it on purpose.

Senator MARSHALL: It is because I come in for the show. But it is all show and no substance. Actually, it is like watching a Punch and Judy show with only Punch. There is no Judy; there is no Judy at all. There is no substance in what Senator Ronaldson has to say.

Let us go back to the very start of Senator Ronaldson's speech, where he decided that everyone on this side of the chamber was a union official and had no other work-life experience, and that we would not even know a shearer if we fell over one. Let me say this: there are three people on this side who have spoken in this debate. First of all, Senator Cameron is a fitter and turner. He worked as a fitter and turner for most of his working life. That is what he was. The second speaker from this side was Senator Anne McEwen, whose first job was as a tea lady in a solicitor's firm and who then worked for most of her working life as a clerical worker.
I am the third Labor person to speak and I am an electrician. I did an electrical apprenticeship and worked a large part of my working life as an electrician. So, Senator Ronaldson, you say that we have not had our hands dirty and that we have no real experience in life but it is simply untrue. It is a demonstration of all show but no substance, which we are very used to from you, Senator Ronaldson. But you are not alone; there are plenty on your side who do that.

Then we heard this little tirade about the Prime Minister and all the things she has to answer. But, strangely enough, I listened to Senator Brandis, Senator Fierravanti-Wells and then Senator Ronaldson in this debate and not a single accusation was made nor a single question put that required an answer—not one. It was just this 'round the world' general muckraking and accusations that other people apparently have made but not saying it here, not even making the point once. Quite frankly, it is a nonsense.

But let me go to what the real substance of this debate is. It is about the special relationship between the Labor Party and the trade union movement. And it is a special relationship. I would not for one moment seek to distance the Australian Labor Party from the fine tradition of the union movement in Australia. It is a close relationship with working people and their representatives. It may be viewed as a source of embarrassment over in the opposition's headquarters, but it only goes to show how out of touch they are with the everyday lives of working people.

As I said, I am a senator who worked for many years as an A grade electrician. I am also a former shop steward and a former official of the Electrical Trades Union. I am very proud to follow in the footsteps of my many predecessors in the Labor Party who began their working life on the shop floor before going on to devote their careers to improving the lives of their fellow workers right across Australia. And our party is full of those people and I am proud to be one of them.

There are, from time to time, in all walks of life and in all professions people who do not do as we would like them to do, whether it be in the judiciary, politics, business and, unfortunately, sometimes the union movement. There are people who do not act as we would like them to act. Recent examples will be before the courts. Those matters will be tested before the courts where they are properly to be tested and, if the accusations made about some in the trade union movement are true, none will be more disappointed than the people of the trade union movement and the labour movement and I will be one of them. I will be incredibly disappointed. But just because one of our colleagues may be found guilty in the future does not tar people on this side of the chamber nor former union officials.

Given that Senator Fifield is himself the grandchild of a widely respected former federal secretary of the former Printing & Kindred Industries Union, Mr Bert Fifield, I am surprised that he would seek to tarnish his own legacy by denigrating the proud history of the trade unions and what they have achieved through their relationship with the Labor Party. Just because there may be people in the trade union movement on this side who have done wrong does not take away his legacy in respect of his grandfather and nor does it take away anyone else's. As I said, unfortunately, you have only to go to the court system and see people who are accused of doing wrong from all walks of life. I know through my personal experience that the vast majority of union officials, union activists and indeed union members...
are hardworking, committed and dedicated people. I am proud to be part of that group.

I just want to go through a little bit of history, because the author of this motion is obviously incredibly ignorant of the background of the Labor Party and the trade union movement in this country. The first working class member of parliament was Charles Jardine Don. He was elected to the colonial government of Victoria in 1859, with the support of the Trades Halls Operatives Reform Association. As members of parliament were not paid for their service until 1870, Mr Don would work as a stonemason during the day and attend parliament at night. The need for political representation of the trade union movement became even more apparent over the following years and this was highlighted when the efforts of trade unions to improve the lives of working Australians through collective action, from 1890 to 1894, were thwarted by the vested interests of the colonial governments of the time. The Labour Defence Committee expressed the need for political representation of everyday Australians in the following words. If we are to:

radically improve the lot of the worker we must secure a substantial representation in Parliament. Then, and only then, can we begin to restore to the people the land of which they have been plundered, to absorb the monopolies which society at large has tended to create, and to ensure to every man, by the opportunity of fairly remunerated labor, a share in those things that make life worth living.

It was in the spirit of this fine sentiment that the first conference of the Australian Labor Party was held in 1891. Later that year Labor won 37 seats in the New South Wales parliament and, in 1893, 16 Labor candidates successfully stood for office in Queensland, 10 in Victoria and eight in South Australia. Finally, the aspirations of Australian workers were represented in parliament by Australia's first clearly differentiated political party and that was the Australian Labor Party.

We have always had a link to the trade union movement and I for one am absolutely proud of it. I can only ask: what aspect of this relationship between the trade unions and the Australian Labor Party could possibly be considered to be a barrier to good government, as the motion suggests?

It is easy to take our quality of life in Australia for granted but decent jobs with decent pay and conditions are not natural facts. Australian workers do not get paid well by international standards because we have a uniquely generous employer class; they are paid more because of the efforts of generations of working Australians who banded together in the spirit of a fair go for all. The Australian labour movement and their parliamentary representatives have made tremendous gains on the most important issues for workers and their families—wages, hours, representation, leave, security and safety.

In 1828 a convict shepherd was sentenced to 500 lashes, one month in solitary confinement on bread and water and the remainder of his sentence in a penal settlement for inciting his master's servants to combine for the purpose of obliging him to raise their wages and increase their rations. He got that penalty because he tried to take collective action to improve their wages, improve their rations and improve their conditions.

Perhaps understandably, the first record of an Australian trade union does not appear until what is thought to be the first general meeting of the Australian Society of Compositors in the Crown and Anchor in George Street Sydney on 21 February 1839. By the mid 1850s, approximately 20 trade unions had been established and in 1856 they
made their first gain, reducing the hours of the then six-day working week from 58 hours to 48 hours with no reduction in pay. To this day you can see a monument to the eight-hour day across from the Victorian Trades Hall council in Melbourne.

In 1946, the ACTU lodged a claim for a 40-hour week. It argued that shorter hours would make workers more efficient and the booming economy could afford it. Two years later, the case was won and the 40-hour week began on 1 January 1948. Today, working hours are on the increase again and the Australian Labor Party, along with trade unions, remains alert to the erosion of the hard-won workplace conditions that are taken for granted all too often.

The Australian labour movement has fought and continues to fight for improved work-life balance for all Australians through access to leave. In 1941, the labour movement—the ALP and the union movement—won conditions like sick leave and one week of annual leave. In 1946, we increased annual leave to two weeks. In 1953, we achieved long service leave. In 1963, we increased annual leave to three weeks and then increased it again to four weeks in 1970. In 1971, we won the right to maternity leave. In 2001, we extended the benefits of maternity and carers leave to casual employees. In 2010, we guaranteed the rights of Australian workers under the National Employment Standards of the Fair Work Act, ensuring, amongst other things, that working parents would have the right to request flexible working hours to care for their children.

In 2011, the labour movement was responsible for extending 18 weeks of paid parental leave to hundreds of thousands of working parents and from 1 January next year Australians will be eligible to apply for two weeks of dad-and-partner pay, again thanks to the labour movement as a whole. That is just a very small snapshot of all the benefits that have been gained by the labour movement over the last century, and then some. The struggle to achieve those benefits is widely forgotten but nonetheless Australian workers enjoy them and they benefit from them, thanks to the labour movement. They are not thanks from benevolent employers; they are thanks to the labour movement. Does the opposition honestly believe that Australian workers will resent the relationship between the ALP and the trade unions when they take a week of leave to enjoy Christmas with their families this year? I do not think so.

For decades, women doing the same work as men were paid just a fraction of men's salary. In line with societal norms of 1907, Justice Higgins in establishing the basic wage ruled that a man's wage must be enough to feed and clothe his wife and family. A woman's wage was to pay only for herself. A landmark ruling in 1969 smashed through the discrimination and by 1974 all women were finally entitled to equal pay for work of equal value. The labour movement achieved that.

Just this year, the Australian Labor government, along with the Australian Services Union and the CPSU were successful in their application for equal pay for workers in the social and community service sector, achieving a historic pay increase of between 19 per cent and 41 per cent for 150,000 of Australia's lowest-paid workers, the vast majority of whom were women. Does the opposition honestly think that these workers resent the relationship between the Labor Party and the Australian Services Union and the CPSU? I do not think so.

From as early as the 1960s a number of unions achieved superannuation for their
members in established industry funds. This led to a wider push amongst unions to ensure that working people would be able to enjoy a decent level of retirement income. In the 1986 National Wage Case, the ACTU argued and won three per cent universal super for all award workers. Compulsory super has since risen to nine per cent through a legislated super guarantee charge negotiated under the accord in 1991.

Reform of taxation and superannuation by the Australian Labor Party this year will result in a 30-year-old person on an average full-time income receiving an estimated $100,000 extra in retirement savings. Does the opposition think that these workers will resent these savings on retirement? Will they decry the relationship between the Australian trade unions and the Australian Labor Party that led to these retirement savings? I do not think so.

The Australian Labor Party governs for all Australians. Is the opposition honestly proposing the government should ignore the ideas and aspirations of millions of trade unionists, millions of trade union members who contribute to Australia's society and economy? Is that what good government is supposed to look like to those across the chamber? When 180,000 unemployed Australians asked conservative Prime Minister Stanley Bruce for work in 1927, and Bruce replied that it was not his business, is that what good government looks like to the opposition in this chamber? When Patrick Corporation unleashed the attack dogs in the waterfront dispute in 1998 with the backing of the coalition government, was that what good government looks like to the coalition?

What about the former ACTU President and Australian Prime Minister Bob Hawke's government—a government that cooperated with unions to launch the accord, a mechanism to bring inflation under control, promote jobs growth and investment, and implement social wage improvement? Perhaps I think that is what good government looks like. What about a government that consults with both working people and their employers? What about a government that works with the Textile, Clothing and Footwear Union of Australia to protect exploited outworkers in the textile, clothing and footwear sector?

What about a government that works with the United Firefighters Union to ensure that firefighters dying of cancer from occupational-related causes get adequate compensation? Those are just two examples of government action taken this year in response to consultation between the Australian trade unions and government. The culture of the Australian Labor Party and its relationship with trade unions is no cause for alarm for firefighters or textile workers—far from it. I think they appreciate the special relationship between the trade union movement and the Australian Labor Party. The special relationship that alarms Australian workers is the relationship that exists between the big end of town and their coalition mouthpieces, a relationship that compels the coalition to demonise the union movement at every available opportunity, not in spite of the achievements they have made on behalf of everyday Australians, but because of them.

We are the government that got rid of Work Choices. We are the government that gave people a fair go. I do not think that having a special relationship with the trade union movement where we give and return basic entitlements to people is a cause of concern to Australian workers. I do not think Australian workers are concerned at all when the Labor Party and the trade union movement stand up for their rights, stand up for the rights of their families, stand up for a
fair go for all, stand up for equality of access and stand up for education being made available to those who need help: those from low socioeconomic backgrounds, those who are struggling on low wages. We are the government that makes education available to them, and we want to make education available fairly to them. We want the best education for those people. I do not think Australians worry about that. I do not think they worry about the relationship between the trade union movement and the ALP when they see a Labor government acting on behalf of working class kids, trying to get the best outcomes, the best social equity, for them.

Let me say, I think this motion is simply a joke. When anyone of any substance looks hard at the great achievements that have been made by Labor governments in conjunction with the trade union movement and the achievements that the trade union movement has made, they should be over there saying that the trade union movement is one of the great civilisers of our society. Every rich Western country has a strong, vibrant trade union movement. They are protectors of democracy. They are protectors of working people. I am proud to be part of it. I am proud to have worked as an electrician. I am proud to have been a blue collar worker. I am proud to have been a union official— aspiring to keep those values alive, defending working people wherever I could—and I am very proud to be a senator of the Labor Party, which has a fine history, a fine tradition and a great special relationship with the trade union movement.

Senator SINODINOS (New South Wales) (17:40): This is an important debate. It is good that speakers from all sides can reflect on the role of trade unions in our society. May I begin by saying that there is no-one in the coalition who says that trade unions should not exist. This is not a debate about freedom of association. This is not a debate about governments taking action to rub out an important component of civil society. We all recognise the role that unions can play in society. But it is one thing to recognise the contribution of unions, one thing to say that they have an important role to play in our civil society, and it is another to ask: 'Do they have too much power, and is part of that power exercised by their ownership of one of the great political parties of Australia, the Australian Labor Party?' That is what we are talking about here. We are talking about who calls the shots, ultimately, in the Australian Labor Party.

We saw no better evidence of that on that night in June 2010, when a sitting Prime Minister was bundled out of office, overnight. He was basically persuaded that he did not have the numbers in caucus the next morning; he had to go. He did not put up a fight in the end. He saw that the numbers were against him and he went. That was the night when the faceless men—they were all men that time—were identified as the people who coordinated and put together the plot. Those faceless men: David Feeney, Don Farrell and Bill Shorten—before he was a superstar. These are people who have several things in common. They are members of the Labor Party and formerly members of the trade union movement in some form or another.

We had the spectacle that night of a member of a very senior union in Australia, the Australian Workers Union, Paul Howes—that shy and retiring Paul Howes, who shuns the media spotlight, who is afraid of the camera; he runs from the camera and the spotlight!—getting on national television to give a running commentary on what they had done to a sitting Prime Minister. The announcement was not even being made by a
member of parliament. It was being made by a sitting trade union official: 'Oh, gee, oh, shucks, I've got an announcement to make: we've just removed or are in the process of removing a Prime Minister.' The gall! The Liberal Party did not have to do anything except sit back and watch as the trade union movement ordained, for whatever reason, that Kevin Rudd had to go. The order went out, and Rudd went.

One of the things that was not in Rudd's favour is that from time to time he had had the temerity to speak out against the unions. He had had the temerity to talk about how the Labor Party was meant to be a broader based, more representative organisation. He had the temerity to do that. In 2007, he showed that temerity by watering down the even more extreme proposal that Julia Gillard, the then shadow minister, I think, for employment and workplace relations, was bringing forward to unwind the coalition's Work Choices legislation. The first draft of the Fair Work amendments, as drafted by Julia Gillard, were even more extreme than the version which finally saw the light of day as Labor Party policy in the run-up to the 2007 general election. It was watered down by Kevin Rudd.

It was watered down by Kevin Rudd because Mr Rudd could see the damage that would be done to the image of the Australian Labor Party if the public were to see how much the parliamentary party appeared to be in the pocket of the trade unions. We know that they have to be in the pocket of the trade unions. They are owned: lock, stock and barrel. There are so many members of the Labor Party in this place—almost all of them—who owe being here to the union movement. They therefore have an obligation—a filial obligation, if you like—to defend the union movement to the last, and this creates a lens that they put on any piece of legislation which comes before us; a lens which has a very heavy trade union bias. That is why it is always a furphy when people say only 13 per cent of the private sector is unionised—yes, but through the union movement that is in control of the Labor Party they exert a disproportionate influence over the legislation and policy of the country. That is the point. The only thing ultimately that stops the Labor Party from doing more extreme things in favour of the unions is the potential for a public opinion backlash.

In 2007, Kevin Rudd watered down the Fair Work Act. We can imagine how more extreme it would have been if Julia Gillard had had her way in. Julia Gillard came to the prime ministership owing her position to those faceless men and to the trade unions behind them. So often during her prime ministership we have seen that she has had to genuflect to those unions because of how she owes her position to them.

When she came back from overseas and found that the redoubtable, long-suffering, beleaguered Minister for Immigration and Citizenship, Chris Bowen, had put together the first enterprise mining agreement involving Roy Hill Mine, owned by Gina Rinehart, she feigned surprise that this had happened. When the unions got in touch with her, they said, 'We've got a problem with this.' All of a sudden she turned around, dropped Bowen like hot coals and said: 'We've got to have a proper review of this. We've got to have a jobs board. We've got to do this and we've got to do that.'

This was the case of a policy which had been carefully put together over 12 months, coming to fruition in this first enterprise mining agreement, suddenly being brought to a halt and requiring a further review because of a union backlash. That is not good for the culture of good government in Australia that there can be that sort of
backlash and that sort of quick backtracking by a Prime Minister. We hope to be administering the biggest resources boom in Australia's history and we need to be putting in place a consistent, credible policy regime that will stand the test of time and which will be coherent. We cannot have a situation where unions can stop a whole process that has been going for 12 months if they find something wrong with a particular agreement. That is where good government comes up against the institutional ownership of the Labor Party by the labour movement.

There are many here who will recall the Cole royal commission into the building industry—something fiercely opposed by many on the other side. Senator Marshall, who spoke before me, formerly an official of the ETU, in his maiden speech to the parliament attacked the Cole royal commission and said it was a 'politically motivated witch-hunt' that was 'desperately trying to uncover non-existent union corruption in the building industry.' Further, he praised the Electrical Trade Union and 'its many fine members who I had pleasure to work with during my tenure there.' Yet this commission catalogued over 100 types of unlawful and inappropriate conduct, including by the ETU. As a result of that the Australian building and construction commission was established as a tough cop on the beat to take a strong stand against union thuggery in the building and construction industry. The Office of the ABCC had helped the building and construction industry to increase productivity by 10 per cent and provided an annual economic welfare gain of something like $6.2 billion, reduced inflation by 1.2 per cent and increased GDP by 1.5 per cent. The number of working days lost annually per thousand employees in the construction industry fell from 224 in 2004 to 24 in 2006. At the same time, building costs fell by 20 to 25 per cent and long project delays were dramatically reduced.

What did the Labor government do? In 2007, they promised, under employer pressure, to keep the Building and Construction Commission. But three or four years later, safe from that 2007 election, they watered down the building and construction commission—they defanged it. What has been the result? You only have to go to the Grocon site in the middle of Melbourne to see the result—the upsurge in days lost in the construction industry and the sort of lawlessness that is returning to the construction sector. Governments, apart from anything else, must uphold the law. They must not be seen to be turning a blind eye to the law. Construction is a sector where that is happening and that is not in the interests of good government.

Senator Marshall talked about the importance of consultation. He talked about how good government is about consultation. Yes, he is right. As part of that consultation, trade unions and stakeholders on many important matters should be consulted. But this government has a track record of not understanding what genuine consultation is about. We saw that with the mining tax, where they mugged an industry overnight with a punitive tax which was actually designed to extract more revenue than the government had estimated at the time. This was only realised when the mining industry finally got a look at it. They were mugged and essentially told, 'Take it or leave it. The numbers are baked into the budget.' Was that appropriate consultation with an industry? Is that the model of consultation that they want?

