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the Senate and committee hearings are available at

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SITTING DAYS—2012

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FOURTY-THIRD PARLIAMENT
FIRST SESSION—FIFTH PERIOD

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

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

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

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

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

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

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

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<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon Julia Gillard MP</td>
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<tr>
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<td>Senator the Hon Stephen Conroy</td>
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<tr>
<td><strong>Minister for Social Inclusion</strong></td>
<td>The Hon Mark Butler MP</td>
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<td><em>Minister Assisting the Prime Minister on Mental Health Reform</em></td>
<td>The Hon Mark Butler MP</td>
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<td><strong>Minister for the Public Service and Integrity</strong></td>
<td>The Hon Gary Gray AO MP</td>
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<tr>
<td><em>Minister Assisting the Prime Minister on the Centenary of ANZAC</em></td>
<td>The Hon Warren Snowdon MP</td>
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<tr>
<td><strong>Cabinet Secretary</strong></td>
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<tr>
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<td><em>(Deputy Prime Minister)</em></td>
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<td><strong>Minister for Financial Services and Superannuation</strong></td>
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Wednesday, 29 February 2012

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

BILLS

Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011

In Committee

Debate resumed.

The CHAIRMAN (09:31): The committee is considering Greens amendments (20) and (21) on sheet 7189, moved by Senator Wright.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (09:31): We are dealing with Greens amendments (20) and (21), which provide that mutual assistance should be refused in all cases involving the death penalty without exception. I have had a long association with this issue. This government and all governments in Australia have continued to remain very strong against the death penalty throughout. The government does not in this instance, though, support removing the discretion to provide assistance in death penalty cases. The existing death penalty ground for refusing mutual assistance is consistent with Australia's strong opposition to the death penalty while still affording sufficient flexibility to ensure that assistance can be provided to combat serious criminal activity, because special circumstances may exist where the foreign country provides an undertaking that the death penalty will not be imposed or, if imposed, it will not be carried out. So we can find the way through this by ensuring that we have mutual assistance with other countries while maintaining our strong voice in international fora about how Australia condemns those countries who use the death penalty.

Another example where mutual assistance for special circumstances may arise is where assistance provided would assist a defendant to prove their innocence. The way the legislation is structured is to ensure that fairness is at the heart of the system. The Mutual Assistance in Criminal Matters Act also enables conditions to be placed on the provision of assistance so that, in instances where there is a view taken by the government, we can place strong conditions on that. This could include, for instance, restricting the use of material to investigative purposes or requiring the country to seek the minister's authorisation to use material for the purposes of prosecuting a person. All of that means that the system that is in place will ensure that we continue to be strong advocates against the death penalty.

Question negatived.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (09:34): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (09:36): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Queensland Floods Recovery) (09:35): I move:

That intervening business be postponed till after consideration of government business order of the day no. 3 (Telecommunications Universal Service Management Agency Bill 2011 and related bills).

Question agreed to.

**BILLS**

**Telecommunications Universal Service Management Agency Bill 2011**

**Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011**

**Telecommunications (Industry Levy) Bill 2011**

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

**Senator CAROL BROWN** (Tasmania—Deputy Government Whip in the Senate) (09:36): As I rise to make a contribution to this debate I am very pleased to once again have an opportunity to put on record my support of the National Broadband Network. I am proud to be part of a government that recognises the importance of bringing Australia's broadband services into the 21st century. As we move towards a digital economy we need to remain competitive in our region, and this is why we are delivering the NBN. No matter what the location, the NBN will ensure high-speed broadband to everywhere in Australia. All homes, schools and businesses will be included.

Fibre-to-the-premises technology, with speeds of one gigabit per second, will connect 93 per cent of premises. Satellite and wireless technology will service the rest of Australia and provide faster and affordable broadband. To put it in layman's terms, what we are talking about is broadband speed a thousand times faster than the speed that many people currently receive. Rural and regional communities, such as my home state of Tasmania, have already started to benefit from the NBN and will continue to prosper and thrive with the assistance of high-speed broadband. The NBN is the single largest infrastructure investment made by an Australian government. It will deliver a once-in-a-generation improvement of our telecommunications infrastructure and it will benefit all Australians. It is cutting-edge technology that will transform our economy and create new ways of connecting with each other and the world.

There have been Australian and international studies that have shown broadband to be one of the strongest ways to increase social and economic development. The Connecting Communities review by a global telecommunications solutions provider looked at the benefits of broadband in the United Kingdom and what this means for Australia. The findings were that high-speed broadband is directly related to strong regional areas and attracting and retaining employees, and also contributes to a low-carbon future. It can be summed up as being 'transformational for Australia'.

We know that, as a significant nation building project, the NBN will end up paying for itself. The advantages it will provide are incredibly widespread and touch on every facet of our lives, including health, education and business. At a grassroots level it will mean that local businesses can develop and get in touch with new markets and that people will be able to access health care without having to leave their homes.

I would like to share a story from my home state of Tasmania, which I know you will be interested in, Mr Deputy President, that highlights the benefits of the NBN. It involves a sign-writing business in Midway...
Point, which was one of the three towns in the initial rollout. Midway Point is in the electorate of Lyons and is represented by Dick Adams, who is a strong supporter of the NBN and a great advocate for his community. This business has seen an increase in its capacity to attract customers thanks to the NBN. As the broadband speed is faster and more reliable, large artwork files can now be sent and retrieved in a matter of seconds, which is a dramatic improvement and has increased the number of clients wanting to do business with it. The NBN means that distance is no longer an impediment to running a successful business, which is crucial for businesses in regional and rural Australia. This is just one example of the many success stories that highlight how the NBN is changing lives and creating opportunities.

Midway Point is joined by Scottsdale and Smithton as the towns where NBN services are currently available in Tasmania, and work has either commenced or will commence in 12 months on a number of other locations. These locations are George Town, Deloraine, Triabunna, Sorell, Somerset, St Helens, Launceston, South Launceston, Bellerive, Hobart, Kingston and Claremont. In Tasmania it is estimated that within 12 months 15,000 homes will have access to the NBN, with work planned to start on an extra 76,000 in the coming year.

Despite hearing stories about the very positive impact the NBN is having on people out there in the community, those opposite are hell bent on preventing Australians from having a world-class, affordable broadband service. If they were serious about ensuring Australians are able to access world-class telecommunications infrastructure, they would support the NBN rollout, as it is supported throughout the community.

This government wants everyone to have access to high-speed broadband, no matter where they live, and we are committed to delivering it for all Australians. As we continue this mission, the Telecommunications Universal Service Management Agency Bill 2011, the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 and the Telecommunications (Industry Levy) Bill 2011 are part of a package of legislation aimed at enabling the continuity of key telecommunications safeguards. These bills are part of the next stage in the government's reform agenda for the telecommunications industry. The bills seek to reform the arrangements for the delivery of universal service and public policy outcomes. This will aid the evolution to the NBN and a more competitive telecommunications market.

Breaking this package down, the Telecommunications Universal Service Management Agency Bill provides the governance, funding and accountability framework for this new statutory agency. It will ensure that universal service outcomes and other important services for the community will still be delivered in a new competitive circumstance. The new entity will guarantee that all Australians have sufficient access to a standard telephone service and payphones, guarantee the continuing delivery of the Emergency Call Service and the National Relay Service, and guarantee that appropriate safeguards are in place to support voice-only customers transferring to an NBN fibre service as Telstra's copper network is decommissioned. It will also ensure that technological solutions will be developed to support the continuity of public interest services such as public alarm systems and traffic lights. These are vital ways to ensure the continuity of basic services to Australians in light of the changes to the telecommunications industry.
that will take place with the rollout of the NBN, including the gradual decommissioning of Telstra's copper customer access network. The government is committed to reducing the disruption for industry and the wider community by keeping these basic safeguards.

Telstra will be required to keep its copper network to deliver voice services outside NBN fibre areas and will also be the retailer of last resort for voice-only services over the NBN fibre network. As well as providing accessible basic services, the legislation will also ensure that the new agency operates in an accountable and transparent manner. It will be required to keep a publicly available register with key terms and services to be provided under all contracts and grants, as well to as prepare annual reports and corporate plans. There will be a review before 1 January 2018 to consider how effective the agency has been. The estimated total cost of the agency is $340 million per year for its first two years and around $330 million per year following that. To help with these costs the government is contributing at least $50 million in funding per year for the first two financial years and $100 million per year after that.

The Telecommunications Legislation Amendment (Universal Service Reform) Bill chiefly amends telecommunications legislation to assist the new arrangements for delivery of universal service outcomes within the telecommunications sector and to facilitate the establishment of the new agency and the changeover to new levy arrangements. An important part of the bill is the proposal of a robust framework for contracting with service providers for the delivery of universal service outcomes and related public interest services in the telecommunications sector. The Telecommunications (Industry Levy) Bill is a bill that ensures the government can raise the consolidated industry levy. This package of legislation further progresses the work the government is doing to reform the telecommunications industry and continue with the rollout of the NBN. The government is committed to giving all Australians access to affordable and high-speed broadband services. The NBN is critical infrastructure that will connect Australians with each other and the world, and I commend the bills to the Senate.

Senator BIRMINGHAM (South Australia) (09:45): I rise to speak on the Telecommunications Universal Service Management Agency Bill 2011 and related bills. But, with the indulgence of the Senate, I will just touch on a couple of other matters initially. Firstly, because I may not have a chance on the record at any other time today to say this, I note that today, being the last day of February, is the culmination of Ovarian Cancer Awareness Month. Knowing that Senator Conroy's office would be monitoring this, as this is his legislation, I note the participation of Senator Conroy and in particular his wife, Paula, in the ovarian cancer breakfast held in Parliament House this morning, and I note in this place, appropriately, the memories that many have of my predecessor in this Senate seat and your predecessor, Mr Deputy President, as Liberal Party whip, Senator Jeannie Ferris, who did so much to raise awareness of ovarian cancer during her battle, which she ultimately succumbed to, with ovarian cancer.

This legislation has come on a little earlier than anticipated because of the filibustering tactics the Greens are employing on the radioactive waste legislation—a shameful tactic from the Greens, who do not seem to recognise the importance to Australia of ensuring that we have a central repository for radioactive waste in this country. I note that having brought this debate on, though, this
has moved out into an area of legislation where there is some broad agreement of principle and some concern over detail.

The universal service obligation is an important tenet and feature of Australia's telecommunications policy. It requires that basic telecommunications services, including home telephone services, business telephone services and payphones, be accessible to all Australians in a fair and equitable basis at an affordable price. The universal service obligation is especially important for telecommunications consumers in rural and regional Australia, as it ensures that basic telco services are available where it may not otherwise be economically viable for telecommunications companies to provide them. Without this subsidy, the tyranny of distance would be all the greater for many rural Australians who may not be able to afford basic services. For this reason, the coalition strongly support the USO. We have always done so, and we continue to do so. It is consistent with our overall support for communications services of the highest standard and order in rural and regional Australia.

Our support has not just been for the USO. If we look at what we had in place at the end of the Howard government, we see that we had in place a number of measures that were designed to provide a better standard and to continually raise the standard and the bar of telco services for rural and regional Australians. I think immediately of the regional telecommunications fund—$2 billion that had been set aside to be able to provide a constant source of funding to upgrade services to rural and regional Australians. Sadly, that fund is no more be cause, like all available piggy banks under this government, it has been raided and spent. It was spent in this case on the National Broadband Network, which thus far is not exactly rolling out vast new services in rural and regional Australia at a rapid pace.

Indeed, if we compare the NBN and where it is up to in its provision of, especially, wireless services to regional communities with what the coalition had in place at the end of the Howard government, we will see that we were on track to deliver wireless services to regional communities within a few years. They would have already had services under the OPEL contract that would have provided for better regional telecommunications services today than they currently have. That would have been delivered under a contract signed by the previous government and funded by the previous government and that would already have been operational today. Instead, we continue to hear promises but see delays from the government as it rolls out the NBN. We hear promises but there are delays and therefore consumers in rural and regional Australia are still waiting to see the genuine benefits of this claimed NBN.

Telstra currently delivers the universal service obligation. Being a former monopoly provider and the owner of much of Australia's fixed line telecommunications infrastructure, Telstra's role in this is understandable. Current regulation requires Telstra to provide basic services at an equitable rate. To compensate Telstra for this obligation, all telco carriers are levied, with the majority of funds raised provided to Telstra to offset the cost of their undertakings in this area. Presently the levy raised is approximately $145 million. This legislation also affects the provision of the Emergency Call Service and the National Relay Service. The National Relay Service delivers voice-equivalent services to Australians with speech or hearing impairments through voice-to-text and text-to-voice technologies. The NRS, I
understand, costs around $17 million under its current contract provider.

Telstra has argued for some time that the fees levied from service providers which it receives to compensate it for the cost it incurs in relation to the provision of the USO are insufficient. Unsurprisingly, Telstra's retail competitors, who are levy payers, have opposed any increase to the levy. This legislation provides ultimately a convenient escape from this argument between companies. The government commissioned the Castalia report, an independent expert report, to consider this matter. It found that the cost of providing the USO combined with the cost of the NRS and provision of public payphones amounted to at least $250 million and up to $300 million annually. While this will in theory end the argument between Telstra and other retail service providers, it opens up a new potential front for argument between retail telco service providers and the government and in particular the new Telecommunications Universal Service Management Agency, TUSMA. We have seen that already with many of the other retail service providers in the telco space questioning the validity of the Castalia report and the costs and doubting whether the sums involved are indeed appropriate. While the current USO was appropriate while Telstra was the owner and operator of Australia's fixed line telecommunications network, with the changed environment foreshadowed by the government through their NBN and of course the planned ripping out of the copper network right around Australia—if, indeed, this ever does occur given the appallingly slow or extravagantly expensive rollout of the NBN to date—it makes sense to plan to alter the arrangements of the USO to fit with the government's overall policy direction. This bill is before us largely because Labor is seeking to create the NBN—a massive government owned communications infrastructure monopoly that will stifle competition and innovation in Australia's telecommunications sector, but that should not be any surprise to anybody given that private ownership, efficiency, competition and business innovation are anathema to what this government stands for. Nonetheless, as the government intends to limit facilities based competition by ripping copper line from the ground and implementing its new regulatory regime with a monopoly fibre provider, we must address the provision of the important services contained in the USO.

On the coalition side we expect transparency and competition in government tenders for services. The question here is whether the processes set out through this legislation and already undertaken by the government as part of the new TUSMA arrangement actually meet with those expectations of the coalition. This process sees the costs of services revealed and openly and transparently funded by both taxpayers and the retail service providers—not to mention it removes a somewhat onerous regulatory requirement from a private business: Telstra. This is all something that our party welcomes. If only the NBN as a whole was as transparent and up-front about the costs, subsidies and competitive impacts of this unprecedented government intervention.

While I welcome the increased transparency of the amount involved and the replacement of the USO and NRS levies with a single levy and the funding arrangements for it, there is of course, as always with Labor, a catch. As we have seen so openly this week, there is always more than meets the eye. Whenever Labor seeks to simplify, the outcome is always more complex. Whenever Labor seeks to cut costs, the outcome is always more expensive.
Whenever Labor seeks to reduce regulation, the outcome is always a new bureaucracy. Labor talks of efficient government and transparent government, but it is of course addicted to bloated, big, inefficient government.

These bills sadly provide for more of the same in some ways. These bills create yet another new bureaucracy. We all know Labor has never seen a bureaucracy that it did not like. This time it is the Telecommunications Universal Service Management Agency, or TUSMA—a mouthful if you do not take the acronym. TUSMA will be created to do what the Australian Communications and Media Authority already does in part—that is, assume responsibility for the USO. I am not sure why the minister lacked confidence in the ACMA to administer all of the operation of the USO, and perhaps he can explain this for us when he sums up. Indeed, perhaps he needs some extra positions to appoint some of his Labor mates to. Maybe we will even see Senator Arbib bobbing up and helping with the USO in his next life. As I understand it, the ACMA will of course continue to collect the industry levy, which will fund the USO. I understand that ACMA has staff of around 40 engaged in the responsibility for the USO and associated aspects. TUSMA will oversee the new regime and it will come at an administrative cost of around $5 million.

I mentioned earlier that the coalition, by our very nature, expect open and transparent tenders for government services, so it is therefore disappointing that, far from taking the opportunity to put the USO and NRS services out to a competitive, open tender, the government have entered into a 20-year contract with Telstra. We all know that Telstra's cooperation and acquiescence to the NBN model is essential for the success of the NBN model. Obviously in this case we see that, even with the USO contract, it does appear to have the image, as suggested by many, of being wrapped up as a potential little sweetener valued at around $2.7 billion over 10 years for Telstra.

One of the TUSMA jobs is to enter into contracts for the delivery of the USO. That begs the question that, if one of their core jobs is to enter into contracts for delivery of the USO but the government has already agreed to the first 20 years worth of contracts, perhaps the new bureaucratic agency is going to have a rather quiet first 20 years. Indeed, the Department of Broadband, Communications and the Digital Economy said as much during the inquiry into these bills. Departmental deputy secretary Mr Quinlivan stated:

These measures were agreed to support the government's broader package of telecommunications reforms, implementation of the NBN and, most importantly in this context, the structural separation of Telstra. We see an admission there from the department that this is not a pure approach about simply the provision of universal services to rural and regional Australians; this of course is all embedded in the government's approach to the implementation of the NBN and the structural of separation of Telstra. Yesterday, the ACCC approved a much revised structural separation undertaking between the government and Telstra—a structural separation undertaking that at least now does not include some of the remarkable provisions that NBN Co. and the government had sought to impose upon Telstra in the first place. Those conditions would have seen them limited to the manner in which they conducted competition for their non-fixed line businesses and non-fibre businesses and would have seen them not able to effectively promote their wireless services against NBN Co.'s monopoly services, because so scared
is the government of any semblance of competition against its NBN model. I do not begrudge Telstra receiving this contract. It probably is at the current point in time the best placed of Australia's service providers to deliver it, given, of course, that it continues to be with the copper line being the product provided to the overwhelming majority of Australian premises. It is the owner of that service and the one best placed to ensure its maintenance and continuance into the future. We have the strange situation under the NBN model and under this proposal that the copper line is going to have to be maintained in certain parts of Australia for an indefinite period of time. Whilst the government proposes to rip up, switch off and disconnect the copper line services for 93 per cent of Australian premises—if, of course, it ever gets that far with its NBN—there is a question mark that remains for the remainder and an uncertainty as to how the services under the USO are going to be provided to those remaining households into the future in a cost-effective manner for all involved. The problem that we have, however, with the Telstra contract, with the report that was undertaken and with the approach going forward is that we will never know for sure if due process really was followed. Certainly we know that there was no real open tender conducted at this stage of events.

Senator Conroy, as the responsible minister, has quite an interesting history when it comes to tenders. I reflect on NBN stage 1 and the tender that was undertaken at that stage to provide the fibre-to-the-node broadband service. Fibre to the node was what the Labor government was originally elected promising. This was, if my memory is correct, a $4.7 billion promise.

Senator Ludwig wants to ask if we have bought the copper. As I just reflected, Senator Ludwig, large parts of Australia—including large parts of rural and regional Australia, critical to your portfolio—are in theory going to continue to be reliant on copper services under this proposal for an indefinite period of time into the future. But Senator Conroy went through that $4.7-ish billion contract for NBN stage 1, for fibre-to-the-node services, only, having spent millions of dollars on that tender, to have to abandon and scrap it, having wasted countless hours of government and private sector time, and to come up with a new model that just shifted the decimal place across by one so that we ended up with something closer to a $50 billion proposal. Clearly it was not a big deal to the government, because equally, as we all know, it was all dreamt up on the back of a serviette, or both sides of a serviette, or both sides of an envelope or a drinks coaster, on that famous VIP flight between Melbourne and Brisbane.

Senator Conroy, of course, continued his interesting history with tender processes in the recent Australia Network contract debacle that the government engaged in, which once again saw millions of dollars and countless hours of government and private sector time wasted on a botched tender process that is now the subject of dual investigations by the Australian Federal Police and the Auditor-General's office. But I digress. Senator Conroy has so many problems and debacles that I could not possibly cover them all now, so I shall return to the issue of TUSMA.

The coalition is concerned that telecommunications service providers, and ultimately consumers and taxpayers, will end up potentially paying more as a result of TUSMA and the arrangements in place. TUSMA's running costs will be paid and
borne in part by taxpayers, at least over the immediate future, and of course by the telecommunications industry through the levy structure, with the government initially providing a flat $100 million contribution to provide the gap between existing levy arrangements and the expected funding necessary for the new USO arrangements. Of course, the industry levy structure in the future has the risk and the fear that there is a lack of incentive to rein in costs, and that has created fears that many retail service providers expressed to the Senate inquiry: they feared that the hit to industry and the costs to consumers will continue to grow and grow. Perhaps, if the government had conducted proper consultations on this matter, the reform would not have caused the concern in the telco sector that we heard about through the Senate inquiry. There was genuine concern about the consultation process and the government's admissions, effectively, that this was all wrapped up before the final legislation was developed. So we come to this process wanting to support the USO and accepting that a new model is necessary given the government's policy direction but with concerns about the bureaucracy and costs which will be expressed later. (Time expired)

Senator CAMERON (New South Wales) (10:05): I am pleased to rise to support the Telecommunications Universal Service Management Agency Bill 2011, the TUSMA Bill, and also the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011, or the reform bill, and the Telecommunications (Industry Levy) Bill—represent further steps in the government's reform agenda for the telecommunications industry. Together the bills form a legislative package to reform the long-term arrangements for the delivery of universal service outcomes and related public policy outcomes, which will facilitate the transition to the National Broadband Network and a more competitive and open telecommunications market. These bills are part of the broad package delivering the NBN, and the resulting retail competition will certainly be a boon to all Australian consumers.

The TUSMA Bill will provide the governance, funding, and reporting/accountability framework for this new statutory agency to make sure that universal service outcomes and other key public interest services continue to be delivered effectively in this new competitive environment. TUSMA will have responsibility for putting in place contracts or grants so that all Australians continue to have reasonable access to a standard telephone service and payphones—it is absolutely essential that payphones still be available in many regional areas and absolutely essential that consumers have access to standard telephone services. I want to make it clear that people will not be forced into any complex or confusing service arrangement with any of the providers.
Australians will have reasonable access to standard telephone services and payphones.

It is also important that calls to the Emergency Call Service will continue to be handled and transferred to the relevant emergency service organisation. We have witnessed some of the most devastating disasters in this country over recent years, and the government is well aware that we have to continue to provide an Emergency Call Service under these new proposals. TUSMA will also be responsible for ensuring that the National Relay Service continues to provide voice-equivalent services for those with a hearing or speech impairment. This government is absolutely committed to ensuring that people who have impediments, either physical or mental, have access to reasonable and decent services. That is what building a good society is about.

Appropriate consumer safeguards will be in place to support voice-only customers migrating to an NBN fibre service as Telstra's copper network is decommissioned. I have heard a lot of talk about why the copper network should be maintained, but I have also heard in my position as chair of the Senate Environment and Communications Legislation Committee about the problems with the copper network—why the copper network is decaying around the country, why the copper network is costing more and more to maintain and why we need to make sure that we do migrate to an NBN fibre service that ensures the telecommunications security and telecommunications initiatives that a modern country needs to take its place in an international economy that is becoming more and more productive and more and more competitive. We need the NBN to deliver in that area. So customers who remain fixed-line voice-only customers after migration will have appropriate safeguards.

Technological solutions will be developed as necessary to support continuity of public interest services—for example, public alarm systems and traffic lights. We all know what happens when traffic lights go down—it causes absolute chaos. It is a productivity issue, it is a social issue, people cannot get home, and companies end up losing production if there are traffic jams and traffic chaos, especially in our bigger cities. Technological solutions will be developed to support continuity of these public interest services.

A key focus for the government is to minimise disruption for consumers and industry by maintaining basic safeguards as the NBN fibre network is rolled out and replaces the old copper network. Telstra is being required to maintain its copper network to deliver voice services outside NBN fibre areas. There are some areas where the copper network is rolled out where the NBN fibre will not go in, but for voice the government is requiring Telstra to maintain that copper network. Importantly, under the agreement Telstra made with the government, announced on 23 June 2011, Telstra will also be required to be the 'retailer of last resort' for voice-only services over the NBN fibre network.

The TUSMA legislation will ensure that basic telecommunications services remain available to all Australians and that the new agency responsible for delivering these services operates efficiently, transparently and with a high degree of accountability. The TUSMA Bill creates a rigorous oversight and accountability framework for TUSMA's activities. This includes a requirement that it maintain a publicly available register with key terms and services to be provided under all contracts and grants it makes. TUSMA will also be required to prepare annual reports and corporate plans and its operations will be reviewed before 1 January 2018 to
consider how effective the agency has been in achieving its policy objectives.

Because of the complexity and sensitivity of many of the issues TUSMA will deal with, decisions that affect industry and consumers will be made collectively by a chair and members who together will have an appropriate mix of industry experience. TUSMA will be a statutory agency established under the Financial Management and Accountability Act 1997 and its CEO and staff will be employed under the Public Service Act 1999. The arrangements for remuneration, disclosure, termination and delegation for the CEO and members of TUSMA generally reflect the standard approach under Commonwealth legislation, as set out in the Australian Communications and Media Authority Act 2005.

The TUSMA Bill enables existing consumer safeguard instruments made under the Telecommunications (Consumer Protection and Service Standards) Act 1999 to form the basis of contract standards or benchmarks for voice and payphone services provided under the Telstra agreement he minister can also determine key performance standards or benchmarks for other contracts entered into or grants made by TUSMA.

It is expected that TUSMA will have total costs of $340 million per year for its first two years and around $330 million per year after that. To help it meet these costs and alleviate the burden on industry, the government for the first time is making a significant contribution of at least $50 million in budget funding per year for the first two financial years of TUSMA's operations and $100 million per year after that. The government is also consolidating the universal service obligation and the national relay service levies into a single levy. To provide a smooth transition for industry, arrangements will be put in place for 2012-13 and 2013-14 so non-Telstra contributors do not have to contribute more than their aggregate liability for the USO and NRS levies in 2011-12. The contribution of each participant towards the proposed new levy will be based, as is currently the case, on its eligible revenue as assessed by the Australian Communications and Media Authority, and they will remain responsible for collecting it. Arrangements will be put in place so smaller carriers with eligible revenue of less than $25 million will not be required to contribute to the new levy, consistent with current thresholds for the USO and NRS levies.

I turn to the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011. The bill primarily amends telecommunications legislation to support the new arrangements for delivery of universal service outcomes within the telecommunications sector, and facilitates the establishment of TUSMA and the smooth transition to new levy arrangements. The government has previously committed to removing USO regulation. A key aspect of the bill is a proposed framework so that after a transitional period the minister may remove USO regulatory obligations from Telstra and move to a complete contractual delivery model. USO regulation can only be removed if the minister is satisfied within two years after commencement that there are satisfactory contractual arrangements in place. The minister will be required to take into account Telstra's record of compliance with its contract and regulatory obligations and any other relevant matters. Separate decisions are required in relation to the standard telephone service and payphone elements of the USO and each decision is subject to disallowance by parliament.

If there are satisfactory contract arrangements in place, the payphones element of USO regulation will be removed across Australia; and STS USO regulation
will be removed in areas that will not be covered by the NBN fibre network. STS regulation in NBN fibre areas will be progressively removed as the NBN fibre network is rolled out and Telstra implements structural separation in those areas by closing down its copper network. Even if STS USO regulation is progressively removed, the existing regulated customer service guarantee that applies to all providers of the standard telephone service will continue to apply to telephone services provided by Telstra under the TUSMA contract.

I now turn to the Telecommunications (Industry Levy) Bill. The Telecommunications (Industry Levy) Bill is a short bill that ensures that the government can raise the consolidated industry levy. I chaired the inquiry of the Senate Standing Committee on Environment and Communications into the bill and our report was tabled last Friday. Despite some concerns about the industry levy proposed in the bill, the telecommunications industry representatives supported the structural separation of Telstra and agreed that their positions in the market will be more competitive as the NBN is implemented. That is a key point. This is the industry conceding that there will be more competition as NBN is implemented—not less, as the argument has been put by the coalition. As a consequence of submissions from the Telecommunications Industry Ombudsman, the committee recommended that TUSMA and the TIO enter into the necessary agreements to share certain information to assist TUSMA's monitoring and reporting responsibilities and that the TUSMA bill be amended to enable TUSMA to disclose information to the Telecommunications Industry Ombudsman. This is about transparency and openness in the industry and for customers to have confidence that the whole approach is working not just for the industry but for the community.

Our inquiry also heard from the Australian Communications Consumer Action Network. As a consequence of what they had to say, we recommended that the TUSMA Bill be amended to make it a criterion for one of the appointments to TUSMA to be a person with experience or knowledge of consumer affairs—again, an important part of ensuring that there is confidence in the whole NBN approach.

These bills before the Senate today are a part of building one of Australia's biggest infrastructure programs ever. That infrastructure program, the NBN, is about delivering affordable high-speed broadband to all Australians, no matter where they live. The NBN is already in use in Tasmania, Armidale, suburban Melbourne and Kiama. Recently, it was announced that Australia's two largest telecommunications companies, Telstra and Optus, had signed up to the NBN, and we had yesterday an announcement that the ACCC has given final approval to develop the NBN. That is a major landmark for the nation's telecommunications industry. The National Broadband Network is a key nation-building infrastructure project. The project will deliver significantly improved broadband services for all Australians at affordable prices. It will connect our cities, our regional centres and our rural communities—something that the coalition never imagined and could never achieve in 11½ years of government. This reforms Australia's telecommunications sector.

The NBN is critical to our future digital productivity growth. It will deliver high-speed, reliable broadband to every home and business in Australia. The NBN will provide access to high-speed broadband to 100 per cent of Australian premises. Ninety-three per
cent of those premises will have access to a high-speed fibre network capable of providing broadband speeds of up to 1 gigabit per second. Seven per cent of Australian premises will have access to next-generation fixed wireless and satellite technologies providing peak speeds of 12 megabits per second. For a country like Australia, with its massive area to cover, with the concentration of populations on the coastal fringes of our country, to be able to act to provide high-speed broadband to the whole country is a nation-building exercise. It is one of the best infrastructure projects this country has ever seen and it allows Australia to improve its productivity, to improve its communications and to take its place as a modern society as the rest of the world continues to adopt broadband infrastructure.