Contrast that with the consultation that has occurred recently with the trade union movement where we have seen a new shipping reform program put through which
offers all sorts of concessions to the shipping industry to help preserve shipping industry jobs, because we are fundamentally uncompetitive in that sector. In return, allegedly, the Maritime Union of Australia have pledged a new productivity compact with the shipowners. We are still to see that productivity compact or any of its content. The reason the 1997-98 maritime dispute occurred is that a lot of people in Australia had had enough—shippers, customers of the shipping lines and customers of the ports. Our wharves were a laughing stock. Our crane rates were amongst the lowest in the world, if you measured wharf productivity that way. People say that what happened on the waterfront was pretty rough. But what had been happening on the waterfront for years with all the rorts was pretty rough.

We can go back to the early seventies, we can go back to the painters and dockers, we can go through the whole history of the wharves, but the fact of the matter is that from a history in the thirties of protecting workers from very bad conditions on the wharves the MUA by the eighties and nineties had mutated into this body that was holding Australian exports to ransom. That is why the Howard government took action. Admittedly it was tough action, but things had reached a point where consensus was not achieving anything. Bob Hawke had tried consensus when he was Prime Minister, and it had not worked on the wharves. Sometimes a government has to stand up and say, 'The government runs the country, not any one sectional interest.' If there is one boast I make proudly, as a member of the opposition and particularly as a member of the Liberal Party, it is that we have no institutional owners. We are not owned by anybody.

Senator Sinodinos: Yes, we have links with business, Senator Thorp, with big business and with small business. We have links with the middle class. We have links with aspiring working-class Australians. We have links with people who have made it in Australia. We have links all over the place. We are not owned by anybody. There are no bloc votes at our national conferences.

Senator Chris Evans: Oh, come on!

Senator Sinodinos: Senator Evans, you are a very experienced former trade union official. You know what I am talking about.

Senator Chris Evans: You're going to tell me there are no factions next, aren't you?

Senator Sinodinos: There are factions in all parties, but there are no bloc votes, and you know that, Senator Evans.

Senator Chris Evans: No I do not.

Senator Sinodinos: None of this confected outrage from you, Senator Evans; we know your form. The Liberal Party is not owned by any section of society; that is very important to remember.

I am disappointed in the contemporary trade union movement. In my maiden speech I talked about the reform surge of the 1980s and the crucial role played by people like Bill Kelty. That was a trade union movement that was forward looking and progressive, that knew Australia had to change. Reform had to happen, and they were willing to help manage the change. Things like the superannuation system that Senator Marshall spoke about were part of the fruit of that sort of partnership.

Today the trade union movement has become fearful, defensive and inward looking. The union movement today wants to mandate job security. They are not outward looking, they are not progressing. They are not sponsoring reform; they are standing in
the way of reform, and that is not good for the government of Australia. Australia needs to keep reforming, particularly now that in the period ahead the terms of trade will not be rising in the way they have in the recent past. Our productivity has to go up. Our competitiveness has to go up. Our costs are 30 to 40 per cent out of kilter with the rest of the world. Some of that is the Australian dollar but a lot of it is the way our costs have gone up, particularly during the mining boom, and those costs are now locked in. We need to be more productive and more competitive. We need a union movement that is a genuine partner in that task, and that means that we have to review the Fair Work Act, among other things. It means we have to review all the ways in which regulations potentially shackle productivity and innovation.

The trade union movement today, unlike that of the eighties, seems incapable of leading that debate and that change. It is too defensive. The trade union movement today is more concerned about the perks and lurks of being involved in the superannuation sector. We need a thorough investigation of the role of unions in industry funds and in the superannuation sector. The reason for that is there are too many instances where trade union officials are doubling up. They have their day jobs as union officials and they are trustees of super funds, and sometimes, as in the case of Bernie Riordan in New South Wales, they are also chairing financial service organisations that are providing services to those superannuation funds with which they are associated. What sort of conflict of interest is that?

This is the same Bernie Riordan who was one of the prime movers in blocking the privatisation of electricity assets in New South Wales along with his good friend and now opposition leader in New South Wales John Robertson. How is that good for the government of New South Wales, one-third of the national economy, and therefore good for the state of the Australian economy? Yet today we have the Minister for Resources, Energy and Tourism, Martin Ferguson, who is one of the few Labor people who tells it like it is in the economic sector, saying that states should be looking to privatise their assets. This government should be telling the ETU and everybody else who is in the way to cooperate with state governments to get that done. This will unlock resources which can be used for other, more productive forms of infrastructure.

How is John Robertson good for the government in New South Wales? He is now virtually irrelevant as Leader of the Opposition. Doesn't it say a lot about the structure of the Australian Labor Party that in New South Wales they can have a leader of the opposition who is one of the prime architects of the downfall of the former Labor government? This is someone who oversaw the destruction of that government from the time of Morris Iemma onwards. How is that good for the government of Australia?

These are the structural problems that Labor has to face. All political parties face their challenges. None of us are exempt from criticism from time to time, but this is a structural problem that is getting worse and worse. It is because Labor in one sense became too successful at gaining power and, to paraphrase Lord Acton, power corrupts and absolute power corrupts absolutely. The trade unions today have absolute power over the Labor Party, and that is the challenge that the ordinary rank and file of the Labor Party face. These are the people who are out there handing out how-to-vote cards; the ones who trudge up, doing their best, because they believe in old-fashioned Labor values. Then they see their party is effectively run by faceless men—mostly men these days. They
think, 'There must be a better way.' No wonder so many young, idealistic people on the left have tended to shift to the Greens or other parties. They think, 'I can't get ahead in the Labor Party. The only way I'll get ahead in the Labor Party is to join a union; I'll have to be sponsored by a union.' That is not a great message to give young people.

This is a time when most young people look at unions and say, 'What can they really do for me in the modern workplace?' Senator Marshall talks about the protections provided by unions. The protection provided to every worker in Australia lies in the productivity and competitiveness of the Australian economy. That is what ultimately underwrites all the benefits that the labour movement and others have been able to get. Those benefits are there because we are a rich country—and, yes, there can be a debate about how we divide the spoils of being a rich country—but those riches were not gained by trade unions simply existing. They were gained by people working hard and having faith in the future.

Sitting suspended from 18:00 to 19:00

BUSINESS

Rearrangement

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (19:00): I move, on behalf of Senator Collins:


Question agreed to.

BILLS

Access to Justice (Federal Jurisdiction) Amendment Bill 2011

Second Reading

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

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (19:01): Can I say at once that the opposition supports this bill. I will turn to the terms of the bill in a moment, but I thought I might, with the indulgence of honourable senators, take the opportunity in speaking to this bill to make a few remarks about the judicial appointments announced on Tuesday by the Attorney-General, Nicola Roxon—they being the appointment of the Hon. Patrick Keane, who had lately been the Chief Justice of the Federal Court, as the 50th Justice of the High Court, and of the Hon. James Allsop to be the new Chief Justice of the Federal Court. As I said in a television interview, but let me say it in the chamber and get it on to the parliamentary record, the opposition congratulates both Justice Keane and Chief Justice Allsop on their appointments and warmly welcomes both of them.

I have had a number of fairly harsh things to say about the Attorney-General in the last few months and I do not resile from them one iota. But to give credit where it is due I am bound to say that, in her senior judicial appointments, so far the Attorney has not put a foot wrong: in the appointment of Justice Gageler to the High Court a few months ago and now the appointments of Justice Keane to the High Court and Justice Allsop as the Chief Justice of the Federal Court. In fact, let me record for posterity, as it were, that early this year the Attorney-General did me, as the shadow Attorney-General, the courtesy of writing to me as part of a quite extensive
consultation process which she undertook. She invited my suggestions as to the names of suitable people for appointment to the High Court. In a letter I wrote to the Attorney-General on 21 April this year, having myself consulted among a reasonably wide cross-section of senior lawyers and judges in Australia, I proposed six names. I will not say who those six were, but I am delighted to say that the names of Justice Gageler, Justice Keane and Justice Allsop were all among them. I am pleased that the Attorney-General and I have been able to see eye to eye on this matter, because all of the senior judicial appointments that the Attorney-General has made in the last few months were from among the six names recommended to her by the opposition.

I do not know Chief Justice Allsop personally. To the best of my recollection I have never met him, but I do know him by reputation to be a particularly distinguished lawyer. I am told that his expertise is in particular in the field of maritime law, which is a very interesting and arcane area of the law. I know that he is a former associate to the Hon. Sir Nigel Bowen, the first Chief Justice of the Federal Court of Australia and a very illustrious Liberal Attorney-General and member of the House of Representatives.

I do know Pat Keane well, having been his colleague at the Queensland bar for many years and having been his junior on several occasions. Pat Keane has had a stellar reputation. He was a university medallist from the University of Queensland. He took the Bachelor of Civil Law degree and won the Vinerian prize, which is awarded to the best graduate in that particularly challenging law course, in his year. He is the only Queenslander, to the best of my knowledge, to have won the Vinerian prize which, in many ways, is the Olympic gold medal of legal scholarship, certainly in the English-speaking world. He had a very successful practice at the Queensland bar. He took silk after only 10 years. He was the state Solicitor-General for something like 15 years, having been appointed by a Labor government and reappointed by the Borbidge coalition government. He has lately been a member of the Queensland Court of Appeal and was then the Chief Justice of the Federal Court. Pat Keane has had an absolutely stellar scholarly and professional career. I am pleased to say that he is a Magdalen man. I do not say that all High Court judges should be BCL graduates from Magdalen College, Oxford, but it does not do any harm.

Having offered those felicitations to Chief Justice Allsop and Justice Keane, let me turn to the content of this bill. This bill is a bill to amend the Administrative Appeals Tribunal Act 1975, the Family Law Act 1975, the Federal Court of Australia Act 1976, the Federal Magistrates Act 1999 and the Judiciary Act 1903 to implement provisions of SCAG model bills relating to procedural and jurisdictional matters pertaining to the federal courts and the Administrative Appeals Tribunal. The amendments proposed by the bill aim to improve the function and efficiency of the discovery rules in civil proceedings, specifically to provide for more flexibility in cost orders and to allow for pre-trial oral examination to implement the SCAG model bill on suppression and non-publication orders, to implement the SCAG model bill concerning vexatious proceedings, and to align the jurisdictional limit of family law magistrates in Western Australia with the Federal Magistrates Court. That is in turn being overtaken by the bill considered earlier in the week which changes the Federal Magistrates Court to the Circuit Court of Australia. The amendments also aim to provide more flexibility to the Administrative Appeals
Tribunal when dealing with the payment of fees.

The amendments proposed by this bill are relatively procedural and non-controversial. As I have indicated, they arise from detailed consideration by the Standing Committee of Attorneys-General. I interpolate to say that I suspect they in fact arise from detailed consideration by officials reporting to the Standing Committee of Attorneys-General. The highest profile issue is that of suppression and non-publication orders, which vary considerably across Australian jurisdictions. Moves to harmonise the rules in favour of open justice should generally be supported.

The bill was referred to the Senate Legal and Constitutional Affairs Committee, which reported on 22 March and unanimously recommended that the bill be passed. I want to say a couple of things about the evidence given to the committee. The suppression and non-publication orders in schedule 2 of the bill are modelled on the Court Suppression and Non-publication Orders Act 2010 of New South Wales, which is the template for other jurisdictions to follow. The vexatious proceedings provisions in schedule 3 of the bill reflect the legislation that has been implemented in Queensland, New South Wales and the Northern Territory as a result of the SCAG process.

The use of suppression and non-publication orders by Australian courts has been a matter of considerable controversy in recent years. Under the regime proposed by the bill, a suppression order is defined as 'an order that prohibits or restricts the disclosure of information by publication or otherwise' and a non-publication order is an order that prohibits or restricts the publication of information but does not otherwise prohibit or restrict the disclosure of information. The grounds for making an order will be that the order is necessary to prevent prejudice to the proper administration of justice; to prevent prejudice to the interests of the Commonwealth, a state or territory in relation to national or international security; and to protect the safety of any person and avoid any undue distress or embarrassment to a party or witness in criminal proceedings involving sexual offences, which is the new 102PF. The amendments provide that persons who may appear and be heard on an application are the applicant, a party, an Australian government, a news publisher or any other person who in the court's opinion has sufficient interest in the matter. The contravention of an order is an offence with a penalty of 12 months imprisonment, 60 penalty units or both. In deciding whether or not to make an order the court is obliged to take into account that a primary objective of the administration of justice is to safeguard open justice, namely public hearings. That is not an absolute value; there are circumstances, as you know, Madam Acting Deputy President, in which it is appropriate for courts to take evidence in camera, but those circumstances are rare indeed and ought to be recognised as narrowly circumscribed exceptions to a strongly defended general rule.

Australia's Right to Know, representing the media, submitted to the committee that there were too many and unjustified orders being made, noting an increase in such orders since the passing of the New South Wales act. In its response the Attorney-General's Department could not comment on the reasons for such increases but submitted that it did not anticipate an increase in such orders in the federal courts as a result of the bill's provisions.

Turning to the vexatious proceedings amendments, vexatious proceedings are defined to include proceedings that are an abuse of the process of a court or tribunal;
proceedings instituted to harass or annoy, to cause delay or detriment or for another wrongful purpose; proceedings instituted or pursued without reasonable grounds; and proceedings conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment or achieve another wrongful purpose. As the definition uses the word 'include', these points should be read disjunctively, namely all or any one of them may apply to a particular case. As the explanatory memorandum states, the definition of vexatious proceedings is an inclusive definition which lists some examples of various kinds of proceedings which could give rise to a vexatious proceedings order. Let me pause to say that litigants with a valid claim are perfectly free to seek vindication by going to the law. For that reason vexatious proceedings orders that seek to restrain proceedings which are otherwise properly made out and properly pleaded are orders that should never be made. They should only be made in circumstances where there is genuinely an abuse of the court's process so that the court is being put upon as a vehicle to traduce another citizen.

Concerns were raised in submissions to the committee about the proposed provisions limiting the ability of the Family Court of Australia to make such orders because of the expression 'proceedings under this act'. The Family Court has some original jurisdiction outside the Family Law Act. The Attorney-General's Department submitted that the intent of the wording is to prevent family law vexatious litigants from making vexatious proceedings under the Family Law Act in multiple courts, for example in the Federal Magistrates Court or the Family Court of Western Australia, rather than limit the Family Court's powers to make such orders. The family law jurisdiction is of course a very difficult jurisdiction in which essentially there are no winners. It deals with people in circumstances which are inherently distressing and as well as the parties before it it deals with children in distressing circumstances through no fault of their own. In that sense, family law proceedings are always vexed proceedings, but that does not make them vexatious proceedings. The term 'vexatious' has a technical meaning in the law which is much more specific and confined than the meaning in ordinary speech.

As I said at the start, the coalition is pleased to support the bill. My only cavil, one I have raised before in this place, is with the misleading nature of the short title of the bill. The government talks a big game when it comes to access to justice. However, its record on access to justice is in fact lamentable. Over the past five years, the Rudd and Gillard governments have increased court fees, starved the courts of resources, sought to abolish and then abandoned the attempt to abolish the Federal Magistrates Court, the most efficient and lowest cost federal court, and sought to introduce new levels of complexity and cost into family law. As I said earlier this year, the Gillard government's attitude to accessible justice is to charge more and provide less.

Not only does this make a mockery of the government's self-serving rhetoric; it reflects a more disturbing approach that reflects a fundamental disrespect for the separation of powers. The courts are not an agency of the executive government. They should not be treated as such. They are a separate institution of government, and they must be sufficiently resourced to perform their constitutional functions and preserve their constitutional integrity.

The amendments made by this bill are welcome. Measures to harmonise the law,
provide flexibility in pre-trial procedures and increase transparency are worthwhile aims. However, to describe these amendments explicitly as 'access to justice measures' is pure spin, which risks devaluing the concept and calls into question the government's understanding of the problem. Best to be less heroic and more modest in our entitling of legislation and accept that this bill is a bill about technical aspects of court procedure. I commend the bill to the Senate.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (19:16): Thank you for that contribution, Senator Brandis. I commend the Access to Justice (Federal Jurisdiction) Amendment Bill 2011 to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Boyce) (19:17): As no amendments to the bill have been circulated, I shall now call the minister to move the third reading, unless any senator requires that the bill be considered in the Committee of the Whole. I call the minister.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (19:17): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a second time.

National Health Security Amendment Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator FIERRAVANTI-WELLS (New South Wales) (19:18): I rise to speak on the National Health Security Amendment Bill 2012. This bill seeks to amend the National Health Security Act 2007 in order to tighten the regulations around the acquisition, handling, storage, transport and disposal of security sensitive biological agents, otherwise known as SSBAs. SSBAs can come in the form of viruses, bacteria, fungi and toxins. Some more commonly known tier 1 SSBAs include the Ebola virus, SARS, smallpox and the plague.

This bill seeks to help further reduce the security and public health risks posed to the Australian community by SSBAs by providing a streamlined reporting regime applicable to entities that only handle SSBAs on a temporary basis, which has been determined to be less than seven days; by providing the Secretary to the Department of Health and Ageing with a discretion to adjust as they see fit the necessary conditions on any registered facility that is undertaking emergency maintenance in order to maintain security; by providing the secretary with the authority to impose the necessary conditions on any entity that is handling SSBAs during a period of noncompliance during which the entity is taking the required corrective action to become compliant; and by providing consistent exemption and reporting requirements for entities that have been deemed to be exempt while handling SSBAs or suspected SSBAs.

The government has advised that during the past several years, while the SSBA Regulatory Scheme has been in operation, it has worked closely with various stakeholders and experts in this field. It was during this period that a number of areas in the legislation were identified where improvements could be made, which has subsequently led to the current bill before us. The strict regulation of SSBAs is vitally important in the prevention of bioterrorism and biocrime, where these lethal agents could be deliberately released into the
community. However, this bill also endeavours to strike a balance to ensure that members of the community who have a legitimate need to have access to SSBAs can do so. The coalition does not oppose the bill.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Boyce) (19:21): As no amendments to the bill have been circulated, I shall call the minister to move the third reading, unless any senator requires that the bill be considered in the Committee of the Whole. I call the minister.

Senator FARRELL (South Australia—Parliamentary Secretary for Sustainability and Urban Water) (19:21): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator CORMANN (Western Australia) (19:22): The Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012 seeks to implement a recommendation of the Cooper review into Australia’s superannuation system to introduce a new, low-cost superannuation product known as MySuper, which will replace existing default superannuation fund products. Madam Acting Deputy President Boyce, we were involved together in the Parliamentary Joint Committee on Corporations and Financial Services inquiry into this particular bill, so I know that you are also very familiar with the issues I am about to address.

Let me say at the outset that the Gillard government’s handling of this reform—which, incidentally, we in the coalition have supported in principle from the outset—has been a complete shambles. In particular, Minister Shorten’s handling of this has been all over the place. It has been disjointed and ad hoc—a change here, a change there. Instead of a strategic approach, we have three tranches of individual pieces of legislation. Rather than being able to deal with the MySuper reform package as a whole, the government has been introducing it in a piecemeal fashion. In the last sitting fortnight, the government insisted that two bills had to be joined together so they could be dealt with by the Senate. Earlier this week, they decided that was not a good idea after all and it had to be split again. We said right from the beginning that, given the way the government had introduced the bills, it was never going to work in the way they proposed. One minute they wanted to rush it, then they wanted to delay it, then they wanted to rush it again, and then they wanted to make another change. Along the way they failed to properly consult with key stakeholders, who are of course at the receiving end of all of the chopping and changing arrangements, and there are significant implications for the way they run their systems. Those implications are ultimately very costly for the Australians we are trying to do the right thing for by helping to create the most efficient, transparent and competitive superannuation system possible. So, let me say right at the outset that the government’s handling of this very important reform has been nothing short of utterly incompetent.

The coalition will be moving some amendments to this bill to address a number of concerns that we have, in particular in relation to the need to improve the definition of the large employer threshold and also in
relation to replacing the additional authorisation requirement for funds with a reporting requirement to APRA. We would also have liked to have used this opportunity to ensure that any MySuper product, which will ultimately be the legislated default product, could compete freely in the default fund market, but we have been given technical advice that we will have to do that in the context of a future MySuper bill, given the way this current bill has been structured.

We commend the amendments that I am about to put to the chamber. If they are not supported, the coalition will not ultimately stand in the bill's way and we will not oppose it. This bill defines the MySuper product. It limits the regulated superannuation fund to offering only one MySuper product, except in certain circumstances. It allows registrable superannuation entity licensees to apply to the Australian Prudential Regulation Authority for authorisation to offer a MySuper product and it sets out various rules on the payment of contributions and account transfers for MySuper products. It also sets out the fees that can be charged and the basis on which those fees can be charged to members of a MySuper product.

I add that the MySuper design contained in this bill is quite different from the original government proposal. I commend the government for reconsidering what they initially thought they wanted to do. The original proposal would have imposed uniform pricing across all MySuper products, which would have had the very counterproductive effect that hundreds of thousands of Australians would be forced into default funds that charge higher fees than the funds they are currently in, which would not have been the intention. By making the sorts of changes that we have promoted for some time, by removing the approach of uniform pricing that the government were pursuing, we will make sure that the risk is somewhat reduced, although we still have some concerns with one of the subsequent MySuper bills, so there is a bit more to be done in this area.

Under this bill, from 1 October 2013 employers must make default superannuation contributions for employees who have not chosen a fund to a fund that offers a MySuper product. However, it does not open the default fund market to competition and choice. Of course, this is a real indictment on the current government. The process by which default funds are currently selected under modern awards is a real indictment on this government. It is a process that was established by the government through Fair Work Australia. It is an anticompetitive, closed shop arrangement which is littered with inherent conflicts that ultimately act to the detriment of people in superannuation. Only if we have a truly competitive, a truly transparent and a truly efficient system will retirement returns for people in superannuation funds, including default superannuation funds, be maximised.

The bill also introduces the concept of infrafund advice, favoured by industry super funds, in a way which we believe is inconsistent with the government's stated transparency objective in the Future of Financial Advice changes. However, since this legislation was first introduced some time ago, the government has acted to provide some clarification around how the infrafund advice provisions are to operate. At this stage we reserve final judgement, until we get some further clarity around all of this.

The coalition have consistently supported any changes which make our superannuation system more efficient, transparent and competitive and which improve value for super fund members. We have been concerned that the initial MySuper proposal
to design a superannuation product and impose uniform pricing through legislation would have created unnecessary inefficiencies and left many consumers worse off. The best way to maximise value for consumers across all parts of the superannuation value proposition—that is fees, fund performance and service—is to maximise competitive tensions in an appropriately transparent system. Low-fee, no-frills products are already available across both retail and industry superannuation funds without the need for legislation. Research from Chant West found that, under the initial one-fee government mandated model, over 750,000 Australians would have been forced to pay higher fees than they currently pay.

There has been extensive debate in the sector around these issues over the past 12 months, and the government has now backed down from its original proposal to impose such a uniform fee structure as part of its MySuper proposal. The government's proposal now is to allow MySuper funds to offer differentiated fee structures. We are still concerned, though, that the creation of a MySuper product through legislation is an unnecessary interference in an existing, highly competitive market for low-fee, no-frills superannuation products. However, what is proposed now is certainly much better than where we started a year ago.

There are some issues that the bill fails to address, and I will just go through some of them in turn. As to default funds, this bill mandates that from 1 October 2013 only MySuper products can be used by employers to make default superannuation contributions for employees who do not have a chosen fund. However, as I have mentioned before, the government has not made any attempt to address the current closed-shop, anticompetitive arrangements for the selection of default funds under modern awards. The recent process through the Productivity Commission was completely compromised when Minister Shorten—in quite an unprecedented intervention, for him—effectively responded to the Productivity Commission report before it had reported. He effectively responded to the Productivity Commission review of the selection of default funds under modern awards and other matters before the Productivity Commission had actually reported. In doing so, he placed a lot of pressure on the Productivity Commission and, quite unsurprisingly, the final report and recommendations were quite somewhat weaker than the original recommendations that had been made by the Productivity Commission in its draft report.

In its initial draft report the Productivity Commission was quite keen on ensuring genuine competition in the default fund market, but the final recommendations on the back of the minister's intervention were much less far-reaching and, we would argue, far less adequate. But even those weaker recommendations by the Productivity Commission have not been adopted by the government. So not only did it take Bill Shorten forever to get around to asking the Productivity Commission to look at this important issue, and not only did the minister intervene in the process in an unprecedented fashion by effectively responding to the review before it had reported, but now the government has introduced legislation into parliament which, instead of ensuring genuine competition, will impose an additional layer of government intervention on the default fund market. The government is also seeking to limit the number of MySuper products in modern awards to just 10—contrary to the clear recommendation of the Productivity Commission, which was that there should be an unlimited list of default funds.
In fact, the government has ignored the Productivity Commission's findings in a number of key areas. The Productivity Commission has proposed that the default superannuation panel will not be created as recommended; rather, it will be subsumed in the existing minimum wage panel. But the new panel is not the final decision maker under this bill, as recommended; the full bench of Fair Work Australia will approve default funds in each award after recommendation from the expert panel. But the process of including funds in awards will only occur every four years, starting in 2014 when modern awards are due for review, as opposed to an ongoing application process. And all awards must have default funds. Currently there are 13 awards that do not list default funds.

Genuine competition in the default fund market is critically important to ensuring that efficiencies and value for Australians in default super are maximised, which of course is supposed to be the objective of this bill. This legislation, and the other pieces of legislation that are supposed to come along with it, are really designed to enshrine in legislation the consumer protection mechanisms that the government judges are necessary for default super fund products. Once those consumer protection mechanisms are enshrined in legislation, there is no reason that those products which qualify for registration as MySuper products should not be able to compete freely in the default fund market. The only reason the government is not all that keen on letting that happen is that the current government and the current minister in particular are very keen to continue to protect the vested interests of a particular segment of the superannuation industry, which happens to be very close to the union movement.

I would just make the point here, on the record, that we will be moving amendments to the other bill, which has now been disjointed from this bill and which will no doubt come to the Senate sometime next week, to ensure that there is genuine competition in the default fund market and that any MySuper product can compete freely in that market. If those amendments are unsuccessful—and given that the current government is clearly not prepared to do what needs to be done to ensure genuine competition in the default fund market for the benefit of people in superannuation—then a future coalition government will do exactly that. A future coalition government will make sure that there is an open, transparent and competitive process and that there is genuine competition between all and any products that qualify for registration as a MySuper product.

Let me make the point here that competition is important not just between individual businesses or between individual superannuation funds; competition is also important between different business models. The industry fund business model clearly has some attractions to it, and some downsides. The retail fund business model also has some attractions to it, and it might have some downsides for certain people in certain circumstances. It is the same with a self-managed super fund. Not every avenue is right for everyone. But in a system that is appropriately transparent, open and competitive, people can make choices, and the choices that people are able to make drive innovation and maximisation of value for people who ultimately aspire to get the best retirement savings returns possible.

We did have some concerns in relation to the intrafund advice provisions in this bill. The explanatory memorandum indicated that superannuation funds would be able to charge for expenses incurred in the provision of intrafund advice as part of the overall administration fees charged to all fund
members of a MySuper product. Neither the bill nor the explanatory memorandum defined what 'intrafund advice' was, and there was no definition of this term in any existing legislation. The explanatory memorandum foreshadowed that the term would be defined in subsequent legislation but, of course, in recent times there has been some effort in relation to the term 'intrafund advice' in particular through ASIC.

We agree with the government when they say that people should not be paying for advice that they do not get and that people should not be forced to pay for advice that is provided to others. In the context of this legislation, why should fund members be forced to pay for personal advice that is accessed by some members but not all? Why should people be forced to pay through the administration fee for the personal advice that is provided to some individual members of a fund but not to all? There was a need to clarify some of these arrangements and some of that work has been done.

In relation to the large employer threshold, there was significant concern expressed to the Parliamentary Joint Committee on Corporations and Financial Services, which inquired into this bill, about the benchmark above which large employers can tailor funds for their employees. The provisions of the bill allow for such tailoring where an employer contributes to a fund on behalf of 500 or more members. Many participants in the superannuation industry submitted to the committee inquiry that the threshold in its current form is 'complex, unworkable and may have a number of unintended consequences.' The coalition will move amendments to seek to amend the bill by replacing this complex and unworkable threshold with a simple, easily quantifiable and effective test that defines the large employer threshold as an employer that has 500 or more employees at the relevant time.

In relation to reporting large employer funds to APRA, the bill as drafted will require a superannuation fund with a MySuper licence to apply to APRA prior to providing superannuation services to each large employer. The superannuation industry has argued strongly and very effectively that the additional authorisation process for tailored MySuper products for large employers is unnecessary, given that all funds offering such tailored plans are already authorised to provide a MySuper product. The superannuation industry has pointed out that this is an additional process which would be cumbersome, time-consuming, unnecessary and costly—with those costs ultimately borne by people in the MySuper funds. They also express strong concerns that this additional authorisation process would move APRA away from its proper and very important role as a prudential regulator focused on risk and governance into areas of commercial interest between funds and large employers which have nothing to do with its regulatory role. If this provision is not amended, fewer Australian workplaces will have super arrangements which reflect their specific employees' needs. That, of course, would be a very concerning development. Australians would have a reduced suite of products in a less competitive market and further unnecessary costs and regulation would be introduced into the financial services industry. So the coalition will move amendments that would require superannuation funds to report the existence of these arrangements rather than apply to APRA prior to issuance.

We believe that one licence to operate a business in any industry is sufficient. The amendments would still allow APRA to disallow a noncomplying fund. Such a process would address the public policy concern that the existence and number of employer plans is unclear to APRA. It would
require regular reporting without undermining the efficiency, competitiveness and commerciality of tender processes. The coalition amendment would also ensure that APRA continues to fulfil its proper role as a prudential regulator which should be focused on risk and governance, without entangling it in commercial matters which affect neither factor.

I would like to quickly clarify the coalition's position in relation to a Greens amendment in the House—the amendment in relation to so-called 'flipping'. The amendment has created a prohibition on moving an individual's investment from a tailored MySuper product to another, without a member's consent. We are concerned that costs in large-employer MySuper schemes would be higher, as they would have to deal with the inefficiencies implied in having to retain and deal with ex-employees. The coalition did not support that amendment. However, it was clear that Mr Bandt had support from the government and other Independent members of the House of Representatives that would secure passage of the amendment through parliament. In light of this, the coalition did not call a division on the amendment.

As I have mentioned, the handling of this whole package of bills has been disjointed, ad hoc and, frankly, incompetent. It is a real shame. (Time expired)

Senator BILYK (Tasmania) (19:42): Back in June, I made a contribution on the Superannuation Legislation Amendment (Stronger Super) Bill, and I made certain important points that I will quickly revisit, because they go to the core of what the Gillard Labor government mean to achieve with our Stronger Super reform package.

We all know that compulsory retirement savings are a relatively recent phenomenon in this country; but, since their introduction by the Keating government in 1993, they have become a significant feature in our economic and social landscape. In my contribution earlier this year, I recognised that Australia has the world's fourth largest pool of privately managed funds, with total savings of some $1.4 trillion. Of course, the goal of these funds is to maximise retirement savings for workers, and this was the purpose of the 2009 Cooper review of superannuation which ultimately led to the Stronger Super package of reforms. I would like to quickly recognise that it was my Tasmanian colleague—and Senator Brown's Tasmanian colleague as well—the now-retired Senator Nick Sherry who initiated the Cooper review. I am sure Senator Brown joins me in acknowledging Senator Sherry's passionate advocacy for superannuation for working Australians.

The bill I spoke on previously was about a component of the reforms, the SuperStream system, which made the process of everyday transactions in the super system easier, cheaper and faster. Stronger Super also includes reforms that will improve the governance and integrity of the superannuation system and will improve integrity and increase community confidence in the self-managed superannuation fund sector.

We know we have an ageing population and, consequently, an increasing need to fund the retirement savings of the next generation. That is why, in addition to the Stronger Super reforms, we have committed to increasing the compulsory employer super contribution from 9 to 12 per cent. This is a reform which will have a significant impact on the quality of retirement for Australian workers, and it is one that is desperately needed to support Australia's ageing population.
One of the recommendations that came out of the Cooper review was to introduce a simple, low-cost default superannuation product called MySuper. Mr Jeremy Cooper, the Chair of the Super System Review, put it well in an article he wrote for the Australian Financial Review, published on 20 April 2010. He wrote about removing the 'bells and whistles' from super products. The Cooper review engaged Deloitte Actuaries and Consultants to provide an estimate of reasonable and achievable total costs for an average fund member with a $25,000 account balance assuming the adoption of the MySuper model. Nearly all of today's default fund members are paying more than the fees projected by Deloitte. In fact, some members are paying twice these amounts.

The reality of the superannuation industry is that while having a choice of funds is good for competition, many fund members take little interest in their superannuation until they are nearing retirement. Investment options and fee structures for superannuation funds can be complex, and it is rare for fund members to seek expert advice in relation to their investment.

The Cooper review found that there are low levels of financial literacy regarding the superannuation sector, and the majority of Australians are disengaged from their super investments. The review did recognise that there are some Australians who are actively engaged with their superannuation investments. However, our compulsory superannuation system does not cater for the different levels of engagement, particularly for those fund members who do not choose their fund or take an active interest in their super. The MySuper product caters for those fund members, to stop them paying for the bells and whistles. Another way of putting is that we are helping people avoid paying for a Ferrari when all they want to do is drive a Commodore—or a Ford, depending on which car you prefer.


The bill requires the Australian Prudential Regulatory Authority, or APRA, to be satisfied that a MySuper product has some core characteristics—namely, that there is a single, diversified investment strategy, which can be a lifecycle investment approach; there is equal access to services for all members; the same process is used in allocating investment returns to members; no limits are placed on the contributions that a trustee of a MySuper product will accept; and a member cannot be transferred out of the MySuper product unless the member consents, or if it is required by a Commonwealth Law.

Trustees of superannuation funds will be required to be authorised by APRA for each MySuper product they wish to offer. APRA will be able to accept applications for MySuper products from 1 January next year. Trustees will be restricted to one MySuper product per fund; however, there are two exemptions to this rule. The branding goodwill exemption will allow merged superannuation funds in which there was material branding goodwill prior to the merger to maintain their existing brand names and continue offering different MySuper products. The large employer exemption will allow funds to offer a tailored MySuper product to employers that contribute to the fund for the benefit of at least 500 employees and associates to suit the needs of the particular workplace.
Funds will be required to charge all members the same set of fees for a MySuper product. However, some employers will be able to negotiate a discounted administration fee for their employees in the generic MySuper product. This will allow trustees to provide more flexibility to certain employers and will result in some members not being forced to pay higher fees as a result of the introduction of MySuper.

A government amendment to the bill responds to concerns raised by trustees who operate a lifecycle investment strategy. While these employees will be placed into a MySuper product by default, it is important to emphasise that we are not taking away choice for those employees who wish to exercise it. If any employee wishes to have more than the basic level of service that a MySuper product offers they simply need to make the choice that is available to them. And those who choose to exercise even more control over their superannuation can set up a self-managed superannuation fund.

MySuper products can now have different investment fees within a lifecycle investment strategy provided that APRA is satisfied that certain criteria are met. The criteria ensure that members invested in assets with lower investment costs do not cross-subsidise members invested in assets with higher investment costs because they are in different stages in the lifecycle. The product may charge no more than four investment fees through the lifecycle. The benefit of a lifecycle investment approach is that it varies the risk over different stages of employment. While employees in the early stages of their career may be willing to take on higher levels of risk for higher long-term returns, they may choose to reduce their risk as they approach retirement so they have greater security in their investment, particularly to insure against events such as the global financial crisis.

The bill also provides for a uniform fee structure. MySuper products will be restricted to charging fees that are described in the same way so that they can be directly compared. I would just like to mention that, when the Howard government introduced the ability for workers to choose their superannuation fund in 2005, very few workers exercised that choice because the fee structures were so complex that it was difficult to compare funds. Some of the fee disclosure documents were between 50 and 100 pages long. Competition between superannuation funds is a laudable aim, but, given the complexity of financial decisions it is important that consumers are able to make ready and easy comparisons between products. Only then can there be true competition between superannuation funds, and that is what a uniform fee structure between MySuper products will achieve.

Of course, the other important component of competition is the ability to compare products, so I am pleased that APRA will be collecting data on all MySuper products and making this information freely available by publishing it on its website.

I have summed up the elements of the MySuper reforms dealt with by this bill. There are some remaining elements of MySuper, including enhanced trustee duties, insurance arrangements, and disclosure, which will be dealt with in subsequent legislation. I note that the bill currently before the Senate was subject to an inquiry by the Joint Committee on Corporations and Financial Services. There were a number of peak organisations who submitted to the inquiry in support of the MySuper reforms and these included the Industry Super Network, the Financial Services Council and the Australian Chamber of Commerce and Industry—and, as we know, ACCI are not often great supporters of initiatives of this government.
I will just read a short statement from Industry Super Network's submission, which I think highlights one of the shortcomings of the Howard government's superannuation choice policy:

... superannuation, regrettably, does not operate like a competitive market where consumers make informed and active decisions to place their savings with the best performing funds ... Without active engaged consumers there is little incentive for providers to strive to offer the best possible product delivering the best possible returns.