But the NBN is just a platform; it is the use of the NBN that will enable our businesses to develop new and efficient ways of doing things—new and efficient ways of improving productivity and improving communications. The NBN infrastructure supports the evolution of the Australian economy by inspiring a new wave of digital innovation that will change and improve the way Australians live, receive services and connect with the world. It will drive productivity improvement across Australian businesses by improving logistics, expanding customer bases and creating new ways of working. It will transform service delivery, increasing efficiency and effectiveness in areas such as health, education and government services. Why should Australians in the regional areas of this country not have access to the best medical advice? The NBN delivers that. This is a transforming approach by this government. It will transform the economy, it will transform health delivery, it will transform education, it will transform every aspect of the economy.

These bills before the parliament today help that process to come to fruition. These are major initiatives by the government and they should be supported by the whole parliament.

Senator LUDLAM (Western Australia) (10:25): I enjoyed hearing Senator Cameron's remarks, and I will follow on in a similar vein. The Greens will rise, as the coalition has done, to support these bills. The Telecommunications Universal Service Management Agency Bill 2011 and the package of other measures in the related bills that come with it are really the last legislative pieces of the puzzle for the National Broadband Network rollout. This is something that I have taken a keen interest in since I arrived here. It has been one of the defining issues, obviously, in the communications portfolio. This last piece, effectively, of the regulatory framework is certainly deserving of support.

The bills create a new statutory agency to deliver basic voice, payphone and other public interest telecommunications services at an ongoing cost to the taxpayer of $100 million per year. We heard evidence during the hearings Senator Cameron referred to in the committee that he chairs that maybe we should not be doing that anymore. Some sections of industry think, 'In an NBN world, why should we be keeping the copper network up and why should we be providing these services to people when the age of broadband is here? ' The fact is that the age of broadband is not yet here. Certainly in Canberra we get services and in Melbourne we get services. In regional areas and in some outer suburban areas where costs have been cut over the last couple of years, in fact services are terrible. So it is extremely important that we maintain the universal service obligation. We believe, actually, that it should be extended—that it should be brought into the 21st century. But at the very
least, while the NBN project rolls out, there is the need to preserve and protect services and to make sure that they are not cut, particularly in areas where services have never been great in the first place.

The bills also mandate reviews in the future to assess exactly how well the USO is being delivered in an NBN world. This is an issue that will need to be revisited. We welcomed input into the Senate inquiry from consumers and from end users who convinced the committee on the need for a consumer affairs representative on the TUSMA board. As Senator Cameron outlined, that was one of the recommendations that the committee took up and has proposed. I understand that the government is interested in pursuing that amendment. The Australian Greens obviously believe that the USO should be brought into the 21st century. It is not merely voice telephony and public payphones. Really what we are talking about in this age is fast data services.

The broadband network is one of the most important infrastructure projects that this country has seen. The network, once established, will bring us closer to the rest of the world and it will be the envy of many countries, given that 93 per cent of the population will have fibre coverage to homes, schools and businesses and other premises. The other seven per cent of Australia's population will have data services through wireless and satellite. It will not be as good as you can get in the metro areas, but it is a huge step change in advance of what we have been able to deliver to people thus far.

Given convergence and the increasing reliance on data services to conduct business in the daily lives of so many people, data services have become an essential service just as much as public telephony has been for many years. We welcome the work of advocates like ACCAN for remembering that this is about people. We have tended to come in here on NBN bills and have long and exotic debates about engineering problems and about competition policy, and we tend to forget that these services are about people. The really interesting questions are around what we will do with the services when they do become ubiquitous.

Some issues with the bill were raised during the committee process. Some of the smaller telcos do not believe that they should continue to pay for the USO. They think that if Telstra is out there maintaining this infrastructure then either the price tag for providing those services should be lower or they should be somehow exempt from contributing. We believe, in line with the general principal, that the areas that are easy to service—the big cities, where the profit margins can be made—should cross-subsidise services in regional areas. I do not think it should be controversial that services should be cross-subsidised in the USO. Effectively, it is one way of doing that for areas where services are patchy. We disagree with the smaller telcos and some of the providers in that instance. We think it is important to maintain the USO.

Perhaps in 10 or 20 years it will be obsolete. Perhaps by then we will have closed the copper network down and we will be providing fast data services and there will be no need for the hardline. But I would imagine that, even though people certainly are abandoning fixed-line services in homes and are transitioning across to mobiles, it is still an essential service. The copper infrastructure still has value and it still provides services that cannot be delivered, at least in 2012, through other forms of technology.
In their evidence, Macquarie and Optus certainly argued that the NBN should render the USO obsolete. Why don't we revisit that question in a decade. Provided the coalition do not destroy the project, do not rip it up or do not flog the pieces off to private industry in an attempt to somehow balance their budget black hole, we should have a piece of infrastructure that will be providing ubiquitous, fast data services to most Australians and will also be generating a return to the Australian people. That is important to remember. In the obsession with privatising essential public services and monopoly infrastructure, we are building an asset. The reason it is off budget is that we are building an asset that will return a small premium back to the taxpayer as it is paying off its debts.

ACCAN, representing end users in the committee hearings, argued for a more integrated approach to providing disability access to telecommunications services. They propose that a range of services be brought under the TUSMA umbrella to be managed in a more integrated way than they are at the moment. We were told at the hearings that the minister was contemplating it but that it was too early and the bills would need to be passed first, so we do not have resolution on that. It is something I think this chamber should pursue. People who are interested in telecommunications and in making them available to people with any form of disability should uphold the mandate that we are extending these services to all Australians. We cannot forget that perhaps this is only part of the job.

Competitors to Telstra have argued that it is not appropriate for the government to simply contract out USO services to Telstra for the next 20 years as a consequence of the deal that was done between the government and Telstra to enable the NBN to go ahead. I have some sympathy for that point of view, because we know that this deal was done behind closed doors in an effort to get Telstra on board and that the universal service obligation had to go somewhere. I think it is appropriate that it has been brought back into public hands, but of course the industry noted—I think correctly—that all we are doing is simply contracting these services straight back out to Telstra, mostly, because they still hold the copper asset.

The bill as drafted does, however, maintain a 20th-century incarnation of the USO, but only for access to voice services. This is something the Australian Greens will be pursuing. I do not think that in the 21st century it is appropriate to contemplate a universal service obligation being simply a voice service. We have moved on. The government has quite correctly proposed a huge investment in telecommunications in this country precisely to provide fast data services to people. Therefore, I think the USO itself, and what we understand by the term 'universal service', should be updated and brought into the 21st century. We will revisit those issues.

The committee made a number of recommendations—it only made three—and I think we should propose a fourth: that the Telecommunications Universal Service Management Agency and the TIO, the Telecommunications Industry Ombudsman, enter into a memorandum of understanding to formalise arrangements for the TIO to provide information to TUSMA for the purposes of TUSMA's monitoring and reporting responsibilities. That is just common sense. If the government moves that amendment we will certainly be supporting it.

Recommendation two was that the bill be amended to make it a criterion for one of the appointments to the membership of TUSMA to be a person with substantial experience or
knowledge and significant standing in the field of consumer affairs. Again, the Greens believe that that is entirely reasonable, and we were persuaded by the evidence given by ACCAN in their advocacy work for the people who will actually use this technology.

The committee then recommended that the bills be passed. The Australian Greens believe that we need to revisit the idea of what the USO is. What is the universal service obligation? It is not simply a voice service in the 21st century; it is something more than that. We believe those issues should be revisited.

Yesterday we saw a huge piece of the puzzle fall into place outside this chamber concerning the bills that we passed well over a year ago now relating to the structural separation of Telstra—to separate out its wholesale and retail arms. Having that agreement signed off by the regulator was an incredibly important piece of the puzzle. The regulator had been holding out for a better deal for Telstra's competitors, for the smaller carriers and for the aggregators, who will take services from the NBN. That is a question about how the competitive landscape looks over the eight- or nine-year rollout of the NBN. It was tremendously important to get that agreement on the books. It removes a significant impediment to the volume rollout. Mr Quigley of NBN Co. told a budget estimates committee the week before last that the delaying of regulatory approvals by the ACCC was having a material impact on the volume rollout—on when we actually scale the build up and start rolling past not thousands but tens and then hundreds of thousands of premises. This was being held up because the ACCC and Telstra had not been able to come to an agreement.

So, what do we have? We have the regulator on board. We have Telstra on board, despite their fierce resistance to the bills. We have to coalition on board for the structural separation undertaking. Mr Turnbull confirmed that for us yesterday. They made it sound like the idea of disaggregating the wholesale and retail arms of Telstra had been their idea all along. The fact is that the coalition held up that proposal and that bill for a year. It cost us a year in the rollout, because former senator Nick Minchin was simply in here advocating for what he thought was the best interests of Telstra. As it has turned out, the best interest of Telstra is to take its place as a retail incumbent in an NBN world with a huge expansion of a customer base into regional areas, where services have never been provided before, and to get out and compete in the marketplace as a private entity. We do not think Telstra should have ever been privatised, but since it was it should play by the rules that everybody else has to play by.

We still do not know when exactly the coalition is going to drop its strange objection to the rollout. I do not understand why or how the National Party—and Senator Williams is in the chamber with us this morning—has stayed silent while its coalition partners try to wreck a proposal to bring world-class telecommunications to regional areas. What on earth are you doing?

I think it is high time the opposition simply dropped its destructive opposition to this project. It creates a degree of uncertainty amongst the NBN engineers, the people building the project and, most importantly, the people in the communities scheduled to get the services when you have the shadow spokesperson or the Leader of the Opposition marching around the landscape saying they are going to destroy the project. It is unbelievable. Let us simply get on with it.

I look forward to the committee stage of the debate on these bills. I look forward to
see, hopefully, the government taking up some of the proposals that were put to it by the committee. I thank the committee staff and secretariat and the other members of the committee for their contributions, and we look forward to the passage of the bills.

Senator FISHER (South Australia) (10:38): Following on from my colleague Senator Birmingham, can I say the coalition of course supports the implementation and continuation of the universal service obligation. The coalition reluctantly recognises the need to rejig that obligation, given that this government seems so bloody-minded as to continue to implement its National Broadband Network. In that context the coalition accepts the need to deal with this legislation.

The problem we have with it is that we simply do not trust the government to deliver, given that it is insisting on creating a new bureaucracy to deal with the universal service obligation and given that there is, arguably, already in place—in ACMA—a body that could be given the task of doing it, particularly given that the new body will not have any incentive to constrain its own costs. It will be funded to the tune of a flat $100 million, with any costs over and above that to be raised by an industry levy. That is, it will be paid for by participants in the industry. Ultimately, those costs will be passed on to consumers. And whilst TUSMA, the new agency, will be constrained by its policy objectives, the Telecommunications Universal Service Management Agency Bill 2011 gives the minister the discretion to expand the tasks TUSMA has—for example, on a public interest basis.

The Australian Communications Consumer Action Network has already recommended that the objectives of TUSMA be expanded—for example, to provide for people with a disability. That may well be a very good cause, and one can imagine the pressure to be put on the good minister—the minister for technology and gadgets—to expand the objectives of TUSMA to cover that. That is but one example of the sorts of ways in which the role of TUSMA may be expanded, with consequent and significant cost implications.

So why don't we trust the government to deliver? When the government first announced a version of its National Broadband Network dream it was, as Senator Birmingham correctly said, a $4.7 billion promise for fibre to the node. When the tender fell in a heap, that promise was aborted and replaced by the promise that this government is now struggling to implement: the promise of a $43 billion fibre-to-the-home network. But the rollout of the NBN has been plagued by delays, secrecy, overspending and lack of transparency. Just a fortnight ago at estimates we were told that NBN Co. is falling well short of the fibre targets that NBN Co. projected—

Senator Conroy: No, you weren't—don't tell fibs!

Senator FISHER: in 2010, Minister, you know it well, for 2012. The minister attempted to downplay those projections on the basis that they were based on assumptions that have not been realised. It may well be—

Senator Conroy: 'It may'; don't let the facts get in the way.

Senator FISHER: It may well be that the delay in reaching a deal with Telstra has impacted on those targets. It may well be that the delivery of fibre to greenfields sites was passed from NBN Co. back to Telstra. So it may well be that critical assumptions upon which NBN Co.'s 2010 projection was based—

Senator Conroy: Have changed.
Senator FISHER: It may be that those assumptions have changed. But the fact remains, Minister, that NBN Co. has still not met the targets projected in its 2010 corporate plan.

Senator Conroy: It couldn't.

Senator FISHER: Minister, it matters little that it couldn't; it projected that it would, if these assumptions came to bear. It was the government's task to ensure that these assumptions did come to bear so that you could deliver on your overall promise for the NBN. But not only did NBN Co. fail to deliver on its projection, it has spectacularly failed to deliver—or should I say demonstrably failed, because 'spectacularly' is meant to be a good word, and it is not good that they have failed to deliver.

The NBN Co. corporate plan, published in 2010, promised that fibre would pass by some 260,000 premises by June of this year. Yet, to date, just under 19,000 premises have been passed with fibre. And passing them with fibre is just the first step, because then they have to bother with getting connected. Some 19,000 of some 260,000 is only seven per cent of the target. That is a compelling 93 per cent shortfall from target, or some 240,000 premises, that NBN Co. has to address in the next four months—which it will not do, of course—in order to realise the target that it set two years ago. Because the assumptions failed to be met, NBN Co. did not pass fibre by one house in the last six months of last year. The ACCC's approval of the technical criteria in recent days will now free up the rollout of the NBN. We look forward to that changing. But we have little confidence that NBN Co.—or this government—will be able to deliver many of the targets that it puts before the Australian people.

The government is continuing to make it difficult for not only the opposition and other parliamentary parties but the Australian people themselves to work out whether or not the taxpayer is getting value for money with the rollout of the NBN. In answer to a specific question during the committee inquiry about the TUSMA model for the delivery of the USO and the negotiations with Telstra about the Telstra agreement, particularly as to whether future payments from TUSMA, the new agency, to Telstra under the Telstra agreement were a financial gain to Telstra, the department said:

This is a vexed question that you have obviously had quite a few people raise with you, as they have with us over the full course of these negotiations.

Of course, coalition senators, as part of what Senator Cameron said was 'my inquiry', considered at one point—as the minority on the committee inquiry chaired by Senator Cameron—that the negotiations were deficient. But leaving that aside for the moment, the department said:

This is a vexed question … We think that we did a good job in negotiating a price with Telstra. … As to the actual cost of delivering them—the services—all I can say is that the negotiations with Telstra were very difficult. Whether there is a margin in there for Telstra I simply do not know. Telstra would not tell us and they did not tell you. Nobody else knows, so I cannot answer your question definitively. All I can say is that we did our best to negotiate a minimum price and we had some independent reassurance.

The total lack of transparency in developing the TUSMA model and negotiating the agreement with Telstra to contract to deliver the USO is a fundamental concern given this government's track record on the rollout of the rest of the NBN, but it is hardly a surprise. I said earlier that Telstra has no incentive to constrain costs. From 2014 to 2015 the government's contribution—so read for that from the taxpayers—will be a flat
$100 million and any blowout in TUSMA's costs will be recoverable through an industry levy with those costs ultimately to be passed on to consumers.

I also said earlier that we struggle to understand the necessity to create a new bureaucracy. As my good colleague Senator Birmingham said, this government has never met a bureaucracy that it did not love. Not only do we struggle to understand that, and I do not think that is to do with our IQ; it is particularly hard to understand that given that the government has largely removed the need for the new agency, TUSMA, to make decisions about contracts to deliver the USO for the next 20 years because that is done and dusted with this bill. It is only after the next 20 years that it is opened up to competition for others to deliver.

In the time that is remaining I want to raise some of the evidence that was given to the committee. For example, there is that from Macquarie Telecom, which said it was concerned about many aspects of the bills before the committee which included the limited capacity for industry participation in negotiations or consultation, the flawed basis upon which the universal service obligation was now based and the scope of universal service, which is an issue that I addressed earlier. The Optus evidence was interesting. Optus said that the universal service obligation bills were a missed opportunity because, in Optus's view, significant structural changes were having to happen because of the deployment of the NBN so the traditional USO network was no longer required—correct. Optus was saying that the most efficient and effective response would have been to either remove or significantly scale back that framework, hence a missed opportunity. They also talked about the increase in the cost of delivery of the USO from $160.5 million per year to $340 million per year without any additional consumer benefit and said, more so, that proposed changes to costing and funding were not, in Optus's view, competitively neutral given that Telstra's supply costs would be unchanged whilst the payments it got, which were funded by its competitors through the levy and passed on to consumers, would be significantly increased under the new arrangements. Optus also reinforced the concerns that TUSMA simply added a new level of bureaucracy and cost to the delivery of the USO which may lead to consequent cost increases and there being a barrier to long-term reform, given the fact that the minister had the ultimate discretion to expand the statutory functions that TUSMA was to perform.

Telstra was at pains to say that it supported the USO bills in the context of facilitating the implementation of the agreement and as part of Telstra's broader participation in the rollout of the NBN. But it did observe that the bills in their entirety would, in Telstra's view, increase administrative costs and it said it had some concerns within its own house with respect to delegations and discretions, particularly those in the lap of the minister. Other comments from other witnesses, such as ACCAN and the Telecommunications Industry Ombudsman, have been raised by colleagues, in particular Senator Ludlam.

So it is given these contexts that the coalition continue to be concerned. Whilst we totally support the universal service obligation and the need to recharacterise it as the government continues to attempt to deliver on its National Broadband Network promises, we have little confidence that the government will do so in an effective and efficient way. That having been said, we reluctantly support this legislation.

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) (10:52): Firstly, can I thank all of those who have made a contribution. I welcome the opposition's constructive approach in supporting these bills, albeit with some reservations, and I am sure we will have a healthy discussion during the committee stage. We do welcome the support for the bills.

The package of three bills, the Telecommunications Universal Service Management Agency Bill 2011, the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 and the Telecommunications (Industry Levy) Bill 2011, will provide a flexible, accountable and transparent model for delivering and funding public policy objectives in the telecommunications sector. The reforms contained in the bills being considered are aimed at ensuring continuity of key consumer safeguards through the transition to the National Broadband Network and into the future. These include ensuring reasonable access to standard telephone services and payphones, the National Relay Service and the emergency call service. The bills address important unfinished business dating back to the privatisation of Telstra. They provide for increased transparency and rigour in the delivery of basic consumer safeguards. Under this approach, the realistic costs of delivering these important services will be appropriately recognised.

The Telecommunications Universal Service Management Agency—or TUSMA, as it has now become known as—Bill 2011 will establish a new entity to support continuity of key telecommunications safeguards in the transition to the National Broadband Network. TUSMA will be a small statutory agency with responsibility for the delivery of the universal service obligation—or USO, as it is more commonly known—and other public interest telecommunications services. The opposition has suggested that TUSMA will employ an army of bureaucrats. This is clearly absurd, given that TUSMA's administration costs are expected to be around $5 million per annum. It will be focused on efficient and effective contract management, despite the claims of those opposite. TUSMA will have the benefit of industry knowledge and experience, and incentives, to ensure contracts are efficiently and effectively managed. TUSMA will enter into and administer contracts and grants for these services in accordance with the policy objectives set out in the TUSMA Bill.

The creation of TUSMA is necessary because the rollout of the wholesale-only National Broadband Network and yesterday's historic acceptance of Telstra's structural separation undertaking will fundamentally change the structure of the Australian telecommunications market. These changes will see Telstra's near ubiquitous national copper fixed line network progressively decommissioned as NBN Co. rolls out its next generation fibre network. These changes will empower TUSMA to require carriage service providers to provide information or documents to TUSMA that are relevant to the achievement of the voice-only migration policy objective.

The current USO regulatory arrangements that are imposed on Telstra were designed for a market where there was a vertically integrated operator of a national telecommunications network. The new National Broadband Network environment will enable all retail service providers to offer high-quality broadband services nationally. Therefore, in this environment it is appropriate to introduce a more competitive and open model for delivering universal service and other public policy
telecommunications outcomes. These new arrangements will benefit both consumers and industry by promoting more innovative, effective and efficient service delivery arrangements. They will also clearly separate policy, regulatory and contractual functions respectively between the department, the Australians Communications and Media Authority—ACMA—and TUSMA. As such, TUSMA will be fulfilling different objectives to the ACMA. TUSMA will be subject to rigorous transparency and accountability requirements. This will help ensure that costs to industry do not increase unnecessarily.

The agreement with Telstra includes a range of incentives to promote cost savings. Further, a structured program of reviews provides opportunities for voice and payphone services to be provided more efficiently. In relation to concerns that TUSMA's scope should not increase unnecessarily, the legislation does provide some flexibility so that the services it delivers can be modified as circumstances change. Despite, again, the opposition's claims to the contrary, any proposed changes will be subject to clear parliamentary oversight and scrutiny.

The Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 amends the universal service regime in the Telecommunications (Consumer Protection and Service Standards) Act 1999. The amendments mean that within approximately two years of commencement of TUSMA's operations the minister must consider whether it is appropriate to remove the current regulated USO on Telstra to make the standard telephone service and payphones reasonably accessible. Subject to Telstra's record of compliance with its contractual and regulatory obligations, the minister may then make declarations that will commence the process for lifting regulation and shifting to a contractual model for the provision of universal service outcomes.

The Telecommunications (Industry Levy) Bill 2011 provides for the imposition of a new levy. This levy will replace two existing separate industry levies and will contribute to meeting TUSMA's costs for delivery of the USO and other public policy telecommunications outcomes. For the first time, government will also be making a substantial contribution towards TUSMA's costs and the delivery of key communications public interest safeguards. The government's budget contribution will be at least $50 million in 2012-13 and 2013-14 and $100 million each financial year thereafter. The government has also committed to increase its base funding in the first two financial years so that contributors to the industry levy, with the exception of Telstra, will not face an increase to that aggregate funding contribution. Furthermore, the government has also committed to review the levy arrangements and the need for any additional budget funding above its committed base funding during the course of the first two years of TUSMA's operation.

The TUSMA bill creates a rigorous oversight and accountability framework. The new legislation will provide for TUSMA to have a board structure and require the minister to ensure that TUSMA includes members who have substantial experience and knowledge of and significant standing in the operation of the telecommunications industry and business or financial management. These members will be expected to take a strong role in managing the costs of TUSMA activities. TUSMA will also maintain publicly available registers of the contracts and grants it administers and report annually to the minister on all significant matters relating to the performance of contractors and grant
recipients. It will prepare a corporate plan every three years as well as a comprehensive annual report. It will provide reports or information to the minister on specified matters relating to the performance of TUSMA’s functions and undergo a comprehensive review for 1 July 2018.

This accountability framework, together with the existing reporting requirements for statutory agencies under the FMA Act, will help give stakeholders the confidence that TUSMA will use its funding to fulfil its functions and policy objectives in an efficient, effective and appropriate manner. TUSMA will also be able to share information with other agencies and persons such as the ACCC and the ACMA.

I want to address a couple of the arguments that have been put forward by those opposite. They have argued that the government did not follow due process in negotiating its contract with Telstra for the delivery of the USO and other public interest services. However, Telstra is the primary universal service provider under legislation and is the only telecommunications provider with a national, ubiquitous fixed line network that can be used to ensure the continuity of key telecommunications services during the transition to the National Broadband Network. I would also note that there have been contestability arrangements under the USO since 2001, but no alternative providers have sought to supply services under these arrangements to date. People who are currently receiving key services need certainty that their services will not be disrupted, possibly for a long time, while a new USO provider rolls out a network or finalises negotiations for access to infrastructure.

TUSMA’s 20-year agreement with Telstra to deliver key services such as standard phone services and public payphones will ensure continuity of basic safeguards for Australians and will strengthen the safety net for rural and regional Australia. I know there are some on the other side of the chamber who strongly claim to support basic safeguards for rural and regional Australia and a safety net. So we welcome their support for this bill. The agreement with Telstra does not—

Senator Williams interjecting—

Senator CONROY: You are buying back the copper, mate. That is not bad. Buying back the copper—that is a classic. The agreement with Telstra does not preclude contestability for other key services that TUSMA will deliver under the contract. Seriously, you are renationalising the copper. What a cracker of a policy. The opposition has claimed that other services will not be subject to contestable arrangements. This is simply not true. Existing national relay service contracts are due to expire shortly and a competitive process will need to be run by TUSMA before 1 July 2013. The government has also committed to TUSMA undertaking a competitive process for the emergency call service within five years. By introducing a more contestable and flexible model for providing the USO these bills will promote greater efficiency, transparency and competition in the delivery of the telecommunications services that Australians rely on while preserving key consumer safeguards.

So I do commend these bills to the Senate but it is important to take into account that the National Broadband Network is being heavily contested. Senator Williams is going to slide out of the chamber now—sliding away from his commitments to regional and rural Australians, but they will be heartened by the fact that you want to renationalise. Did he check with you, Senator Fisher? Malcolm Turnbull yesterday announced that
he is renationalising the copper. He said he will instruct the National Broadband Network company to take over Telstra’s copper lines—renationalising it. That is what he announced, seriously. You should not let him blog—not live blog. It is really tragic. Renationalising the copper—I love it. Did he clear that with anyone, Senator Birmingham? Did anybody see it at all? Did anybody at all know what he was doing yesterday? That is billions of dollars that he has committed to give to Telstra to buy an asset that is dying in the ground, that is literally disintegrating in the ground, and he is going to give them billions of dollars for it. Even when they tried that on us we would not be in it. Fair dinkum, it is a cracker of a policy. I cannot wait to hear more about it. I look forward to seeing how much—

Senator Birmingham interjecting—

Senator CONROY: We are bypassing them. We are paying for them to come across and we are renting their ducts. We would never have been mugs enough to buy their copper. Buying their copper! Goodness me! Did you hear that, Senator Ludlam? I know you are back in the chamber now, and I will wind up in a moment. Did you know that the Liberal-National Party announced yesterday they are renationalising the copper network?

Senator Ludlam: Communists.

Senator CONROY: I think that needs to go on the record. Senator Scott Ludlam for the Greens just called the Liberal Nationals ‘communists’. That has to go on the record. With that thought in mind—

Senator Mason interjecting—

Senator CONROY: You will be voting for this, apparently, Senator. You spent your entire political life, to your credit, fighting communism. You thought you had led the destruction of communism only to discover that once you got back into bed with those rural socialists they’d get ya! And now we have a policy to renationalise copper. So I will leave it at that, Senator Ludlam, and look forward to the chamber's support for these bills.

The ACTING DEPUTY PRESIDENT (Senator Moore): I know all those comments were made through the chair.

Senator CONROY: They absolutely were.

Question agreed to.

Bills read a second time.

Debate adjourned.

BUSINESS

Rearrangement

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) (11:07): I move:

That government business order of the day No. 2 National Radioactive Waste Management Bill 2010 be postponed to the next day of sitting.

Question agreed to.

BILLS

Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011

Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011

Education Services for Overseas Students (TPS Levies) Bill 2011

Second Reading

Debate resumed on the motion:

That these bills be now read a second time.

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) (11:07): You can't keep these good socialists down!

Senator MASON (Queensland) (11:07): Thank you to Senator Conroy. I always enjoy his interjections as well as his contributions in this place. I rise to speak on the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 and related bills. Madam Acting Deputy President Moore, you would be aware the international education sector in our country has been through a lot lately: the global economic crisis affecting demand, increasing foreign competition, an uncompetitively high Australian dollar, well-publicised provider collapses, and, indeed, violence against overseas students. These have all been subjected to very sharp media scrutiny. Last but not least, the sector has had to adjust to a series of reforms, of which the most recent raft is contained in the three bills before the Senate today.

It is very important that we get it right. Today’s—and previous—education services for overseas students bills might sound right. They might sound rather technical and, indeed, they are at one level, but these changes belie their importance to the sector. International education is Australia's fourth-largest export industry and Australia's largest personal service industry, contributing over $16 billion to our national economy—not counting many less direct and less easy to quantify benefits.

I know I quote these statistics very often to the Senate and I will continue to quote them because I believe they are telling and need to gain more currency, both in the parliament and in the community. All too often still, post-secondary education, particularly but not just restricted to university education, is seen as something rather ethereal or boutique and far removed from the realities of everyday life—something of just niche interest. Yet it benefits the Australian economy nearly as much as gold and a few billion dollars more than tourism.

It is not our beaches, the Great Barrier Reef or the Outback that bring in most visitors to Australia. It is our lecture halls. The most common answer to the famous tourism ad slogan, 'Where the bloody hell are you?' is: 'At university, studying.' That is why it is imperative that we continue to nurture and grow this industry. International education deserves as much of our attention and appreciation as mining, tourism and manufacturing.

The proposed legislative changes before us today arise out of the Stronger, simpler, smarter ESOS: supporting international students report conducted by the former distinguished member of the New South Wales Legislative Assembly and former member for the House of Representatives, Hon. Bruce Baird. Several reforms recommended by Mr Baird have already been implemented, including changes to registration fees and the establishment of an overseas student ombudsman. These bills being debated today are in response to Mr Baird's recommendations, primarily recommendation 16 of his report. These bills will establish a single tuition protection service for all higher education providers listed on the Commonwealth Register of Institutions and Courses for Overseas Students—CRICOS.

The Tuition Protection Service can be accessed by students to gain a refund on that part of their course which is not delivered in the event their higher education provider does not meet its refund obligations under
the ESOS act. Students will only be eligible for a refund of the unused part of prepaid tuition fees. In other words, tuition for which the student has paid but which has not yet been delivered by the provider, rather than a full refund as was previously the case, in recognition that students may obtain credit for part of the study already completed.

The new scheme limits the collection of fees to no more than one study period in advance and requires providers who do not receive recurrent government funding to place all students' pre-paid course fees for their first study period into a designated account which can only be drawn down when the student begins study. In addition, these bills establish an online information service to allow students to select from suitable placement options in circumstances where their higher education provider does fold, and will establish national registration for providers operating in more than one jurisdiction.

These bills were referred to both the House of Representatives and the Senate committees on education and employment. All stakeholders had an opportunity to comment and some common threads have emerged. The Australian Council of Private Education Providers, ACPEP—the peak body for private higher education providers—Universities Australia as well as the Group of Eight universities are all concerned about the rushed implementation of these forecast changes. They think the time frames are unrealistically short. But beyond the time frame for the changes, there are also specific concerns relating to cash flow issues, quantum of fees and the approach to risk.