In the last few seconds that I have remaining I would just like to say that, in an economy like Australia's where we have the wealth and therefore the means to provide what most Australians dream of after a life of hard work and paying taxes, a comfortable and dignified retirement is what everybody should be entitled to. This bill will help people to realise that outcome.

Senator THISTLETHWAITE (New South Wales) (19:51): I support the passage of the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012. There are many economic legacies of the Hawke and Keating governments, but probably the most significant economic legacy in terms of advantages and changes to the lives of ordinary Australians is in the form of compulsory superannuation. We now have a $1.3 trillion investment fund—a pool of savings that not only businesses and investors but also workers, employees and their families can rely on to grow our economy to provide security and safety in retirement.

Congratulations to Paul Keating for his foresight as Treasurer in establishing our superannuation system. The bill before the Senate today builds on that great legacy and tradition of providing strong superannuation legislation in this country and it delivers on the government's 2010 election commitment to introduce a new, simple and low-cost default superannuation product for employees, MySuper. It is a key part of this government's Stronger Super reform package. Other reforms also include processes to make everyday transactions to the super system easier, cheaper and faster through the SuperStream package of measures, improving the governance and integrity of the superannuation system and improving the integrity of and increasing community confidence in the self-managed superannuation fund sector.

Stronger Super also complements the government's historic commitment to increase the superannuation guarantee from nine to 12 per cent. MySuper will provide a simple, cost-effective default product that all Australians can rely on. MySuper will be limited to a common set of features that make it easier for members, employers and other stakeholders to compare the performance of funds across the MySuper product range. Ultimately, that will place downward pressure on fees and will promote engagement and a greater understanding of superannuation in our economy.

This bill amends the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Industry (Supervision) Act 1993 to establish the core framework for MySuper products. MySuper products will replace existing default investment options in default funds, from 1 July 2013. MySuper products will have a simple set of product features, irrespective of who provides them.

Therefore, the bill requires APRA to be satisfied that a MySuper product has some core characteristics. These characteristics are: a single, diversified investment strategy, which can be a life cycle investment approach; equal access to services for all members; the same processes are used in allocating investment returns to members; no limits are placed on the contributions that a
trustee of a MySuper product will accept; and a member cannot be transferred out of the MySuper product unless the member consents or if it is required by Commonwealth law.

A trustee will also have to demonstrate that they are able to meet new obligations to act in the best financial interests of the members of the MySuper product. These obligations are outlined in other tranches of legislation that have been before this parliament.

The bill also establishes the authorisation regime for MySuper. Trustees will be required to be authorised by APRA for each MySuper product they wish to offer. APRA will be able to accept applications for MySuper products from 1 January 2013. I note that a number of funds are beginning to establish MySuper style products and to promote them in the marketplace. Any trustee will be able to apply to offer a MySuper product except trustees of eligible roll-over funds, self-managed superannuation funds and APRA-regulated funds with fewer than five members.

APRA will generally only authorise a trustee to offer a single MySuper product in a superannuation fund. However, trustees will also be able to offer employers who contribute to the fund for more than 500 employees a separate MySuper product tailored to the needs of that particular workplace. These products will be able to differ from a fund's main MySuper product in terms of investment strategy, member services and fees. These MySuper products must be separately authorised by APRA.

Minister Shorten has acknowledged that some stakeholders have raised concerns in relation to the process for authorisation of MySuper products for large employers. It has been suggested that there should be no separate upfront APRA authorisation of tailored large employer MySuper products. However, upfront authorisation will provide certainty for employers and their employees that the product will not be disallowed by APRA after it has been put in place and already started to receive contributions. If a MySuper product was allowed to commence before it was authorised and then disallowed by APRA this would be very disruptive, causing the employer to have to find another default fund at very short notice and causing the superannuation of employees to have to be moved to a different superannuation fund.

APRA has started to draft guidance material that, where a trustee has already been authorised to offer a main MySuper product, the authorisation of subsequent tailored MySuper products will only need to focus on key differences between the tailored product and the already authorised MySuper product. As such, where there are few differences in a tailored MySuper product, the authorisation process is expected to be quicker and require significantly less effort by a trustee. The government considers that this approach strikes the right balance between certainty for employers and employees and a smooth and functional application process for trustees.

Minister Shorten has asked Treasury to conduct a review of the authorisation process within two years of the commencement of the MySuper regime and this review will assess the efficiency of the authorisation process, including any impacts on commercial tender processes. The review will also specifically examine the time taken by APRA to assess and decide applications for authorisation of tailored MySuper products.

From 1 January 2014, it will be mandatory for all employers to make contributions to a fund that offers a MySuper product for any employee who has not chosen a fund. This
will provide employers six months to ensure that they are able to select a default fund that offers a MySuper product to comply with the superannuation guarantee obligations.

MySuper products will be restricted to charging fees that are described in the same way so that they can be directly compared. APRA will collect and publish data on all MySuper products to ensure that this information is freely available. Members of a MySuper product will also be generally charged a single fee structure. This will enable members, employers and market analysts to make comparisons based on the actual fees paid by the member in each MySuper product. In addition, requiring the same fees to be charged to all members will place a competitive pressure on trustees to offer the best possible fees to all of their members.

However, a trustee will be able to charge a lower administration fee to employees of certain employers reflecting administration efficiencies for the fund in dealing with that employer. Further, APRA will be able to authorise MySuper products with different investment fees within a lifecycle investment strategy if it is satisfied that certain conditions are met. Those conditions are: that the investment fee charged to each member of an age cohort is the same; that there is a maximum of four age cohorts and therefore no more than four investment fees; and that the investment fees for the age cohorts reflect their fair and reasonable attribution to the investment costs of the fund between the age cohorts. This will ensure that members invested in assets with lower investment costs do not cross-subsidise members invested in assets with higher investment costs because they are in different stages of the lifecycle.

I conclude by making some comments about the points raised by Senator Cormann regarding default funds and their listing within modern awards. The fact is that these reforms do not affect choice of superannuation fund legislation. Employees maintain the discretion to choose which fund they wish to have their superannuation contributions made to. That means when they go to the employer they receive an employment declaration and their choice of superannuation fund form.

The opposition has an issue with industry superannuation funds because—and this is really the crux of the matter—most employees choose to remain in industry funds because the fees are lower, commissions are lower and the performance is greater. That is a product of the system that has been established by a Labor government, a system that the opposition wishes to try to tear down. It has never got over the fact that it never appreciated the significance of superannuation and never initially supported its establishment and cannot get over the fact that superannuation funds that are run by unions, with trustees on those boards, in cooperation with employer associations perform better than most corporate funds.

On that basis, this is a worthy reform in the great tradition of Labor delivering better superannuation and better retirement savings for our economy. I comment the bill to the Senate.

Senator WONG (South Australia—Minister for Finance and Deregulation)
(20:03): I thank all senators who have participated in this debate as it has been the subject of a number of contributions. This is a bill which delivers on the Labor government’s 2010 election commitment to introduce a new, simple low-cost default superannuation product, called MySuper. It represents yet another important step in improving the efficiency, competition,
transparency and governance arrangements for the superannuation industry.

MySuper is one part of the government's comprehensive agenda to make superannuation simpler, fairer and more efficient in order to deliver better retirement incomes. In combination, the government's superannuation reforms are estimated to increase retirement superannuation balances by almost $150,000 for a 30-year-old worker earning average full-time wages. MySuper will benefit the estimated 60 per cent of working Australians who are currently in the default investment option of a default fund.

There were a number of contributions in this debate which would pertain to the amendments to be moved by the opposition. I will respond to those in the context of the committee debate. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

**In Committee**

Bill—by leave—taken as a whole.

**The TEMPORARY CHAIRMAN** (Senator Cameron): The question is that the bill stand as printed.

**Senator WONG** (South Australia—Minister for Finance and Deregulation) (20:05): I table a supplementary explanatory memorandum relating to government amendments to be moved to this bill. I also seek leave to move government amendments (1) and (2) on sheet BG 245 together.

Leave granted.

**Senator WONG:** I move government amendments (1) and (2) on sheet BG 245 together:

(1) Clause 2, page 2 (after table item 1), insert:

1A. Schedule 1, item 1A

1A The day this Act receives the Royal Assent.

(2) Clause 2, page 2 (table item 3), omit "However, if the provision(s) do not commence before 1 January 2013, they commence on that day."

These amendments relate to the provisions which enable trustees to apply to APRA for authorisation to offer a MySuper product. Currently these provisions will commence on 1 January 2013, allowing applications to offer a MySuper product to commence from this day. However, a key requirement for the application to offer a MySuper product are contained in the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012, which is the tranche 3 bill. Importantly, this bill includes elections to charge commissions and to move members' existing balances to MySuper that a trustee will have to make with their application to offer MySuper products. This tranche 3 bill is currently in the House of Representatives and applications to offer a MySuper product shall not commence until that bill is passed. Accordingly, the amendment from the government changes the day on which the provisions of the bill commence to a day fixed by proclamation to ensure that applications for a MySuper product will not commence until those key requirements in the bill to which I have referred have also come into effect.

**Senator CORMANN** (Western Australia) (20:07): I place on record that the coalition supports those amendments, but I make the point that the reason there is a need for these amendments is the exact reason that I pointed to in my second reading debate speech: the disjointed, ad hoc and, quite frankly, incompetent nature with which this reform was progressed by the government. We have had three tranches instead of having one piece of legislation dealing with the MySuper reform holistically so that we could have proper scrutiny of what is on the table
and a proper holistic assessment of the merits or otherwise of what is being proposed. The government have been chopping and changing, rushing things and then slowing things down, and they really have not known where they were going with it. Now, because they got stuck with the timing, they need to make these sorts of amendments. Otherwise, they will come unstuck with the practical implementation. We understand why the government have to do it and on that basis we will support it.

Question agreed to.

Senator CORMANN (Western Australia) (20:08): by leave—I move amendments (1) to (4) and (6) to (8) on sheet 7277 together:

(1) Schedule 1, item 6, page 4 (line 12), after "29T", insert "or satisfies the provisions of section 29TB".

(2) Schedule 1, item 9, page 9 (line 24), omit "or 29TB".

(3) Schedule 1, item 9, page 9 (line 29), omit "or 29TB".

(4) Schedule 1, item 9, page 11 (lines 7 to 14), omit paragraph 29TB(1)(b), substitute:

(b) that employer is a large employer in relation to the fund (see subsection (2)); and

(6) Schedule 1, item 9, page 12 (after line 15), at the end of section 29TB, add:

(3) An RSE licensee with a MySuper authorisation must report the details of MySuper products for large employers to APRA on an annual basis. APRA may disallow a large employer MySuper product at any time where it does not comply with subsection 29TB(2).

(7) Schedule 1, item 9, page 14 (line 30) to page 15 (line 8), omit paragraph 29U(2)(b).

(8) Schedule 1, item 9, page 21 (line 14), omit "sections 29T and 29TB", substitute "section 29T".

Before I start to make a few points in relation to these amendments and the reasons for them, I will make a quick observation about some comments that Senator Thistlethwaite made in his second reading debate speech. Senator Thistlethwaite essentially told the Senate that the reason the coalition is in favour of competition in the default super fund market is because we are concerned that industry funds are so good and that competition is the only way that we can somehow tear industry funds down—because we hate industry funds. That is a completely ridiculous and inherently illogical argument. If industry funds are as good as Senator Thistlethwaite says they are—and I hear these arguments all of the time—and if they so much better, with lower fees, better service and higher performance, then surely they would thrive in a competitive environment.

I have made the point quite regularly to senior executives and leadership of some major industry super fund organisations that the current Labor government is actually not doing them a favour by creating this anticompetitive, closed shop process through Fair Work Australia, which protects them and shields them from genuine competition. Quite frankly, if they could thrive in a genuinely competitive environment, how much better would that be? It would force everybody else in the market to aspire to rise to that same level and it would provide a genuine engine in that market to ensure that there was innovation and improvement in the value proposition across the board. Nobody is ever so good, I would say to Senator Thistlethwaite, that they cannot be even better for being on the receiving end of some competitive tensions.

Of course, that is something that the Labor Party fundamentally does not understand, but we understand that only the most efficient, the most transparent and the most competitive superannuation system, with appropriately high corporate governance standards, will ensure that the retirement savings of people across Australia are maximised, including and in particular the
retirement savings of those Australians in default superannuation funds. When it comes to corporate governance standards, do not go any further than the government's own commissioned Cooper review, which firstly found that the so-called current equal representation model in the industry, where you have equal numbers of union representatives and employer representatives managing a fund, is no longer appropriate, no longer contemporary, given the size of the market we are dealing with and given where corporate governance standards are in 2012. But I am getting a bit diverted.

On the first set of amendments, the bill as drafted would require a superannuation fund with a MySuper licence to apply to APRA prior to providing superannuation services to each large employer. Five organisations—BT, Mercer, the Corporate Superannuation Specialist Alliance, the Association of Superannuation Funds of Australia and the Financial Services Council—all argued strongly at the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the bill that this additional authorisation process for tailored MySuper products for large employers is unnecessary, given that all funds offering such tailored plans are already authorised to provide a MySuper product. The superannuation industry across the board made the strong point that this additional process would be cumbersome, time consuming, unnecessary and costly.

Of course, here we have it. This government has never seen a bit of red tape it does not like. This government has never seen a bit of red tape, ultimately unnecessarily pushing up costs for people in super funds, that it does not like. Given the choice between an efficient process or some additional red tape, this government will invariably go for the additional and unnecessary red tape, and that is what they are doing on this occasion. Representatives from across the superannuation industry expressed strong concerns to the PJCCF inquiry that this additional authorisation process would move APRA away from its proper and very important role as a prudential regulator focused on risk and governance and into areas of commercial interest between funds and large employers which have nothing to do with its regulatory role. If this provision is not amended, fewer Australian workplaces will have super arrangements which reflect their employees' specific needs.

Again, this is maybe not something that the Labor Party understands, but different workplaces and different sectors of the economy do happen to have different needs, including when it comes to being able to tailor a particularly attractive superannuation proposition. You would have thought that any government that is focused on maximising the benefits for Australians saving for their retirement would want to provide maximum flexibility to ensure that these MySuper products can be tailored in such a way as to be as efficient and as cost-effective as possible to the specific needs in specific workplaces. But no, clearly the government is not that focused on the employees' needs. Who knows what interests it is focused on. Australians will have a reduced suite of products in a less competitive market and further unnecessary cost and regulation will be introduced into the financial services industry. The coalition amendments will require superannuation funds to report the existence of these arrangements rather than apply to APRA prior to issuance.

We believe one licence to operate a business in any industry is sufficient. The amendments should still allow APRA to disallow a noncomplying fund. Such a process would address the public policy
concern that the existence and number of employers plans are unclear to APRA. It would require regular reporting without undermining the efficiency, competitiveness and commerciality of tender processes, and the coalition amendment would also ensure that APRA continues to fulfil its proper role as a prudential regulator, which should be focused on risk and governance without entangling it in commercial matters which affect neither factor.

I have moved opposition amendments (1) to (4) and (6) to (8), but those comments also apply to amendment (9), which will have to be moved separately because the voting pattern, in a technicality that always escapes me, is somewhat different. From your smile, Minister, I can see that you know what I am talking about. It seems that to achieve what we want to achieve, we will be voting in favour of opposition amendments (1) to (4) and (6) to (8), and we will be opposing schedule 1 in the following terms:

(9) Schedule 1, item 12, page 25 (line 12) to page 26 (line 15), TO BE OPPOSED.

With those few words on these amendments, I commend our amendments and our recommended approach to the Senate.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:16): The government does not support the opposition amendments. These amendments would mean that a tailored MySuper product does not have to be authorised by APRA and would allow a trustee to accept contributions even if APRA had not assessed the product. It would be a fairly unique approach, given that licensing regimes would generally not allow something to commence until the regulator had made a decision. I am advised that APRA has made clear that authorisation is an important entry control for MySuper products, ensuring that there can be an upfront assessment that the product meets the legislative criteria before member contributions are placed into the product.

APRA has indicated in draft guidance material that where a trustee has already been authorised to offer a MySuper product, authorisation of subsequent tailored MySuper products would only need to focus on key differences from a fund’s main MySuper product. As such, where there are few differences in a tailored MySuper product, the authorisation process is therefore expected to be relatively quick. My comments, consistent with Senator Cormann’s apply also in relation to opposition amendment (9).

Question negatived.

Senator CORMANN (Western Australia) (20:17): In order to facilitate the operation of the Senate tonight, I will not be calling a division, but I wish to place on record that the Labor and Greens senators in the chamber indicated that they were opposed to our amendments. Of course, we are in favour of our amendments and we are very disappointed with this outcome. My comments are just to facilitate progress.

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

Question agreed to.

Senator CORMANN (Western Australia) (20:18): I move opposition amendment (5) on sheet 7277:

Schedule 1, item 9, page 12 (lines 1 to 15), omit subsection 29TB(2), substitute:

(2) An employer is a large employer in relation to a regulated superannuation fund if there are 500 or more employees of the employer, or an associate of the employer, at the time the beneficial interest in that class is first issued and at the end of each annual reporting period.

There were significant concerns expressed to the Parliamentary Joint Committee on
Corporations and Financial Services, which inquired into this bill, about the benchmark above which large employers can tailor funds for their employees. Provisions of the bill allow for such tailoring where the employer contributes to a fund on behalf of 500 or more members. Many participants in the superannuation industry submitted to the PJC inquiry that the threshold in its current form is complex, unworkable and may have a number of unintended consequences. The organisations expressing their concerns included the Financial Services Council, the Corporate Super Specialist Alliance, Mercer, and the Association of Superannuation Funds of Australia—a broad cross-section of the industry, as you can see. This coalition amendment replaces the complex and unworkable threshold with a simple, easily quantifiable and effective test that defines the large employer threshold as an employer that has 500 or more employees at the relevant time. I commend the amendment to the Senate.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:19): I indicate to the chamber that the government opposes the amendment. A test based solely on employees as opposed to members would allow an employer to obtain a tailored MySuper product for substantially fewer than 500 members. The government believes it is appropriate to leave the test as it is in the government's bill before the chamber.

Question negatived.

Bill, as amended, agreed to.

Third Reading

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:21): I move:

That the bill be now read a third time.

Question agreed to.

Bill read a third time.

Equal Opportunity for Women in the Workplace Amendment Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:22): It is a pleasure to rise to give the summing-up speech in this debate on the Equal Opportunity for Women in the Workplace Amendment Bill 2012. This is a bill which delivers a significant package of reforms that were promised by the government during the 2010 election—reforms aimed at reducing gender inequality. It has been estimated that closing the gap between men's and women's workforce participation could boost GDP by 13 per cent, and through improved workplace participation and workplace flexibility for women the reforms are also expected to improve productivity and to contribute to addressing current and future skill shortages.