The coalition shares some of these concerns so let me briefly touch upon them in greater detail. The time frames proposed by the government for implementing this significant suite of legislation does indeed seem very short. The coalition would have preferred to have a longer lead time to allow some providers more time to change their business model, which the new fee regime will necessitate. We are not talking about a minor or cosmetic change here. The quantum of fees that institutions will be able to collect upfront makes a huge difference to cashflow. If the quantum is reduced, as it is under the proposed legislation, institutions have to restructure the way they operate and do business. Clearly, this is not something that can be done overnight. The ESOS Act, as it currently stands, requires providers to give notification of default within 14 days. While the coalition acknowledges some of the problems the Department of Education, Employment and Workplace Relations outlined in evidence to the Senate committee with the current 14-day time frame, the opposition is not convinced that the proposed new 24-hour deadline is adequate—though I have just been looking through the recently released proposed government amendments and I do notice that amendment (1) changes the government's proposal from 24 hours and substitutes that for three business days. Looking at that amendment here and now, it would seem that that amendment is far more preferable. So I think the government is on the right track. I should also remind the Senate that both the House and the Senate committees that looked at the legislation recommended that the notification period be 72 hours or three business days respectively. So I do think the government is on the right track.

The coalition acknowledges the diverse nature of the providers who will be affected by the changes envisaged in these bills and has some concern about the one-size-fits-all nature of the way in which student tuition fees may be dealt with. The legislative changes proposed allow operators to collect,
in most circumstances, only a proportion of upfront course costs and for those fees to be placed into a designated account. Many providers argue that this scheme may result in a destabilisation of their existing business model. On the other hand, the department believes allowing providers to collect pre-paid fees ‘encourages poor business practices’. We acknowledge that for some operators the department’s view is probably the correct one but we believe the department has underestimated the great diversity of the international education sector. For that reason the coalition would have preferred a legislative scheme in which riskier operators are subjected to more regulation than less risky operators in order to reflect this great diversity.

The coalition will support this legislation, but we will, as we often do—and as you have often heard me say in this place—monitor its implementation to ensure it achieves its policy objectives. We owe the international education sector nothing less.

Senator RHIANNON (New South Wales) (11:17): International students are significant for our education sector in terms of what they bring to our education communities and the commercial strength of our tertiary sector. We benefit from the rich social capital, knowledge, skills and diversity international students bring not only to our classrooms and campuses but also to our communities. Those students who stay after studying here keep directly contributing to our prosperity and wellbeing. Those students who return home provide links with the regions around us and assist to connect us to the rest of the world.

International students are an important conduit for the flow of ideas, of personal and national relationships and obviously with investment and trade. Economically, overseas students studying in Australia poured some $16.3 billion into our economy last financial year. Education services are still our largest services export industry and Australia’s third-largest export industry after iron ore and coal. International students generate demand for nearly 181,000 full-time equivalent employees and, with the short-sighted historic decline in public funding for higher education, now represent a substantial investment in our universities from which all Australian students profit.

I just mentioned the huge amounts of money international students bring in, and I think it is relevant to this debate that we note that this has decreased. Last year we saw a significant drop of 12.5 per cent in the international student income. That is actually a hefty $2.3 billion plunge from the 2010 high of $18.6 billion. So how we manage this sector is obviously vitally important.

These bills before us, the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011, the Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 and the Education Services for Overseas Students (TPS Levies) Bill 2011, represent the latest in a line of legislation, beginning with the ESOS Act itself, seeking to strengthen protection of international students’ interests. It is clear that there is a range of different approaches from the different parties represented in this parliament, but overall there is a commitment that protection needs to be in place. And the Greens certainly argue that the improvements are badly needed.

It is relevant to this debate to remember the terrible assaults experienced by Indian students in 2009 and also the default of a number of private providers, which has brought real disgrace on the sector in many areas. I understand that 49 private providers
defaulted in 2009 and this affected about 11,000 students—and we know that it did severely damage Australia's reputation as a safe and welcoming country for overseas students. These problems have been compounded by some education agents and providers who in fact have misled students about courses, work opportunities and migration outcomes. This unethical behaviour has made it much more difficult, I believe, for Australia to present its best face in an increasing sharp international competition. This competition is more and more attracting overseas students away from Australia. Again, it further underlines the need for this legislation.

Australia Education International has provided some very informative information for what we are considering here. Its September report showed that the perception of quality education as the most important factor for prospective students when choosing an international education destination. The same report showed Australia as ranking third out of five English-speaking competitor countries in perceived quality education. I would argue that that supports the Greens position for substantially more investment in our education systems.

These bills are the second in the tranche of responses to the Baird review, tightening regulation around the industry and protecting students' interests, and so working to rebuild and safeguard Australia's reputation and own interests in this incredibly important sector.

I would like to go on to some of the details of the bills. I mentioned the defaulting of private providers during 2009 and 2010. Out of the total of 54 college closures in the last five years only 11 have provided any refunds at all to their overseas students. Overseas students have been paying substantial amounts of money upfront for their education. In 2010 the cost of default refunds and student replacement services was $11.5 million. That was up by $2.2 million from 2009.

As of December 2010 there were 32 claims that were not finalised, and the government has been forced to subsidise the ESOS fund twice to cover unfunded student refunds. The centrepiece of these bills seeks to remove the risk of this happening again. Obviously, these are issues that are important for the reputation of the sector and there is also the issue of the financial burden that is put back on the public of Australia.

A new universal tuition protection service, or TPS, will be the centrepiece here. When providers default on commencing or completing a course at a particular location for which students have paid, TPS will organise alternative course placements or student tuition fee refunds. The Greens are pleased to see that low-risk publicly funded institutions will be exempt from two of the levy components: the base fee and the risk rated components. I note that low-risk private providers may also apply for exemption from the same components.

However, there is a major anomaly in calculating the TPS levy. The administrative fees are set at $100, plus $2 per enrolment for the previous year. The base fees are set at $200 plus $5 per enrolment for the previous year. I give emphasis to 'the previous year', but that is what this is all based on. Yet new providers seeking registration—and one could argue that they pose a higher risk of default—are in effect exempted from the $2 and $5 per student components because they do not have a prior history of enrolments. This is where we have an extraordinary anomaly.

I argue that this is an absurd contradiction in risk assessment terms. New providers must already provide projected domestic and
overseas student numbers with their application for CRICOS registration. I will move an amendment to the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill to ensure that new providers are also charged per student, using their projected likely total enrolments to complete the calculation. This could actually also provide a check against overinflated claims of student numbers that new providers might be tempted to provide.

The overseas student tuition fund will also pay for placement services and the costs of TPS staff, its director and the board—which is intended to represent the different sectors of international education providers. Some in the sector have expressed concerns that there is no requirement in the bill to ensure that representation, so we are inserting an amendment that requires the seven non-department board members to represent providers from across the international education and training sector, including providers of ELICOS courses, which provide major pathways into further Australian studies for overseas students.

The amount of initial prepaid tuition fees a provider can collect from each student before the course starts will be limited to one study period of 24 weeks, and may not be more than 50 per cent of the total tuition fees for the course unless the total length of the course is less than 24 weeks. Thereafter, providers may not receive overseas tuition fees more than two weeks before study commences. This is to minimise the amount of refunds a defaulting provider may need to repay to students.

I fully appreciate that this is a logistical challenge for providers. However, we need to remember that last year calls on the ESOS Assurance Fund were an unsustainable 523 per cent higher than the year before, with some $11.5 million being drawn from that fund, which had to be topped up by the government twice. Clearly, it is not sustainable and something has to give. Let us not forget that last financial year the sector lost $3.2 billion in income compared with the previous year, and it is suffering for it. We have to take the hard steps to ensure that our international students' money—and let us always remember that it is their money—is protected and available to give back to the students when providers do not deliver what the students have paid handsomely for. Surely, that is something that we could all agree on.

To that end, any initial prepaid—that is, pre course commencement—tuition fees should be kept in a designated prepaid fees account, which may only be drawn to a minimum balance of the unused fees as the course progresses. In the case of default, the unused portion of those fees can be transferred to an alternative course provider if the student accepts another placement, or the unused balance can be refunded to the student. State education providers and publicly funded universities are exempt from this requirement as low-risk providers, being effectively underwritten by the government, unlike private providers. However, regulations may exempt other such providers if they are determined to be similarly low risk. Moving on to the issue of accommodation, these provisions provide protection to overseas students by ensuring their unexpended tuition fees are available for refund should their education provider default on course provision. Clearly, this is incredibly important. However, there is nothing in these bills to protect students when they pay what are often substantial upfront accommodation fees to providers, and these can disappear with shonky providers and have done so. Some measure of protection surely belongs in this
legislation. I am concerned that it was not in there from the very beginning. We will be amending these bills to afford prepaid accommodation fees the same protection as tuition fees, except in item 11, where providers will be able to draw down below the protected amount in order to make advance payments to accommodation suppliers, and may do so before a course commences.

We have also given attention to the issue of record keeping. Record-keeping requirements, which oblige the confirmation and updating of written student contact details, academic progress and attendance records every six months, streamline student replacement or refunds in the case of default. It will provide another way of ensuring overseas students do not slip by unnoticed in the system, which is also the justification for the requirement to report any provider or student default within 24 hours.

There has been some argument around the tightness of this reporting deadline, and I understand it has caused some logistical challenges for providers. The department has committed that the reporting system will be online and easy to reverse. However, there have been significant delays in cases where overseas students have gone missing, some in very serious circumstances, with overseas governments expressing grave concern. The duty of care for the welfare and safety of students remains paramount. Clearly, their friends and family need to feel confident that they are safe at all times and that, if there are problems, they will hear about them quickly. In many cases, foreign governments are also playing a role here and want to be confident. Again, it goes to the perception of how international students fare in our country with regard to the key issue of safety.

Providers must notify students if that provider defaults on the provision or completion of a course the student has paid for and must either organise for students to be placed in another similar course, if the student so chooses, or provide a refund of unexpended fees. The provider must then advise within seven days of how they have met those obligations. Conversely, in the case of student default, providers must have a written agreement with each overseas student or intending student setting out refund conditions in the case of student default. They must pay any refund due to the student under the agreement within four weeks of the student's claim unless the student did not pay outstanding payments, had their visa refused because they did not start the course on the agreed date or withdrew from the course at that location.

There is a need for the national code to be updated, and for benchmarks and minimum standards for refund policies of providers to be instated, to ensure all students are entitled to consistent refund policies. That first requires consultation outside this legislative process. This is another small protection which does not yet exist but which these bills should afford a student. I look forward to the debate in the committee stage, because there is clearly room for improvement on these bills.

Senator THISTLETHWAITE (New South Wales) (11:34): The Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011, the Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 and the Education Services for Overseas Students (TPS Levies) Bill 2011 build on the significant and progressive reforms that the Gillard government has made in Australia's education sector. A commitment to a long-term, high-quality international education
sector is at the forefront of the Gillard government's priorities.

It would come as no surprise to anyone in the broader community that this government is delivering a significant number of reforms to our education sector. These reforms are aimed at ensuring not only that all Australians get the best education but also that Australia's reputation as a provider of high-quality, first-class educational services in the international community is fulfilled. In last year's budget, Labor outlined $3 billion of additional investment in training to address skill shortages across the industry. This government is putting back into a number of industries that matter most to our nation, and through these vocational education and training reforms we will see, in the longer term, productivity growth in our economy.

International education is one of Australia's most important industries. It is our third-largest export industry and annually provides revenue of more than $16.3 billion to the Australian government. Income generated in my home state of New South Wales by overseas education services amounted to $5.8 billion, or 37 per cent of export income from all onshore students, in 2010-11. In Victoria and Queensland, there was $4.8 billion and $2.5 billion respectively, while in other states the income from overseas students amounted to $2.6 billion. Of the total export income generated by education services, $15.8 billion was from spending on fees and goods and services by onshore students, and a further $595 million was earned through offshore and other educational activities. The international education sector in this country cannot be taken for granted. In recent times we have seen the effects that the high Australian dollar has had on the demand for placements of international students in Australia. And not only are the economic effects important; reputation is crucial to our nation's ability to attract international students and grow this important export market. That is why in 2009 the Prime Minister, in her then role as Minister for Education, asked Bruce Baird to conduct a review of the Education Services for Overseas Students Act and associated legislation. While the review was conducted the government moved to have the ESOS Act amended to require reregistration of all overseas student education providers to ensure ongoing integrity in this important industry. When the Baird report was released the government committed to a staged response to that review. April last year saw the enactment of the first stage of the government's response to the Baird review. Legislation soon followed in June to adjust the annual registration charge for cost recovery. This bill represents the government's fourth piece of legislation to strengthen the regulation of international education in Australia.

The government has already taken other significant steps towards creating a long-term future for international students in the higher education sector, including the establishment of a national regulator for the vocational education and training and higher education sectors and significant reforms to the student visa program. This bill will strengthen Australia's reputation as a high-quality education provider within the region and throughout the world. It does this by establishing a strong but fair regulatory regime for the provision of international education and training services. This ensures that the interests of overseas students are protected by establishing minimum standards and providing tuition and financial assurance for those overseas students. Also, the bill is designed to strengthen Australia's migration laws by ensuring providers collect and report information that is relevant to the
administration of the law relating to student visas.

As I said earlier, the education sector is of huge significance to the Australian economy. It is one of our largest export industries, generating about $16.3 billion a year for our economy. The sector is also very important when it comes to employment. It is responsible for about 125,000 jobs throughout the economy. The international education sector in Australia has also grown considerably in a relatively short period of time—from about 50,000 students at the beginning of the 1990s to more than 600,000 students now. Obviously this growth has led to an increased number of international students at our universities. Macquarie University, in the north of Sydney, has around 12,000 international places, Monash University has around 13,000 places and my old stomping ground the University of New South Wales also has around 13,000 places.

On top of this we have also had a huge rise in the number of education providers for international students, particularly in the private sector. Significantly, there are now more than 1,200 providers in this sector. These huge numbers, and the relatively large increase in recent times, have caused pressures on the regulatory framework that underpins our international education sector. The Baird review focused on several major aspects of those pressures in the international education space. When the report was released in 2010 some of the key recommendations included strengthening the registration process; effective monitoring and enforcement provisions; empowering students with information about complaint handling; ethical recruitment; and stronger consumer protections for students.

In early 2011 the government acted to bring in a wide range of reforms designed to give effective enforcement, to restrict processes around the registration of education providers and to give access to the ombudsman to allow students who attend private schools and private education providers to access a fair and balanced complaints facility. These changes were necessary at the time and they have created a framework for this second round of reforms. These bills will address many of those remaining recommendations contained in the Baird report.

Key to those reforms is the strengthening of tuition protections, and education providers who close their doors will no longer be able to take their students' money with them without some recourse. The reforms contained in these bills are also the government's response to a series of closures within the sector that have cost students a great deal of time, money and heartache to get refunds but have also done damage to Australia's reputation in the international community as a market for overseas students.

Closures affect not only the students but also our reputation throughout the world as a stable provider of services. The current system requires all non-exempt providers to belong to a tuition assurance scheme and pay into the ESOS Assurance Fund. This process involves separate applications and fees as a condition of CRICOS registration. Often the process means that the costs of placing affected students are not distributed throughout the industry in an equitable way.

The introduction of the Tuition Protection Service allows for a single point of placement for students and, in the worst cases, a refund for students. The TPS will allow for all possible placement options for students, placement incentives for providers and greater student choice. A single TPS means greater flexibility in service, a single entry point for students, a single set of fees
for providers and, of course, greater accountability to government. The TPS will also mean providers who take on displaced students will receive the equivalent of an unexpended prepaid fee. This means the education providers and, importantly, the students are not out of pocket when these circumstances occur. If students do not meet the entry requirements of an education provider there is no obligation to admit the student; and for providers who are unable to pay any difference in fees that may be payable to take on a student there are no compulsory placements. The TPS will include student refunds for unspent portions of upfront fees paid to education providers.

Under the current system, if an education provider closes in the final weeks of a student's study, the student is entitled to a full refund even if they obtain credit for completed units of study from another provider. These changes are about ensuring that we strengthen the framework of our approach to providing education services. The changes will provide greater integrity and greater security which will only bolster Australia's reputation as a provider of first-class international student services.

In the past, growth was seen as the only objective; no thought was given to Australia's reputation as a global education supplier. Neither was any thought given to the welfare of students receiving the education nor, worst of all, to ensuring that their education was of a good standard. Growth in the overseas student education sector is fantastic for the Australian economy, and the creation of jobs servicing overseas students is of great importance to all of us. This bill is designed to ensure that growth in the industry continues and that we strengthen the reputations of the industries which are providing the services.

Let us take the example of a potential student from China, from where more than $4.1 billion of student related income comes into the Australian economy each year. That potential student will now be able to choose an Australian education provider and have confidence that their investment in the future will be secure. Another example is that of a potential student from India, from where more than $2 billion of student related income makes its way into the Australian economy each year. There are also potential students from Korea, Vietnam, Malaysia, Thailand, Indonesia, Nepal, Hong Kong and Saudi Arabia. The combined economic benefit to the Australian economy of the education of students from these countries is more than $4.8 billion. These students expect to come to Australia and receive an education of the highest calibre; this government has an obligation to protect those students and to ensure that the Australian education sector has the reputation it deserves—and that is what these reforms will do.

Whether for Australian students or for international students, the Gillard government is delivering better education services in our economy which will provide the platform for better delivery of services as well as greater growth and greater strength in our economy. These are things that must be supported by the Senate.

Senator McKENZIE (Victoria) (11:47): I too rise to comment on the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 and associated bills. For the record, I acknowledge the many overseas students whose presence in our regional universities, TAFEs and colleges offers benefits to all Australian students as well as to our regional communities more generally. Only last week I participated quite vigorously—though probably less vigorously than I had in the late 80s—in the O-week celebration at Latrobe University in Bendigo.
There I was able to see firsthand the social and cultural value of international students studying at our institutions as domestic and international students got to know each other through a range of social activities prior to commencing their university studies.

Australians are known to value the wealth of cultural diversity and social sophistication brought by international students to campuses and their associated communities. The internationalisation of Australian education provides people in all areas of Australia with the opportunity to learn about other cultures and languages. In addition, it provides Australia with a ready-made supply of future advocates in the best laboratories and the brightest boardrooms in countries right across the world. All overseas students need our recognition and our support.

According to the ABS, during the last 20 years there has been strong growth in transnational education. There are more than 3 million tertiary students worldwide who are enrolled outside their country of residence. That is an increase of more than 200 per cent since 1985, when just under 1 million students travelled overseas to study. Since the 1980s Australia has become a major player in the international student market by offering globally recognised courses and qualifications. Australia's international students are currently our second largest group of temporary entrants.

In 1990 Australia welcomed 47,000 international students to our shores; by 2004, Australia attracted six per cent of all tertiary students enrolled outside their country of residence and was the fifth most popular destination for overseas students. Already by the year 2000 the number of international students had grown to 153,000. In 2005, overseas students represented approximately 18 per cent of all higher education students. In 2010, we welcomed more than 619,000 international students to universities, TAFE colleges and schools throughout Australia.

So the provision of education services to full-fee-paying overseas students is an important industry for the Australian economy, and many of the senators who have been commenting on this bill have made reference to that fact. Education services provided in Australia to international students were valued at over $9 billion in export earnings in the financial year 2004-05. At the time, it was the fourth-highest-earning export industry for Australia: in total, it generated more revenue than either wool, wheat or beef. Today, according to the Commonwealth government's Department of Education, Employment and Workplace Relations, education services are Australia's third-largest export industry behind coal and iron ore—that is saying something—and the largest service export industry, ahead of personal travel services.

Full-fee-paying overseas students are therefore an important revenue source for Australian universities. In 2005, revenue from full-fee-paying overseas students represented 15 per cent of all revenue within the higher education sector, which is a significant proportion. As universities work towards delivering quality educational infrastructure right around our nation, it is important that they are well funded. By 2008, the Australian overseas student industry contributed $15 billion in export income to the Australian economy from spending on fees and goods. The latest comparable ABS estimate, which is for the year 2008-09, is $16.6 billion. Universities Australia, the peak body representing Australian universities, states that education exports are the clear No. 1 service export ahead of tourism. As well as being an important revenue source, overseas enrolments can help educational institutions reach the critical mass needed to diversify...
the range of educational programs on offer to all students. The international student population growth has led to significant expansion in the number of education providers offering services, particularly in the private vocational education and training space. There are now more than 1,200 providers ranging from large universities and TAFEs and public and private schools to small private colleges and English language providers, many in regional centres throughout Australia. Together this has resulted in pressures on the underpinning regulatory frameworks, exacerbated by external factors such as global economies and the increasing value of the Australian dollar.

The background to the more current problems facing international education in Australia is by now well known. Reputational damage associated with provider closures has affected all providers in the international education sector, and this has needed to be addressed. In my own home state of Victoria this was particularly the case. I have first-hand experience of this and it is great to see both institutions and jurisdictions working hard to repair the damage.

One of the issues highlighted through the recent provider closures was the ability to gain a national picture of education providers to determine how many students were going to be affected. Current figures indicate that approximately 230 providers operate across sectors and jurisdictions, contributing to a disjointed system for these providers in that they experience different processes and charges in each jurisdiction, and different initial and annual registration charges at the Commonwealth level. There may also be a duplication in registration assessments which are more global to the organisation rather than local to the course being delivered at a particular campus. Only 11 of the 54 providers that closed between 2008 and the end of March 2011 met or partially met their refund obligation to students. That would significantly play into the reputation of our Australian providers in this area, the issue obviously being that the international students—all 11,000 of them—are the ones left holding the can.

The Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill is part of a package of three bills to establish a tuition protection service for all our overseas students. The bill amends the Education Services for Overseas Students Act 2000 and places obligations on registered international education providers when a provider fails to start or finish providing a course or when the overseas student fails to start or finish a course. It also provides for a national regime of national registration of providers. It limits the amount of initial prepaid fees that may be collected by a registered provider and it provides that students are only eligible for a refund of the unused portion of prepaid tuition fees and specifies what details must be kept on student records.

In summary, the implementation of a new universal single-layer TPS framework will place students more effectively into the Australian tertiary education sector. It will limit refunds, remove unnecessary administrative layers and fees, and draw from a greater pool of available places in the education sector, with incentives for providers to place students. It will enable greater student choice and responsibility as well as direct contact with potential new education providers. It will also provide for transparent decision making and fee setting that better targets provider risks and ensures sufficient funds are collected from the sector to meet fluctuating requirements related to the risk of future provider default. We
obviously appreciate greater transparency in this area. The changes will also complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

As I examine the detail, I want to comment on one of the issues raised—that of prepaid fees. Providers will be limited to the amount of prepaid fees they can collect at any one time to no more than 50 per cent of the total tuition fees before the student has begun the course. The current ESOS provisions have no restrictions on prepaid fees, with students possibly paying 100 per cent of tuition fees, sometimes before a student visa is approved. While many providers take no more than one study period fees at a time, this amendment is designed to help reduce the liability to businesses by limiting the size of refunds owed to students and reduce any potential refunds.

The changes also propose to restrict a provider from collecting student tuition fees not more than two weeks before the commencement of a course. Stakeholders have regarded this restriction as impractical. The Council of Private Higher Education suggests the period should be extended to four weeks while the public university sector wants no time frame when a university can accept prepaid fees. All but the low-risk providers will also have to keep initial prepaid fees in a designated account until the student commences their first study period. Whilst the requirements do not apply to low-risk providers such as universities who receive Commonwealth funding and providers administered by the state education authority, they will apply to many smaller private universities, colleges and schools who are similarly low-risk providers and have quite strong reputations in the sector.

The Department of Employment, Education and Workplace Relations argues that the proposed changes will ensure providers are able to meet their refund requirements should the provider default or the student visa application be refused and will assist and encourage sustainable business practices. However, one-size policy solutions rarely result in a seamless implementation across a sector or an industry, so there is a bit of wait-and-see on this one. The change is designed to stop providers from using prepaid fees for operating expenses before the student commences, despite the fact that a lot of operating expenses in order to start teaching a student actually occur before they have to rock up on day one of classes and encourage more sustainable business models. Penalties have been recommended for non-compliance and for the misuse of prepaid fees. It is reasonable that if a provider defaults and fails to provide a course at an agreed location or a course does not start on an agreed date, then the student should be reimbursed. However, there needs to be some recognition of those providers with strong reputations such as the Holmes Institute, which has been operating for many years in this sector and offering a range of programs to international students, and similar low-risk providers who will be caught in these hasty policy implementations. Whilst it will protect Australia's reputation for delivering quality education services, it will mean that all providers are able to meet their student refund obligations in a timely way. This will obviously impact on the financial operations of the business and many institutions. I have reservations concerning the impact of this legislation on regional universities, TAFE colleges and boarding schools—all smaller institutions than the likes of Melbourne, Sydney or Monash universities. Invariably the most expensive two months of any year
occur when the curriculum is being prepared, the teachers are gearing up and the equipment is being purchased—the charge will prove a challenging cashflow issue.

I recognise that the focus is on better managing risk upfront and throughout a provider's registration and that these need a legislative framework to provide security and support for all our overseas students. At the same time we must also ensure that the financial operations of all our educational providers is protected and a variety of educational providers is available in all areas of Australia. While international students provide welcome financial input into our tertiary sector and are a rich addition to the cultural and social experience for Australian students studying alongside them, it is incumbent on legislators and regulators to ensure that our higher education sector remains world-class. We have a responsibility to all students studying in Australia to ensure that they have a high quality educational standard. We also need to guard our reputation abroad as a destination of choice for the world's brightest. Financially, educationally and socially the experience of our international students needs to be positive, transparent and rewarding. There are challenges on these fronts, which universities, governments and communities are addressing. This legislation, based on the Baird review recommendations, goes towards addressing these concerns.

Senator BACK (Western Australia) (12:02): I rise also to contribute to the debate on the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 and cognate bills, and to affirm the comments of my colleagues—that is, the critical importance of overseas student education to this country, particularly in the Asian region. I am very pleased to acknowledge visitors in the public gallery who come from the very regions where we are hosting and, in some cases, receiving higher education.

People must not overlook or dismiss the importance of overseas student education to the Australian economy, to our foreign affairs and to the long-term wellbeing of our relationships in the region. We are pleased to have a circumstance in which the export income to this country from the overseas higher education sector is now the third highest in the nation and it is the highest service based export income earner for Australia. This is undervalued by most Australians. It is not understood by most Australians, and it needs to be far more deeply seated into the psyche of our community.

The benefit for us is not just when the students are here; there is also the long-term benefit that comes from them having studied in this country. In 2009 I had the pleasure of giving the occasional address at Edith Cowan University in Perth, where I was informed that one-third of the graduands in front of me that day were from overseas. I think back too to the occasion in 2004 when the company that I then ran opened an office in Manila in the Philippines. There was a Filipino businessman who could not have been more helpful to us in opening doors and in introducing us to people in government and in the business sector. At a function at the ambassador's home, I asked him: 'Why are you giving us so much assistance? Why are you so keen to see our company here?' He said: 'Because I got my opportunity during the Colombo Plan back in the 1950s. I studied at the University of Western Australia. It was an opportunity that would otherwise have been denied me and I have never forgotten it. I have never ever wasted an opportunity to be able to join with Australian companies and government in trying to advance their interests.'
I urge my colleagues and the wider community to understand and realise that as we move more into the Asian region, politically, diplomatically, militarily and economically, we have an enormous resource in the graduates and alumni of our Australian institutions—those who have come from overseas to study here and those who go back to their countries and who, hopefully, think well of their Australian experience. We should be building on that: we should be maintaining contact with the alumni and we should be using them as they move into senior positions in business, commerce and government. We should be using those links all the more into the future. That is why this legislation is so important.

It has been mentioned by others that the income to this country from overseas students is now in the order of some $16.3 billion. It has been as high as $25 billion annually, and I want to explore for a few moments the reasons for its decline. Referring back to an earlier age, when I was engaged in business activities in India in the early part of the last decade, I remember reading and then discussing with our Australian consul in Mumbai the widely-publicised fact that Australia had passed the United Kingdom and was second only to America as a location popular with Indian students wanting to study overseas and gain overseas qualifications. I was very proud as an Australian and as one who had been on the faculty of the Curtin University in Western Australia, another university that has long had an association with overseas students and relies heavily on the income from full-fee-paying overseas students. I ask: why is it that we have gone down on the list? We would be no closer now than probably fourth or fifth. Yes, currency fluctuations and the high Australian dollar are points. Others have obviously alluded to the unfortunate publicity that occurred as service providers failed, as overseas students were left here helpless and, regrettably, as some students from overseas countries, particularly in this case India, seem to have been the subject of attacks, particularly in Melbourne. I made it my business to inquire about the background and the basis of that and I am absolutely satisfied that there was no deliberate attempt to target Indian students as such. What came home to me is the fact that those who arrive on our shores need some form of orientation—to be aware that you do not get on a train late at night with a laptop computer and the sorts of objects that others might want to steal from you, or they might cause physical damage to you. I am sure that we have seen that overcome.

Unfortunately, also evident to us when we undertook the hearings on this particular matter under the chairmanship of Senator Marshall in the Senate Education, Employment and Workplace Relations Legislation Committee was the lack of consultation prior to decisions being taken. I learnt that recently from vice-chancellors; we have certainly learnt it from other registered training providers. If there is one lesson that we all want to get out of this process it is that we must engage—government must engage and departmental senior officers must engage with all of the players before we make precipitous decisions. We had a circumstance in which overseas students were coming to this country and enrolling in spurious courses—hairdressing and cooking type courses—with the expectation, often driven by agents in their home countries, that this was an easy path to Australian residency, ongoing to Australian citizenship. Those are the sorts of issues we should have foreseen and we should have put measures in place to prevent them happening.

We all know very well that overseas agents and, in some cases, Australian providers are only too willing to see the
short-term benefit and ignore the long-term loss and the long-term damage that they cause by building up expectations that can never be realised. From this side of the chamber to the government side of the chamber, if we can work constructively to put those sorts of activities behind us we will be all the better for it.

The figures are interesting. A previous speaker mentioned that 125,000 full-time equivalent positions were generated here in Australia for service providers to provide educational services for overseas students—a very impressive figure. When we saw the downturn, unfortunately the dramatic loss of those positions was also reported to us. What is equally interesting to me is that, of the 380,000 students who had student visas, the average number of family member visits per student was 1.8 last year. If my calculations are correct, somewhere approaching 700,000 visitors come to this country who would not have come had their relative not been studying here. Again, that is something which we should surely be encouraging. I would be very interested to learn from tourism authorities and others about what the yield might have been. How high spending were those overseas visitors who came directly as a result of their student relative being here?