As well as improving gender equality the bill aims to simplify reporting for businesses. A review of the act by the Office for Women in FaHCSIA revealed a number of economic, social and legislative changes that make it important for updates to be made to the act and for the Equal Opportunity for Women in the Workplace Agency to provide a contemporary response to national challenges. The review made it clear that gender equality is essential to maximising Australia's productive potential and to ensuring continued economic growth. Gender equality is good for the economy; it is also the right thing to do.

The first reform made by this bill is to change the name of the act to the Workplace Gender Equality Act 2012 in order to
emphasise the focus of the act. Concomitant changes are made to the name of the agency and to the title of the director. The bill also amends principal objects of the act to reflect the focus on gender equality in the workplace. Importantly, the coverage of the act is expanded to include men as well as women, particularly in relation to caring responsibilities. Under new outcomes based, streamlined and more transparent reporting requirements a relevant employer will need to prepare and lodge a public report containing information on gender equality indicators for the reporting period commencing 1 April 2013. Smaller organisations will not be required to report, but they will be able to access the agency's advice, education and incentive activities.

Businesses will be able to complete and submit reports online using a secure web portal. This is a change that has been sought by the business community as it will save them time and money. The reporting changes will represent the first opportunity for the agency to gather and analyse a rigorous and standardised data set, and will mean that organisations can measure their performance against others. When an employer lodges a public report employees and shareholders must be informed and their organisations must be given the opportunity to comment. Under the amended legislation the minister will be able to set industry-specific minimum standards in consultation with industry and experts. These standards will be determined prior to 1 April 2014 and will be used to identify organisations that are struggling and to target advice and assistance. The bill also improves the transparency and fairness of the compliance framework and consequences for noncompliance.

This new legislation puts gender equality in the workplace in the spotlight. It is a reminder of the determination of this government to improve women's economic security. This begins with fair and equitable treatment in the workplace. I have great pleasure in commending the bill to the Senate.

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

The Senate divided. [20:30]

(The President—Senator Hogg)

Ayes .................33
Noes .................27
Majority ............6

AYES

Bilyk, CL
Brown, CL
Collins, JMA
Crossin, P
Evans, C
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
Milne, C
Polley, H
Rhiannon, L
Singh, LM
Sterle, G
Thorp, LE
Whish-Wilson, PS
Wright, PL

NOES

Back, CJ (teller)
Birmingham, SJ
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Fifield, MP
Johnston, D
Mason, B
Nash, F
Payne, MA
Ruston, A
Scullion, NG
Williams, JR

Bernardi, C
Boyce, SK
Bushby, DC
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Humphries, G
Kroger, H
McKenzie, B
Parry, S
Ronaldson, M
Ryan, SM
Smith, D

CHAMBER
Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CASH (Western Australia) (20:32): Minister, I turn to the minimum standards. The explanatory memorandum states that before 1 April 2014 the minister will by legislative instrument set minimum standards in relation to specified gender equality indicators, specified relevant employees and specified reporting periods. You will be aware that there has been a three-year lead time to this legislation, along with the fact that it has been on the government's legislative agenda for some time this year. Could you please advise the Senate of what progress the minister has made in relation to the development of the minimum standards to date.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:34): I am advised that the work to date has primarily involved academic research, but I am obviously able, if the senator would like a more detailed briefing on this after the passage, to arrange such a briefing.

Senator CASH (Western Australia) (20:35): If the agency has been undertaking research, what research has been undertaken by the agency to date? I will ask that question again: the minister in her answer to me stated that the agency has been undertaking research to date in relation to the minimum standards. Would the minister be kind enough to advise the Senate what research has been undertaken by the agency to date, given the fact that there was a three-year lead-up in relation to this legislation and the legislation has been on the government's agenda for the majority of this year. Also, the relevant reporting period that employers will be reporting under actually commenced approximately three or four months ago.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:35): I am advised that the work to date has primarily involved academic research, but I am obviously able, if the senator would like a more detailed briefing on this after the passage, to arrange such a briefing.

Senator CASH (Western Australia) (20:35): Could the minister elaborate on the internal cost to each organisation and not just on the reporting requirements themselves? If you cannot elaborate, you will not elaborate or there is no further information to be provided, please say so for the Hansard record.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:36): I refer the senator to the RIS.

Senator CASH (Western Australia) (20:35): Could the minister elaborate on the internal cost to each organisation and not just on the reporting requirements themselves? If you cannot elaborate, you will not elaborate or there is no further information to be provided, please say so for the Hansard record.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:36): I refer the senator to the RIS.

Senator CASH (Western Australia) (20:36): Has the government's task force to reduce red tape approved of this legislation?
The purpose of the RIS is to assess the net benefit, and so in relation to the regulatory burden and the cost-benefit analysis I would refer the senator to the RIS.

Senator CASH (Western Australia) (20:36): The minister, I am sure, is aware that in a number of the submissions presented during the KPMG inquiry and in relation to the Senate inquiry, some businesses raised the issue of an increased regulatory compliance. Again I ask: on the basis that these issues have been raised during the development of the legislation and during the inquiry into the legislation, has the government's task force to reduce red tape approved of this legislation?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:37): I am the minister for deregulation and I am happy to explain to the senator on another occasion the regulatory assessment framework that the government has put in place. Under that framework there is a regulation impact statement required for significant reforms. That is included in the explanatory memorandum that the senator would have, which really does go through the issues that she is referring to.

Senator CASH (Western Australia) (20:39): The agency under this legislation is stated to be able to review a relevant employer’s compliance with this act by seeking further information from the employer. The wording used is 'may'. It then states that the agency may do this on a random basis. What guidelines are there surrounding the ability of the agency to undertake such a review and in what circumstances would the agency undertake such a review?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:39): The word 'may' in this context I would suggest is probably no different to the way in which statutory discretions are defined across many provisions in legislation state and federal. It is a discretion that gives a statutory agency particular powers. They have a discretion in that. Obviously it would be a matter for the agency as to how they may choose to explicate in more detail how they would want to approach the exercise of those powers. That is not spelt out in legislation, and that is not an unusual thing. There are a lot of statutory discretions in the form that you have described.

Senator CASH (Western Australia) (20:40): Certainly there are a lot of such discretions but, given that there was a three-year lead-up in relation to this legislation,
one may have thought that the agency had been provided with some form of guidelines in relation to the exercise of this power, in particular given that checks on a relevant employer may be undertaken and may by written notice require a relevant employer to provide information that is relevant to the employer's compliance with the act. Again I ask the minister: in relation to the checks on the employers, what are the relevant guidelines under which these checks may be taken?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:41): I am not sure what the senator means by checks.

Senator CASH (Western Australia) (20:41): One of the powers that is given to the agency is that it is able to undertake checks of employers to ensure that they are complying with the act. This is an issue that we raised earlier on this year.

Senator Wong: What section is this?

Senator CASH: It is in relation to the agency reviewing the relevant employer's compliance with the act by seeking further information from the employer and the agency being able to do that on a random basis. I am looking at page 15 of the bill. One of the comments the minister made—in fact, I believe it was former minister Ellis—was that the agency would be able to conduct random checks of employers. A number of employers have raised concerns in relation to the ability to undertake random checks. One would like some guidelines in terms of what are the random checks and how they are going to be undertaken.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:42): I would have thought the very nature of random reviews of an employer's compliance, which I think is what the senator means when she says checks, indicates that as a compliance mechanism they would be obviated if I was to say to you precisely which employers would be the subject of a random check.

Senator CASH (Western Australia) (20:43): Has the minister or the government considered the implications of union bosses being provided with the information that is required under the act and is it the government's intention that these new measures be used by union bosses to make ambit wage claims or to draw out enterprise negotiations?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:43): In relation to the last point, the answer is no.

Senator Cash: And in relation to the first?

Senator WONG: That is a debating point.

Senator CASH: Has the government in drafting this legislation turned its mind to the implications of union bosses being provided with this information and the use to which the information may well be put?

Senator Wong: The relevant term is employee organisations.

Senator CASH: I am happy to go with employee organisations.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:44): We are not quite sure, other than the general anti-union tirade that usually comes out of the contributions of those on that side, precisely what the senator is referring to. If she is referring to the fact that there is potentially confidential information included, I am advised that there are confidentiality provisions contained in the legislation.
Senator CASH (Western Australia) (20:45): One of the aspects that the Australian Greens are concerned about is that the bill excludes those businesses with fewer than 100 employees. Indeed, Senator Rhiannon, in her speech on the second reading, said that the Greens see this as quite detrimental. Has the government given any consideration to extending the coverage of the act to businesses with fewer than 100 employees?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:45): I am looking forward to an amendment being moved at some point. At some point we will get to an amendment, I suppose.

Senator Cash interjecting—

Senator WONG: That is a very mature attitude! I will just put on record what the opposition spokeswoman for women said: 'At the rate you're going, I might as well call some divisions just for a bit of fun.' Just for a bit of fun, because, you know, we want to have a bit of fun on this piece of legislation!

Senator McEwen interjecting—

Senator WONG: Yes. That the spokesperson for women thinks that this is a bit of fun says something about the attitude on that side. It was probably a bit of a mistake to say that, Senator Cash. I am advised that the act in fact covers employers who have fewer than 100 employees. However, it is the reporting requirement which is relevant to the threshold.

Senator CASH (Western Australia) (20:46): Yes, and therefore has the government given any consideration to whether or not businesses with fewer than 100 employees should be required to report?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:46): I understand that we did consider it and declined to extend the reporting requirement below the 100 threshold.

Senator CASH (Western Australia) (20:47): Has the government undertaken modelling on the increased regulatory burden of extending the coverage of the act to businesses with fewer than 100 employees and, if so, what was the result of that modelling?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:47): Not that I am aware of, nor am I so advised, and the government's position remains the one I have outlined.

Senator CASH (Western Australia) (20:47): One of the issues in the regulatory impact statement at page 19 is in relation to the range of regulatory approaches that could be taken by a government. The first one is 'Reducing regulation—no regulation or self-regulation'. It states:

This approach is not recommended.

It then refers to 'Light and responsive regulation'. It says this is 'the preferred option'. It then refers to 'Prescriptive legislation' and states:

This approach is not the preferred approach at this time.

Has the government given any consideration to going down the path of prescriptive regulation in relation to reporting requirements at any time?

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:48): The government has made the decision to put forward the approach which is contained in the legislation and which is consistent with the option in the RIS.

Senator CASH (Western Australia) (20:48): by leave—I move opposition amendments (1), (2), (4) to (6), (8) and (9) on sheet 7263:
(1) Schedule 1, Part 1, item 46, page 12 (line 8), omit "13C and".
(2) Schedule 1, Part 1, item 46, page 12 (lines 8 and 9), omit "sections" (wherever occurring), substitute "section".
(4) Schedule 1, Part 1, item 46, page 12 (line 31), omit the note to subsection 14(2).
(5) Schedule 1, Part 1, item 48, page 13 (line 21), omit "13C,".
(6) Schedule 1, Part 1, item 55, page 15 (lines 24 and 25), omit "gender equality indicators, ".
(8) Schedule 1, Part 1, item 55, page 19 (after line 32), after section 19E, insert:

19F Agency to make publicly available the names of employers who submit compliant reports

The Agency shall make publicly available the names of relevant employers who regularly submit reports which comply with this Act.

(9) Schedule 1, Part 1, item 71, page 21 (after line 23), after section 33A, insert:

33B Minister to repeal a legislative instrument when a new instrument is made

If making a legislative instrument under this Act which imposes a requirement on employers, the Minister must cause an existing legislative instrument which imposes a requirement on employers to be repealed.

The opposition also opposes schedule 1 in the following terms:

(3) Schedule 1, Part 1, item 46, page 12 (lines 10 to 20), section 13C TO BE OPPOSED.
(7) Schedule 1, Part 1, item 55, page 16 (lines 15 to 29), section 19 TO BE OPPOSED.

The coalition moves these amendments because an analysis of the impact of the current legislation suggests that, despite its stated intent, the bill in its current form will trigger a number of unintended consequences, will result in the implementation of bad public policy and will not achieve the desired policy outcome.

One of the coalition amendments seeks to remove the inordinate level of discretion proposed to be provided to the minister. The bill is drafted to provide the minister with an inordinate amount of discretion. The explanatory memorandum confirms this broad discretion. It states that the bill:

… gives the Minister the flexibility to consider all issues relevant to gender equality and to add new matters.

The coalition believes that the parliament should be given the opportunity to consider the scope and extent of these new matters. The minister to date has been unable to provide any guidance as to what these new matters may be. Perhaps, Minister, you may be able to enlighten us as to whether or not there has been any consideration of what these new matters may well be. In particular, the regulatory impact statement at page 21 talks about 'prescriptive regulation' and says that this 'is not the preferred approach at this time'. Certainly I have asked the minister the question that needs to be answered. To date, it has not been, and I still have concerns about if and when this will be the preferred option of the government, given that in the government's own regulatory impact statement the only guidance that is given is:

This approach is not the preferred approach at this time.

In the absence of agreeing with the coalition's amendments, I would have appreciated the minister giving an undertaking that this is not the intended option and will never be the intended option of the government. Given that the bill provides a mere framework agreement and the government has failed to address so many of the issues that are conveniently left to ministerial discretion, it is the coalition's position that the government is premature in introducing this legislation.

The coalition amendments also seek to reintroduce provisions allowing the agency to waive public reporting requirements for relevant employers and insert a provision for
the agency to give public acknowledgement to relevant employers who regularly meet compliance standards. The bill as drafted is all stick and no carrot, with the capacity for the agency to waive reporting requirements for a relevant employer to be repealed. As the Ai Group said in their submission to the initial KPMG review:

... it may be worthwhile, in Ai Group’s view, to introduce a form of positive recognition for organisations which submit regular reports, to provide an incentive to do so. This may be more appropriate and effective than the alternative, which is to penalise those which do not report. While EOWA recognises outstanding organisations through its "employer of choice awards", there are of course numerous organisations which regularly report but for a variety of reasons do not apply for or receive such awards. Recognising organisations which regularly submit compliant report, such as a certification process, could be considered.

The coalition amendments also require the government to remove one regulation for relevant employers for each new regulation imposed by the act. To date, whilst the government is very strong on its rhetoric in relation to repealing regulations, my understanding is that over 18,000 regulations have been introduced by the Labor government during its time in office whilst but a handful of regulations have actually been repealed. So, despite its rhetoric, the government is certainly failing miserably in this regard.

Unlike the government, the coalition supports the right and responsibility of employers to operate efficiently and employ people on merit. We also believe in smaller government and not interfering with businesses getting on with the job of employing people. The coalition believes that the imposition by government of unnecessary and burdensome regulation on business causes business, big and small, to divert time, money, efforts and resources to comply with government red tape. Under this government, that is a considerable amount of red tape, with over 18,000 regulations having been introduced whilst this government has been in power, as I said, rather than creating jobs and opportunities for all Australians. We support the right of employers to run their business efficiently and to employ people on merit. We do not support the placement of measures which are designed to increase the level of government interference in the workplace.

As I stated in my speech in the second reading debate, the coalition is concerned that this particular bill will not achieve its stated objectives and will, rather, as stated by the Chamber of Commerce and Industry of Western Australia, only serve to divert the attention of employers away from efforts to implement measures to promote workplace equality, to ensure they are compliant with the procedural requirements of the legislation.

Whilst the department estimates that the cost to business will decrease on average, from approximately $1,200 to $450 per annum in resourcing costs, page 24 of the regulatory impact statement specifically states:

The reforms will result in increased compliance costs for businesses who have not previously been compelled to report.

Page 26 of the RIS states:

Agency will be provided with the authority to conduct organisational reviews.

It goes on to say:

The time burden—on businesses that are selected for such a review—would be increased—as would the cost burden, being $1,300. It is interesting to note that this estimate was modelled on organisations that have kept
appropriate records up to date and accessible. It was certainly not modelled on organisations that have not done this, and therefore the logical conclusion is that the compliance burden on those organisations is certainly going to be a lot heavier.

The compliance burden on Australian businesses is increasing and impacting on productivity and competitiveness. Studies of red tape in Australia have put the cost of red tape as high as four per cent of all business costs. The Productivity Commission has estimated the rewards for red tape reduction alone to be worth $12 billion in additional GDP. Regulation, whether for economic, social or administrative reasons, can increase the cost of doing business, inhibit innovation and erect barriers to entry. The volume of regulation, as I have already stated, continues to grow under the Labor government. I note we have the relevant minister here, the minister for, allegedly, deregulation. I would like to know what the minister's definition of 'deregulation' is, given that over 18,000 new regulations have been introduced under this government, whilst I understand that fewer than 100 have actually been repealed.

Many important laws and regulations have been introduced without proper assessment of the costs and benefits, including a lack of consultation with affected stakeholders. The coalition understands the impact that red tape and excessive regulation can have on business. We work on this principle, unlike the government: a business that has to close employs no-one. In our opinion, that does not assist gender equality in the workplace. The coalition's commitment to reducing red tape is a real commitment—hence the announcement of our deregulation task force. The aim is to reduce regulation and red tape by over $1 billion per annum. Regulations that raise business costs and reduce competition are a particular focus of the coalition's review.

Unfortunately, Labor does not understand this and this bill is just another example of its lack of understanding. In proposing our amendments, the coalition is seeking to strongly support the principle of gender equality. The amendments are drafted to make meaningful changes to the current bill in the interests of achieving gender equality, improving workplace participation and improving workplace flexibility. The reform of the act represented the chance for the government to do something meaningful to advance gender equality in Australian workplaces by introducing measures to improve flexibility, productivity and incentives to encourage women back to the workforce after having children. Regrettably, what we are faced with tonight, and what will pass the Senate tonight, is nothing more and nothing less than hastily concocted, half-finished measures that are unclear and provide for an inordinate amount of ministerial discretion. They certainly provide for an inordinate amount of ministerial discretion, in particular when the minister is able to make decisions that will directly impact on the regulatory burden on businesses. That is not something that is supported by the coalition. The bill in its present form represents a failure of Labor government policy and a lost opportunity to improve gender equality, which will continue to be a significant disincentive to the participation of women in the Australian workforce.

Senator RHIANNON (New South Wales) (20:58): Senator Cash has put no coherent argument about why coalition amendments should be supported and this legislation should be voted down. We have heard a few anti-union outbursts and off-the-mark questions, and Senator Cash's red tape complaints just do not stand up. The
legislation before us puts minimal requirements on business.

The Greens do not support any of these amendments. The package of changes knocks out the advances for women in this bill. The amendments, if passed, would return us to the status quo, which is quite extraordinary. Having said that, the amendments are useful in that they provide a window into the coalition's policy for women and what a setback it would be for women if we ended up with an Abbott-led government. What Senator Cash has put on record tonight is that the coalition will not play a role to end discrimination and remove the disadvantage so many women still face. There is a lot of heavy lifting to be done to remove all the discrimination. Tonight provides a very small step, a small bit of lifting, and the coalition could not even come on board for that.

Senator WONG (South Australia—Minister for Finance and Deregulation) (20:59): I thought I should respond to Senator Cash's amendments. First, in relation to some of the comments about deregulation: a number of the senator's assertions are quite incorrect. I do not wish to take up the Senate's time by going through them. I would make the point that she might want to look at a report—I think it came out today—which talked about the time taken in compliance for small business; the largest single component was in fact the GST, which, of course, was introduced by the coalition.

I think her figure of $4 billion, in terms of the Productivity Commission's assessment of the benefits of deregulation, the cost reduction, is actually referring to a Labor agenda. It is actually referring to the various components of the seamless national economy reforms which COAG signed off on in 2008 and which Minister Bradbury and I and other ministers are working on. And it was those deregulation and harmonisation initiatives—introduced by a Labor government, and being worked through in painstaking fashion, because that is, unfortunately, what is required, with state governments of both political persuasions—which were assessed by the Productivity Commission as giving rise to the reduction in business costs of $4 billion.

I think the senator did introduce all of her amendments, so I will just give her and the chamber the courtesy of indicating briefly the government's response. The government does not support these amendments.

On amendments (1) to (5): these amendments seek to reinstate the waiving provision and remove the personal information provision. The government does not support the reinstatement of the provision enabling the agency to waive public reporting requirements. In the consultations carried out for the review, waiver was not well supported across business or the community more broadly. It is administratively burdensome for both the agency and business.

To streamline the administrative burden the government has the new online simplified reporting system to which I referred earlier, which makes reporting once a year consistent across all employers. If select organisations were to be waived from reporting annually, the integrity of the data would be undermined. Really we are looking at, I suppose, an annual health check on gender equality, and I think it is not an unreasonable proposition.

We are not sure why the coalition would be doing so, but one of the amendments, I am advised, involves the removal of provisions relating to personal information. The government considers that this provision is important to ensure the privacy of
individual employees and is consistent with the provisions of the Privacy Act, and so does not support the amendment.

On amendments (6) to (7): these amendments seek to remove the capacity for the minister to set minimum standards in relation to gender equality indicators. What the amendment proposes to do is to remove all reference to how minimum standards are set. One wonders how that is in fact pro-business and how that would be transparent. Without this provision, it would seem rather strange to consider how a minimum standard would in fact be set. The minister, under the government's approach, is required to consult with appropriate organisations and persons, and in considering the consultation the minister will consider the nature of the instrument. So the amendment, I am advised, makes neither legal nor practical sense. In the consultation process, business asked for the assurance of a disallowable instrument, and this is what section 19 provides.

As to amendment (8): this amendment seeks to make public the names of relevant employers who regularly submit reports which comply with the act. We believe this amendment is unnecessary. Section 15A is already being amended by this bill to explicitly enable the agency to publish reports by electronic or other means. Recognition of good gender equality practice is a key part of the agency's functions, and this will continue.

Amendment (9) seeks to have the minister repeal an existing legislative instrument imposing a requirement on employers when a new instrument imposing a requirement is made. The government does not support this amendment. The legislative instrument referred to in the bill would not contain requirements. The requirement to report is contained in section 13, in relation to gender equality indicators not in the legislative instrument. The specification of minimum standards in relation to gender equality indicators, I am advised, is not a requirement. Similarly, the minister cannot cause a legislative instrument to be repealed. A legislative instrument is required in order to revoke an existing instrument. As for all disallowable instruments, it is tabled in the parliament and subject to disallowance. The government believes this ensures an appropriate level of scrutiny.

The TEMPORARY CHAIRMAN (Senator Boyce): The question is that amendments (1) and (2), and amendments (4) to (6), (8) and (9) on sheet 7263 moved by Senator Cash be agreed to.

Question negatived.

Senator CASH (Western Australia) (21:05): Due to the lateness of the hour, I will not be calling a division. However, I note that the government and the Greens did not support the coalition's amendments.

The TEMPORARY CHAIRMAN: The question now is that section 13C in schedule 1, part 1, item 46, which was circulated as amendment (3), stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN: The question now is that section 19 in schedule 1, part 1, item 55, which was circulated as amendment (7), stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator WONG (South Australia—Minister for Finance and Deregulation) (21:07): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Dental Benefits Amendment Bill 2012
Second Reading
Debate resumed on the motion:
That this bill be now read a second time.
(Quorum formed)

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (21:10): I rise to make a brief contribution to the Dental Benefits Amendment Bill 2012. This bill will implement the federal Labor government's dental health reform package. The oral health of Australian children has been declining since the mid-1990s. By the age of 15, six out of every 10 children will have experienced tooth decay. That is why the Labor government are taking action to implement our dental health reform package.

This is a six-year package that will invest over $4 billion. It includes $2.7 billion for around 3.4 million Australian children who will be eligible for funded dental care; $1.3 billion for around 1.4 million additional services for adults on low incomes—including pensioners, concession cardholders and those with special needs—who will have better access to dental health care in the public system; and $225 million for dental services in terms of capital and workforce for people living in areas of need, such as outer metropolitan, regional, rural and remote areas.

For those 3.4 million Australian children, going to the dentist will be just like seeing a GP. In my home state of Tasmania—and, as Senator Polley has just reminded me, her home state, and also Senator Colbeck's home state—around 74,000 children from 40,000 families will benefit from this new dental reform package. Eligible Australian families who receive family tax benefit part A will be entitled to $1,000 per child every two years over the life of the package. This $1,000 can be used for basic care on procedures such as check-ups, cleaning, scaling, fluoride treatments and fillings. Investment in our children's teeth is so vital. Investment for the future and it will significantly benefit them late in life.

Recent studies have outlined that children in lower socioeconomic areas experience 1½ times more tooth decay and cavities than those in wealthier areas, and members of low-income households have more than twice as much untreated tooth decay as those in high-income households. Almost 20,000 children under the age of 10 are hospitalised each year due to avoidable dental issues, and 45 per cent of 12-year-olds have decay in their permanent teeth. In 2007, just under half—46 per cent—of six-year-olds attending school dental services had a history of decay in baby teeth. Finally, people earning more than $60,000 per year have, on average, seven more teeth than those earning less than $20,000.

The statistics are damning. I could go on, but these statistics highlight why the Gillard Labor government have taken action to implement our new dental health plan. These figures are simply not acceptable. For many years, Medicare and public hospitals have given Australians access to free Medicare whilst millions have missed out on adequate dental care. So I am extremely proud that it is the Gillard Labor government that is tackling this issue head on and investing in dental reform and putting forward a package to improve the oral health of Australian children.

But we are not stopping there. As I have mentioned earlier, the dental reform package also includes a $1.3 billion investment in additional services for adults on low incomes. This will cover 1.4 million services for pensioners and concession card holders as well as those with special needs and enable them to access dental health services.
in the public system. We will also provide $225 million for funding in dental infrastructure and the workforce in outer-metropolitan, rural and regional areas, which will assist more Australians regardless of where they live to gain access to high-quality dental care.

Our $4 billion dental health reform package comes on top of the $515 million announced in the 2012-13 federal budget. This budget measure will see 400,000 people benefit from a blitz on the public dental waiting list. Of this budget commitment, $345.9 million will be set aside for treating patients on waiting lists over the next three years, including Indigenous Australians. This blitz on public dental waiting lists will help treat people with emergency procedures and those with preventative needs.

We will also increase the Voluntary Dental Graduate Year Program from 50 to 100 placements per year by 2016 at a cost of $35.7 million over three years. This will help increase the capacity of our dental workforce by delivering more dentists who can provide support and care for Australians. This funding will be used to provide practice experience and professional development opportunities, including in those areas that are underserviced, to dental graduates. The Gillard Labor government will direct $45.2 million over four years to introduce an oral health therapist graduate year program. This will give placement opportunities with a focus on public dental services to 50 new graduates each year from 2014.

Services in regional areas will be strengthened by a new $77.7 million grants program to encourage and help dentists to relocate to regional, rural and remote areas. There are grants of between $15,000 and $120,000 to relocate, depending on where the dentist moves to, and grants of $250,000 to help with the purchase and fit-out of new dental facilities. This program will play a vital role in attracting dentists to regional and rural areas, where we know it is harder to access dentists and dental services.

In closing my short contribution here tonight I want to say that the evidence was quite clear: the oral health of our children was suffering; it was vitally important that we acted. That is exactly what the Gillard Labor government has done. This bill and other measures we have implemented are designed to improve the oral health of Australians, particularly our children, and I am proud to be part of the Gillard Labor government that is taking action to address the dental needs of our country. I commend the bill to the chamber.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (21:18): I rise to contribute to this debate on the Dental Benefits Amendment Bill 2012. The coalition supports good investment in dental health. Last December, the Australian Institute of Health and Welfare released a report card on Australia's dental health. In 2010, approximately one-fifth of the population did not have their own teeth, and many others over the age of 65 who did have natural teeth also wore dentures.

I want to take you to the Chronic Disease Dental Scheme—the very scheme introduced by the then health minister Tony Abbott. The scheme was an outstanding success, providing 20 million services to over one million patients since 2007. I recall when this government tried to throw that scheme out. Thankfully, we had the numbers in the Senate to keep it in place. People with chronic health conditions were referred by their doctors to a dentist, who devised a program. An eligible person could access over $4,000 in Medicare benefits over two years. It is a scheme that has worked, but Labor and the Greens will close the scheme.
on 30 November. In fact, no new services have been provided since 7 September in this scheme.

I want to refer to a letter I received from a young mum from a small town in northern New South Wales near where I live. She says she took her son to a doctor on 12 September only to be told the scheme had been cut off five days earlier. Her son is 20 years old. He is an insulin dependent diabetic and his dental health is poor. He was devastated to find out this program was cut. His mother, a registered nurse, said:

It is amazing how the government wants to raise the health of the nation, particularly for people with chronic disease, as it is such a burden to the people themselves and the health system. Yet they cut something as important as this. Being a registered nurse I know first hand how valuable this scheme was to people.

She is correct.

Here is another story. A man with chronic health issues and on oxygen came to my office to express his disappointment with the scheme closing. What does he do now? Does he go to the back of the queue in the public system?

I must applaud Armidale dentist Dr Chris Cole, who arranged a petition against the closure of the scheme. He has pointed out the follies of throwing these people onto the public health system. In some of the more remote areas, people may need to travel for hours to get to a hospital. They could be sitting there waiting their turn but then someone with a serious dental issue comes in, is treated ahead of them, and then the dentist runs out of time. So off they go on the long trip home and wait for the next call. This is what we face in rural and regional areas of our nation.

The Chronic Disease Dental Scheme is closing, not because it did not work, but because it was established by the man who, hopefully, will be the Prime Minister after the next election. And the greedy Labor government, who could not balance the books of a school fete, then went after those dentists who made a mistake with their paperwork. It was amazing. When the dentists filled in the paperwork to claim this money back off the government for carrying out this work, all sorts of obstacles were placed in front of them, to the tune of millions of dollars, throughout the nation. These dentists were treated like criminals—this from a government that has wasted billions upon billions of dollars. When shadow health minister Peter Dutton attempted to have the closure of this scheme blocked in the other place, naturally the member for New England, Tony Windsor, stuck with the government. That is not surprising when you read his agreement with the government, which states he must consult with them before voting.

Regional Australia is the whipping boy again. In 2009, figures revealed that there were just 24 dentists per 100,000 people in remote and very remote areas, compared with a massive 62 dentists per 100,000 people in major cities. Fewer services are provided in regional areas compared with the cities. Private dental services are provided at the rate of 601 per 1,000 people in cities, compared to just 397 per 1,000 people in remote and very remote areas.

I started in this job back in July 2008. Not long after that we received an increase in our electoral allowance of $4,800. I believe that dental assistance and dental services are most important. I am not a doctor, but people tell me that if you do not have good dental health, then you do not have good health—full stop. I started the Williams Regional Dentistry Scholarship, in conjunction with the National Rural Health Alliance. I sponsor a first-year dental student to the tune of
$4,800 a year and I have guaranteed to do that while ever I am in this job.

Olivia Jom of Albury was the first recipient of my scholarship; Jessica Powell of Tamworth was the second; and Alayne White of Cowra is the current scholarship winner. She is doing her first year in dental science at Charles Sturt University in Orange. I have put my money where my mouth is—and I am very proud of that—to help these regional students who wish to become dentists through the costs of their first year at university. We hope that they will return to regional areas.

In 2000 the coalition government introduced the RAMUS Scheme, the Rural Australia Medical Undergraduate Scholarship Scheme, where people from regional areas could receive a $10,000-a-year scholarship to study medicine. We know that those most likely to return to regional areas are those who have grown up in regional areas. Thankfully, at last, we have seen an increase in numbers where more than 1,400 medical students have completed their medical degree under RAMUS. We also need the same in dentistry.

We come to the Labor-Greens scheme, an unfunded $4.1 billion dental program that will not commence until 2014. This means-tested entitlement for children aged between two and 17 will commence 13 months after the closure of a scheme that was working for the benefit of some of these children. It will provide a $1,000 capped benefit over two years for eligible children. What about those children who require more treatment, taking them over the $1,000 cap? What about those children who were part-way through treatment under the Chronic Disease Dental Scheme before the government so cruelly pulled the plug?

Perhaps Minister Plibersek and her Greens colleagues can explain to those children why they must suffer for 12 months. And it gets worse. The scheme for adults will not commence until July 2014. There are already 650,000 people—400,000 adults, according to the government—on public dental waiting lists, but the minister says Labor's plan will provide only 1.4 million additional services over six years. We have 650,000 people on a list, including 400,000 adults, and, as I said, the minister says that Labor's plan will provide only 1.4 million additional services over six years. It will not cope.

We all remember that, in 2008, Labor proposed a Commonwealth Dental Health Program and promised one million services by providing funding to the states and territories. It was revealed in Senate estimates that the Commonwealth did not assess the capacity of the public dental workforce to provide the projected services and that the number delivered may have been significantly less than that promised.

The coalition does not oppose this legislation but places on record its disappointment with the government's handling of the dental needs of Australians.

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (21:26): I rise also tonight to speak on the Dental Benefits Amendment Bill 2012. Whilst not entirely opposed to this bill, the coalition has some concerns in relation to the changes to public dental services that this bill will enact. This bill will completely change the way taxpayer funds are directed for public dental programs. We also hold concerns and have done so for a long time in relation to the way that this government has set about introducing its dental agenda. The Gillard Labor government has chosen to link the introduction of its new dental benefits scheme to the closing of the Medicare
Chronic Disease Dental Scheme, which, as I am sure history will attest, was one of the most successful public health initiatives that has ever been seen in this country.

The CDDS is a scheme about which I have often spoken in this chamber. My interest in this particular scheme has been sparked not because of its patent level of success, which was demonstrated by the huge uptake rate by primarily concession card holders, who would otherwise have had little or no access to the dental care that it funded, but because of the government's underhanded attempts at closing it through an obvious and shameless witch-hunt of dentists who were practising under the scheme.

Of course, their exploitation of dentists in this regard has had a devastating impact on many individual dentists right across Australia—and I see Senator Di Natale down there in the chamber; he has had many representations from dentists right across the country about how they have been affected by the treatment they received from the Labor government over the last couple of years. But it has also had an impact on the level of confidence that the profession has in publicly funded dental schemes.

The government's blatant abuse of dentists has also led to concern amongst CDDS patients, who were understandably worried that the funding for the dental care that they so desperately needed and which was so necessary to managing their chronic illness was being pulled out from underneath them.

By way of background, the CDDS was a successful Howard government initiative, implemented in 2007, and introduced by the then health minister, now Leader of the Opposition, the Hon. Tony Abbott. This scheme has assisted over one million Australians suffering from oral health complications, resulting from chronic disease, through the provision of up to $4,250 in Medicare benefits for eligible patients. The average amount spent by patients was, in reality, much less than $4,250 but the uptake was higher than anticipated as the scheme was clearly well targeted and uncovered a huge unmet demand for such badly needed dental care treatment. Those who used it included cancer patients and patients suffering from diabetes and coronary disease, amongst other chronic illnesses that impact on oral health.

Over 80 per cent of patients accessing the CDDS—over a million people—were also health care card holders. This makes sense because statistically people with greater means usually use their means to deal with chronic disease dental issues, either through private health or direct payment because they have the means to do so. But this statistic highlights that it is unlikely the vast majority of CDDS patients would have been able to privately fund the treatment that they received under the scheme and would otherwise have had to wait years for treatment under public dental practices, if they could have got it at all.

What we are debating today, the new scheme that the government proposes, does not provide an alternative to fund the needs of these patients. Labor have sought to close down the CDDS as a scheme they reject because it was not theirs, and because it was introduced by a man who they are doing everything humanly possible to vilify, the Hon. Tony Abbott. They have used every spurious trick in the book to do this, including many mistruths about it being used by millionaires, who of course largely have private health care or would, as I have mentioned, otherwise have self-funded their chronic-disease related dental needs, and about widespread rorting by dentists culminating in their demonisation of the dental profession through auditing the
crossing of t’s and dotting of i’s and then seeking repayment of all fees paid for otherwise legitimate dental work that was needed by the patients and was actually delivered by the dentists.

Needless to say, Labor wanted the scheme gone. They could not get the Greens’ support so the only alternative they had was to make it as unattractive to dentists as possible and, in the process, also hopefully undermine its public profile. The allegations that Labor make about the scheme simply cannot be supported and the facts on its success stand on their own. As mentioned, the Labor government has linked its cancellation of the CDDS to the introduction of the Dental Benefits Amendment Bill 2012 that we are discussing in this place today. Indeed, the introduction of the scheme in this bill was the carrot that finally attracted the Greens to support ending the CDDS. I am sorry that the Greens senators have now left the chamber.

What are we getting for this wonderful deal that arises out of yet another collaboration of Labor and the Greens? The fact is that the Labor government is redirecting public dental funds that were once available to anyone in Australia who had dental needs occasioned by a chronic disease, largely taken up by those with little alternative to that care, to a completely different demographic of patients through the establishment of the Child Dental Benefits Scheme, the CDBS. Under the CDBS eligible children between the ages of two and 18 years will be able to access basic dental care, capped at an entitlement of $1,000 per child over two years. Not only is this significantly less than the amount available for urgently needed dental care under the CDDS, it also excludes chronic care needs of two- to 18-year-olds and completely excludes funding the urgent dental care needs of adult patients who are suffering under a chronic disease.