Of course, that 380,000 student figure is low because it only includes those on student visas. When you add in short-term, English-as-a-second-language students who come here on tourist visas, we would see that number of students, with the multiplier effect, dramatically increased. Those of us who have had sons or daughters overseas on Rotary exchange or similar types of programs always seem to find an opportunity to visit them when we otherwise would not have gone there. We all know the attraction and the power that accompanies these sorts of visits, and we would often see a multiplier effect with the visitors going back to their home country, speaking well of Australia, speaking well of their relative's experience here and generating others to come.

It is interesting to listen to the evidence, particularly from those who were providing short-term training, especially in the English language. For example, English Australia advised us that the number of students under the umbrella that they represented had decreased from 219,000 in 2008 to 122,000 in 2011. The number had almost halved in that three-year period. That has a dramatic effect on employment, service provision and the jobs of those who would have been providing the service. It is also interesting that there was a 30 per cent decline in the number coming from China for short-term courses in the English language, a 40 per cent decline in those coming from Thailand and a 50 per cent decline in those coming from Vietnam—some of the very markets that we want to promote to. I go back to tourism. Naturally enough, in terms of yield, in terms of dollars left and dollars invested—not in terms of numbers yet—we know that China has become the highest contributor to offshore tourism to this country. We should not overlook those opportunities.

Recommendations were put forward to the department and onwards to the government, especially when it came to questions about prepayment fees. I thought very good suggestions were put forward by those organisations. They said that we are now in stiff competition with service providers from other countries and that we do not want to put into place legislation that would make it so unnecessarily onerous for those wanting to come to Australia that they look to other countries. We would simply be denying ourselves the opportunity.

It was put to us that representatives support the intent of the legislation—and I
am quoting here from correspondence to me—to ensure that fees are utilised for the study period for which they are collected and that ‘the proposed legislation proposes two broad mechanisms to achieve it: firstly, depositing funds into a nominated account and drawing it down; and—not or; and—secondly, putting a limit on collection of no more than six months or 50 per cent of the fees themselves’. These people made the point eloquently that the objectives would be served by either one of those two but that the administrative burden of having to comply with the two of them was certainly unnecessary. They said it would be expensive and it would be confusing for the overseas students. So I still ask that the government give consideration to what have been very reasonable submissions from them.

If nominating an account and drawing it down was not enough, they would strongly recommend that legislation to limit fee collection to no more than two weeks prior to the course commencing be abolished entirely or extended to a minimum of six weeks. The point they were making is that, in a very short course, the confusion associated with having to break the payment into two, the administration associated with collecting the funds a second time and the inconvenience to those who are supporting overseas students in having to make two payments rather than one is simply unnecessary.

If ever there was an instance in which a risk management approach should be taken to this whole question, then the funding for and protection of overseas students as part of their education is a prime example. I am interested in knowing the sort of risk analysis that was done on those service providers who failed. I am interested in knowing, for example, the status and structure of those which failed. Were they the university sector? Were they the publicly owned TAFE sector? Were they long-established Australian companies? Were they long-established Australian private providers? Were they substantially overseas companies or organisations that had come into Australia to take advantage of this burgeoning demand?

Until we know the background of those who failed—of those who failed their students, of those who took money and ran with it—I do not believe we can introduce legislation that is a catch-all for all purposes. For example, do we think for one minute that any one of the 28 or 29 universities in this country are going to close up shop and run away with overseas student money? The answer is patently no. Do we think that would happen with state owned, run and managed TAFEs or their equivalent? The answer is no. Therefore, it is critically important that we apply legislation on the basis of risk, and where there is no risk or low risk then the legislation should reflect that. We have many analogies. We have the capacity to put funds into escrow. We have the capacity to place a bond on a new provider if we perceive there is a risk associated with their capacity or willingness to deliver on what they are charging and claiming. I do not yet see that we have this approach.

I see we have a sledgehammer to kill a nut. I see we have a one-size-fits-all approach. I do not think this is the way to go. I do not believe we get the best when we penalise those for whom there is no risk associated with the activity, function or legislation under which they will be caught. I made this point to the department, I made it in the hearing itself: we must be much more forensic, if that is the term, in identifying where the risk lies and in applying treatments to that risk to ensure that we minimise or negate it. If it does not exist, do not impose
the penalty or imposition in the first place. Witnesses before us and submissions placed before us from the various service providers made that point.

On the point of competition, Australia has a great track record of 'aid, trade and fade'. If time permitted I could go through industry after industry where we have provided aid throughout regions of interest to us, that has led to trade and, for various reasons, we have faded. I make the plea that we do not fade. But, in so doing, I also make the point that it is such a lucrative opportunity that it is not just this country that has that opportunity, it is countries throughout Asia—the Philippines, for instance. Our universities have campuses in Singapore, Malaysia and other countries, and increasingly now in the Middle East, in the United Arab Emirates et cetera. So let us not think for a minute—arrogantly—that we are the only country capable of providing these educational services.

There are two things I do not want to see happening: firstly, our own service providers shifting offshore because they cannot—or do not want to and do not believe they need to—comply with restrictive legislation here and move offshore to locations where they do not have these levels of governance and insistence but can still equally and safely provide the education; and, secondly, our being disadvantaged as a result of overseas service providers setting up and taking the very market that we are building a reputation for and in which we have enormous capacity for growth.

**Senator XENOPHON** (South Australia) (12:22): I will first reflect on some of the comments made by Senator Back in his comprehensive contribution on this package of education services for overseas students legislation, not so much on points of difference but on matters that need to be sorted out in the committee stage. There is no doubt there is unanimity in this place about the importance of the overseas student sector. It is a significant part of Australia's economy. In my home state of South Australia it is one of the biggest export earners. South Australia is better as an economy and as a community because of the overseas student sector. It would be fair during the committee stage to explore the concerns around risk raised by Senator Back and others in the coalition. My understanding, as I read the bill, is that all but the lowest risk providers will have to keep prepaid fees in a designated account for the first study period. There is an element in the report of the Senate Standing Committee on Education, Employment and Workplace Relations that relates to risk that ought to be explored. The committee inquiry was very ably chaired by Senator Gavin Marshall and the deputy chair, Senator Back.

We not only need to strike a balance between ensuring that we do not have so much red tape that it becomes an onerous burden on educational institutions but also need to have some security, some sense of guarantee, for those overseas students who sign up for these courses that they will be able to pay those fees with the security that if anything does go wrong with an education provider they will not be out of pocket. That is the very important policy balance that needs to be obtained.

Let us put this in perspective. This is a major sector which is very important to Australia's economy and very important to my home state of South Australia. I have spoken in the past about my concerns for the overseas student sector in Australia and how we slipped back for a whole range of reasons. One of the big challenges we now have is a very strong Australian dollar, which is making us less competitive in the overseas student sector. The government
needs to be congratulated for the action it has taken so far. The Baird review was a positive review that looked at a whole range of issues to comprehensively deal with these problems. The fact that Mr Bruce Baird AM was a former senior coalition politician indicates that the government has tackled this issue in a bipartisan fashion, and that is a good thing.

In my home state of South Australia, overseas students make up nearly 10 per cent of the state's total exports compared to between seven and eight per cent nationally. That is why I have a vested interest, if you like, on behalf of my constituents to make sure we get this right. Unfortunately, some unscrupulous education providers have taken advantage of the strong growth in this sector to make a quick buck. In 2009 and 2010 we heard story after story of students who had come to Australia only to find the course was not what they paid for and, in some cases, the course and the provider no longer existed. There were also distressing stories of students forced to undertake long hours of physical labour in exchange for minimal education. This, coupled with disturbing accounts of isolated attacks against overseas students, even though they were universally condemned, began to reduce confidence in the sector.

The overhaul of provider standards and regulations along with the establishment of an overseas students ombudsman have finally begun to pay off with improved standards and increased confidence for providers and students alike.

I note the work the government has done in implementing the Baird review, and this package of legislation is a part of that. The Australian overseas student education sector is much stronger as a result of these changes, and I support the government's intentions in these bills. I also support the government's amendments to these bills, which are in line with the recommendations made by the committee.

I will be moving again—I hope it is a case of third time lucky—amendments to the Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 and I will discuss these in more detail during the committee stage. In brief, my amendment simply gives the minister the discretionary power to make payments to overseas students to cover incidental costs such as travel or accommodation where a provider has failed to deliver the services as promised. It is a discretion for the minister that I think can be exercised in a way and in a manner that could enhance confidence in the sector. These payments could only be made after consultation with the Director of the Tuition Protection Service and if they do not put the TPS in financial difficulty. I am trying to get that blend of ensuring that it strengthens the sector and also ties it back to fiscal responsibility. These measures are sensible and straightforward and have appropriate safeguards in place to ensure that they do not place an excessive burden on the scheme.

I support these bills. I think it is fair, though, that some of the concerns raised by Senator Back and other coalition senators in their additional comments to the committee report be addressed. As I see it, we need to strengthen support and confidence in the sector. That will involve some costs, but the benefits of that will be to have more overseas students coming to Australia knowing with greater confidence that they will be protected from unscrupulous operators, the very small minority that taint the sector. The measures in this bill are a positive step.

thank all senators who have contributed to this debate and appreciate the positive manner and constructive way in which they have approached these issues. I will not delay the chamber too long in summing up other than to say that this is the final response to the Baird review, which I think has been a very good process designed to address some of the issues which were exposed in terms of the management and support for overseas students studying in Australia. I congratulate Mr Bruce Baird on the role he has played.

I also thank all those who contributed to the debate around these bills. We have listened to the sector and their concerns, but there is one overriding objective in all of this, which I continue to stress: this is a competitive international industry. Brand Australia is really important in this debate. For every closure of a college or every student who is treated poorly, the impact is felt around the world in terms of Australia's reputation. It does not matter whether it is the small cooking college in Melbourne or the Australian National University; a poor experience for someone in the small cooking college in Melbourne impacts on the ANU and every other university and college that is out there marketing its services as part of Australian international education.

So it is very important that we get this right. It is very important that we provide as much protection and support for those international students and the sector as possible. That is done by making sure we have a very rigorous regulatory environment which supports the sector, supports its capacity, supports its responsiveness to the needs of students and ensures that we continue to support a really strong international reputation for our international education sector.

I have heard the concerns of stakeholders about some of the business aspects of these changes and the good work that came out of the Senate committee inquiry, so the government will be moving some amendments to give providers more time to notify the TPS Director of provider and student defaults. We think these suggestions, made and picked up by the Senate committee inquiry, are good ones and so we will be moving amendments to support the approach that was recommended in that report.

I do not think we have enough evidence to support some of the amendments that have been moved by the Greens and Senator Xenophon. I am not sure whether he is still moving amendments; I heard he was moving amendments but I will have to double check.

Senator Xenophon: You heard right.

Senator CHRIS EVANS: Okay. I heard right. You looked quizzical, Senator, so I thought maybe I had heard wrong.

Senator Xenophon interjecting—

Senator CHRIS EVANS: We will come to that in time, but I do appreciate the constructive manner in which senators have engaged in this. I remind people that the passage of these bills is essential if we are going to get the 1 July 2012 date, but I will deal with the amendments as we move through the committee stages.

Question agreed to.

Bill read a second time.

In Committee

Bills—by leave—taken together and as a whole.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (12:33): I table a supplementary explanatory memorandum relating to the government amendments to be moved to the Education
Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011. The memorandum has been circulated in the chamber.

Senator XENOPHON (South Australia) (12:34): I want to ask an opening question following on from Senator Back's contribution. I think it reflects the additional comments of the coalition senators. It is a genuine question based on the coalition's concerns in saying that this is a one-size-fits-all approach. I think that Senator Back said that for a university, one of the Group of Eight, or a state-run TAFE, the risks involved of anything going wrong with that institution are practically non-existent or negligible compared with, say, a private institution of the sort that have collapsed. My understanding is that the issue of risk is factored into the legislation in considering the regulatory burden. I just want that clarified, because it seemed to be the main criticism, as I understood it, from the coalition. I am just trying to establish whether issues of risk are greater. There was a gradation of issues of risk in determining the regulatory compliance.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (12:35): Senator, the simple answer is that the TPS is a universal model. We decided to go down that path. That was what was recommended. We thought it was the best way to approach the issue. There were a lot of discussions in the sector about that, rather than trying to split off different sections and having different systems apply to them. There was some initial resistance to that, but I think most people came on board and understood that.

It is based on risk assessment—that is true—but I make the general point that I disagree with Senator Back in one regard. I think it is true to say that the universities are enacted by state legislation and they are much more secure than some of the other providers in the sector. That is the case, but I would not want to pretend that we have not had concerns about the university sector in Australia, that there were not a number of universities whose practices were of concern. I have certainly raised it directly with them, and a number of them are addressing those things. They are addressing them in terms of the Knight review response as well. It is equally true that not all the TAFEs have been, in my view, perfect citizens in this regard. So I just want to dispel the myth that somehow all of the concerns across the sector and how we deal with international students were centred on private colleges. I think I had a reputation for going pretty hard at some of the cooking college and hairdresser sector of the market as immigration minister. It needed to be cleaned up, and it has been. We have to be wary, but it is equally true that we need universities and TAFEs to provide first-class education services and proper supportive services for students. I am not one who believes 'university good, private college bad' or 'TAFE good, private college bad'. I think it is a much more complex set of circumstances than that. I think it is important that we have a universal system. But it is, as you say, important that, as we have done in response to the Knight review, we try to risk-rate what we are dealing with.

Senator MASON (Queensland) (12:37): Just briefly, Minister, I thank you on behalf of the government for those amendments. I think it is fair to say that they generally reflect the findings of both the House of Representatives and Senate committees. We will discuss them in a moment, but I just
want to thank you for that. I think that has moved the debate on considerably this afternoon, and I want to thank you. There was an issue raised in the Senate committee by several witnesses about the level of consultation by the department with many of the stakeholders, and we addressed this in the committee hearing in Melbourne. Can I just relay that concern and ask you, Minister, whether you are happy with the level of consultation. If you are not particularly happy, will we see improvements next time and how will that be done?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (12:39): There have been, as I understand it, two main consultation rounds with the sector, during and after the Baird report. There is obviously ongoing consultation. I myself have met with many providers. I had one of them in my room just before we came into the chamber, so I see providers all the time. Obviously, once we pass the legislation, the department will conduct information sessions for providers to explain the changes in detail. I have no reason to be critical of the department's consultative processes, but I am happy to take those up and make further inquiries. I did not realise that the criticisms were as strong as you indicate. Certainly the whole approach to this has been based on this being something that impacts on the sector and that they have to manage, so the whole thing has been about trying to get the sector to a place where, if not everyone is happy, at least they accept the legitimacy of it and accept that it is a broadly appropriate response to dealing with the problem. As I say, we very much followed the Baird-recommended approach. But I will have a look at the question you raise and seek my own feedback to see whether that concern is justified. I heard some initial rumblings, but they were more about whether or not they agreed that some of the universities were reluctant to be put into a universal scheme et cetera. But I will take on board your concern and make my own inquiries. That is the best I can do at this stage.

Senator MASON (Queensland) (12:40): I was simply reflecting the comments of some of the witnesses at the hearing. I am just relaying that, if I might. On the cost of the new scheme, again there was concern expressed that some of the small independent schools—with, let us say, fewer than 50 overseas students—may not continue to maintain their CRICOS registration as a result of these changes. Is that of concern?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (12:41): My advice is that there has been no suggestion to us that there is particularly likely to be an impact on that sector to affect the way they operate their business. We understand that schools will continue to recruit in that way, and we do not think the TPS arrangements are onerous for them. But certainly there has been no indication to us that somehow this is going to drive change in the sector.

Senator MASON (Queensland) (12:42): Again, I was reflecting concerns expressed, but if that is the view of—

Senator Chris Evans: My advice.

Senator MASON: That is your advice? I understand that, Minister. Can I move to the time frames. You would be aware, Minister, that this has been a constant issue with respect to these reforms. With respect to the default provisions in the legislation and the time frames, has the government discovered that stakeholders are concerned about the time frames? Many of them, in fact, say this is a significant increase in regulatory burden. Of all the concerns—indeed, the
complaints—expressed at the Melbourne hearing, I think it is fair to say that the time frames were the most significant, the most broadly expressed and perhaps the most virulent criticism of the legislation.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (12:43): Do you mean the time frames under the legislation or the time frames for implementation of the legislation?

Senator MASON (Queensland) (12:43): Both, although the government's amendments partly address one aspect of the time frames. But I think it is fair to say that the implementation was an object of much concern.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (12:43): As I say, and as I think Senator Mason has acknowledged, we have tried to address the concerns that were expressed in the committee hearings about the provisions for reporting in the bill, and we have responded to those. Quite frankly, we have not responded in the same way as some would ask us to because there is the integrity of the system to protect. It is important, and this is why we are doing this. I think that one of our amendments goes a bit further than the committee recommended in terms of the time—it went from three days to five, I think. So we are trying to pick up what is reasonable without undermining the integrity of the system.

In terms of the commencement provisions, I think people have had a pretty strong warning about what was about to occur. Obviously they have had the Baird report since March 2010, and the bills have been in the parliament since September 2011. The first TPS levy, which has the most significant impact for providers, will not be imposed until 2013. I do not accept some of the wild claims made about the onerous nature of administrative costs. There is no doubt that there are requirements on providers, but I make no apologies: if you are going to have a system which provides protections, you have to make sure that people actually provide a framework that allows us to do that.

Progress reported.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Furner): Order! It being 12.45 pm, I call on matters of public interest.

Asylum Seekers

Senator SINGH (Tasmania) (12:45): Over the last six months Tasmanians have opened their hearts to men seeking asylum at the temporary immigration detention facility at Pontville in southern Tasmania. Despite attempts at fearmongering and whipping up moral panic by the Leader of the Opposition in the Senate, the Pontville Immigration Detention Centre has been embraced by Tasmanians, so much so that in recent weeks there has been a groundswell of support from the Mayor of Brighton, Tony Foster OAM, the Tasmanian government, including Premier Lara Giddings, support organisations and locals, who see the presence of the centre in their community as an opportunity rather than a threat. There can be no doubt that at the end of its six months in operation, Pontville has been a success and its impact on the local area overwhelmingly positive.

Not only is the Pontville centre safe and secure, but it is also supported by the outstanding Brighton community. In the months in which it has been open, the centre has become a focal point for national and
local service providers, community organisations and volunteers, who have dedicated themselves to compassionate care and support to the asylum seekers. And there is no doubt that the great cooperation between the Department of Immigration and Citizenship and service organisations has assisted in the rapid processing of visa applications.

Tasmanians have reached out to these men, many of whom depend on the companionship of volunteer buddies to ease them through the trying time while their claims are being assessed and, in doing so, made that process smoother than it might otherwise have been. In these six months, almost 400 men housed at Pontville have already been released on permanent or bridging visas or into community detention. There remain currently 262 men in the Pontville Immigration Detention Centre. The large majority of these asylum seekers will be released into the community on permanent or bridging visas or released into community detention. I have been assured that the Department of Immigration and Citizenship is working as hard as it can to enable the greatest number of asylum seekers to be released from Pontville over the next month before the centre closes. A small group of asylum seekers will be relocated over the next month as their applications are still being processed.

On 16 February 2012, the Minister for Immigration and Citizenship, Minister Chris Bowen, reiterated his commitment that the Pontville Immigration Detention Centre will close. It is my belief that the proximity of the Pontville centre to Brighton and to Hobart has been critical to facilitating volunteer support, and I am encouraged that the men still being assessed will be relocated to immigration centres located near capital cities.

I would also take this opportunity to impress upon this chamber that the centre at Pontville was not only a model of detention that was mindful of the needs and care that ought to be accorded asylum seekers but also a model that was effective. I want to acknowledge the role of the facility's DIAC manager, Dean Hulme; SERCO manager Andy Senior; and the staff who all approached a challenging situation with good planning and respect for the needs of the centre's occupants. Though I understand the minister's commitment to close Pontville, I hope that this model can be replicated in other detention centres and the building's facilities at Pontville are maintained against the possibility that they may be required again in the future.

Naturally, all of us in this chamber hope for an orderly and regular refugee migration system—and one from an ever-decreasing pool of global refugees. But if we should be required to accommodate irregular migration on the basis of our international commitments then let us follow the lead of the Brighton community and do so with open arms. Let us be as the volunteers in that community and the people calling for this centre to stay open, and stand ready with the generosity and care that that community has demonstrated.

Alongside staff-run programs, the volunteer support has been able to provide activities that accelerate and ease the transition of asylum seekers into the community and make the time necessary for assessment useful. Those activities have included a range of English and Arabic language classes, driving lessons, world news updates, visits to iconic areas, gardening and yoga. In many cases, the volunteer programs have not just been about acclimatising asylum seekers to their new Australian environment; they have also been about sharing the skills, knowledge and
experiences of asylum seekers with locals—providing a real opportunity to foster the kind of understanding and connection that is necessary to bind a community together outside the walls of detention.

One particular story, I think, captures the spirit of these relationships. The Brighton Knitting Club welcomed the asylum seekers by dedicating their time to knit beanies and other clothing in all sorts of colours for the men in the centre, cognisant of the newness of Tasmania's colder climate to the mainly Afghani asylum seekers. But a number of women went further, visiting the centre with knitting needles in hand, prepared to teach the men how to supplement the clothes they had been provided. They were surprised, and pleased, to discover that the Hazara occupants of the centre were already skilled at knitting, many having made their livelihoods with similar skills in making and weaving carpets. In the regular visits to follow, the men and women swapped skills at the same time as they swapped stories. There is little greater example, I think, of multiculturalism in action than people of totally different backgrounds and experiences bonding over the interests and activities that they share, each teaching the other a new ability and a new empathy.

It was a belief in these things that led Emily Conolan to harness the enthusiasm of the Tasmanian community and establish Tasmanian Asylum Seekers Support. Shortly after announcing the purpose of the group, Emily was overwhelmed by the number of people who wanted to be part of a constructive engagement with Australia's humanitarian immigration program. Over 150 volunteers have visited asylum seekers on a regular basis through the kind of coordinated activities about which I have spoken. Some have worked one on one with an asylum seeker to provide direct company and support. Each of those people deserves thanks—not just for their compassion but also for their preparedness to look past the barriers, the physical walls, the trepidation of the unexpected and the cultural differences that too often prevent us from genuinely engaging with others. Their support has helped to make Pontville a more hopeful place. And of course Emily deserves thanks for seizing the initiative that has made such a positive experience possible.

There is bipartisan consensus on the need for thorough immigration processing, including a period of mandatory detention. But we must always remember that the object of an orderly immigration program is not only to protect the Australian community but also to provide refuge to those seeking safety. The vast majority of people who seek asylum in Australia are those who have a well-founded fear of persecution in their country of origin. For one reason or another, their very identity—their ethnicity, their beliefs or sexuality—make them unwelcome in their home countries. They have made the decision to uproot their lives because they face violence, intimidation and discrimination, without recourse to the laws we in Australia take for granted.

The stories of most asylum seekers are stories of fear. For them, Australia is exactly the lucky country of which its people are so proud. Asylum seekers come to our shores by whatever means they can in search of the freedoms, opportunities and rights that make us the liberal democracy we are. Through a storm of danger and desperation, Australia is the first safe harbour in which refugees are permitted to be themselves. In Australia, every person is protected by the law and by the social contract that is so deeply a part of our community, no matter the person's background or identity. Those who violate that contract by breaking the law surrender some of its benefits, such as liberty. But those who seek refuge from lawlessness or
from violations of the universal laws of human dignity must be protected by our contract. They must have access to the protections of our society and the security and safety that implies. Such protections are the seeds of possibility. They offer the chance to make a life inspired by optimism rather than by apprehension. They offer hope.

During the years of coalition government from 1996 to 2007, Australia’s immigration detention regime had the effect of systematically crushing the hope of refugees that they would ever have the chance to begin a new life. Under the Howard government, families with young children were kept behind razor wire for years on end. Some were released into the community with papers known as temporary protection visas, under which genuine refugees were required to constantly reapply to remain in Australia or be forced to return to the country in which they had suffered persecution. Under the so-called Pacific solution, other refugees were sent to detention on Nauru, a tiny island where some stayed for up to three years with little human contact. For every refugee who has overcome incredible odds to build a new life, there is a person whose hope has been consumed by tragedy or a journey to shelter which is just too far.

Worst of all is when the promise on which their hope rested turns out to be as precarious as the lives they left behind. It is no surprise that many refugees who are already suffering under the weight of psychological trauma—from fleeing a crisis or enduring a prolonged ordeal—simply could not cope with such gruelling stress. Instead of escaping to safety, these asylum seekers too often found a novel type of torment: physical or psychological isolation, captivity and the restriction of freedom. In such conditions, the most tenacious hope would turn to a spiral of despair. In these conditions, optimism degenerated into severe mental disorders. The evidence is clear that length of confinement is associated with the progressive deterioration in mental state. Similarly, the uncertainty of TPV status was the greatest single contributor amongst refugees to post-traumatic stress disorder. The effects of such trauma are profound and enduring. Refugees held in detention for only a short time have far better settlement outcomes than those in prolonged detention. Those whose faith has survived until settlement in the community are less restless and far more likely to move quickly into employment and accommodation and to build relationships in the community.

I am pleased that under the Labor government the parameters for mandatory detention have been dramatically recast. Labor abolished TPVs, ending that regime of dreadful fear and uncertainty. On 18 October 2010, the Prime Minister and the Minister for Immigration and Citizenship announced that the government would expand the numbers of low-risk and vulnerable family groups and children being housed in community based accommodation rather than in detention centres. Today, children are no longer held in detention centres, and 1,600 people, mainly vulnerable families, are in the community under residence determination. Recently, the Department of Immigration And Citizenship updated this house through Senate estimates. By next year, one-third of asylum seekers will be issued bridging visas to live and work in the community while their claims are assessed, and another 20 percent will be in community detention.

Yesterday the Attorney-General and the Acting Minister for Foreign Affairs announced the next stage in the ratification of the Optional Protocol to the Convention Against Torture in order for Australian law to better reflect our commitment to human
rights. OPCAT provides for a robust and thorough inspection regime amongst the detention facilities, including prisons, police custodial facilities and, of course, immigration detention centres.

The national interest analysis tabled yesterday by the government makes it clear that even when human rights are a principal consideration of existing detention facilities, as I believe they are under this Labor government, there is still great benefit in a strengthened inspection regime. Indeed, the New Zealand Human Rights Commission noted in its 2010 annual report that OPCAT was valuable for 'identifying issues and situations that are otherwise overlooked, and in providing authoritative assessments of whether new developments and specific initiatives will meet the international standards for safe and humane detention'.

Checks and balances on any sort of power are a basic requirement for fairness and justice, and there can be no doubt that vigilance regarding human rights should be a basic requirement in the power exercised through the detention system. I look forward to discussing OPCAT, in particular when it comes to the Joint Standing Committee on Treaties, as I believe its ratification is of vital significance to the national interest and to honouring our obligation to the global community. I and this government are deeply committed to finding ways to promote the dignity of the individual, especially the vulnerable and those in need, while advancing the interests of the community as a whole. The continued reform of our immigration system is part of that—a reform program that will need to be sustained in order to reverse a punitive culture, reflecting the worst of attitudes towards those who seek only safety, that developed under the previous government. I acknowledge that, right now, too many people still languish in long-term detention, I acknowledge that we are still seeking an agreement to prevent lives being risked on leaky boats, and I acknowledge that immigration continues to be one of the most vexed policy issues in Australia, but surely the compassion displayed by Tasmanians at Brighton shows we all agree our policies should be guided by the hope that brings people to our shores to start a new and better life.

Government Schools

Senator BACK (Western Australia) (13:00): I rise to express concern over what I see as an increasing disconnect in Australia's education system, a circumstance in which children have become incidental to the whole process and in which process has replaced outcomes. It is delightful to see representatives of the primary schoolchildren of Australia sitting in the chamber observing today.

In Senate estimates recently, in the Standing Committee on Education, Employment and Workplace Relations, I could not help but think I was on the set of Yes, Minister, that iconic program in which Sir Humphrey Appleby explained to the minister why there were no patients in the hospital beds. This is by no means a reflection on the excellence of Ms Paul and her staff, because I believe they are very diligent officers, but I could not help but think of Minister Hacker saying, 'But, Humphrey, there are no patients!' I am concerned that we have lost the focus. We have taken children out of the centralism for which education should be there. It seems now to have become all about the dollars. It seems to have become all about the process and not about the outcomes. We are not learning about the opportunities for children and what is holding them back from their aspirational goals in education and in development.
It seems to me that we have almost lost the plot for the direction of education delivery in this country. Despite being some two generations after the postwar period, in which time there has been heavy emphasis on education in this country, and despite an increase in education funding of only 40 per cent in the last 10 or 20 years, where are we? I draw attention to an article by Ms Louise Maher on 24 February on the ABC, in which she recorded that recent surveys have indicated seven million adult Australians have low literacy levels. Some 46 per cent of this survey were poor on prose literacy and 47 per cent were poor on documentary literacy, and it was even lower for numeracy and problem solving. This has to be holding them back in both their life and their employment opportunities. It must be holding business, industry and government back, and therefore it must be affecting productivity.

It is a decline which Australia cannot afford. For the current generation of children, surveys indicate that in 2000 only one country outperformed Australia in reading and scientific literacy, and only two outperformed Australia in mathematical literacy. Moving forward from 2000 to 2009, not one but six countries outperformed us in reading and science, and we went from third to 13th in mathematical literacy. This is not good enough. It is not good enough for the investment we make, and I believe that this place is where we should be examining it.

Only recently, following Senate estimates, did we have the release of the Grattan Institute report, in which comparisons were made with equivalent schoolchildren in Hong Kong, Shanghai and Singapore. Only then did we learn that we were at least two years behind in those same literacy and numeracy skills. I spoke to primary school principals last night who said to me: 'Yes, but they're only rote learners in Asia. Our students are far more developed. Our excellent students are internationally in demand in engineering, medicine, science and the arts.' Of course they are, but education, as we all know, is across the board. I said to these principals, 'I hope you're not being drawn into a 1960s "Japanese cars are inferior" type of scenario,' and they assured me they were not.

These are great causes for concern, and I ask, 'Where are the solutions?' In the consultations I have had it seems clear that the solutions lie in developing the team theme. The saying is that it takes a community to raise a child, and it takes a team of three key members to educate that child and to develop them educationally. Those three key members are the parents, the student, and the teacher and those who support them. The point is that if one of that triumvirate—that holy Trinity—is absent then the outcome will be compromised and the child will not develop. I support the strongly made point from teachers that they cannot play the role of two of those three. So I give the challenge: let us get back to the basics; let us let teachers teach; let us promote an image of professionalism in teachers and their profession.

Those of us who have worked in and moved through Asia and India know the reverence with which teachers are held there. Only last night on the ABC program Lateline, I saw the Director-General of Education for Finland being interviewed, telling us that it is harder to get into primary school teaching in Finland than it is to get into medicine, that only 10 per cent of applicants for teaching are successful and that nearly all teachers have a master's degree. I say that we must commit parents to engaging in and supporting their children's education and their school, and that they must be there on the positive side and not on the neutral or the negative side. We ought to
be putting resources into teaching—not into school halls but into teaching. You can teach a child under a tree if they want to learn. In fact, there are many instances in which many children might be better off spending a good deal of their time outside. They tell me that in Scandinavia, up to year 10, a lot of the learning is done outside. The focus has to be on teaching.

We have to identify the poorly performing teachers. We must counsel them to improve, or if teaching is not for them we must counsel them out of teaching. How would it be, being in charge of children from nine in the morning until 3.30 in the afternoon, if you hate the job day in and day out? All of us know teachers like that. One of us at least I know has been married to a teacher who found themselves in that position. One of us at least I know has been married to a teacher who found themselves in that position. I say we must improve transparency and visibility in the education system—to children, to parents, to the parents' peers, to the teachers' peers and to the wider community. There is a perception being expressed out there that we have lost the truth and that we need to tell it as it is. It is not about the dollars, I believe; it is about how we spend them.

I am glad my colleague and leader in this area, Senator Mason, is here. We should be asking these questions of the department, the state education systems and the Catholic and independent schools. Why is education so poorly valued in this country? Why do so many teachers have such a poor self-image when it comes to teaching? How many teachers of year 12 students recommend teaching as a profession for their graduating students leaving school? If the answer is zero then we must be asking why that is the case. We must be asking: what aptitude tests are undertaken by universities to identify those students before they commence their course? I richly benefited last night from speaking to primary school principals. There were three groups of five, and I think they all said to me that they believed too many young teachers were graduating without the aptitude for teaching. For heaven's sake, these things are basic! We know that in so many professions now—medicine, veterinary science, nursing and many others—we try to understand whether this is a career for that student.

Why is it that so many young teachers go into teaching with so much vim and vigour—usually in country areas—only to find that the isolation and the complexity drags them down, and then they either leave that school or that town, or teaching, dispirited? Why is that the case? Are we examining what the wastage rate is? What number of teachers after one, three or five years are no longer teaching? I would like to see that information in the state system and also in the Catholic and independent school systems.

I would like to know the movement rate between those schools. In my own state of Western Australia I think up to 40 per cent of state schools now have, or are moving to, independent public status. We in this place need to understand what I term the 'wastage rate'—that is, those who are leaving the profession—in the independent public schools as opposed to the traditional state schools. We all know, and probably we in this place are an example, that people move between professions. I have the privilege of being in my eighth complete career change. I ask the question because we know in many instances people will leave a profession but at some time in the future they will go back to it because the original career was of enormous interest and benefit. Among those of my associates and family members who have been or still are teachers, I do not know of a single one who left the profession to go into something else who then said teaching was more appealing and more satisfying and they wanted to go back into teaching. Even those who remain in the education system and get elevated into the halls of power—
how many of them go back into the classroom? This is the disconnect about which I speak, and I think we simply do not have sufficient information to be able to assist and drive that process.

From listening to the director-general of education from Finland, and also from reading briefly the executive summary of the Grattan Institute report, I know about the amount of mentoring that younger teachers get from more senior teachers, the support in the classroom and the emphasis and focus on the students themselves. A teacher very close to me made the point that teaching can be a very isolating experience: 'Parents, principals and local communities need to back the teachers. They are often left to defend themselves in the face of unreasonable parents and unsupportive principals and, in many cases, students who are totally unresponsive.' Principals must have the right, in my belief, to hire and fire and should also be able to set reasonable standards not only for their own teachers but for classroom behaviour, and they must be able to deal with students who do not fit in. This is a three-part race: it is the teachers, it is the parents and it is the students. Disruptive students should not have the right to dominate a class environment, a team environment, and disrupt others from learning.

I was asking a principal about this once and he said to me: 'Why can't we look at an option in the same geographic area, so as not to disturb people residentially, where we classify schools into 'excellent', 'ordinary' and 'poor' and teachers rotate on a two-yearly basis so that one who is in an excellent school moves to a poor school and hopefully takes some of the practices of that excellent school to the poor school?' A teacher in an underperforming school will know they have got only that two years and then they we will be moving up, so, over time, we will see continual improvement.' All too often we have a scenario in which teachers find themselves in the one school and never move.

I believe very firmly that we have got to get away from this practice in Australia where nobody is allowed to fail. We do fail; we all fail. Teachers must be able to be honest. Teachers must be able to make mistakes, and so must their students. Teachers must be able to grade honestly and they must be able to fail students. Students must know where they fit in the group; only then can a student start to make reasonable choices and realise that more work is required of them if they are to achieve. If they do not learn this in the school environment, they are in for an almighty shock, as we all know, when they get into the post-school environment. I believe that we are underselling our students. We must tell students that life is what they make of it: that, if a door opens and they do not take the opportunity behind it, the opportunity will not be there again—but who knows what other opportunities will emerge? We must tell them that success is the direct result of determination and effort. Incidentally, I have seen these comments made in the media recently. We must allow students to stop looking for easy options and to get out of their comfort zone. I urge young teachers to apply that thinking as well—get out of your comfort zone and take responsibility for your own decisions and courses of action and for their consequences. It is okay to make a mistake; but learn from it and do not repeat it—learn about risk. I believe that, at the moment, the education system is not imparting the skills that students and teachers need. (Time expired)

WikiLeaks

Senator LUDLAM (Western Australia) (13:15): I rise to make a few comments on the WikiLeaks publishing organisation and
its editor-in-chief, Julian Assange. Although most people probably had not come across WikiLeaks until its stunning series of document releases in 2010, the organisation has been around since 2006. Its key innovation is a secret drop-box where whistleblowers can provide documents to journalists, and the journalists do not necessarily know who the sources are. That is, I think, the key innovation of this organisation—a journalist cannot be hauled into court and forced to disclose who their source is, because they do not know who it is.

WikiLeaks, despite having existed and done valuable work for a number of years, did not really burst into public consciousness until 2010 with the release of a collateral murder video which shows US forces quite casually obliterating a city block, killing a Reuters journalist and his associates and then seriously wounding a number of children who happened to be in a van that drove up to try to clean up and take the bodies out of the combat zone. Subsequently, the Afghanistan and Iraq war logs provided us with a glimpse into the conduct of these wars, one of which Australia is still engaged in. In the Afghan war logs we discovered that there had been 114 incidents of coalition military attacks on civilians. Ninety-one thousand field reports were made public. Many of them are mundane, but many of them also give us an extraordinary insight into how war is fought in the 21st century.

There are revelations in the Afghan war logs—and in the Iraq war logs, which were released a short time later—of war crimes on the part of our ally the United States. Iraq Body Count, the London-based group that monitored civilian casualties during the Iraq conflict, says that it identified around 15,000 previously unknown and unreported civilian deaths from the data contained in the leaked war logs. Iraq Body Count discovered that US authorities were systematically failing to investigate hundreds of reports of torture and rape and of extrajudicial killing by Iraqi police and military forces. The conduct was systematic and completely unpunished, and the Australian public, who were taken into the disastrous and illegal war in Iraq, did not know about it because the material had failed to make its way into the press and onto the public record.

Late in 2010 occurred probably the most important release to date—depending on how you see these things—when the publication of Department of State cables put the WikiLeaks organisation and its editor-in-chief, Julian Assange, onto the front pages of the world's newspapers. The Department of State cables give us a different view: an insight into how global diplomacy is conducted. They contain interesting things about Australian political personalities and about the conduct of ministers—foreign ministers in particular—and they give us a window into how the United States conducts its activities around the world.

It should be said, of course, that WikiLeaks does not exist to undermine the United States government. Mr Assange is on the record—and I paraphrase here—as saying: 'The more you have to hide, the more you have to fear. Regimes such as China, which do not have the democratic protections that exist here in Australia and even in the United States, have more to fear: there are more secrets there, so there is more to be disclosed.' Indeed, the first serious revelations which WikiLeaks was able to publish in partnership with other media organisations were about Kenya. There is nothing necessarily anti-American going on here, but leaks are emerging from within the United States military and diplomatic corps that shine a spotlight on how the US government works and just how far from reality the spin is.
For its extraordinary and important work WikiLeaks has been correctly recognised as a publishing organisation and its editor-in-chief as a journalist. As recently as late last year the Walkley Foundation awarded Mr Assange the Walkley award for most outstanding contribution to journalism in 2011. The ruling of 2 November 2011 by the Queen's Bench division of the British High Court acknowledged that Mr Assange is a journalist and WikiLeaks a publishing organisation. Right around the world—in Italy and in Spain and in the form of the Amnesty International UK media award 2009—it has been acknowledged that WikiLeaks is a publishing outfit and that this organisation has nothing to do with terrorism.

Senior US administration figures are on record as saying that no essential damage has been done to US interests as a result of the activities of WikiLeaks. On 11 August 2010, a spokesman for the Pentagon told the Washington Post:

We have yet to see any harm come to anyone in Afghanistan that we can directly tie to exposure in the Wikileaks documents.

Moreover, an Australian Department of Defence investigation concluded in October 2010 that the leaked documents had 'not had a direct significant adverse impact on Australia's national interests'. That assessment has been backed up by the then US Secretary of Defense, Robert Gates, and the US Secretary of State, Hillary Clinton, who have been downplaying the impact of the releases and saying that they have not in fact affected US security interests.

Nonetheless, there is a fierce campaign afoot to destroy WikiLeaks: to discredit Mr Assange and his associates and colleagues and to set the organisation back—in fact, to simply destroy it. We discovered a great deal about this last night when five million emails from the private American security organisation Stratfor were released in the latest document drop by WikiLeaks. Stratfor's Vice President for Counterterrorism and Corporate Security is a gentleman named Fred Burton. He is a former deputy chief of the Department of State's counterterrorism division, so there has obviously been a revolving door in the United States—many of Stratfor's staff have come to it from the US intelligence and defence community.

In early 2011, Burton revealed in internal Stratfor correspondence that there had been an indictment made by the secret grand jury which, as we were aware, had been empanelled in the United States. This email, which is from Australia Day 2011, reads:

Not for Pub—we have a sealed indictment on Assange. Pls protect.

In a later email he says:

Assange is going to make a nice bride in prison. Screw the terrorist. He'll be eating cat forever. Charming! Further emails reveal that the strategies that were enabled by things like the US Patriot Act which were implemented by the Bush and Cheney administration after the attacks of 9-11 were being used not simply to track down and destroy terrorist networks but to track down and destroy media organisations. This further email says:

Take down the money. Go after his infrastructure. The tool we are using to nail and deconstruct Wiki are the same tools used to dismantle and track aQ [Al Qaeda]. Thank Cheney & 43—meaning the 43rd President of the United States. It continues:

Big Brother owns his liberal terrorist arse.

Burton states:

Ferreting out [Julian Assange's] confederates is also key. Find out what other disgruntled rogues inside the tent or outside [sic]. Pile on. Move him from country to country to face various charges for the next 25 years. But, seize everything he and
his family own, to include every person linked to Wiki.
You thought Team America was fiction, but that is how these people appear to behave behind the scenes in emails that they do not think will be read by the general public.

There has been a targeted campaign of character assassination in the public realm that ties in with this secret process of a grand jury indictment. Now we know, from an email that was sent on Australia Day last year, that such an indictment exists. That means the United States can potentially move to extradite Mr Assange from Sweden if he ends up there, from the UK if he remains there or from Australia—in fact, from any country with which the United States has an extradition agreement.

The campaign to destroy the WikiLeaks organisation needs to stop. This is a publishing organisation and it is essential that we know that the Australian government has done, and intends to do, everything that it can to protect Mr Assange and the organisation.

There is one further email from Stratfor for the Senate to consider. Burton says that he will:

… pursue conspiracy and political terrorism charges of declassified the death of a source someone which he could link to Wiki.
Burton's strategy is to:

… bankrupt the arsehole … ruin his life. Give him 7-12 years for conspiracy.

That is absolutely key. At the point where this indictment was meant to hit the table, all of a sudden by pure coincidence the world's newspapers would be carrying a story that a source named in one of the WikiLeaks documents, which were extensively redacted by the organisation, would be all over the front pages—that somebody had died as a result of the WikiLeaks drop. It is unbelievably cynical to pursue a strategy like that in order to try and destroy this organisation.

We need to know what the role of the Australian government in this has been. If a private security company in Texas has known for well over a year that this sealed indictment exists, did the United States government share that with its close ally Australia or not? The Prime Minister, the Minister for Foreign Affairs, whoever that currently is, and the Attorney-General have some very difficult questions to answer. I will be putting this question to the Prime Minister's representative in this chamber shortly after two o'clock this afternoon. So I am putting the Prime Minister on notice now.

Is Australia ignorant in this matter or complicit? I do not see a great deal of room for splitting the difference. Did the United States government hide this information from the Australian Prime Minister and the Australian defence and intelligence community, keeping us ignorant about the fate of an Australian citizen and journalist, or did they disclose that information which makes Australia complicit in this unbelievable attack on a media organisation that has done nothing more than do what journalists are supposed to do—tell the truth about what is going on behind the scenes by people in power?

We have heard quite sensible comments from Senator Brandis. We have seen Mr Turnbull on the record. We have had Mr Rudd on the record saying, 'People tearing up passports is my responsibility.' We have no idea yet what the new foreign minister will say. We have not heard anything from our current Attorney-General.

Late last year I initiated a series of freedom of information requests. They have been stonewalled, they have been blocked, they have been frustrated and there have
been excuses every couple of weeks about why it is so difficult to disclose this kind of information; so we do not yet know whether the Australian government is incompetent and ignorant or complicit. But if there is some other answer I would be very interested to find out what it is. We have put dozens of questions on notice to try to establish what the Australian government knew and it is time that the Australian government came clean. It is no longer acceptable for the Prime Minister to simply keep her head down and hope this will all go away, because push is about to come to shove, quite seriously.

Mr Assange has now been under house arrest for 448 days, an extraordinary period of time, during which the organisation has continued to do extraordinarily valuable work in feeding the world's media news organisations with the primary source documentation for story after story after story. So if Mr Assange is complicit and has committed crimes then so is the editor of the New York Times and the Guardian and the people who write for Australia's Fairfax press and the ABC. We are all implicated in this.

There is one final email that I want to quote from which I think really underlines the importance of the Australian government stepping up now, today, in defence of this Australian citizen:

... that they are going after the confederates, they are going after the network, they are after everybody who has ever had anything to do with WikiLeaks.

I am one of those. I met Mr Assange late last year. He has met with many news editors, he has met with journalists from all over the world and he has helped them do their job. So we are all implicated in this. If you are hearing this from the press gallery, the people who signed on to the Walkley Foundation's sign-on letter last year, publishing organisations around the world and around the country, an attack on this organisation is an attack on all of us. If the world is not safe for an organisation like WikiLeaks, then it is not safe for any of us.

I am calling on the Australian government to come clean about what it knows and do what it quite rightly did in the instance of the boy in Bali who found himself in serious legal trouble when he was caught in possession of a small quantity of marijuana. The Australian government put people on planes, they sent assistance, phones rang and people got onto the Indonesian authorities to make sure that that boy had the best consular and legal assistance that could possibly be made available to him, and rightly so. What we have seen in the case of Mr Julian Assange, who is working as a journalist and has provided some of the most important revelations on the conduct of war and commerce and diplomacy in modern history, is silence. It is time that that silence was lifted.

Murray-Darling Basin

Senator GALLACHER (South Australia) (13:29): I rise to speak on an issue of great importance to all South Australians, and that is the health of the River Murray. Indeed, we are within the 20-week consultation period, which I believe is an opportunity for the Murray-Darling Basin Authority to really discuss the outcomes of the draft plan and develop the final plan without the extreme rhetoric that has been played out in the media.

If we do not have the level-headed discussion needed, we run a very high risk of no action. I am talking about a plan that does not favour one outcome over another, but an outcome that achieves healthy rivers, strong communities and sustainable food production. I believe this is paramount and we have a real opportunity to achieve this now. We must not let it slip. If no action
were to occur it would result in some major implications for South Australia, because that state has the most to lose. Not taking any action will not only result in the environmental deterioration of the River Murray but also run the risk of destroying whole communities in South Australia.

Future droughts, coupled with the status quo, would devastate the whole River Murray. When seeing coalition leaders playing politics on this issue rather than doing the right thing for the Murray-Darling Basin a lot of South Australians are very concerned.

I believe we should recognise that the Murray-Darling Basin Authority is an independent authority that has no political motive in this debate, so its process of consultation and science must be respected. It is pleasing to see prominent South Australian Liberal Party members recognise this and even support the Murray-Darling Basin Authority Plan. However, their federal leader, Mr Tony Abbott, is far less than convincing. On this side of the chamber, our position remains unchanged. It is well known that in the 2010 federal election the health of the River Murray was a primary issue for the South Australian Labor Party.

I am not going to stand here and play the numbers game on the sustainable diversion limits. We have seen the debate progress from the numbers produced, when the guide to the draft came out, through to November, when the draft plan was produced. Now we are hearing groups state various numbers in this consultation period, and I am sure there will be even greater debate when the actual plan is released.

The number of gigalitres should not be the issue in this debate. Instead, we should be discussing what is needed to achieve the right outcome. What I have seen of the draft plan is that this is an achievable goal, and I am confident that after this consultation period the three main outcomes will set out our path to long-lasting reform. These main outcomes are healthy rivers, strong communities and sustainable food production. This reform will strengthen the resilience of the Murray-Darling Basin system so that in times of drought and with the effects of climate change the Murray has a chance to remain in a position that will not be compromised.

One of the major issues for South Australians when talking about the three outcomes is salinity. This is a real issue for the lower regions of the Murray as on occasions some areas are too salty for drinking, irrigation and livestock. For many years now we have heard expert after expert express the problems, particularly in the lower regions of the Murray. Salinity does damage to the crops for irrigators and also damages the ecological life that resides in the Murray. Low flows have meant exposure of acid sulphate soils to the air and increasing salinity.

The issue of salinity was wonderfully put in the House committee report into the Murray-Darling system:

The soils and groundwater of the Basin release salts into the rivers. This salinity is natural and, under natural conditions would be transported down the system and out the mouth during times of high rainfall.

It goes on to say:

… the MDBA estimate that two million tons of salt would need to be flushed out of the system each year to balance the entry of salt into the rivers.

The report continues with a detailed explanation:

Droughts tend to see less salt regularly flushed from soil profiles or flowing through depleted aquifers. Flows move salt through the river system. Flows out of the Murray mouth prevent the accumulation of salts in the Lower Lakes and
Coorong. During the drought, the Murray mouth has been dredged open. The mouth of the Murray was regularly sand blocked prior to river regulation by structures and lochs. The health of the entire Murray-Darling Basin is not indicated by the open or closure of the Murray mouth.

The saline nature and propensity for blue-green algal outbreaks are inherent in the character of the ephemeral Basin streams. Ensuring there are adequate flows to move and flush salt and nutrients out of the system is a responsibility of all who depend on its waters.

Yes, this does go into the issue of dry-land salinity, as well, but also illustrates the need for the Murray to dilute the saline inflows and to flush the saline water that has entered the river and simply sits there due to the lack of flow. This is very insightful, and shows the importance of a healthy river system.

South Australia has also been acting to reduce salinity by keeping the mouth open through dredging. Other important initiatives, such as recycling water through stormwater capture and the construction of the desalination plant, have been aimed at reducing our reliance on the Murray. However, the most important way of flushing the salinity out of the system is through greater flows, and the only way for this to occur without waiting for floodwaters or greater rain is by returning more water to the Murray-Darling Basin.

South Australian communities have also felt the full brunt of the drought, on top of the low flows to the mouth of the Murray. Communities have suffered from a lack of tourism, which has only recently come back to life due to last year's floods. Fish are back and the boats are back and activity is occurring.

But let us talk briefly about the lost voices in the deterioration of the River Murray—that is, the native fish, birds and other animal species. They should not be lost in the conversation. I am confident that the Murray-Darling Basin Authority is using the best available information to develop the basin plan and help the natural habitat of these species.

South Australians do not want to see bandaid solutions such as dredging, which has come at a cost of around $40 million. For eight years, six million cubic metres of material has been removed from the mouth. Thankfully, with the floodwaters making their way to the mouth, dredging was halted in 2010. However, South Australia should not accept bandaid solutions any more, and that is why reform is drastically needed. I ask all senators and members in this place to consider the plight of South Australia, a state that has done its share of hard yards supporting the Murray. It is not just about the Murray mouth being open. Let us not forget that during the drought South Australian irrigators also faced increasingly greater costs in purchasing additional water allocations or in reducing the water to their crops, typically a lose-lose situation. In this debate we must also remember that in 1969 South Australia had capped its own allocations, using only seven per cent of the extracted water in the Murray-Darling Basin. Continued growth in water use led to a basin-wide cap on surface water diversions being imposed in 1995. All jurisdictions now have a cap on surface water diversions in place. It should also be noted that many parts of the basin have seen little or no growth in diversions for some decades.

The Australian government's approach to water recovery is based on the common starting point of today's allowable diversions. No-one has been singled out under this approach, and no-one is disadvantaged. It is a real shame that other states do not recognise this move by South Australia in 1969 or recognise the work that South Australia has done for the Murray. What this
cap did for our state is that our irrigators had to change their behaviour with regard to water. They have done this with the greatest success, maintaining high levels of food production within their allocation of water. We are well-known improvers on how we use water, and this has been done through investment in technologies and increased efficiencies. We hope that the model of innovative technologies improving efficiencies for irrigation will be integrated throughout the Murray-Darling Basin.

I have been very public on the issue of infrastructure and I will continue to advocate for investments in this area because it is a practical solution that benefits irrigators and the river. It is extremely pleasing to see that improvement in infrastructure is an important objective of this federal government. As I have said, we have seen infrastructure projects work in South Australia. If these are applied to the rest of the country with even greater innovative advancement, much more water can be left to flow down the river. The Labor government is putting $4.8 billion in to hundreds of infrastructure and water management projects across the basin as part of the Water for the Future initiative. This is part of the government's commitment to bridge the gap to the proposed levels of water use through investment in irrigation efficiency upgrades and voluntary water purchases, which are getting much more water back to the environment.

If no action is taken and outcomes are not reached, then that will continue to contribute to the trend of decline in many local communities, especially in South Australia. Putting reform in the too-hard basket should not be an option. We have already seen over 1,000 gigalitres recovered. Stopping now will be to the detriment of the work already achieved. The government has also made a commitment that we will not forcibly take water from irrigators—something that is easily forgotten in this debate. The possibility of no reform is not an option that a South Australian federal parliamentarian can take. I am sure I have the support of all my South Australian federal parliamentary Labor colleagues, and I am certain that reform is the sentiment of the majority of South Australians.

The Murray-Darling Basin is not a system that should be looked at solely through the eyes of a South Australian, and I can well understand some of the concerns raised by other states and groups. However, we all have a lot to lose if we cannot take this once-in-a-lifetime opportunity to fix things. The health of the Murray-Darling Basin is an issue for all Australians, because it affects our ability to produce food in the basin and the ability for communities to thrive. This is not a time to come to a grinding halt halfway through the job. If we pull through, we can achieve the healthy river, strong communities and sustainable food production that we are all seeking. I urge all those in the Senate to understand what the river means to South Australia and to support the federal government and the reforms that are needed to ensure we achieve these goals.

Murray-Darling Basin

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (13:41): I rise today to talk about the Murray-Darling Basin. Being within my shadow portfolio responsibilities, it is something that is obviously very close to my heart. If we did a word association game with the Murray-Darling, I think many Australians would think of the food the basin produces and the environmental assets it contains. The Murray-Darling has played a pivotal and iconic role in the development of Australia, from a country that at one point had problems with food production. We had
times of starvation in Australia not long after whites settled, in the convict days—and we would not want to return to those days.

Not too many Australians realise that 2.1 million of us live in the Murray-Darling today. Another million, while living outside of the basin, rely on it for their water supplies. If the Murray-Darling were a state it would be roughly equal in size to Western Australia. The people who live and work in the basin are often the forgotten elements of the Murray-Darling Basin Plan. There is much talk about gigalitres and environmental watering plans but less about how we can design a plan that does not—and this is extremely important—pull the economic rug or the social rug out from underneath millions of Australians. These Australians are the descendants of thousands of Australian pioneers who went west and scratched out a living, as was asked of them by their nation. They fed their family, they fed their town, they fed their community, they fed their state and they fed our nation. Now they feed not only our nation but people overseas as well. Their labours have produced the towns of Shepparton, Mildura, Renmark, Griffith, Bourke, Moree, my home town of St George and many others. The economies of these towns are quite substantial. Towns such as St George in the last year produced $640 million worth of cotton and a couple of hundred million dollars worth of grain, as well as cattle, sheep and everything on top of that. If a nation wants to pay its debts, it must make money; it must invest in where it makes money and it must accept that it produces a product that other people are willing to buy.

The pioneers who went out west and developed our nation sometimes do not get full kudos. We have this long-lasting legacy of real wealth and easy access to a wide variety of fresh food. One of the greatest responsibilities of any government is to feed its people and to protect its food sovereignty: the capacity to feed itself. So often we are losing this as we import more and more products and as we shut down agricultural areas, which will exacerbate the problem. We have representatives of these Australian people here in Canberra today. I would like to formally recognise the representatives from Women for a Living Basin who have made the trip to Canberra today. Their stories are some that are not told often enough.

The Basin Plan will have its biggest direct impact on those that hold irrigation licences. Those who hold an irrigation licence will generally get paid, but those who live in a town from which irrigation licences are taken will not. It is a ripple effect through the town—to the mortgage holder, to the tyre shop, to the motel. These people do not get paid. These people are left literally high and dry and are put out of business by the government.

We can see that impact in the data. House prices in 25 towns that the authority identified as ‘vulnerable’ have fallen by four per cent, according to RP Data, in the year after the release of the botched Guide to the Murray-Darling Basin. House prices have fallen in Finley by 17 per cent, in Hay by 15 per cent and in Stanhope by 10 per cent. Those price falls came after house prices had risen in these towns in the year prior, by nine per cent. I saw that in my own town. During the drought house prices went through the floor. Since the drought we have had one of the most successful increases in house prices. But what this has the capacity to do is lock in a permanent ‘drought’ in some areas.

The government’s botched Basin Plan process, however, has dampened that new confidence even as the rain has continued to fall, because people are asking, despite the rain falling, whether the government will
turn off the water. We can see that impact at
the consultations that the Murray-Darling
Basin Authority has held throughout the
basin. In one week, more than 15,000 people
turned out in Shepparton, Griffith and
Deniliquen to voice their concerns about the
plan. Deniliquen experienced its biggest-ever
traffic jam—possibly its first-ever traffic
jam. We can see the impact in the
impassioned speeches that were delivered at
these consultations. Bernie Roebuck, the
principal of Finley High School, gave an
impassioned plea for us to concentrate not
just on the farms and the wetlands but on the
broader impact of what we are doing—and
this is a teacher talking—one the schools and
on the social fabric. As Bernie said:

Constantly I hear that emotive calls, emotive
language, emotive pleas, emotive people should
be dismissed as the lunatic fringe because they
exaggerate, they misrepresent, they do not
produce balance nor facts in dealing with the
plan.

I would say how can one not be emotive if
your livelihood, and all that is important to you, is
at stake. I see no reason for us to need to
apologise for being emotive.

It is for this reason that it is so important that
these women have made the trip to Canberra
today. The fundamental problem with the
Basin Plan approach has been that it is
driven from Canberra, not from the people in
the basin with the greatest knowledge and
the capacity to bring about an outcome that
will have the least economic and social
effects and will deliver what people want,
which is water for the basin. It is of constant
bemusement to me that the Murray-Darling
Basin Authority has one office for the basin,
in Canberra, and another in Adelaide,
Adelaide not actually being in the basin
while Canberra is, in fact, the biggest city in
the basin. So the question has to be asked:
what about the other places—Griffith,
Deniliquen, Swan Hill or Berri? It would be
helpful if there were a greater concentration of
shopfronts for the people in the basin in
the areas most likely to be affected by the
decisions of this plan.

When you read the draft basin plan there
is no indication of how they have factored in
the economic and social impacts of their
decisions. You do not read anywhere, 'Well,
we won't take so much water from this area,
because the impacts would be too great on a
social or an economic basis.' They made
promises and they paid for consultants—and
no doubt they have all got their cheques—but
we have never actually been able to
clearly identify a change to the plan by
reason of social and economic factors. The
draft plan reads as one giant black box that
none of us, those who eventually have to
vote on this plan, have the privilege of seeing
inside. I fear that this black box has had to be
constructed because the plan has become
more about political compromise than a true
and fair balance of economic, social and
environmental concerns—which is actually
what both the Labor Party and the coalition
promised. I fear that, as Bismarck would
remark, 'the lesser the people know about
how sausages and laws are made, the better
they sleep in the night'.

This approach is not good enough. We
promised the people of the basin a triple
bottom line. We promised people we would
balance the economic, social and environ-
mental outcomes. We cannot yet tell whether
such a balance has been achieved because we
do not have the detail in front of us. We all
recognise that we need to protect the
environmental health of the basin and that
some of that will require a reduction in the
amount of water used in the basin. But that is
already happening.