It is a significant concern to the coalition that the closure of the CDDS will leave chronic disease sufferers without access to the dental care that they need. Since first getting involved in the issues related to the unfair treatment of dentists by Labor, I have had many constituents contact my office to tell me just how much this dental treatment means to them in terms of managing their chronic illness and consequently improving their quality of life. The work undertaken through the CDDS not only assisted in restoring a patient's physical and dental health, but also in many instances the treatment that CDDS patients received had a significant impact on their mental health and their social outcomes. I have seen before-and-after shots of CDDS patients who, due to chronic disease, had suffered almost unimaginable dental decay. The ‘before’ photos showed mouths full of broken, chipped and rotting teeth. This obviously would have had a significant impact on each of those individuals’ relationships, their ability to engage and interact socially and their ability to obtain employment.

With the closure of the CDDS and dental funding redirected to children's health, such patients will be entirely dependent on the limited resources of state dental services, which notoriously experience demands which exceed capacity. The sudden closure of this scheme will compromise patient care, and this actually matters. The people affected are real people for whom the scheme was making a real difference.

This Labor government has turned its back on the many Australians who have been accessing the vital and necessary dental care under the CDDS and those who could have accessed the scheme if it was continued. Labor claims their CDBS, because it focuses on children and teens, is a measure to target preventative dental care. However, respected submitters to the Standing Committee on
Community Affairs inquiry into this bill were critical of the age limit imposed on this scheme.

For example, Associate Professor Hans Zoellner, representing the Association for the Promotion of Oral Health, stated in the organisation's submission:

Of particular concern in dentistry, is that young adults, becoming independent of their parents and commencing adult independent life, have essentially equivalent dental needs to older teenagers. One aspect of the teen-age population, is an increase in the rate that decay develops, so that sudden withdrawal of dental services from young people once they reach the age of 18, will result in a corresponding deterioration in dental health in young adults.

Professor Zoellner's submission also states:

There seems no clear reason why the dental care of any individual should be determined on the basis of age…

And finally:

There is the further practical impact of sending a signal to young people, that once you get over the 'teenage years', that oral health is assured, whereas in fact life-long care is needed, especially as people age and accumulate chronic disease…

As those quotes demonstrate, dental care is required at every stage of life and those needs may increase as one gets older.

The fact that the government has closed the CDDS only serves to demonstrate that they on that side of the chamber have very little understanding of what the CDDS achieved in providing ongoing care and assistance to patients of all ages suffering with chronic disease. Some of the speakers in this place may even know very little at all about the issue, just accepting the government's spin fed to them, along with speaking notes prepared by the department.

Through you, Madam Acting Deputy President, I invite those opposite to actually have a look at the way the Chronic Disease Scheme treatment has transformed the lives of some of the most vulnerable and disadvantaged Australians—people who those on that side of the chamber purport to represent—and how its withdrawal and replacement with a far more limited scheme will remove that opportunity for thousands more vulnerable Australians. The government may have set 30 November as the closure date for the CDDS, but the patients who have accessed the scheme since it started in 2007 will continue to suffer from chronic disease long after that date.

Examples of patients requiring ongoing treatment as a result of having dentures fitted under the CDDS are common. Dentures require frequent adjustment over a long period of time before the process can be deemed as finalised. Given the high number of health care card holders who accessed the CDDS—I repeat, over 80 per cent of people who accessed the CDDS were health care card holders—it will come as no surprise that many denture patients treated under the CDDS will be unable to afford to fund the completion of this process. It seems unfair that these patients received the life-changing news that they would receive ongoing dental treatment to be funded through Medicare, only to have that treatment taken off them as the government have changed course because they did not like the scheme because they did not introduce it and Mr Tony Abbott did.

Stakeholders also expressed concern at the inquiry in relation to the lack of detail for this policy. As yet, no details in relation to the schedule for treatment under Medicare are available. The government has said that this schedule will be provided in a series of regulations and maybe amendments. This only serves to demonstrate that this bill is just another example of the Gillard Labor government implementing major policy on the run. It also serves to highlight the
worrying trend that is evident right across the activities of this Labor government of requiring parliament to pass into law bills that do not have the detail included, meaning that parliament has no way of properly understanding the consequences of the decisions that we make in this place at the time that those decisions are being made. This is not the way that a Westminster system of government should be run, and it is counter to the fundamental principles of the accountability of the executive to the legislature.

It is not just adult CDDS patients who will suffer as a result of the closure of this scheme. Children who currently access treatment under the CDDS will also experience diminished access to oral health care as a consequence of Labor's bill. Under the Dental Benefits Amendment Bill, the financial assistance provided will be slashed to a capped amount of $1,000 per eligible child over two years, compared to the CDDS financial limit of $4,250. Additionally, under this bill, eligible children will only be able to access basic dentistry. Associate Professor Hans Zoellner wrote in his submission to the committee that this will significantly impact upon children currently receiving treatment under the CDDS. I think it goes without saying that that is obvious. Professor Zoellner concurs that most children only need basic oral health treatment—so he agrees with that—but there are those who do need advanced dental treatment, and those children will be greatly disadvantaged by current government plans relative to their options under the CDDS.

Some witnesses to the inquiry quoted statistics to suggest that Australian children have poor dental attendance and consequently inadequate preventative service. However, as Associate Professor Zoellner points out in his submission, most Australian children already have access to dental care through state public dental services. It therefore seems illogical to argue that this new scheme will be the panacea to children's oral health issues when in fact, in all likelihood, the public dental system will be placed under increased pressure as a result of the closure of the CDDS. Yet the government remains quite critical of the CDDS and has made all sorts of far-fetched claims, as I have mentioned, in an attempt to win support for their CDBS.

The government has claimed that the CDDS was not targeted, but this is incorrect. The CDDS was a highly targeted scheme aimed at assisting individuals within our society suffering from some of the most cruel health complaints. The government has also claimed that the scheme was accessed by millionaires, but the figures show that over 80 per cent of patients under this scheme were health care card holders. This fact strongly refutes Minister Plibersek's claims that the scheme was providing free dental care for wealthy Australians. However, I think the worst claims made by Labor were during their incessant attempts to shut down this worthy program by accusing the dentists performing work under the scheme of rorting the system.

The coalition has a proven record when it comes to dental care, and we were the first party to establish a publicly funded dental scheme that worked well and provided sound patient outcomes. We do not entirely oppose this bill because, despite our conclusion that it is clearly not the superior option and that it will not deliver the most beneficial outcomes for the amount of taxpayer funds spent, it will still deliver some benefits. But, given that the government is so intent on redirecting public funding towards children's oral health and, with the Greens support, will achieve that change, what we then would like to see is continued support for children requiring complex dental care equivalent to
that they could have accessed under the CDDS.

This should be delivered in such a way that there is no treatment gap between the closure of the CDDS and the commencement of the CDBS, and with extended financial assistance in excess of the $1,000 cap, if required. It is always difficult to achieve the balance in relation to public dental schemes, particularly in times of fiscal restraint. Yet it is disappointing that this Gillard Labor government has had to publicly shame dentists and cut funding for adult chronic disease sufferers to push what is, on the facts, clearly an inferior public dental agenda.

Senator SMITH (Western Australia) (21:42): I rise also to speak on the government's Dental Benefits Amendment Bill 2012. This is an important piece of legislation that aims to tackle some serious problems in relation to dental health. Unfortunately, the way the government has gone about it means that what is being delivered is perhaps not as effective as it might otherwise be. In all the blaze of publicity this government has sought to give to its new scheme, it has been pretty well silent about the fact that it is closing the Chronic Disease Dental Scheme for all patients on 1 December 2012. It is not uncommon for a government to close one scheme and replace it with another. However, the problem in this instance is that the new scheme the government is establishing does not commence until 2014. This will leave some 650,000 people on the public dental waiting lists—those most in need of dental treatment and who were relying on the CDDS to help pay for their dental treatments—without any assistance in the meantime.

The Howard government's Chronic Disease Dental Scheme, which was introduced by the now Leader of the Opposition when he was health minister, is being abolished by this government, and there is nothing to replace it until 2014. Patients who relied on the old scheme are just expected to fend for themselves. The CDDS has been accessed by around one million patients since its inception in 2007. Its costs have not blown out. It has been, for the most part, a well-run, well-managed scheme. Certainly, there were a few isolated problems, but can anyone opposite name a government scheme for which there is not? Yet the government has decided to scrap it, citing massive cost blow-outs—which there were not; the costs were coming down—and rorting, when there was one case out of 1,500. Why? It is because it suits the government's political needs, rather than the community's policy needs.

You have to ask yourself why the government is not replacing the CDDS immediately and why it is waiting until 2014. The answer of course is that the Gillard government is engaged in a series of desperate acts, scrapping and slashing, desperately trying to conjure up a budget surplus for Wayne Swan. This government, unfortunately, cares more about the political imperative of getting a surplus, however thin and however shoddily constructed, than about the dental health care needs of Australians and their families.

I served on the Senate Community Affairs Legislation Committee that examined this bill and we heard from several stakeholders that they are concerned about the way the government has gone about this. I and other coalition senators share these concerns. I point to two sets of comments made by the Australian Dental Association. The first comment, not surprisingly, points to the importance of investing in child oral health from both a health perspective and a
financial perspective. The Australian Dental Association said:

Investment in the oral health of children is a sound and sensible investment as it may result in a long-term monetary saving for government and the community by minimizing future deterioration in dental health. There is a substantial body of evidence indicating that early intervention and preventive treatments provided early in life are a proven and well-established method to prevent poor dental health in later life.

I think we would all concur with those sentiments. The Australian Dental Association's other comment focused on its concern that the closure of the CDDS was being pursued in a time frame that was premature. It claimed that many patients will miss out on essential treatment as a result of the 30 November 2012 cut-off. The Australian Dental Association told the inquiry:

A 12-week period, to complete treatment, will mean that patients under the CDDS will not be able to finalise their treatment plans. Treatment of the chronically ill, for which this Scheme was designed, is often complex, requiring an extended period of time. Complex treatments are often staged to allow adequate healing.

The ADA calls on the Australian Government to recognise that it is critical that arrangements are put in place to allow for treatment services to be completed even if this requires introducing a transition process for existing patients on a case by case basis.

When it closes on 30 November, there will be a 13-month gap for the children currently receiving treatment. These are children in the middle of treatment who will not be able to have their treatment completed by the 30 November deadline. The families of these children cannot afford the full cost of private treatment. There will potentially be serious health, economic and social ramifications for these people as a result of the government's shoddy policy approach.

The government has been unable to say why it thinks these children should suffer for 13 months. They may well suffer for longer than that, of course, because the government has thus far been unable to say anything about the schedule for treatment under Medicare. The government says that issue will be dealt with by a series of amendments to this legislation at a later time. The Gillard government wants us to take it on faith. That is certainly not fair to legislators and it is certainly not fair to the mums and dads of children with important and critical dental health needs.

Frankly, it is a bit rich of this government to expect the public to take it on trust. The people of Australia do not trust this government. They do not trust it for good reason. The list of broken promises grows longer each week. The record of administrative incompetence and policy on the run is a sorry one. How can anyone in this place have any faith whatsoever that this government will ultimately deliver an effective scheme? How can we be expected to believe the government will be able to pay for it? The absence of detail is emblematic of this government's approach: making policy on the run, getting the media release out there and smiling nicely for the cameras, all the while hoping to God no-one starts asking questions about the detail.
If this government had not wasted millions of dollars on pink batts, NBN cost blow-outs and its utterly discredited policies on illegal immigration, it would not now be in the position of having to scrap this scheme and leave dental patients in desperate need of assistance to fend for themselves. The coalition support investment in dental health and it has been a tenet of our policy for a long, long time. The coalition are concerned about the many patients currently receiving treatment under the CDDS and who will be forced to forgo that treatment during this gap period.

What does the closure of this scheme really mean? It means that the means-tested family tax benefit part A or other specified payments entitlement for children aged two to 17 years will not commence until 14 January—13 months after some children lose access to the existing scheme. This proposal is supposedly to provide a $1,000 capped benefit over two years to eligible children, with the government claiming some 3.4 million children will be eligible. Again, the unfunded cost of this is expected to be $2.7 billion. The proposal for adults will not commence until 1 July 2014—19 months after the current scheme closes. Funding will apparently be provided to state governments for public dental services and services will no longer be available for adults through private dentists under Medicare. The unfunded cost of this is expected to be $1.3 billion.

A key element of the package includes a $225 million flexible grants program for dental infrastructure, which will not commence until 2014. The invitation to apply for funding under that grants program will not commence until 2014. This is a critical point that deserves some further examination. As I travel around the great southern region of Western Australia, the needs of regional and rural Australians and their oral health needs are an issue that is constantly raised with me. It is interesting to reflect on the work of a National Rural Health Alliance and the work that it has done in regard to dental care in rural and remote Australia. It has said that there were 57.6 practising dentists per 100,000 population in major cities compared to 28.5 in outer regional and 19.8 in remote Australia; and 33.7 per cent of regional and remote dentists are busier than they would prefer compared to 17 per cent in major cities. They also said that around 73 per cent of all regional-remote dentists are 40 years or over compared to 60 per cent in major cities. Conversely, only 27 per cent of dentists working in regional or remote areas are under 40 years of age compared with around 40 per cent in major cities. It is quite clear from this evidence and the evidence of other coalition senators that dental health needs are important but that this government has been lazy in providing a suitable policy response.

My concern is for the children in the middle of treatment at the moment who will not be able to have their treatment completed. Families have nowhere to turn, and there has been no consideration whatsoever of the impact this will have on those children. The government and the Australian Greens need to explain why these children must suffer for 13 months with incomplete treatment and absolutely no certainty whatsoever on the provision of the schedule of services that are going to be provided. This, of course, is on the proviso that the government can actually deliver on its unfunded promise in 2014.

The coalition supports investment in dental care and does not oppose the intent of the bill, but it has legitimate and necessary concerns about the children who will lose access to that treatment. The coalition is concerned about the children who will not be able to complete their treatment. We have
concerns about the unfunded $2.7 billion cost of the measure and we have concerns about the yet to be seen schedule of services, fees and other essential details that are not yet available on this bill.

The oral health needs of Australians young and old deserve better than the lazy policy making demonstrated by this particular legislative proposal.

Senator BOYCE (Queensland) (21:53): I rise to speak on the Dental Benefits Amendment Bill 2012. It is interesting to look at the area of dental health in Australia. It is certainly an issue that has bedevilled governments over many years. The first real move to do something other than blame the states for not having enough funding to do anything about it was made by the then Minister for Health and Ageing Mr Tony Abbott when he established the Chronic Disease Dental Scheme.

Unfortunately, this government is now trying to dress up something which has been a failure in order to continue programs that assist people with dental problems as though it is a good thing. The first move in this area was to try to blacken the reputation of many dentists by attacking the Chronic Disease Dental Scheme, which had been extremely successful. Eighty per cent of those using the scheme were people who held concession cards. The initial attempt by this government to blacken the reputations of dentists who had made administrative errors in claiming the rebates for the Chronic Disease Dental Scheme, and to liken the scheme to some sort of dental treatment for millionaires, was complete nonsense and absolute rubbish, and it completely disparaged the work that was done by the Auditor-General and others to make the point that this was not the case. The government could not even inquire of Australia's dental prosthetists as to how their work came into the Chronic Disease Dental Scheme, or educate them about it. The then minister, Minister Roxon, claimed that the government had done everything in its power to tell all those involved in the dental industry about the Chronic Disease Dental Scheme and how it worked, and according to her it was due to the stupidity and/or greed of those in the dental industry that it was not working.

The problem then was that the Australian Dental Prosthetists Association came out and made the valid point that no-one had ever undertaken any education or training with their membership around the Chronic Disease Dental Scheme. Given that over 800 of the 1,100 dental prosthetists in Australia had provided services under the Chronic Disease Dental Scheme, it would seem reasonable that they might have been consulted and that Minister Roxon would have noticed and not claimed to have offered training to the entire dental industry when there was this very large component of it that had received no advice or information whatsoever from this government.

The Australian Institute of Health and Welfare, which is in my view a fantastic organisation that produces very valuable material, has done numerous studies into various aspects of oral health in Australia. One, which the AIHW fortuitously brought out on October 25 this year, looks at chronic conditions and oral health, which is exactly the area that Mr Abbott's scheme—the first scheme to look at dental health conditions—addressed. This report found that the impact of oral conditions on people with a chronic condition, including those with asthma, cancer, heart disease, diabetes, arthritis, stroke, kidney disease, high blood pressure and depression, were more than twice that of people who did not have chronic disease. It showed that people with chronic disease experienced, at more than twice the rate of the average person: toothache; discomfort...
with the appearance of their teeth, mouth or dentures; avoidance of some foods due to problems with teeth, mouth or dentures; broken or chipped natural teeth; and pain in the face, jaw or temple or in front of the ear or in the ear due to teeth problems. The worst-affected people in terms of their oral health were those who had experienced strokes.

Again, people with chronic disease had far worse impairment as a result of oral problems, particularly in the loss of teeth. They had a much higher average number of missing teeth and they had inadequate dentition—that being fewer than 21 teeth—so that they were unable to avail themselves of a proper diet. It is a serious issue which needs to be properly addressed.

Debate interrupted.

**ADJOURNMENT**

The PRESIDENT (22:00): Order! I propose the question:

That the Senate do now adjourn.

**People's Republic of China**

Senator FAULKNER (New South Wales) (22:00): 'There is nothing in Australian history to compare with that China visit.' Those are not my words; they are the words of Dr Stephen Fitzgerald, Australia's pre-eminent authority on China and our first ambassador to the People's Republic of China. He is referring to Gough Whitlam's 1971 mission to Beijing, a mission Whitlam himself described as the most exciting and exacting he ever made. The 21st of December this year will mark 40 years since the Whitlam government formally recognised and established diplomatic relations with the People's Republic of China. Gough Whitlam was the first member of the Australian parliament to call for recognition of the PRC as 'one China' and, in mid-1971, as leader of the Australian Labor Party, he was the first Australian political leader, and one of the first Western leaders, to reach out to China.

It was characteristic Whitlam courage and vision that motivated his politically daring adventure to the Great Hall of the People in Beijing for a midnight meeting with Chinese Premier Zhou Enlai in July 1971. At the time, under the dark cloud of Cold War politics, of the Vietnam War and in the mind of many a contrived threat from China, sections of the Australian community were deeply fearful of the insidious and relentless growth of communism in our region. This was of course the time of 'reds under the bed', when former Prime Minister Menzies ran a fear campaign based on the red and yellow hordes pouring down from Asia, and Billy McMahon warned of the Australian Labor Party being tools of the Chinese communists. The former federal president of the Australian Labor Party and Queensland parliamentarian Tom Burns, who joined Gough Whitlam on that first visit to China, called the visit, in the context of international relations and domestic concerns at the time, 'real gutsy politics'.