Before the Basin Plan process was even
started, the last Liberal-National government
returned almost 500 gigalitres of water to the
Murray through the Living Murray Initiative. Such amounts were achieved without the rancour and wasteful buyback rounds that we have seen from this government. These reductions were carried out in consultation with local communities, a process that the recent Windsor report praised but which the government seems to have ignored. They do not seem to look after their Independent mates when it actually counts for the rest of us. When it came to office, the government turned its back on these successful approaches and instead launched headlong into a haphazard and ill-thought-through buyback process. It all sounds good in theory: buy water from willing sellers. What could go wrong? Well, plenty did. The government spent $23.75 million to purchase Toorale Station, near Bourke. They did not even bother to inspect it before they purchased it. We know that today the government is yet to touch the infrastructure at Toorale, partly because an environmental assessment deemed that the irrigation infrastructure had created its own ecological climate which should not be destroyed. So the ring tanks and cells continue to fill but there are no jobs and the Bourke Shire Council has lost a substantial section of its rateable base. What is more: even if they were to let the water go, it would not go to the river but out to a floodplain.

The government also bought $303 million of water from Twynam Agricultural Company. From the government's own figures, we know the cost of this water was around $2,800 per megalitre, compared to an average cost so far of $1,900 per megalitre. So when they do buy water they are not prudent enough to do a proper assessment of how they could buy it for a proper price. Its rushed approach to buybacks was in stark contrast to its foot-dragging on investment in upgraded irrigation and on-farm infrastructure. Investing to upgrade our water delivery practices can save water for the environment and local communities. It is a justified choice given the social dividend that this investment provides. That is why when the last Liberal-National government announced its Murray-Darling plan, it called for this spending to be prioritised.

Instead, the exact opposite has happened. The government has spent more than originally planned on buybacks and less than hoped for on infrastructure funding. So far $1.75 billion has been spent on water buybacks, while only $280 million has been spent on infrastructure which actually delivers water into the basin. Now they are continuing that process. Just last year the inquiry of the House of Representatives Standing Committee on Regional Australia into the Murray-Darling Basin lambasted the government for its poor handling of the buyback and infrastructure programs. The report, which was agreed to by Labor, coalition and Independent members said:

The Committee heard of grave mistrust of this department—the department of water—across Basin communities resulting from the failure of the department to identify and respond to community concerns on a range of issues. In addition, this department has demonstrated a consistent failure to deliver water programs, including strategic water buyback, which is in the best interests of productive communities. This department should no longer be responsible for delivering these programs.

The report recommended that the government end its non-strategic approach to buybacks, and this is something that the coalition put forward in its Murray-Darling policy at the 2010 election. The government agreed that it would freeze buybacks in the southern system. So it came as a shock to many in the basin that the government announced a new round of buybacks in the southern basin last week. Minister Burke
argued in the other place yesterday, in response to a question from the member for New England, that this really was a non-strategic buyback process and was exactly what Murray-Darling communities were asking for.

That was news to them. Every major irrigation company has come out to criticise the government which, in its chaotic form of government that we are currently experiencing, once again has failed to think this through. Once again, it has failed to talk to them properly. Today in the Colleambally Observer John Culleton, CEO of Colleambally Irrigation, rejected Minister Burke’s explanation to parliament as ‘nonsense’. He said:

The notion this initiative is in any way strategic is just nonsense; it’s quite clear the real purpose is about buying water as cheaply as possible and being seen to be ticking-off on one of the Windsor Inquiry’s recommendations and little else.

What’s doubly galling is that this announcement should come as it has – out of the blue; so much for commitment to recovering water in smarter ways and the promise of improved engagement and transparency.

This is the hallmark of the government’s approach to the Murray-Darling—lots of announcements, very little consultation and completely chaotic planning.

We are now 14 weeks into the 20-week consultation period announced after the draft. So far the Murray-Darling Basin Authority has announced only nine public meetings. After the release of the guide to the Murray-Darling Basin Plan they held 33 public meetings. This time meetings have been held at inconvenient times, such as during the grape harvest in Mildura. There is a growing sense of frustration at the lack of detail and lack of consultation that has been provided. Nobody can say how much water is needed for specific environmental assets.

This plan is not just about the one or two iconic environmental assets; it is about 2,442 key environmental assets throughout the basin. Nobody can explain how much water is needed for each, how they are going to get it there, where they are going to store it and what the socioeconomic effects will be on the places they take it from. It is complete and utter chaos.

Every irrigator in the basin knows how much water is needed for the different paddocks in their fields. The government will now be the biggest irrigator in the country, but we cannot get any detail of how they are going to water their assets. They do not even know what to do with the water that they have got now. Last financial year they were allocated 724 gigalitres of environmental water but used only 387 gigalitres. Five gigalitres was wasted when it could not be carried over to the next year. The government cannot even say how much water will come from each catchment. Instead, they have hung X factors—I do not know what X stands for; maybe it is the Xenophon factor—over every basin community. How can they say that the economic and social impacts are not excessive on a particular town if they will not even tell how much will come from that town?

But this is not just about the towns in the basin and the 2.1 million people who live in them. This plan involves all Australians. If you push a shopping trolley you are part of the basin. If you want grocery prices to stay down you are part of the basin. If you are proud of Austria's capacity to produce its own food you are part of the basin. If you believe that people who have done what this nation has asked them to—go west, scratch out a living and deal with the privations of remoteness as honourable people—then you believe in the basin. But, if we believe somehow that borrowing money from
overseas to shut down productive assets and reduce our capacity to repay our debts is a smart move, then we are fools, all of us.

Sitting suspended from 13:56 to 14:00

QUESTIONS WITHOUT NOTICE

Arbib, Senator Mark

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:00): My question is to the Assistant Treasurer, Minister for Small Business and Minister for Sport, Senator Arbib. On what date did he first inform the Prime Minister that he would be resigning?

Senator ARBIB (New South Wales—Assistant Treasurer, Minister for Small Business, Minister for Sport and Manager of Government Business in the Senate) (14:00): I am happy to answer that question: 22 February.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:00): I should congratulate the minister on his second last day in the Senate for giving the only directly relevant answer I have heard from the government. Mr President, I ask a supplementary question.

Honourable senators interjecting—

The PRESIDENT: Order! I need to hear Senator Brandis.

Senator BRANDIS: I could not get the question out because of all the jollity. Could you ask for the clock to be reset, please?

The PRESIDENT: Yes, that is reasonable in the circumstances. Senator Brandis, continue.

Senator BRANDIS: Thank you very much. I refer to Mr Bob Carr's statement early this afternoon confirming that the Prime Minister offered him the minister's Senate seat and the foreign affairs portfolio and the Prime Minister's statement earlier this morning that the report to that effect in this morning's Australian newspaper was 'completely untrue'. Who is telling the truth, the Prime Minister or Mr Bob Carr?

Senator ARBIB (New South Wales—Assistant Treasurer, Minister for Small Business, Minister for Sport and Manager of Government Business in the Senate) (14:02): I am happy to answer the question. The question does lie well outside my portfolio duties; but, given that I have only two question times left, I am very happy to answer the question for you, Senator, and I will be as direct as possible. I have not actually read the Australian article so it is very difficult for me to deal with the detail in the article itself. I had no conversations, prior to my announcement and prior to talking to the Prime Minister, with former Premier Bob Carr whatsoever, and I was very surprised when it was raised in the media. The speculation that somehow there had been a deal or some sort of set-up is totally incorrect. When I spoke to the Prime Minister about my decision she was totally unaware, and that was following the leadership ballot. So I think the speculation in some of the newspapers and some of the online commentary is incorrect. (Time expired)

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:03): Mr President, I ask a further supplementary question. Given the faceless men humiliated the Prime Minister yesterday after they vetoed her planned appointment of Mr Carr, doesn't this confirm what we already know, that the Prime Minister still cannot control her government; she still cannot control her ministry? And notwithstanding the minister's gesture of healing, even his departure will mean that faceless men like him will still be in control?
The PRESIDENT: The minister can only answer those parts of that question that the minister is in control of.

Senator ARBIB (New South Wales—Assistant Treasurer, Minister for Small Business, Minister for Sport and Manager of Government Business in the Senate) (14:04): It is a very difficult question to answer in terms of my portfolio, but can I say that it is a bit rich coming from Senator Brandis. In terms of leadership and faceless men, I have to say that I remember when Malcolm Turnbull's leadership came under threat and I can point to all the senators across the other side of the room who did everything they could to filibuster in this place over the CPRS to ensure that Malcolm Turnbull's leadership fell.

Senator Brandis: Mr President, I rise on a point of order. Talking about what may or may not have happened in the opposition 3½ years ago is not directly relevant to the issue of whether faceless men will continue to control the Gillard government.

Senator Chris Evans: Mr President, I rise on a point of order. As I explained to Senator Brandis yesterday, he seeks to ask questions that, quite frankly, are completely irrelevant to the minister's portfolio. The minister at least tries to provide some response, and he then seeks to take a point of order. The question was out of order. We did not object on the basis that Senator Arbib was quite happy to give as good as he got; but, quite frankly, when the question is out of order, is not related to his portfolio and is so wide ranging, it is pretty hard to see how the minister can respond in any other way than be wide ranging in response.

The PRESIDENT: Order! I have asked the minister to respond to that part of the question which might pertain to his portfolio. The minister has 32 seconds remaining.

Senator ARBIB: Yes, there was the loyalty shown to Malcolm Turnbull by some of the faceless men and women in the Liberal Party on the Senate benches over there. Senator Bernardi is not here—and Senator Bernardi is a good friend of mine—but if anyone is a faceless man in this parliament, Cory Bernardi takes the cake.

The PRESIDENT: Senator Arbib, withdraw that.

Senator ARBIB: Mr President, I am happy to withdraw that about Senator Bernardi. He is a good man. Tony Abbott, the Leader of the Opposition, today—

The PRESIDENT: Mister.

Senator ARBIB: Mr Abbott got some payback from his own people over paid paternity leave. (Time expired)

Paid Parental Leave

Senator CROSSIN (Northern Territory) (14:06): My question is to Senator Evans, the Minister representing the Prime Minister and the Leader of the Government in the Senate. Can the minister outline to the Senate how the federal government is delivering for working parents through Australia's first paid parental scheme.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:07): I thank Senator Crossin for her question and acknowledge her campaigns for paid parental leave for Australian women and men throughout her time in politics. This government is very proud that we have delivered real reform for working Australians, especially with the paid parental leave scheme. The government's scheme is just one example of the important reforms we are making to support families.

I am pleased to inform the Senate today that since being introduced in January 2011
the paid parental leave scheme has received more than 140,000 applications from Australian families. As a result of Labor’s reforms, families now have the opportunity to take the time they need to welcome and support a new child into their family. They no longer have to worry about their job security when they take a decent period of parental leave. I am also pleased to announce that 82,000 parents have already received the parental leave entitlement in full. These Labor reforms have provided essential financial security to people during one of the most important times of their lives. The scheme is also good for business in that it is based on recommendations by the Productivity Commission that said the scheme would not only support the health outcomes of children and mothers but also, as part of the arrangements we have put in place, encourage people back into work and training.

We have had large numbers of businesses registering for the scheme and we have had a successful operation of the scheme. This is delivering for families the sort of support they need. It is delivered through sustainable funding from this government. It is designed in a way that allows it to be affordable to the federal budget without putting an unfair burden on businesses. This is a responsible, balanced scheme delivered by this government after 11 years of neglect by the Howard government.

So, the scheme will deliver most to the rich families, most of those on very high incomes, but business will pay a new tax in order to fund it. Quite frankly, it is again a sign of very muddled thinking by the opposition. (Time expired)

Senator CROSSIN (Northern Territory) (14:10): I have a further supplementary question, Mr President. Is the minister aware of any threats to the paid parental leave scheme or in fact to the government’s other important policies that benefit Australians, keep them in work and benefit families?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:10): The opposition have got themselves into such a mess that, if they were to be elected, they would have no alternative other than to slash education, slash health and slash aged-care spending. They have promised the wealthy that they will support a parental leave scheme that supports the most wealthy; they have promised that they will support the most wealthy with a private health insurance rebate; they have promised the big miners that they will support them by ending the resource rent tax; they have also promised that they will tax small business more by removing the concessions that we are about to put in place; they promised Australian
workers that they will take away the extra super that we will provide; they promised that they have a totally unsustainable set of priorities that have a $70 billion black hole, that seeks to reward the most wealthy in our community while looking to cut health and education services to ordinary Australians, because they will have to find $70 billion.

(Time expired)

DISTINGUISHED VISITORS

The PRESIDENT (14:11): Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the former Yugoslav Republic of Macedonia led by the President of the Assembly, His Excellency Mr Trajko Veljanoski. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate. With the concurrence of honourable senators, I ask the President to take a seat on the floor of the Senate.

Honourable senators: Hear, hear!

Mr Trajko Veljanoski was then seated accordingly.

QUESTIONS WITHOUT NOTICE

Carbon Pricing

Senator CORMANN (Western Australia) (14:12): My question is to the minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. Is the minister aware of comments by the Chief Executive of Australia's largest power generator, Macquarie Generation, that as a direct result of Labor's carbon tax electricity prices will rise by more than the Gillard government has let on? Is this why the Minister for Resources and Energy, Mr Ferguson, said earlier this week that Labor's carbon tax could be to our disadvantage as a nation?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:13): First, in relation to electricity prices, the government does stand by the modelling it has undertaken in relation to the increases across different sectors. That is why we have put forward, and this has been endorsed by this chamber, a very comprehensive set of assistance to Australian households that recognises the additional costs flowing from a carbon price. That assistance, as the senator knows, will be provided through increases to the pension, the disability support pension, family tax benefits and other payments including a tripling of the tax-free threshold—all of which are to be clawed back by those opposite. In relation to what would disadvantage the nation, I again go back to what I said yesterday.

Senator Cormann interjecting—

Senator WONG: What would disadvantage the nation is a policy which would more than double the amount that taxpayers would pay for every tonne of carbon, and that is the opposition's policy.

Senator Cormann interjecting—

Senator WONG: No amount of interrupting by the opposition and Senator Cormann will get them away from these facts—

Senator Chris Evans: Mr President, I have a point of order. I ask you to draw Senator Cormann to order.

Senator Abetz: Precious!

Senator Chris Evans: I am not at all precious about interjections, particularly if they are witty. But the constant interjections by Senator Cormann who keeps it up throughout the answer, seeking to outshout Senator Wong giving her answer, is clearly disorderly and I ask you to call him to order.

The PRESIDENT: Order on both sides! Senators know that calling or shouting across the chamber or interjecting is disorderly.
Both questioners and those who are responding to the question, in this case Minister Wong, are entitled to be heard in silence.

**Senator WONG:** As I was saying: I was asked in the question what would disadvantage the nation. What would disadvantage the nation is a carbon price over double what the government is proposing, without assistance to Australian families, that will cost 1,300 per household per annum out to 2020, that will impose a greater cost on Australian business, that relies on bureaucracy to pick winners without any guarantee that emissions will actually fall. That is the coalition’s proposition. It is a higher cost proposition not only for the economy, not only for Australian business, but also, and worst of all, it is a higher cost that would be levied on Australian households and families—the same people that you want to take benefits from. *(Time expired)*

**Senator CORMANN** (Western Australia) (14:16): Mr President, I ask a supplementary question. In light of the evidence that electricity prices will increase by more than the 10 per cent admitted to by the Gillard government, has the government done any further assessment of the impact that even higher electricity prices will have on families who are already facing higher cost-of-living pressures as a direct result of Labor's carbon tax?

**Senator WONG** (South Australia—Minister for Finance and Deregulation) (14:16): We are very conscious of cost-of-living pressures, which is why we are providing tax cuts and which is why we are providing increases to the family tax benefit. We have already provided increases to assistance through the education tax refund and we are providing more funding to Australian families through the childcare rebate. We are serious about ensuring that we manage the economy, including managing the changes that a carbon price will bring, with a very clear eye to supporting Australian families, and that is what we have done. It stands in stark contrast to the economic illiteracy of those opposite, who are going to take taxes from Australian families and give them to large polluting companies with no significant benefit to the environment, at a higher cost to the economy and at a higher cost to the Australian taxpayer. The senator should remind everybody that he supports lower family tax benefits and lower pensions. *(Time expired)*

**Senator CORMANN** (Western Australia) (14:17): Mr President, I ask a further supplementary question. Why is the Gillard government so intent on pressing ahead with the world's largest carbon tax when it will push up the cost of electricity and cost jobs without doing anything to reduce emissions?

**Senator WONG** (South Australia—Minister for Finance and Deregulation) (14:17): The carbon price the government has put forward—and it comes into effect on 1 July—is substantially less than the effective carbon price which would be imposed by the policy of those opposite. The Treasury’s analysis is that the coalition's policy is equivalent to an effective carbon price—

*Opposition senators interjecting—*

**The PRESIDENT:** If people wish to debate the issue, the time for that is after three o’clock, when question time has finished.

**Senator WONG:** Under the coalition's policies Australia would need an effective carbon price at least twice as high as the government's—some $62 per tonne in 2010 dollars—by 2020 to reduce pollution by the bipartisan amount of 160 million tonnes by 2020. The party that used to be a party of
market economics wants a taxpayer funded, bureaucratically run scheme, which will be more expensive for the economy, more expensive for Australian business and more expensive for Australian families. *(Time expired)*

**WikiLeaks**

Senator LUDLAM (Western Australia) (14:19): My question is to the Minister representing the Prime Minister, Senator Evans. I refer to reports in the Fairfax press this morning that Stratfor, a Texas based private intelligence firm, has known for more than a year of the existence of a sealed indictment from a secret grand jury against Australian citizen and journalist Julian Assange. Did our ally the United States give the Prime Minister the courtesy of a disclosure and, if so, when? Or did she read it in the papers along with the rest of us? Minister, for how long has the Prime Minister known of the existence of this sealed indictment?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:19): I thank the senator for his question. I obviously cannot comment on unsubstantiated media reports about sealed documents that have been discovered, because, quite frankly, all of that was news to me this morning as well. But I can tell you that the Australian government is not aware of any charges by the US government against Mr Assange. Our embassy in Washington continues to closely monitor developments. Mr Assange remains in the UK, awaiting the outcome of his appeal to the UK Supreme Court regarding his possible extradition to Sweden. We continue to monitor closely Mr Assange's legal situation and have sought and received assurances from Swedish authorities that he will be accorded due process if he is extradited. While Mr Assange was detained in the UK in 2010, Australian consular officials provided him with a high level of consular support. This remains available to him, as we have advised his lawyers on a number of occasions. I understand that officials were last in contact with Mr Assange's lawyers in late January 2012.

Senator Ludlam: I call a point of order, Mr President, on the direct relevance of the minister's answer. I did not refer to any of the Swedish prosecution matters or anything that is occurring in the UK. My question goes directly to whether the Australian government knows of the existence of a sealed indictment—that is just a 'yes' or a 'no'.

The PRESIDENT: The minister is answering the question from what I have heard.

Senator CHRIcS EVANS: Mr President, I was trying to be helpful to the senator and give him what information I had, but as I said in the first part of my answer, the Australian government is not aware of any charges by the US government against Mr Assange. If that is all he wants to know, I will stop there.

Senator LUDLAM (Western Australia) (14:22): Mr President, I ask a supplementary question. Does the Prime Minister propose to take any action whatsoever relating to the existence of this indictment and the potential for Mr Assange to be transferred not to Sweden or to anywhere else but to the United States? Is the government intending to do anything at all to prevent this from happening? I am happy for the minister to provide any details at all about any action of any kind that the government proposes to take to prevent this extradition from occurring.
Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:22): As Senator Ludlam is aware, the government has clarified in answers to questions he has put on notice on this issue that the Australian government has asked the US government about these reports. The government has not received any advice of any grand jury investigation.

Senator LUDLAM (Western Australia) (14:23): Mr President, I ask a further supplementary question. Perhaps the minister will take the matter on notice. Now that the dirty little secret is out, will the government stop the delays and obstructions in fulfilling—

Honourable senators interjecting—

The PRESIDENT: Order! Both sides, Senator Ludlam is entitled to be heard in silence.

Senator LUDLAM: Thank you, Mr President. There was a great deal of shrieking. I am interested to know whether the government will stop the delays and obstructions in fulfilling my freedom of information requests on this matter that went to the Prime Minister's office last year. Will the minister find out if there is a sealed indictment in the US and report back to the Senate? Will the minister ascertain whether or not such an indictment exists? (Time expired)

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:24): If there are dirty little secrets, they have been kept secret from me, so I cannot help him in that regard. What I can tell him is that I understand he has made an FOI request, which was received by DFAT on 2 December last year. The response is being worked on by DFAT. I gather that is in line with Senator Ludlam's agreement on an extension of time. That is all I can say in response to his question.

Carbon Pricing

Senator BIRMINGHAM (South Australia) (14:24): My question is to Senator Wong, the Minister for Finance and Deregulation and Minister representing the Minister for Climate Change and Energy Efficiency. Will the minister guarantee that full revenue forecasts associated with the sale and auction of permits under Labor's carbon tax will be published in the forward estimates of this year's budget papers for the 2015-16 budget year when the carbon tax moves from a fixed price to a floating price?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:25): I congratulate Senator Birmingham for finally getting a question on carbon. I think he is three or four down the track from Senator Cormann. He would also know—

Senator Ian Macdonald interjecting—

Senator Conroy interjecting—

The PRESIDENT: Order, on my right and on my left!

Senator WONG: This government has ensured that its assumptions about the carbon price and its policies in relation to the Clean Energy Future package are reflected fully in the budget. That is more than can be said for anything the opposition has put forward. The entire carbon price package is included in the midyear review, the MYEFO bottom line, and that also shows the budget returning to surplus in 2012-13. We have been very upfront with Australians as to the cost of the Clean Energy Future package, far more upfront than those opposite, who continue to obfuscate and mislead people about the true cost of the policy that they are now
advocating, contrary to the one they previously had.

The senator would know—I think he was at estimates for this aspect—that we have said consistently that in this year's budget we will update the figures in the usual way across government for the 2015-16 year, and that will obviously include the carbon price in that year. I am certainly not going to get into any speculation about how those updates might occur. I am sure the senator will have the opportunity to consider the government's figures post the announcement or the bringing down of the budget, which I would say again will be a surplus budget, unlike the $70 billion black hole that his leader is leading him to. That is the reality. We have offset new spending and those opposite do not—(Time expired)

Senator BIRMINGHAM (South Australia) (14:27): I thank the minister for the answer. Mr President, I ask a supplementary question. Given the European ETS is forecast to continue trading below A$15, isn't it highly likely there will be a multibillion-dollar drop in carbon tax revenue in 2015-16 when the shift to a floating price happens? And, given that the majority of spending under the carbon tax is fixed, as the minister admitted in her Sky News interview on Sunday, won't this lead to a multibillion-dollar budget black hole? Isn't there just as much chance of the minister's own words from Sunday—a very negative effect on the budget when this shift occurs?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:28): There was certainly a lot of speculation in that little question. I know Senator Birmingham is desperately trying to demonstrate that he can mix it with the best and throw all these questions at the government, but, really, that was a question almost entirely—I will give him one credit—based on speculation. It is true that I was asked about an earlier move to a floating price and my answer reflected the proposition I put in response to his primary question, which is that we have already paid for and costed the carbon package, the Clean Energy Future package, in the budget and the bottom line still shows a return to surplus in 2012-13—something those opposite, out of the mouth of the shadow finance minister, have already walked away from. I have previously said we will update the figures in the usual way in the budget. (Time expired)

Senator BIRMINGHAM (South Australia) (14:29): Mr President, I ask a further supplementary question. How does the minister explain downplaying the budget impact of a shift to the floating price in 2015-16 when questioned by the opposition compared with her willingness to argue in response to changes suggested by Mr Rudd than an earlier floating price would be likely to have 'a very negative effect on the budget'? Why has the minister only been open about this risk when it allowed her to rebuff Mr Rudd's leadership plans?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:30): I will answer that aspect of the question which is in my portfolio responsibility and not some of the rhetorical accusations which characterise that question. In relation to the current period of the fixed price, as I have said—and this will be the third occasion during this set of questions—we have reflected the cost of the policies, including the household assistance package, in the budget bottom line, which shows the budget returning to surplus in 2012-13. I would remind those opposite that their policy is to claw back the age pension increase and the increase to the disability support pension, to not give the tax cuts through the tripling of the tax-free threshold and to claw back the
family tax benefit increases. That is coalition policy. In relation to what occurs in the 2015-16 year, we will account for that properly in the usual way, which is something you can never give a commitment to, because you refuse to cost your policy; you know it will cost more. (*Time expired*)

**DISTINGUISHED VISITORS**

*The President* (14:31): Before I call Senator Thistlethwaite, I acknowledge the presence in the President's gallery of former senator John Herron. Welcome back to see us, Senator Herron.

Honourable senators: Hear, hear!

**QUESTIONS WITHOUT NOTICE**

**Fiscal Policy**

Senator **THISTLETHWAITE** (New South Wales) (14:31): My question is also to the Minister for Finance and Deregulation, Senator Wong. Can the minister outline why it is important for governments to have properly costed and fully funded policies? How has the government shown the importance of costing and funding policies through the implementation of its Paid Parental Leave scheme?

Senator **WONG** (South Australia—Minister for Finance and Deregulation) (14:31): I thank the good senator for his question. He is one of the senators in this place who have shown an interest in economics. I have to say that, apart from Senator Sinodinos, it appears those on the other side are no longer interested in economics and certainly not interested in sensible fiscal policy.

This government does understand the importance of ensuring that policies are properly costed and fully funded. One would have thought that was an uncontroversial proposition, but apparently with this opposition, this shadow Treasurer and this shadow finance minister it is now a controversial proposition that you would actually have to properly fund and properly cost your policies.

The government, whether it was in the previous budget or the previous mid-year review, have shown that we make the decisions, sometimes difficult decisions, to offset spending and to find savings. We delivered a net improvement to the budget bottom line of $6.8 billion across the forward estimates in MYEFO, when you consider particularly the significant revenue downgrades the government was hit with. This followed some $100 billion of savings across four budgets.

But what do we have from those opposite? The first thing we have is a $70 billion black hole—they are not my figures; they are Mr Hockey and Mr Robb's figures. Take it from them.

Senator Cormann: That's just not true.

Senator **WONG**: Senator Cormann says that is not true. I suggest he might want to rock up occasionally to the ERC on that side and let them know that they have got their costings wrong.

But, on top of all of this, we have an opposition led by a man who is completely reckless when it comes to the economy, who shoots from the hip and who has a Paid Parental Leave scheme that is 'practically friendless' in his shadow cabinet. We know that, even inside the Liberal Party room, the sensible people are starting to worry about Mr Abbott's economic recklessness and his refusal to do anything sensible— (*Time expired*)

Senator **THISTLETHWAITE** (New South Wales) (14:33): Mr President, I ask a supplementary question. Can the minister outline, in the context of running a clear fiscal strategy, why it is important to ensure that spending priorities are fully funded?
Senator WONG (South Australia—Minister for Finance and Deregulation) (14:34): As I said, good budget management does require some difficult decisions. We saw that in the last budget and we saw that again in the mid-year review. But, of course, the alternative is a series of unfunded, unaffordable, undeliverable promises from those opposite. The real story of what is happening in the coalition is that they are having to walk away from a surplus. They are having to walk away from support of the National Disability Insurance Scheme. They have had to walk away from tax cuts because they know they cannot balance the books. So, instead of properly funded, properly costed policies, they have come up with a new one. They call it an 'aspiration'—a budget aspiration; a policy aspiration that you kind of hope about but you never actually have to fund. That is what your election promise will be: an aspiration. (Time expired)

Senator THISTLETHWAITE (New South Wales) (14:35): Mr President, I ask a further supplementary question. Can the minister outline any approaches to funding spending promises other than making tough choices and prioritising spending? What would the impact be of those alternative approaches?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:35): The alternative approach is obviously one where you see a $70 billion black hole and where you have to cut services to Australian households drastically because you have been so undisciplined in the policies that you are promising. One of the things that should be noted is this: the Leader of the Opposition claims that the coalition are the party of lower taxes. They say it is in their DNA.

Senator Abetz interjecting—

Senator WONG: Perhaps Senator Abetz would like to explain why their paid parental leave policy is funded by a new tax. The party that claims to be the party of lower taxes wants to say to Australians, 'We don't believe in taxes, but you know what? We're going to whack a bit more tax onto the company sector to pay for a Paid Parental Leave scheme that our party room and our shadow cabinet does not support.'

Emissions Trading Scheme

Senator EDWARDS (South Australia) (14:36): My question is to the minister representing the Minister for Climate Change and Energy Efficiency, Minister Wong. Is the minister aware that Adelaide Brighton, a leading concrete manufacturer in her home state of South Australia, has recently announced a $2.7 million profit drop and has warned of future hits to its earnings attributed to the introduction of the Gillard government's carbon tax? Can the minister explain how the government can stand by its claim that the world's biggest carbon tax will not penalise South Australian industry and, therefore, send South Australian jobs offshore?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:37): I am aware of the comments by Adelaide Brighton Cement. When I was the minister for climate change, that was one of the companies with whom I dealt in the context of putting together what was then the Carbon Pollution Reduction Scheme. The government has put in place a very significant amount of assistance—

Opposition senators interjecting—

The PRESIDENT: Order! Senator Wong, continue.

Senator WONG: The government has put together a substantial amount of assistance in the jobs and competitiveness package very much having regard to those
industries that are trade exposed. There is a substantial amount of assistance for industries which are emissions intensive and trade exposed through the provision of free permits, which will significantly alleviate the effect of a carbon price. The good senator also asked about jobs in South Australia. I would say to him this: the coalition's policy is to drastically cut and end continued support for the car industry, which, as he knows, is very important to the economy of South Australia.

Senator Abetz: How does this relate to cement?

Senator Wong: I was asked about jobs in South Australia. If you think the car industry is irrelevant to jobs in South Australia—

The President: Senator Wong, ignore the interjections and just address your comments to the chair.

Senator Wong: I will take that interjection and I would make the point that South Australian senators who come in here and lecture the government on jobs in South Australia while backing in the coalition's ending of assistance to the car sector, really, have no basis on which to make such an assertion. They have no grounds to stand on and some people might even say there is a touch of hypocrisy in those who ask such questions. We are very conscious, as a government, of the importance of supporting jobs, which is why we have put in place a very substantial amount of assistance through the jobs and competitiveness package. (Time expired)

Senator Edwards (South Australia) (14:39): Mr President, I ask a supplementary question. Despite trade assistance, Adelaide Brighton is predicting a further net $5.4 million drop in profit in its first full year following the introduction of the carbon tax. How is the government planning to compensate the additional costs for every business in South Australia, particularly when the industry is already facing difficult conditions as a result of weakening demand, increasing labour costs and a high Australian dollar?