After a long journey to Beijing, through Hong Kong and Canton, the travelling party arrived at the Great Hall of the People for a midnight meeting with the Premier. Gough Whitlam sparred diplomatically and intellectually with the renowned Chinese leader Premier Zhou. Differences in views and policies were explained and clarified, and assurances were secured on trade—particularly Australian wheat sales. And, Gough being Gough, discussion with the Chinese Premier was not limited to politics, economics, or trade. Topics ranging from Greek mythology to the French Revolution were also canvassed. A sceptical Liberal Prime Minister back in Australia, Billy McMahon, announced that Zhou 'had Mr
Whitlam on a hook and he played him as a fisherman plays a trout'.

But, as they so often do, world events took a dramatic twist—and, as Tommy Burns put it, 'pulled the rug right out from under McMahon's feet'. Four days after Gough Whitlam's visit, US Secretary of State Henry Kissinger arrived in Beijing on a secret mission to meet the Chinese Premier. Secretary Kissinger famously reported back to President Nixon, 'The process we have now started will send shock waves around the world'. It certainly did. On 15 July 1971, President Nixon announced to an astonished world that the United States intended to formally recognise the People's Republic of China and the president would visit Beijing the following year. By October, the General Assembly of the United Nations had decided by more than a two-thirds majority to recognise the PRC. And, to the growing embarrassment of the McMahon government, the People's Republic of China established formal diplomatic relations with Canada, Japan, and 10 European countries, including Great Britain and Germany.

On 5 December 1972, the day the first Whitlam government was sworn in, Gough Whitlam announced that he had instructed our ambassador in Paris to open negotiations with his Chinese counterpart. The joint communiqué was signed on 21 December, just three weeks after the election. The following year, 1973, strengthening our relationship further, Prime Minister Whitlam met with Chairman Mao in Beijing.

Our relationship with China has come a long way since the formalisation of diplomatic relations 40 years ago. China's economic growth has been phenomenal, and Australia too has enjoyed extraordinary economic growth since 1972. After significant reforms in both countries during the 1980s our terms of trade are burgeoning. But the Australia-China relationship is increasingly deeper and more meaningful than just economics and trade. Our social and cultural relationship grows stronger, with increasing numbers of Chinese students, professionals and tourists visiting our shores every year. Likewise, growing numbers of Australians are heading to China every year.

The Whitlam government's formal diplomatic recognition of China in 1972 was a significant milestone in Australian foreign policy. It was truly visionary and it was the starting point for the flourishing and prosperous relationship we enjoy with China today. The 40th anniversary of formal diplomatic relations between Australia and China, to be celebrated on 21 December this year, is a very important milestone in the history of both countries and I believe it warrants due acknowledgement in this parliament.

Joyce, Mr Matthew

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (22:08): For over three years now Matthew Joyce has been enduring a living nightmare with his family, having been firstly incarcerated and then detained in Dubai. The circumstances of this incarceration have been raised by me in the Senate before tonight and in my mind have not been given proper or appropriate consideration by the governments of successive prime ministers or by successive foreign ministers.

The circumstances surrounding his incarceration were comprehensively documented by Cameron Stewart in last weekend's Australian, and I commend Mr Cameron for the article, because this is a complicated matter that has not been extensively reported on. It is also worth noting that this is the first time that Matt Joyce himself has made any public comments or agreed to an interview with a
journalist. He has always hoped that truth would prevail through the judicial process and has never sought in any way to influence that process. Regrettably, having been detained now since January 2009, with his passport seized and his life reduced to a waiting game with his wife and children, it would be reasonable if he had begun to question the strength and robustness of the judicial process.

For those who may not be aware of this highly respected Victorian businessman who was arrested in Dubai in January 2009, I will provide a brief explanation. He has been the subject of a criminal trial in Dubai now for almost three years, with charges arising out of a property transaction that involved Sunland in 2007. Matt Joyce was charged with Marcus Lee, on the basis of evidence provided by Mr David Brown, a Sunland executive. This year, that evidence was held up to scrutiny in the Victorian Supreme Court, on 8 June. In his judgement, Justice Croft found that Mr Joyce and his co-accused are victims of a false complaint to Dubai authorities by senior executives of Sunland. In a speech I made in the Senate on 19 September, I covered His Honour's findings at length.

Mr President, Australia has a long history of trying not to interfere in or influence the judicial systems of other nations when it comes to Australian citizens, which is as it should be. Concerns about Australian citizens charged or incarcerated overseas are dealt with through diplomatic channels, just as they should be. But the inconsistent and seemingly random way in which the former Rudd Labor government and now Gillard Labor government choose to liaise with nations on behalf of Australian citizens demands questions. Only this year, since Senator Carr has become the Foreign Minister, we have seen him making public diplomatic entreaties to a number of his counterparts. In only the last week, Minister Carr has publicly raised the case of a Tasmanian lawyer who is detained in Mongolia, working for Rio Tinto. None of this I have issues with. I recall Prime Minister Gillard getting on the phone to personally speak to the father and the young man who was charged and jailed for the possession of drugs in Bali. The Foreign Minister has been directly involved in cases in Libya and Syria, yet I cannot understand why he continues to sit back and not get himself involved diplomatically in the case of Matt Joyce.

The Prime Minister has been silent in her defence of Mr Joyce, with Minister Carr seemingly keeping his distance and choosing to stay informed through third parties. This is not how he has dealt with other Australian citizens detained in other countries overseas, yet he chooses this approach in this particular case which has been scrutinised in the Victorian Supreme Court and clearly the individuals concerned have been cleared of all accusations. We have been advised that the Prime Minister wrote a letter to the Head of the Ruler's Court and yet no confirmation has been sought to ascertain if it was received by the Head of the Ruler's Court, nor, may I add, has the Australian government received a response. Given the compelling judgement brought down by Justice Croft in the Victorian Supreme Court, it begs the question why the Prime Minister or the Foreign Minister has not picked up the phone and pursued diplomatic channels in seeking a resolution to this travesty of justice. There are so many questions that have been asked of Minister Carr in this regard, and yet he seems to be incapable of coming in here and providing comfort to the family of Matt Joyce that this case is not only on his radar but is, as it should be, one of primary concern.
This is a matter that is now receiving nationwide attention. An e-petition has been posted in the last week, appealing to the Australian government to actively pursue the release of Matt Joyce. I encourage all concerned Australians to register at www.bringmatthome.com.

This is not just about Matt Joyce, although personally I think the government has a lot to answer for. This is about all Australians who might find themselves in strife overseas and need to be assured that the Australian government will not forget them. For those who are familiar with the very different judicial systems in the United Arab Emirates, this is a real concern, where culture, religion and politics are so very different to our own country and potentially affect every Australian who chooses to work or play in the region.

At a time when Qantas and Emirates have initiated a partnership agreement, with Dubai being the transit stopover for all Qantas international flights, the number of Australians potentially exposed has increased exponentially. There has been a growing, meaningful and mutually beneficial relationship between Australia and the UAE. Yet the unresolved status of Matt Joyce looms as an impediment to strengthening the ties between our two nations.

There have been many speeches made in this place about forgotten people, forgotten Australians. It is of great concern that another name may well be added to that list, and that name is Matt Joyce. I call on the Prime Minister, once again, to pick up the phone and call His Highness Sheikh Mohammed bin Rashid Al Maktoum, the constitutional monarch of Dubai, Prime Minister and Vice President of the United Arab Emirates, and bring an end to this nightmare for the Joyce family.
boggy country, sand and wash-outs. It is actually very enjoyable if you are a four-wheel-drive enthusiast.

I have often stood here and talked about the merits of trade training centres. As I said at Umuwa, there is no difference there from what is happening all around Australia. This Labor government is putting in trade training centres. There is no special deal there. We have a trade training centre in Umuwa which is worth $7.3 million. The lead school is Ernabella Anangu School. The other schools in the cluster are Amata Anangu School, Indulkana Anangu School, Fregon Anangu School, Kenmore Park Anangu School, Mimili Anangu School, Murputja Anangu School—and I had to apologise at the opening that I am not sure that I get the language right—Pipalyatjara Anangu School and Watarru Anangu School. The clusters of schools are there. The trade training centre is there.

It is a great facility. I have to pay tribute to the contractor. I have seen a lot of construction in my day. It is fantastic. It is state of the art. Kids are going through there, excited to be learning construction, automotive work, agriculture, baking and hospitality. It is a really exciting venture. I followed opening the facility by speaking with an Indigenous leader who said: 'Proper jobs for our people. Proper jobs, that's what we want. Proper jobs.' It was exciting. There we were. The APY Lands, if you have any knowledge of South Australia, are normally the subject of less than good publicity, but there we have a state-of-the-art facility, we have positive Indigenous leaders talking about proper jobs for their kids, and we have a cluster of schools that are going to feed into that trade training centre and kids who want to work with their hands and work with their minds and get on in life.

It is a long way away. It is 1,200 kilometres from Adelaide before you turn off to do another 250 kilometres to Ernabella or Umuwa, so it is a long way from the heart of civilisation, if you like, in South Australia. As I say, it gets an inordinate amount of bad publicity, but I saw a very positive event there. I saw Indigenous leaders and committed workers combining to provide an opportunity for kids in Indigenous villages and communities to get on. While we were there we had an opportunity to visit the arts centres. I do not have a lot to do with the arts, but I was astounded at the progress that these people have made with the success of their arts centres. A minimum of subsidy to put a couple of artists in each of these centres has meant that they are generating income from the real world into Indigenous communities. If you go to oric.gov.au you will be able to see what these are centres are making. Their audit reports are there. So a minimal subsidy from Simon Crean's portfolio is generating significant earning capacity in these Indigenous communities. It really goes back to feeding, clothing, educating and sustaining these Indigenous people. They are very proud of it.

I would like to share a few stories with you from Tjala Arts. Hector Burton said: 'Anangu really love to run their own company. Anangu are really proud of this company they own. We need to do this work for the young people to see, they will watch us and learn from us and then it will be their turn to run their own show, to run their own company on their country. Iluwanti Ken said: We want to keep teaching our young ones so they can teach the generation which follows them. This is very good work for all aboriginal people living in Central Australia. We are giving our young people every opportunity we can through this company, we are encouraging them and they are coming. The leaders are the Elders, first they teach. It's like filling in the first page of the book.
so the young person can go ahead and write the rest of the story.

Nvurpaya Kaika said:

When outsiders come, they will see Anangu, the way we have always been, and the way we are today—strong—holding onto our culture. We put our stories on the canvas and leave it for the children to grow up and learn about the country and culture that surrounds them. When people see Tjala Arts I think they are shocked at what we have created here. We teach our children everywhere in the Art Centre and everywhere else, we show them the story sites. Our stories are really big and powerful, they are everything to Anangu. We don't need pen and paper, we carry our stories in our hearts, in our blood, and the country carries them too.

Sadie Singer, a senior elder and landowner of the APY Lands, said:

I worked as a member of the Indulkana Community Council for seven years. I then worked as a Police Aid. Now, I live on my homeland, 10kms outside of Indulkana and today I am semi-retired. I now teach my grandchildren how to make paintings and how to do Inma (dancing) and make artefacts. I tell them how to continue stories about special bush-tuckers, honey ant and jukurrpa (dreamings). I look after my boys and grandchildren. I teach them how to follow the fresh tracks to get emu, perente, and kangaroos. They have to hear about their great, great grandmother and know their culture to keep it strong.

The stories go on and on. The reality is that, with minimal funding in arts, we have something that is working and attracting a lot of money back into Indigenous communities, which is then providing the food and sustenance that people need.

I could speak for a lot longer than I have tonight. I just want to say thank you to everyone who gave me the opportunity to participate in this trip. I thank Elizabeth Tregenza, Tracy Tinkler, Keith Darwin and Mark Connelly for their briefings on the APY Lands. I would also like to thank Marika Zellmer, Bob Smith and Jeremy Gaynor for their hospitality throughout the trip.

**Education**

Senator WRIGHT (South Australia) (22:27): I rise to speak tonight about the importance of ensuring that all Australian children have access to high-quality education that equips them with the knowledge and skills they will need for the 21st century and gives them an opportunity to reach their full potential.

The Gonski review found that Australia's international performance in education has declined over the last decade and that underfunding of public education, in particular, has led to a deep inequity in Australia's schools system, which deprives us as a nation of the full potential of our children. The Gonski review recommended:

... that a significant increase in funding is required across all schooling sectors, with the largest part of this increase flowing to the government sector due to the significant numbers and greater concentration of disadvantaged students attending government schools.

The Gonski review also recommended that our nation embrace a new schools funding model that seeks to address this inequity and improve overall student performance by providing funding on the basis of needs.

Since the Gonski review was publicly released in February, the Australian Greens have been calling for legislation to implement its recommendations by the end of this year. Last week, the government's draft education bill was finally released and, after such a long wait, it was very disappointing—an exercise in rhetoric rather than meaningful action. It did not contain the means to implement the reforms and recommendations put forward by the Gonski review. While it does contain some commendable principles, they are not enforceable. Most importantly, the new
funding model we have been waiting for is still nowhere to be seen.

This coming year will be make or break for our schools. Gonski has provided clear evidence of a broken system and a way forward for how it can be fixed. We currently have the best chance to reform a discredited schools funding system in decades. We must not squander it. People from around Australia agree. They have been writing to me about why Gonski is important and what an opportunity it provides for significant reform. I have received more than 200 accounts. Many of them are inspiring—they describe how many people have received an excellent and enriching education through our public education system. But there are also those which reveal how some public schools are significantly underresourced, with their teachers working in increasingly strained circumstances. I am going to share some of these accounts with you tonight.

First, we will hear from Jill, who lives in Victoria. Her story highlights the need for better funding and resources to educate children with disabilities. Jill wrote to me:

I strongly believe that the Gonski recommendations should be implemented in full.

I have two children, both with disabilities, and I have not been able to keep them in public schools because those schools simply did not have the resources to provide the relatively minimal extra assistance each of them needed.

Whether children are disadvantaged by disability, by economic circumstance, by location or any other reason, they should always have the genuine option of an adequately resourced public school.

My son, for example, spent a year in the Principal's office and in her Year 6 classroom — when he was in year 2 - because they only had resources to provide extra assistance for two hours a week, and then only for 10 weeks.

I'm sorry, but Asperger's syndrome does not go away in 10 weeks - nor do the effects.

Our educational system should be able to cope with situations like this. But clearly it can't.

My son was only mildly affected, and it has taken several years for him to recover from the trauma of this year. Proper arrangements would have avoided heaps of later expenditure.

My daughter was diagnosed with ADHD in early high school, and could not cope with the learning style of sitting in the classroom and listening. As a result, she ended up leaving school at year 10, - yet it is not difficult for a well-trained teacher to accommodate different learning styles.

These are some of the reasons why we need Gonski.

Education is critical to an intelligent, thinking country, and we need to make it our top priority (and not just for kids). This is the future of our country, of our industry and it should not be essentially restricted to those whose parents have the option - albeit often through great sacrifice - of sending their children to a private school.

Jane Ra... from Western Australia highlighted the necessity of funding for need of a different kind. She wrote:

I have a year 6 and a year 9 child and am strongly committed to the public education system.

I have been increasing alarmed at the lack of funding for basics at the children's primary schools -even extending to insufficient teachers, - and longstanding teachers' aides being forced to leave even when they are an integral part of the community and workforce within the school.

Specifically my children are both gifted. I have learnt by experience as well as by research, that gifted children have very special needs, and are very much at risk in many ways.

They have a very high rate of anxiety, the boredom they suffer daily puts them at risk of behavioural disorders and depression, and long term they have an incongruously high rate of school drop out.

Rightly - with short resources, the focus is on the lower end of the educational spectrum, but
there is not enough money to provide for those needy children.

There is very little left for the gifted kids - who are almost entirely left to fend for themselves in primary school. My yr 6 girl now has to survive another 18 months of boredom before she starts high school and I fear for her.

And, finally, I will share the words of Sabina, from Victoria, who wrote:

I have only a small story to tell but it makes me cry writing about it.

At my local Williamstown library, on a cold, wet winters night recently, I was present as two young boys, no more than 11, were fighting over who could use the public computers - not to play games - but to 'get my homework done by tomorrow'.

I felt awful - realising these 2 kids, who lived in the housing commission flats nearby, - were studious enough to come out in darkness and cold on their own to try and research for their assignment....

Whilst my friend's children in the same suburb go on European trips and have the latest.

We must ensure that each child has the same opportunities in life, as much as possible. - That children have access equally to computers, the internet, excursions and various learning opportunities.

Regarding literacy - I've worked in this area and the statistics (and my experience) concerning lack of basic literacy skills to navigate the world (brochures, prescriptions, newspapers etc) - in this great first world country! - are terrible.

This is even before we look at indigenous communities; - right here in our own neighbourhoods.

We must fully support and implement the Gonski recommendations to ensure a functioning, equitable, healthy society.

So the Australian Greens say: as a community we must be willing to pay for what we value. School funding is about more than just money for new buildings and better infrastructure. It is also about valuing our teachers by providing conditions to enable them to do one of the most important jobs in the world—educating citizens of the future—and a career structure that attracts and retains them. For too long we have been requiring our teachers—too many teachers, in many of our public schools—to deliver results in a chronically underfunded system. We need action now, and our public education system needs investment now. We must legislate for Gonski, and make a serious investment in the future of our children.

Senate adjourned at 22:36

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]


Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No. 21 of 2012—Information provided by life insurers and friendly societies under Reporting Standard LRS 100.0, LRS 120.0, LRS 210.0, LRS 300.0, LRS 310.0, LRS 330.0, LRS 340.0, LRS 400.0, LRS 420.0 and LRS 430.0 [F2012L02199].

Broadcasting Services Act—Television Licence Area Plan (Darwin) 2012 [F2012L02207].

Carbon Credits (Carbon Farming Initiative) Act—Carbon Credits (Carbon Farming Initiative) (Conservative Estimates, Projections or Assumptions: Greenhouse Friendly Initiative Transitional Crediting Calculation (Alternative Waste Treatment)) Determination 2012 [F2012L02191].
Civil Aviation Act—
Civil Aviation Order 82.0 Amendment Instrument 2012 (No. 2) [F2012L02208].
Civil Aviation Order 82.3 Amendment Instrument 2012 (No. 1) [F2012L02209].
Civil Aviation Order 82.5 Amendment Instrument 2012 (No. 2) [F2012L02210].

Environment Protection and Biodiversity Conservation Act—
Amendments of lists of exempt native specimens—
EPBC303DC/SFS/2012/58 [F2012L02195].
EPBC303DC/SFS/2012/60 [F2012L02196].
EPBC303DC/SFS/2012/61 [F2012L02197].
Final (Small Pelagic Fishery) Declaration 2012 [F2012L02194].


Therapeutic Goods Act—Therapeutic Goods (Listing) Notice 2012 (No. 3) [F2012L02190].