Senator Wong (South Australia—Minister for Finance and Deregulation) (14:40): In relation to the carbon price, I would again remind a senator, we have a very substantial amount of assistance through the jobs and competitiveness package. We recognise also that many businesses will be able to pass on the price increase to consumers and that is reflected in the assessment of the appropriateness of household compensation. That is why we are providing additional assistance to Australian households, to reflect the fact that there will be some prices that will be passed on. I would remind the senator his party supports an increase in the company tax levy to fund the Paid Parental Leave scheme that the shadow cabinet does not support. I would remind the senator that his party supports a policy which will cost Australian families $1,300 additional tax, for which they will not get any assistance. So, if he really cares about ensuring that our transition to a low-pollution economy is managed sensibly, he certainly would not be supporting the position that Mr Abbott is proposing.

Senator Edwards (South Australia) (14:41): Mr President, I ask a further supplementary question. Is the minister aware that Adelaide Brighton is planning on moving part of its clinker business offshore to mitigate the additional costs as a result of the government's carbon tax? What is the government's message to the 1,300 workers from Adelaide Brighton whose jobs may disappear as a direct consequence of this government's job-destroying carbon tax?
Senator WONG (South Australia—Minister for Finance and Deregulation) (14:41): I am not aware of any detail of commercial decisions which might have been made or are proposed to be made by Adelaide Brighton Cement.

Senator Brandis interjecting—

Senator WONG: Yes, it is Senator Brandis. I am not in the boardrooms of every company in Australia. That is true. I wish I was as smart as Senator Brandis though and I might actually know it all, wouldn't I?

Senator Ludwig: Did you just call him a know-it-all?

Senator WONG: I did call him a know-it-all.

Government senators interjecting—

The PRESIDENT: Order! Senator Wong, continue.

Senator WONG: This government is committed to supporting Australian jobs. That commitment has been demonstrated through our response to the global financial crisis. That commitment is demonstrated by the fact there are 200,000 Australians in jobs who would not otherwise be had we followed the advice of the Leader of the Opposition. Our commitment is demonstrated by the fact that we have put substantial assistance in our clean energy package to support jobs and competitiveness. Our commitment is demonstrated by the investment in skills that we know is critical to give Australians the tools to get the jobs not just of today but of the future.

Food Additives

Senator XENOPHON (South Australia) (14:43): My question is to the Minister for Agriculture, Senator Ludwig, who also represents the Minister for Health and Ageing. Food Standards Australia New Zealand gave evidence during a recent Senate estimates hearing indicating that the impending ban on the import of orange juice concentrate containing the fungicide carbendazim was now under review due to lobbying from processors. This is despite a prior commitment from the government as recently as last month that it would ban the import of carbendazim in juice concentrate after the first quarter of 2012. Can the government please indicate how the so-called review of the ban on carbendazim in orange juice imports has progressed?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:43): I thank Senator Xenophon for his question on this issue. I can inform the Senate that food safety and setting health limits for imported food falls within the responsibility of, as he has identified, Food Standards Australia New Zealand, FSANZ. Further, it is the role of the Australian Pesticides and Veterinary Medicines Authority to approve and register the use of particular chemicals in Australia. The APVMA is reviewing carbendazim and in the interim has suspended use on a number of crops including all citrus fruit. As a result of the suspension of carbendazim use the APVMA is currently considering removal of a number of maximum residue limits for carbendazim from the Food Standards Code, including that for orange juice, so that effectively a zero MRL will apply. I am also informed that at present no decision has been made by the APVMA on this matter or on a change to the MRL—that is, while FSANZ conducts a risk assessment for imported products and engages with industry it is important to have industry consultation.

At present Australia does not have a maximum residue limit in place but allows the presence of carbendazim in citrus products at 10 parts per million. The advice of FSANZ is that a 70-kilo adult would need
to drink about 140 litres of orange juice in one day to consume an unsafe amount of orange juice with carbendazim present at this level and a child would need to drink about 40 litres in one day. However, the APVMA suspended the use of carbendazim on a range of crops, including oranges, in 2010. This was following a review in 2007 and was focused on the use of the chemical— (Time expired)  

Senator XENOPHON (South Australia) (14:45): Mr President, I ask a supplementary question. Does the minister concede that there is an inconsistency between the ban on the use of carbendazim on Australian crops and the allowing of imports of orange juice containing carbendazim? What impact does this have on the Australian citrus industry?  

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:46): To be clear, to date there has been no change in policy, and the use of carbendazim is still allowed at the level of 10 parts per million. The Australian juice manufacturing industry is heavily dependent on imported product. Unlike the United States, which is a net exporter of citrus juice, the Australian domestic market is only able to supply about 45 per cent of the needs of the orange juice industry.  

I again note for the Senate that FSANZ, the regulator in this area, has not raised any concerns about the presence of carbendazim in the fruit juice Australians are consuming. The APVMA, which deals with agvet chemicals, has an ongoing review in progress. It is consulting with FSANZ on this matter, but FSANZ is not aware of any test results in which carbendazim levels in orange juice have been above this safe level. (Time expired)  

Senator XENOPHON (South Australia) (14:47): Mr President, I ask a further supplementary question. Finally, does the minister concede that there is an inconsistency in that Australian citrus growers are banned from using carbendazim, but we can bring in imports containing carbendazim? What advice does the minister have as to the impact that has on Australian citrus growers, who are struggling after years of drought and now a high Australian dollar in competing fairly with these imports?  

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:47): I thank Senator Xenophon for his second supplementary question. It is worth going back to what I said earlier to the Senate, which was that a review is underway. The APVMA is reviewing the use of this particular chemical in the agvet area. The APVMA is considering the removal of a number of maximum residue limits—that is, MRLs—for carbendazim from the Food Standards Code.  

But it is important to allow the process to run. They do have to consult with the industry. They do have to include risk assessment by FSANZ, which is the food regulator, and until that occurs there is a suspension of the product in Australia. FSANZ, on the other hand, has not raised human health concerns for imported product. But in respect of our domestic market, our domestic processors are heavily reliant on imported concentrate as the domestic market simply cannot meet its demand. The APVMA and FSANZ— (Time expired)  

National Security  

Senator CASH (Western Australia) (14:48): My question is to the Minister representing the Minister for Immigration and Citizenship, Senator Ludwig. I refer the
minister to the revelation made by the former Prime Minister and now former foreign minister, Mr Rudd:

… decisions … were taken, in my absence often, and then announced and implemented, often without my knowledge, in the case of various decisions like the Malaysia solution for example, and then off they went only to discover they didn't work.

Will the government now admit that the failure of the cabinet to work together and function properly has resulted in the chaos that is now Australia's border protection policies?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:49): I thank Senator Cash for her ongoing interest in the Malaysian arrangement, because those opposite show no interest in working through this solution to ensure that we can have legislation in place. At the start, I do not accept any of the underlying import that the question put forward. This is a cohesive government that is working on bringing forward a Malaysian arrangement that results in stopping the boats coming to Australia.

What those opposite, who continue to talk the talk but actually will not come to the table and deal with the legislation and deal with how we resolve this issue, want to do is continue to play games with this. They want to use it as a political football, a political stunt, to make their point. However, this government wants to resolve this issue. Why won't you come to the table to resolve the issue rather than continue to crabwalk on immigration? That is what you are doing.

The UNHCR has given its support to our arrangement, which involves both signatory and non-signatory countries. But Mr Abbott says: 'We are not saying that they have got to have temporary protection visas; we are not saying that they have got to be prepared to turn around boats. We would do those things if we were in government.' You can do those things, should you get to government, but what we want you to do is come to the table and come forward with a proposal to deal with the Malaysian arrangement so we can deal with this legislation. (Time expired)

Senator CASH (Western Australia) (14:51): Mr President, I ask a supplementary question. Given that almost 16,000 people have now arrived on 286 illegal boats since the government's decision to abolish the proven border protection policies of the former Howard government—

Government senators interjecting—

The PRESIDENT: On my right! Senator Cash is entitled to be heard in silence.

Honourable senators interjecting—

The PRESIDENT: Order on both sides!

Senator LUDWIG: I thank Senator Cash for her first supplementary question, but she did not rise to the invitation to actually come forward with an arrangement that will in fact stop the boats and deal with the immigration matter. What we have always said is that, without a genuine deterrent such as the Malaysia arrangement, the boats will still keep coming. You can chalk down the negativity that you are now reflecting to Mr Abbott,
because Mr Abbott can only say, 'No, no, no, no, no.' You wonder whether or not he would change his name to Nanette! Boats will continue to come to Australia unless the coalition is willing to come to an agreement with the government to deter asylum seekers from making those dangerous journeys. These latest boat arrivals, of course, are just further evidence of the consequences of the coalition's negativity. The government has been prepared to negotiate—(Time expired)

**Senator CASH** (Western Australia) (14:54): Mr President, supplementary question No. 2: given that the Minister for Immigration and Citizenship voted in Labor's leadership ballot for the candidate who believed that his own Malaysian people swap deal did not work, when will the government—

**Government senators interjecting—**

**The PRESIDENT:** Wait a minute, Senator Cash. Again on my right, order! I remind you that Senator Cash is entitled to be heard in silence. Senator Cash, I am listening to the question.

**Senator CASH:** When will the government end the pretence of clinging to this policy failure and restore the coalition's proven policies?

**Honourable senators interjecting—**

**The PRESIDENT:** Order! Just remain seated, Senator Ludwig. Order! I remind senators on both sides that shouting across the chamber is completely disorderly.

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:55): I thank Senator Cash for her question. I think that Senator Cash wants to say yes and wants to agree with our legislation but feels constrained by Mr Abbott. The coalition just does not get it. All expert advice shows that Nauru will not in itself break the people-smuggling trade. The opposition know that. The Greens know that. We already know that.

**Honourable senators interjecting—**

**The PRESIDENT:** Senator Ludwig, resume your seat. On both sides, if you wish to debate it, it is not long before question time will end and you can do that then. Senator Ludwig, continue.

**Senator LUDWIG:** It is clearly time now for Mr Abbott to pick up the phone, talk to the Prime Minister and put in place a solution that will deter the boats and make sure that people do not risk their lives on unsafe boats. More importantly, you can hang up on Nauru and you can hang up on your tired policies that do not work, but in fact you would be far better placed to say no to some of the baggage of your past, say no to those policies—(Time expired)

**Defence Procurement**

**Senator PRATT** (Western Australia) (14:56): My question is to the Minister for Manufacturing and Minister for Defence Materiel, Senator Carr. Can the minister inform the Senate of what the government is doing to help the local industry build the capabilities we need to support the Australian Defence Force?

**Senator CARR** (Victoria—Minister for Manufacturing and Minister for Defence Materiel) (14:57): Senator Pratt, thank you very much for the question. Today I announce the preferred tenderer for a new $300 million defence contract. That contract is for the repair and maintenance of the Anzac class frigates. The preferred tenderer is Naval Ship Management Australia, a joint venture between Babcock and United Group Infrastructure. The work will be based out of Perth. This contract is the first of what I trust will be many contracts reflecting a new approach. For too long local suppliers have
complained about hand-to-mouth contracts. What we want to do is to provide incentives for long-term investment in Australian-based companies and Australian workers. This is a five-year contract which allows us to judge the performance and allows industry to invest in its own future with confidence. That is a good approach for industry, it is a good approach in terms of jobs, it is a good approach for the Navy and it is good for the taxpayer. This is consistent with the approach that the government is taking in all forms of procurement.

We have long argued that, when it comes to buying Australian, we can simply not get enough. But that does not mean that we should buy Australian at any price or on any terms. What the government emphasises is that we are not in the business of accepting second best. What we argue is that we should reject the assumption that local industry cannot compete in terms of global competitiveness. We reject the notion, and the small-mindedness and fearmongering of those opposite. This is a country that can do great things, and, I think, we can build high-tech, high-wage, high-skilled jobs in Australian manufacturing. We want to ensure that all our people share in the prosperity that they all have a right to expect.

(Time expired)

Senator PRATT (Western Australia) (14:59): Mr President, I ask a supplementary question. Can the minister please tell the Senate what role defence procurement plays in supporting Australian manufacturing?

Senator CARR (Victoria—Minister for Manufacturing and Minister for Defence Materiel) (14:59): I would indicate, Senator Pratt, that every working day the DMO is spending some $45 million. This year it will spend more than $10 billion, and 54 per cent of that, $5½ billion, will actually be spent in Australia. So defence procurement is in fact vital for our manufacturing base in this country. It supports some 27,000 jobs. It builds skills in industrial capabilities and it generates spin-off innovations that benefit many other manufacturing industries.

These are some of the most creative and ambitious firms that operate in this country. We want them to grow and we want them to be able to integrate more effectively into international supply chains. So we want them to diversify and to find opportunities in other sectors outside of defence. Just as our athletes do not face global competition without training and support, nor should our firms. We are working with our manufacturing firms to build on their strengths, and I am absolutely confident—

(Time expired)

Senator PRATT (Western Australia) (15:00): Mr President, I ask a further supplementary question. Could the minister please further advise the Senate what specific assistance the government is able to provide to local defence suppliers?

Senator CARR (Victoria—Minister for Manufacturing and Minister for Defence Materiel) (15:00): This is a country that should dream large. And, unlike the knuckle-draggers on the other side of the chamber, we are committed to ensure that this country achieves greatness. We aspire to improve the opportunities for all our people both in terms of—

Opposition senators interjecting—

The PRESIDENT: Senator Carr, I think you might just resume your seat for a moment until we get a little bit of order. I know there is a little bit of excitement in the chamber, but if you could just calm down for another 41 seconds so Senator Carr can complete his answer.

Senator CARR: We would not expect the philistines opposite to understand this fundamental premise, but we do have a
serious situation in this country. This is a government that is committed to ensure that we invest in manufacturing, we invest in Australian jobs and we invest in prosperity. We are investing some $445 million in programs specifically aimed to assist Australian defence industries through the period 2018-19. We are looking at ensuring that we have the skills available to meet the requirements of our defence forces, to meet the skill requirements of our defence companies, and to ensure that we provide the necessary capabilities so that Australian industry can—(Time expired)

Senator Chris Evans: Mr President, while I would like to hear Senator Carr expand on those views, I suggest that we put further questions on the Notice Paper.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Workplace Relations

Senator ARBIB (New South Wales—Assistant Treasurer, Minister for Small Business, Minister for Sport and Manager of Government Business in the Senate) (15:02): I seek leave to have additional information incorporated in Hansard in response to a question asked by Senator Back yesterday, 28 February.

Leave granted.

The answer read as follows—

- The Government position on the ABCC has been clear for a long period of time.
- Prior to the 2007 and 2010 elections, Labor made a commitment to the Australian people that it would replace the ABCC with a new body, a body that is part of our Fair Work system and a body that is charged with ensuring lawful conduct in the building and construction sector— which is such an important sector for our national economy. This Bill honours those commitments.
- The Bill has been referred to the Senate Standing Committee on Education, Employment and Workplace Relations for inquiry and report. That occurred on 10 November 2011.
- The Committee has conducted their inquiry and the Committee are due to present their report to the Senate today 29 February 2012.
- It is the not the first time the Committee has inquired into the Bill and not the first time it has reported on the key aspects of the Bill.
- I note the Opposition have a motion on the notice paper that they want to refer the Bill to the Committee for a further inquiry and report.
- The Opposition, rather than accepting the will of the Australian people are now just trying to stop the Government from implementing its commitment to them.
- That's why the Government will not be supporting this motion from the Opposition.
- We want to get on with delivering what the Australian people have asked for and so will not agree to the Bill going back to the Committee for a third time.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator FIERRAVANTI-WELLS (New South Wales) (15:03): I move:

That the Senate take note of answers given by ministers to questions without notice asked by Opposition senators today.

Today's Australian tells us that Senator Carr was offered Senator Arbib's job and former foreign minister Kevin Rudd's job last week. Senator Arbib told the Senate today that he told the Prime Minister on Monday, 27 February that he was resigning. If this is the case, whose vacancy did Prime Minister Gillard have in mind? There must have been someone in mind to roll in New South Wales to enable the offer to be given effect to. Or was Senator Arbib really pushed, despite his assertions to the contrary?

Minister Carr has confirmed the offer; Julie Gillard had denied it. Who is telling the truth? Given the PM's form on so many
broken promises, we know who to believe. So much for the Prime Minister's alleged new assertiveness; the faceless men have forced the withdrawal of her offer. Julie Gillard has egg on her face. It is business as usual.

It was very interesting to hear Senator Arbib's response to Senator Brandis. I am sure, Senator Arbib, that you take away from this place a wealth of information. I have of course suggested that you write a book. As I said yesterday evening, I am sure it will be a bestseller. But perhaps now, Senator Arbib, that you are retiring, you could transfer your considerable parliamentary skills and return to our screens on a full-time basis. Many of our colleagues in this place would be unaware that, before becoming a powerful New South Wales right factional leader, and ultimately one of the faceless men, our Senator Arbib was a star of the small screen.

An opposition senator: What?

Senator FIERRAVANTI-WELLS: Yes, and he started early. At the age of 18 there was our Senator Arbib on our screens in no less than that iconic Channel 7 soapie, Home and Away. In a precursor of things to come, episode 368, aired on 8 April 1989, shows young Mark Arbib in the role of Freddie Hudson—a young man visiting the youth centre because he was having a few hassles at home. And here is a photo of him—even with hair! Here he is with a serious, grim, focused look.

The DEPUTY PRESIDENT: Senator Arbib, did you rise on a point of order?

Senator Arbib: Yes. Can I ask that that photo be tabled, please, or burnt— one or the other?

The DEPUTY PRESIDENT: There is no point of order.

Senator FIERRAVANTI-WELLS: Senator Arbib, of course I am happy to table it. Here he is with a serious, grim, focused look; a prelude to the political bloodletting, cutting and thrusting which was to propel him to the heights of New South Wales and national politics—but, as Senator Arbib allegedly gave Richo as his reason for leaving, he was 'sick of being covered in blood'. Anyone interested in seeing this, go to YouTube; I will give you the reference—clearly an omen for the current soap opera of unhappy political families that have become a daily feature of Australian political life. The closing credits recognise Mark Arbib as playing the character called Freddie. Funny—the acting was something. Senator Arbib, that you omitted to mention in your maiden speech when you listed the many occupations that you held before entering parliament. Mark Arbib's career has certainly been stellar—perhaps not quite in the same league as other former soapie stars, like Kylie Minogue, but he has certainly become a household name. It is interesting to note, Senator Arbib, that in your maiden speech you made mention of your grandmother's great disappointment when you told her you were running for the Senate. You stated:

She questioned why I would take a job that lasted only six years and suggested I consider taking a more secure job as a bank teller.

Sadly for your grandmother, your job here lasted all of three years and five months. Perhaps, with hindsight, the bank teller job may have been a safer and more edifying career option.

Senator Arbib may tell us that he is leaving to help the healing process. Great sentiment, Senator Arbib, but all it means is that there will be one less faceless man. There may be one less, but they will remain in charge. The only way to restore hope, reward and opportunity is to go to an election. In the sentiment in which my contribution was made, I take the
opportunity to wish Senator Arbib all the best in his new career.

Senator FURNER (Queensland) (15:08):
It is only Thursday, and groundhog day continues with this obsession on the other side of what is happening in our caucus. We had questions put to Minister Arbib from Senator Brandis about his desire to move on. Senator Arbib has legitimate reasons: he is a family man. I have seen his two young daughters and they are legitimate concerns and legitimate reasons for him to consider his resignation.

Without casting aspersions on the other side, let us have a close look at what happens in their caucus room. Just yesterday—as you know, Deputy President Parry, because you were there—they were crying over spilt milk, or was it a glass of cheap milk? No doubt there were other members who leapt to the defence of the particular senator who was under attack by those from other factions when their group—

Senator Ian Macdonald interjecting—

Senator FURNER: Why don't you pop your Alzheimer's pills, Senator Macdonald? I am not directing that at you; I do not think you take any pills. You seem a fit and healthy senator.

Then it was Senator Boyce's turn. She wanted to talk about the Rolls-Royce parental leave scheme that Mr Tony Abbott has proposed that will harm big businesses and jobs. There is no surprise in that, about harming jobs, because we know their record when it comes to jobs. When we on this side implemented the national stimulus package, we protected jobs in our communities. Up to 200,000 jobs were protected from the global financial crisis. And what did those opposite want to do? They wanted to oppose it, and they did oppose it in this chamber and in the other place to stop people being employed, to stop people having opportunities to sustain their employment out in the community. That is just a small snapshot of what happens in the opposition caucus: spilt milk and Alzheimer's pills. Put them together and what sort of concoction will you get? Who knows.

Let us talk about some of the other questions that were put to senators on this side in question time today, particularly on climate change. Once again we heard the climate change coalition sceptics complaining about what we are doing for the environment. If I reflect back a couple of years ago, some senators who are here—Senator Cameron and Senator Pratt—were on a climate change inquiry with me. We heard cold, hard facts and evidence from the likes of the CSIRO, from NASA and from over 1,000 top scientists globally about why we need to act on climate change. Senator Cameron was well informed, along with the rest of us, including the now Parliamentary Secretary for Defence, Senator David Feeney, about why we need to act on climate change. Yet those opposite, the climate sceptics, buried their heads in the sand, like they always do, and denied it. What does Mr Abbott say about climate change? Doesn't he call it 'absolute crap'? It is fitting to use that sort of language, given the language that was used in the coalition's caucus yesterday, with some senator being called an 'f-wit'. This is the type of opposition that wants to gain government at some stage in the future. Let us hope that never occurs, because that is their style.

When it comes to the opposition's style, we know their position on policy and legislation in this place. It is a vacuum of empty cupboards. There is one word they are consistent with, though, and that is no: 'No, no, no'. They are consistently putting that position forward to present their case on how they wish to look after our great nation. But we are going to look after our nation. This
government will make sure that at least nine out of 10 citizens will be assisted. Households will have permanent assistance as a result of pension rises of $338 a year and singles up to $510 a year. And that will be indexed as well.

I want to spend a little bit of time on the issue of what the coalition is going to do, conversely. They want to take back $1,300 a year from families as a result of what their policy will provide. In doing that, they will have their $70 billion black hole and they are going to have to run into severe deficit for a number of years. Where are they going to get that money from? Are they going to get it from pensioners? Are they going to rip it out of other areas where people need it the most? Are they going to rip it away from single mums and single householders that need that money the most? Surely that is the position they will come to. (Time expired)

The DEPUTY PRESIDENT: Before I call Senator Mason, I remind senators about correct titles and about using language that suits the Senate.

Senator MASON (Queensland) (15:13): I think I am going to have to raise the tone of the debate in this chamber and concentrate on Senator Wong's answers to questions today. Who remembers a few days ago, when the Minister for Climate Change and Energy Efficiency, Minister Combet, said this:

From 2020, all nations face binding obligations to reduce emissions and our major regional trading partners … will expect us to deliver along with them.

And what have we learned today from the front page of the Australian? What is one of our major trading partners, indeed the world's third-largest economy, doing about a price on carbon? What have we learned? Let us have a look at page 1 of the Australian:

Senior Japanese diplomatic officials in Tokyo have told The Australian there is 'no chance' of the country adopting a scheme similar to Australia's carbon tax or emissions trading scheme in the foreseeable future.

That is what the front page of today's Australian reports the Japanese to be doing.

The coalition's argument against a carbon tax is simple, has always been simple and can be said in one sentence: the carbon tax is not in our national interest, certainly not now. We argue that only when a sufficiently comprehensive group of our major trading partners, particularly those countries that are, like Australia, energy-rich, trade exposed nations such as Canada, Russia and Brazil, commit to a price on carbon will it be in our national interest to do so. The coalition has argued that from the beginning. If Australia acts unilaterally, it will not change the environment, it will not change our weather and it will not change the climate at all. It is a very simple argument, and has been from the word go.

China and India say they are going to do something, but I will believe it when I see it. The Economist came out on 25 February. Just off the press, it said:

China is still likely to consume 4.4 billion tonnes of coal in 2030, when its carbon emissions are expected to have increased from 6.8 billion tonnes of carbon-dioxide equivalent in 2005 to 15 billion tonnes.

That is more than double. The Chinese and the Indians can promise all they like, but their consumption is going up, and it is going way up.

The great lie is not about whether there should be a carbon tax or not. The great lie was not even the Prime Minister's dishonesty about whether there would be a carbon tax. That is not the great lie. The great lie is pretty simple: the Labor Party has argued very simply that it is in our national interest
to have a price on carbon irrespective of what any other nation on earth does.

Senator Farrell: Mr Deputy President, on a point of order. We have a very good system for noise in this chamber. Could the senator be requested to tone his—

The DEPUTY PRESIDENT: It is not a point of order, but I take your point. Senator Mason, could you just monitor the decibels, not to curb your enthusiasm.

Senator MASON: I thought I was speaking very quietly, as I always do—and you know that, Mr Deputy President. This is the problem: the Labor Party has argued from the beginning that it is in our national interest to have a carbon tax even if no other nation on earth does anything. That is the great lie. That is the lie that this government should be pinned on. The Prime Minister's dishonesty comes and goes, but that lie will stick with the Labor Party from now to eternity because it is false and they know it is false.

In other words, the Australian Labor Party believe that Australia should act unilaterally, that it should act irrespective of what any other country on earth does. They are the great unilateralists. In the end, if we act fundamentally unilaterally it will destroy our economy and our way of life, and other resource-rich, trade exposed countries will take advantage of our leverage, our legislation and our carbon pricing. In the end, that is Labor's great failure. Only when this debate matures to the level where the Labor Party finally understands that we rely on the rest of the world to act will the government finally come to some sense, but I am not holding my breath.

Senator CAMERON (New South Wales) (15:19): Through you, Mr Deputy President, I assure those in the gallery that there is usually a far more serious debate in this place than they just heard from Senator Fierravanti-Wells. Here we are in a period where the global financial crisis is still destroying jobs around the rest of the world, where the US and Europe are trying to deal with huge problems, and what do we get? We get an absolute comedy routine from the opposition. Senator Mason's response was not much better; that was merely a comedy routine as well. If you know the coalition's policies—and I use the plural because you never know what their policy on climate change will be from one day to another—you will know that the coalition adopted a price on carbon to go to the last election that John Howard fought and lost. John Howard was arguing for a price on carbon.

Since people are showing things around, I will do a little advertising here. I picked up a book today called The Australian Moment: How We Were Made for These Times by George Megalogenis, one of the key economic commentators and writers in this country. He describes how John Howard dealt with climate change. He says that John Howard was a climate change chameleon: he changed whenever it suited him from one position to another. It is not just John Howard who is a climate change chameleon; the coalition are also climate change chameleons. They change their position whenever they think it suits their political position.

This is what George Megalogenis said about John Howard in this book, which was launched today and which I recommend everybody get a copy of to see the truth about the Howard government's position. In January 2007, it says, John Howard offered $10 billion for a federal takeover of the Murray-Darling without consulting Treasury for advice on the numbers. Those great economic managers over on the coalition side offered $10 billion and they did not even go to the Treasury to ask what it would mean and what it would do. So that puts the
lie to the argument of economic responsibility on the other side. He said in June that he became a convert to a market based mechanism to deal with climate change after receiving his own report written by Peter Shergold, the head of the Prime Minister's department.

If you do not know, Peter Shergold is highly respected around the place. He was one of the key advisers to John Howard and he wrote a report that said we should put a price on carbon and it should be based on a carbon emissions scheme. John Howard promised a domestic emissions trading scheme, a cap-and-trade system, beginning no later than 2012. We heard all that nonsense—and the chameleons were at it again over there. He said for years he had argued against Australia moving before anyone else in the region—and now he wants to go first! This is John Howard. He wanted to go before anybody with a price on carbon, as Australia had done with tariffs. 'Australia will continue to lead internationally on climate change,' he said, 'globally and in the Asia-Pacific region, not in a way that lectures and moralises but in a way that builds support for global action to meet the enormous challenge of climate change.'

That destroys the argument Senator Mason was putting up that the coalition are acting responsibly by not moving on climate change. The coalition's own report, the Shergold report—and anyone from the coalition who stands up after me will have to deal with the Shergold report—says you have to act early to deal with climate change because climate change is real; climate change is what your grandkids are going to be living with in the future; we have to deal with it, and the most economically responsible way to deal with it is by putting a price on carbon. These lunatics do not realise that. (Time expired)

Senator IAN MACDONALD (Queensland) (15:24): I listened very intently to Senator Cameron's contribution. It followed the lines of Senator Wong today in question time, applauding and lauding the carbon tax that is going to be imposed upon all Australians and send every Australian's cost of living up. Senator Cameron, if it is so good, why is it that your leader, the leader of the Labor Party, the current Prime Minister—this week, anyhow—promised before the last election that there would be no carbon tax under a government she leads? If it is so good, Senator Cameron, please explain to me why your Prime Minister, your Labor leader, promised to the Australian public, hand on heart, that there would be no carbon tax under a government she leads?

I want to return to the carbon tax shortly. But this debate started with reference to Senator Arbib's imminent departure. I wish Senator Arbib well. I did not have a lot to do with him, but I thought he was one of the more competent Labor ministers—not that that is great praise for him. I wish him well in the future. I do not know what Senator Arbib is going to do. Some suggest he might be joining up with his old mates Mr Eddie Obeid and Mr Eric Roozendaal from the New South Wales Right of the Labor Party. I understand they have had business dealings before. Perhaps they are going back into those business dealings. In fact, I just googled on my iPad a rather interesting article by Kate McClymont in the Sydney Morning Herald—not a paper I usually read in Queensland—that made a very interesting connection between Senator Arbib, Mr Eddie Obeid and Mr Eric Roozendaal from the Health Services Union, who is very prominent at the moment. There is a sort of winding up of what seem to be business interests there. So I wish Senator Arbib well, and I hope that he enjoys life outside of parliament.

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CHAMBER
I want to return to the carbon tax debate that was mentioned in question time today. Let me read you a passage from Hansard:

Let us deal with a few facts. Let us have a scientific debate about climate change and its potential impact on the tourism industry. Globally, aviation contributes just two per cent of greenhouse gas emissions but eight per cent of world GDP—that is, 28 million jobs and $US3 trillion. Recently, the less than august Australia Institute—an organisation for which I have no respect because it seems to pride itself on belting low-income people in Australia—proposed a carbon tax, an elitist tax, on domestic flights and called for an end to the promotion of the aviation industry. Never mind that, according to the Australian Greenhouse Office's National Greenhouse Gas Inventory, civil aviation contributes just 0.9 per cent of Australia’s emissions. If we got rid of the entire aviation industry, as the Australia Institute would have it, we would still be left with 99 per cent of Australia’s emissions.

Who said that? It was Mr Martin Ferguson, the current Minister for Resources and Energy. When he said that, back in 2007, he was the shadow spokesman on transport. Martin Ferguson is a minister who I think is reasonably competent—again, that is not a great recommendation when you consider the ministers that we have. Martin Ferguson is sensible. There was Martin Ferguson saying what a ridiculous idea a carbon tax was. And yet, to Mr Ferguson's undying shame, he was one who breached the promise that the Labor Party would never introduce a carbon tax.

In the north of Australia, which I represent, Airnorth has just started a new direct service between Townsville and Darwin. It is a great service, but the cost is going to increase by $7 each way because of the carbon tax. Come 1 July, prices for airline travel all across Northern Australia will have to go up because of this ridiculous carbon tax, which will just add to the cost of living of all Australians.

Question agreed to.

WikiLeaks

Senator LUDLAM (Western Australia) (15:30): I move:

That the Senate take note of the answer given by the Minister for Tertiary Education, Skills, Science and Research (Senator Evans) to a question without notice asked by Senator Ludlam today relating to Mr Julian Assange.

I recognise that Senator Evans was sent in here for question time in his representational capacity—this matter is not in his portfolio—but what a remarkable response I received from him. I asked whether the Prime Minister knew of a sealed indictment against Mr Julian Assange which has been made by a secret grand jury in the United States. We do not have the grand jury system in Australia; there are very few jurisdictions that still have grand juries. However, we need to learn a great deal about it.

What the Prime Minister sent Senator Evans in to question time with by way of a brief was remarkable. I have been foreshadowing that I was going to ask questions about Mr Assange all day. I told the press gallery this morning that I was going to ask the these questions of the Prime Minister, and I foreshadowed them in the MPI discussion earlier today. The first question was: what does the government know about this attack on the democratic rights and citizenship entitlements of an Australian? The answer that came back through the brief given to Senator Evans was vacant and ambiguous, and that is a perfect description of the Australian government's response to these matters over more than a year. When is the Australian government going to step up and do its job?

The Prime Minister of the country did not necessarily know, Senator Evans told us—
although he did not directly engage with the substance of my question—whether or not such an indictment existed. So, even though some ex-State Department guy in Texas running a little intelligence organisation apparently knows—his knowledge has been revealed in an email which was one among a drop of five million emails from Stratfor—the Australian government apparently does not. Or maybe it does; that is what we are seeking to find out.

Mr Burton, who is the former deputy chief of counterterrorism at the US State Department and who is now the vice president of intelligence at Stratfor, turns up in a large number of this drop of five million emails. His Australia Day message for Australia in 2011 was:

Not for Pub—We have a sealed indictment on Assange. Pls protect.

The 'we' that he refers to is the US government. If our government knew of this, why weren't we told? If the Prime Minister—or perhaps the Foreign Minister or the Attorney-General—knew that the attack on Mr Assange was coming, why wasn't the information shared with the Australian people? Why wasn't it shared with me at any time during the interminable series of questions on notice I have asked and the freedom-of-information requests that I have lodged to try to assess exactly what the game is and how deeply involved and implicated in it the Australian government is? Some conspiracies turn out not to be theories at all.

The second question I put to Senator Evans was whether the Australian government had any intention of taking any action whatsoever—anything at all; name one thing—to protect against the very real threats now being levelled at this journalist, Mr Assange, who works for a publishing organisation. In a short time I will test the Senate's views on whether it agrees that Mr Assange is indeed a journalist and that the WikiLeaks organisation is a publishing organisation. There is a motion on the Notice Paper which I invite senators who are with us this afternoon to take a quick look at. It does not call on the Senate to do anything—heaven forbid!—but to recognise that Mr Assange is indeed a journalist, as the British High Court and the Walkley Foundation have done.

The Prime Minister, through the minister's vague and ambiguous answer this afternoon, did not seem to indicate that anything at all had been done. Here is an idea: call in the United States ambassador. That is why the United States ambassador is here in Canberra—to keep the flow of communication open about matters of relevance between states, particularly between allied states. I have not had much luck in my request to meet with the ambassador; maybe it will jump a little bit higher up the to-do list after today—we will see.

The third thing I asked the Prime Minister was whether she plans on taking any action and whether the government would perhaps stop obstructing my freedom of information requests and put some material on the record. Let us know, because the Australian government in this matter will turn out to have been either complicit or ignorant—either we have been kept in the dark or the government has been keeping secrets. The Prime Minister and the rest of the cabinet may think that the rest of this information will be disclosed when they are good and ready. Perhaps it will be disclosed along with a story of somebody killed in action as a result of the wiki-drop. The existence of such a story has also been disclosed in the email drop, so perhaps the strategy now is to wait until the appropriate time and then tell the world public through the world's media organisations that there has been a death and that it is Julian Assange's fault and then to
move to unseal the indictment. What a breathtakingly cynical strategy that would be!

I think it is time that the government put some material on the record, because—you know what?—you may not get to do it at a time of your choosing. Who knows what material WikiLeaks has on your cabinet and on what the Prime Minister knows. We will find out one way or another. Please, Prime Minister, take the lead and release this information. *(Time expired)*

Question agreed to.

PETITIONS

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

**Baby Safe Havens**

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

The petition of the undersigned draws to the attention of the Senate a need for legislation to be enacted to provide legal abandonment of newborn babies.

Your Petitioners therefore request that the Senate call on the States to consider enacting legislation so that young women would be discouraged from killing, causing physical harm or abandoning their babies if the Commonwealth provided "Baby Safe Havens" where the mothers would remain anonymous and immune from prosecution. It is the intention of the undersigned that this legislation will prevent any further tragic loss of infant life through abandonment.

by Senator Polley (from 768 citizens)

Petitions received.

NOTICES

Presentation

**Senator Boyce** To move:

That the Senate—

(a) recognises:

(i) the importance of World Plumbing Day on 11 March and its aim of highlighting the role that the plumbing industry plays in relation to health through the provision of safe water and sanitation, and

(ii) the environmental role of the industry in water conservation and energy efficiency and the increasing use of renewable sources of energy;

(b) notes that it is estimated that 3.1 million children die each year as a result of water related diseases; and

(c) congratulates the World Plumbing Council on its role in promoting the importance of the plumbing industry, both in developed countries and in developing countries where good plumbing could save lives.

**Senator Bernardi and Senator Stephens**

To move:

That the Senate—

(a) supports freedom of religion as a universal human right;

(b) does not support the imprisonment or persecution of individuals on the basis of their religious belief;

(c) calls on the Iranian authorities to release Pastor Youcef Nadarkhani, who has been sentenced to death for the sole reason of his refusal to recant his Christian faith;

(d) recognises that this action is a breach of Iran's international obligations, its own constitution and stated religious values; and

(e) stands in solidarity with Pastor Nadarkhani, his family and all those who seek to practise their religion without fear of persecution.

**Senator Brandis** To move:

That the following bill be introduced: A Bill for an Act to establish a process for assisting victims of overseas terrorist acts, and for related purposes. *Assisting Victims of Overseas Terrorism Bill 2012*.

**Senator Hanson-Young** To move:

That the Senate—

(a) notes the deteriorating human rights situation in China and Tibet over recent months, including the following developments:

(i) the imposition of a media blackout by Chinese authorities in Sichuan, Qinghai and the
region of Tibet since 24 January 2012, including shutting down the presence of international and non-government media organisations and coverage of pro-Tibetan activities, which has been documented by global press freedom organisation Reporters Without Borders,

(ii) the continuation of Tibetan people self-immolating as a form of protest that now amounts to 23 self-immolations and 15 deaths since February 2009,

(iii) the increased Chinese military presence since early 2012 on the streets of Lhasa, Serthar and parts of eastern Tibet which has been described by the exiled Tibetan Prime Minister Lobsang Sangay as a state of ‘undeclared martial law’, and

(iv) a reported increase in arbitrary arrests of hundreds of Tibetans by Chinese authorities since 6 February 2012 upon the Tibetans’ return from the annual Buddhist Kalachakra ceremony in Bodhgaya, India, which has been condemned by international organisation Human Rights Watch; and

(b) calls on the Australian Government to:

(i) urge the Chinese Government to restore press freedom and release any Tibetan people who have been arbitrarily arrested on account of their political or religious views, and

(ii) support the call by exiled Tibetan Prime Minister Lobsang Sangay on 21 February 2012 for a United Nations special investigator to undertake a fact-finding mission in Tibet to better inform the international community of the situation.

Senator Heffernan To move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on the Foreign Investment Review Board national interest test be extended to 27 June 2012.

Senator Colbeck To move:


Fifteen sitting days remain, including today, to resolve the motion or the instrument will be deemed to have been disallowed. (to be resolved on 21 June 2012)

Senator Ludlam To move:

That the Senate—

(a) notes the publication of evidence that a sealed grand jury indictment against Australian citizen Mr Julian Assange has been in existence for more than a year; and

(b) calls on the Government to obtain confirmation of its existence from the Government of the United States of America and report to the Senate.

Senator Hanson-Young To move:

That the following matter be referred to the Environment and Communications References Committee for inquiry and report by 28 June 2012:

The Murray Darling draft Basin Plan, and in undertaking the inquiry the committee must consider:

(a) the science and modelling relevant to the development of the draft Basin Plan;

(b) the outcomes of various scenarios of water recovery, including, but not limited to, the 2750GL featured in the draft Basin Plan, and the implications of groundwater extraction;

(c) the operation of the review mechanisms contained in the draft Basin Plan;

(d) system constraints that have an impact on the draft Basin Plan, and the information and research available to the Murray-Darling Basin Authority (MDBA) relating to redesigned river management options;

(e) the interaction of the draft Basin Plan with relevant legal requirements;

(f) the MDBA’s engagement with basin communities, including original Indigenous owners; and

(g) any other matters.

Senator Milne To move:

That the Senate—

(a) notes that:
(i) solar hot water is among the most cost-effective way to reduce householders' power bills and cut greenhouse gas emissions,

(ii) the Australian solar water heating industry employs more than 1 000 people in manufacturing and many more in installation around the country, and is beginning to develop as an export industry, and

(iii) the Australian solar water heating industry is already under pressure from the high Australian dollar, low renewable energy certificate prices and imports of instantaneous gas hot water systems; and

(b) calls on the Government to:

(i) immediately reinstate and extend the Renewable Energy Bonus Scheme which has helped a quarter of a million Australians to reduce their power bills and which has supported the development of a clean manufacturing and installation industry, and

(ii) release information about the extent to which the scheme's forecast expenditure will exceed actual spending in the 2011-12 and 2012-13 financial years.

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Reporting Date

Senator McEWEN (South Australia—Government Whip in the Senate) (15:35): On behalf of Senator Sterle, I seek leave to move a motion relating to the presentation of a report of the Rural and Regional Affairs and Transport Legislation Committee, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 and the Qantas Sale Amendment (Still Call Australia Home) Bill 2011 be extended to 14 March 2012.

Question agreed to.

BUSINESS
Leave of Absence

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:36): by leave—I move:

That leave of absence be granted to Senator Milne on 1 March 2012 for personal reasons.

Question agreed to.

BILLS
Native Title Amendment (Reform) Bill (No. 1) 2012
First Reading

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:37): I move:

That the following bill be introduced: A Bill for an Act to amend the Native Title Act 1993 to further the interests of Aboriginal peoples and Torres Strait Islanders, and for related purposes.

Question agreed to.

Senator SIEWERT: I present the bill and move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:37): 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 SIEWERT: I table an explanatory memorandum and seek leave to have the second reading speech incorporated in Hansard.

Leave granted.
The speech read as follows—

NATIVE TITLE AMENDMENT (REFORM) BILL (NO. 1) 2012

The Native Title Amendment (Reform) Bill (No. 1) 2012 is the second iteration of Native Title reform proposed by the Australian Greens.

The Bill seeks to address key failures of the Native Title Act 1993 (NTA). We want to provide meaningful rights and a basis for economic and community development to Aboriginal and Torres Strait Islander people. Something the Act has failed to do in the 18 years since it came into force.

By introducing this Bill and any further reforms we intend to contribute constructively to a debate about native title reform that can ultimately lead to simpler legislation which produces more meaningful outcomes in a more timely fashion for all those involved.

In March 2011, I introduced the Native Title Amendment (Reform) Bill 2011. The Bill was referred to the Senate Legal and Constitutional Affairs Standing Committee in May last year. Over 35 submissions were received, from a range of stakeholders and government agencies during the course of the inquiry. The majority of these were supportive of the intent of the legislation – many noting the great need for the Native Title Act to be reformed. The submissions contained many useful suggestions on how the Bill might be strengthened and improved.

This new Bill builds on those suggestions. We have closely examined the submissions and incorporated numerous revisions, creating a more robust and effective piece of law.

In the original Bill we sought to address some of the 'low-hanging fruit' of native title reform – by targeting some of the areas of native title law where relatively simple amendments could have far-reaching implications for addressing some of the current barriers to effective native title outcomes. In this Bill we have chosen the most important and most urgent of those areas and drafted amendments which we hope will gain broad support.

We are still committed to incorporating aspects of the United Nations Declaration on the Rights of Indigenous Peoples into the Native Title Act. We are currently exploring the best way to do this and intend to introduce another Bill later this year.

As I said when I introduced the original Bill, if we do not work together to traverse the "impenetrable jungle" that is native title litigation, there is little hope for just outcomes for Aboriginal and Torres Strait Islander peoples. The second reading speech for the original Bill is still relevant for this current revised Bill:

... nearly two decades after the introduction of the NTA it is clear that native title has failed to deliver on its promises.

The Preamble states that …

"The people of Australia intend:

(a) to rectify the consequences of past injustices by the special measures contained in this Act… for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and

(b) to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire."

We hope that by the time we reach the twentieth anniversary of the NTA in 2013, the process of native title reform will be seriously underway, and we will be able to see native title delivering on some of the seemingly forgotten promises contained in the preamble to and objects of the NTA.

In practice, the people who the Act recognises and describes as "...the most disadvantaged group in society..." as a consequence of the dispossession of their lands, have had to rely on one of the longest and most complex pieces of Australian legislation to try to "...secure their advancement..." and to recognise and protect (not establish) their pre-existing rights.

In nearly two decades since its introduction, only a handful of native title claims have been resolved, with many of these being in remote areas which had been of little interest to European colonists. For the majority of our Aboriginal and Torres Strait Islander people, particularly those in
urban areas and regional centres, native title has offered little and delivered less.

Meanwhile the promised complementary measures have also been a grave disappointment – the land fund has only been able to help out a limited number of communities, and the social justice package never eventuated.

It is clear that in the application and judicial interpretation of the NTA a huge gap has emerged between these original promises and intentions, and the on-the-ground experience of Aboriginal and Torres Strait Islander communities seeking to have their native title rights recognised and protected.

Justice Kirby characterised the barriers to the recognition of native title rights as comparable to an impenetrable jungle, saying:

"It would be easy for the judicial explorer to become confused and lost in the undergrowth to which rays of light rarely penetrate. Discovering the path through this jungle requires navigational skills of a high order. Necessarily, they are costly to procure and time consuming to deploy. The legal advance that commenced with Mabo v Queensland, or perhaps earlier, has now attracted such difficulties that the benefits intended for Australia's Indigenous peoples in relation to native title land and waters are being channelled into costs of administration and litigation that leave everyone dissatisfied and many disappointed." 2

There are many who still believe that the recognition of rights to land, culture and resources through native title could provide a strong and sustainable basis for 'advancement' by underwriting and enabling community and economic development.

The former Prime Minister Kevin Rudd, for instance, spoke of the capacity for respect for native title to provide a sturdy foundation for durable economic and social outcomes in his Apology speech.3

It is a tragic shame that neither his government nor its successor have done anything to seek to strengthen and facilitate recognition of the native title rights of Aboriginal and Torres Strait Islander Australians to help make that vision a reality. Instead the only changes to native title laws we have seen in these two terms of Labor Government have been those that either diminished native title rights or at the very least have failed to enhance the capacity of traditional owners to participate in securing meaningful outcomes.

This of course comes on the back of over a decade of Coalition Government under John Howard that systematically wound back the rights of Indigenous Australians, diminished native title rights, and saw the scrapping of all the existing avenues for representation and decision making with the removal of ATSIC.

The challenge for this government in moving forward to make the vision of the apology a reality is to put aside the paternalism of the Howard/Brough years and to actively engage Aboriginal communities in policy development, decision making and community development instead. This also means recognising, as the Cape York Land Council put it, that "[m]eaningful respect for native title as a valuable property right is part of the solution … not an impediment" 4.

The impetus for reform

The impetus for this bill arose from the interactions with Aboriginal and Torres Strait Islander Australians and native title experts that took place in and around the 2009 inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the Native Title Amendment Bill 2009. A Bill which in and of itself had little to do with reforming native title to deliver better outcomes.

The discussions that took place around that Senate inquiry crystallised many of my long-standing concerns with the NTA which lead to a continuing dialogue on broader native title reform that has ultimately led to these reforms.

At the time of the introduction of the first 2009 bill, the Attorney General Robert McClelland stated that the intent of the Australian Government in introducing the bill was "... achieving more negotiated native title outcomes in a more timely, effective and efficient fashion" 5.

The vast majority of the evidence tended to that Senate inquiry supported the need for native title reform that would achieve more effective native title outcomes in a more timely and
resource efficient manner but disagreed with the Attorney General's suggestion that the Government's reforms came anywhere near achieving those outcomes.

As Tony McAvoy of the National Native Title Council put it at the time:

"...the amendments that are proposed in this amendment bill are not controversial. They may make some small difference but they are not going to make any vast change in the way in which native title matters are dealt with. There is not going to be any rush of settlement of native title applications as a result of any of these amendments."

The submissions to that inquiry identified a number of other possible reforms to the NTA that promised to address the barriers to timely and meaningful native title outcomes and went beyond the narrow agenda of the government's first 2009 bill. These included addressing the 'burden of proof' through a rebuttable presumption of continuity, strengthening the requirements for parties to 'negotiate in good faith', and raising the threshold on extinguishment, among others.

Many of the issues raised in this inquiry were further discussed and developed in the Native Title Report 2009 of the Australian Human Rights Commission by the then Social Justice Commissioner, Tom Calma. This report made an important series of recommendations for native title reform, many of which have provided the basis for the reforms proposed within this bill.

I note that this bill does not cover all of the reforms recommended by Tom Calma, and includes a number of measures that he did not discuss at the time. While many of the good ideas can be attributed to Mr Calma and to others, I take full responsibility for the way they have been interpreted as legislative amendments. I commend the work of the former Commissioner and thank him sincerely for his efforts.

I would also like to thank the native title experts, Aboriginal and Torres Strait Islander organisations, land councils and representative bodies that have contributed their thoughts, ideas and comments to us in response to our inquiries and as part of the consultation process we undertook around the discussion paper and draft amendments proposing these reforms.

The right to negotiate also applies offshore

This item seeks to improve procedural rights over offshore areas for native title holders. In doing so it seeks to address the contradiction between the existing provisions of subsection 26(3) of the NTA (that limits the right to negotiate to acts that relate to a place on the landward side of the mean high-water mark) and the fact that native title rights have been recognised to exist in offshore areas.

This amendment is consistent with the views expressed by the then Attorney General Robert McClelland, who stated in 2009 that:

"When it comes to behavioural change, I accept that the Australian Government has to lead by example. I believe we are doing just that. For example, last year I announced that the Government will take a more flexible approach to recognising native title in Australia's territorial waters. The Australian Government now accepts that native title can exist out to the limits of the modern territorial sea, generally 12 nautical miles from the territorial sea baseline. Given that the Government is involved in all claims over offshore waters, this approach should help bring about more negotiated settlements."

The limitation of procedural rights under subsection 26(3) that denies traditional owners a right to negotiate over future acts in offshore areas is clearly inconsistent with this recognition that native title can exist up to 12 nautical miles out to sea, and so item 2 of the bill remedies this by repealing subsection 26(3) to remove this unnecessary contradiction and allow traditional owners the right to negotiate over acts that impact on their sea country.

Strengthening good faith negotiations

The future acts regime plays a crucial role in the manner in which traditional owners are able to exercise their native title rights, by governing the requirements placed on parties negotiating agreements concerning proposed activities. There has been sustained criticism of the manner in which the future acts regime has led to protracted and uncertain outcomes, and calls for the act to be amended to create stronger incentives for
beneficial agreements and to achieve greater procedural fairness by striking a better balance between native title and non-native title interests.

To this end the amendments proposed in items 3 to 12 of this bill expand on the current requirements for parties to negotiate 'in good faith' in relation to future acts.

Currently the burden of proof for proving the absence of good faith in negotiations is on the native title party, rather than the proponent of a proposed future act. This appears procedurally unfair as it is in effect the proponent who is effectively asserting that they have negotiated in good faith for the required period when they apply for a matter to be taken to arbitration.

Item 3 of this bill seeks to strengthen the requirement to negotiate in good faith, in line with the recommendations of the Native Title Report 2009.10

The NTA as it stands prevents parties from resorting to an arbitral body, such as the National Native Title Tribunal, for a period of six months from the issue of a notice that the government intends to grant a mining tenement. This fixed negotiating period does not take into account the relative scope or difficulty of the proposed negotiations – it is the same irrespective of whether the parties have established previous agreements or are meeting for the first time, and irrespective of whether they are negotiating a single act or attempting to conclude an overarching agreement on a 'whole of claim' basis.

So on the one hand, parties who are undertaking complex negotiations in a genuine attempt to make efficient use of their time and resources to secure wide-scale agreements over large areas of land and multiple future acts need to do so within the six month limit (irrespective of the number of negotiations and the lack of resources of the native title representative body). On the other hand, proponents who are not inclined to enter into serious negotiations with native title holders can effectively stonewall and sit on their hands for six months, knowing they can then force the matter to arbitration without any requirement to demonstrate they have made all reasonable efforts to come to agreements.

To this end item 3 of this bill substitutes a new paragraph 31(1)(b) which requires parties to negotiate in good faith for at least six months and to use all reasonable efforts to come to an agreement about the conditions under which each of the native title parties might agree to the proposed future act. As made clear in the evidence to the Inquiry, this provision does not limit the ability of parties to reach agreement within 6 months but it does require negotiation for at least 6 months before either party can apply to the Tribunal.

Item 4 inserts new subsections 31(1A)–(1C), providing clarification of what the requirement to negotiate in good faith really means.

The good faith negotiating requirements are one of the few legal safeguards that native title parties have to protect their native title interests under the NTA. While section 31 of the NTA seeks to oblige the parties to negotiate in good faith during the negotiating period, in practice it is virtually impossible for claimants to establish that a proponent is not acting in good faith. This is borne out by the decision of the Full Federal Court in the matter of FMG Pilbara v Cox11 - a decision which substantially watered down the right to negotiate, to the extent that any negotiation in which the native title party cannot demonstrably prove bad faith is effectively considered to be a good faith negotiation.

Item 4 strengthens the requirement to negotiate in good faith by including explicit criteria for the type of negotiation activities that are indicative of good faith and clarifies that deceptive or unsatisfactory conduct is not a perquisite to demonstrate a failure to negotiate in good faith. Furthermore, it places a requirement on the arbitral body to consider the financial resources, and in the case of the native title party, the demands of cultural and religious practices, when considering whether a party has negotiated in good faith.

Item 7 reverses the onus of proof so that the party that is asserting good faith is the one that is required to prove it, by inserting a new subsection 31(2A).

Item 10 provides that a party may not apply to an arbitral body (under subsection 35(1)) until the party has first demonstrated good faith.
negotiations have taken place in accordance with section 31.

Strengthening coexistence by disallowing extinguishment

Another area where the NTA has failed to deliver is the manner in which the bar on extinguishment has been set too low. This has meant that in practice the principle of 'coexistence' of native title rights, which is clearly envisaged within the NTA, is too often brushed aside or ignored.

Item 13 of the proposed amendments seek to address this issue. Item 13 inserts new sections 47C and 47D. The new section 47C provides that in the case of National, State or Territory Parks, extinguishment is to be disregarded. Given the nature of national parks, it is appropriate for the non-extinguishment principle to apply and to allow for the co-existence of native title rights and interests. Chief Justice French has used the example of the vesting of a nature reserve on Crown land as one act which could be determined to have extinguished native title, where it would make sense to be able to disregard extinguishment and provide for an agreement between the traditional owners and the state to recognise native title rights in the interests of managing that reserve.12

New section 47D provides that at any time prior to a determination, the applicant and a government party can make an agreement that the extinguishment (or possible extinguishment) of native title rights and interests can be disregarded.

The current breadth and permanence of the extinguishment of native title through the provisions of the NTA is arguably unjustifiable, unnecessary and in breach of Australia's human rights obligations.13

Section 47 of the NTA provides a model for coexistence of native title and other rights on pastoral leases. The new sections in item 13 are consistent with the current application of the NTA, and allow the existing coexistence provisions to be extended to nature reserves and allow extinguishment to be disregarded by agreement in a wider range of circumstances.

Presumption of continuity

In practice, the bar for the recognition of native title rights has been set too high – with the onus of proof of cultural continuity being placed on Aboriginal and Torres Strait Islander people, and with evidence standards effectively mandating a reliance on the written accounts of European colonists that deny the predominantly oral nature of Indigenous cultures.

As the Australian Human Rights Commission argued in its submission to the 2009 Senate Inquiry:

"It cannot be disputed that Indigenous peoples lived in Australia prior to colonisation and that the Crown was responsible for the dispossession of Indigenous peoples throughout Australia.

It has also been acknowledged by governments over time through various policies, laws and statements of recognition, including the creation of land rights regimes and other mechanisms, that Indigenous peoples are the Traditional Owners of the land.

It is in this context that the Commission argues that it is unjust and inequitable to continue to place the demanding burden of proving all the elements required under the Native Title Act on the claimants."

The issue of prior occupation and hence the pre-existence of native title rights is not being questioned (as the preamble to the NTA readily acknowledges) and so under these circumstances it seems to be 'fundamentally discriminatory'14 and a gross injustice to place the burden of proof upon the disposessed. This is particularly true when we consider that it is State and Commonwealth Governments that have granted the rights that have lead to the possible extinguishment of native title, and that it is those governments who hold many of the historic records needed to establish connection.

The intent of providing for a rebuttable presumption of continuity is to shift the burden of proof in a way that encourages government parties (who must now take on the role of adducing evidence in their archives to rebut presumptions) to be more inclined to settle claims with a strong prospect of success – rather than
dragging them out in the Federal Court as they are currently entitled to do.

Item 14 of our proposed amendments to the NTA seeks to address this issue, by putting into legislation amendments suggested by Chief Justice French\(^1\) that reverse the burden of proof to create a rebuttable presumption of continuity.

Moving to resolve more native title cases by consent determination could result in timelines being 'streamlined beyond recognition' and costs being 'reduced out of sight'\(^2\). However, as the Native Title Report 2009 points out\(^3\), a respondent would still be able to defeat a native title claim due to the operation of section 223, by providing appropriate evidence.

We have adopted a suggestion from the Law Council of Australia to insert new section 61AB clarifying that a court may determine that section 223 has been met notwithstanding substantial interruption of or significant change to traditional laws and customs if the interruption or change resulted from the action of a State or a Territory or a person or a party who is not an Aboriginal or Torres Strait Islander.

**Definition of 'traditional'**

As described in the second reading speech to my original Bill, in practice, the manner in which 'traditional' culture is defined by section 223 of the Act fails to recognise the dynamic and living nature of Indigenous Australian cultures. Instead it seeks to freeze culture in some pre-colonial past, which defines traditional culture based on a snapshot of cultural practices at the time of European settlement and an expectation that they should continue unchanged. This ignores the fact that by their very nature the cultures of Australia's first nations were geared towards adapting to and surviving in an often harsh environment, not to mention the substantial efforts and resources expended by successive governments aimed at forcing or encouraging changes in behaviour.

This limited and unrealistic definition of 'traditional' means that in practice it is far too easy for a respondent to rebut the presumption of continuity by establishing a law or a custom is no longer practiced in exactly the same way it was at the point of colonisation. A more sensible and realistic definition of traditional culture would be one that "encompasses laws, customs and practices that remain identifiable through time"\(^4\) and allows at law for an appropriate level of adaptation to the changing circumstances brought about by colonisation.

The narrow application of section 223 has created insurmountable barriers to cultural resurgence as clearly seen by the Noongar, Larrakia, Wongatha and Yorta Yorta cases. In practice, the policy decision to narrowly interpret continuity and traditional practice under section 223 in the Yorta Yorta\(^5\) case has created a situation which directly contradicts the original objects of the NTA – in that it means that there is no opportunity to raise the role of past injustices in the interruption of cultural continuity in an Act whose every intent is to provide remedy to those injustices.

Where a group has revitalised its culture, laws and customs by actively seeking out and recovering those elements of cultural continuity driven underground by dispossession, forced relocation, or the removal of children, a comparatively minimal interruption to the sharing of that culture across the claimant group should not be sufficient to prevent the recognition of native title rights.

This state of affairs is clearly at odds both with the stated intentions of the NTA and Australia's international human rights commitments. On this basis it would be sensible to empower the Court to disregard any interruption in the observance of traditional laws and customs where it is in the interests of justice to do so.

Item 18 of our proposed amendments inserts new subsections 223(1A), (1B), (1C) and (1D) which provide clarification of the definition of 'traditional' to ensure that the interpretation of what counts as ongoing Indigenous culture and law is based on a more realistic understanding of the maintenance and continuity of traditional practices and cultural values over time. This should help ensure that communities who have maintained a strong connection to their lands, laws, cultural practices and values will not have their recognition discounted based on changes which do not fundamentally alter the core of their cultural identity as traditional custodians of their land and sea country.
Commercial rights and interests

As mentioned in the second reading speech to my original Bill, in practice, the rights native title have delivered have also not been strong or complete enough to effectively provide 'for the advancement' of traditional owners or to provide a basis for economic and cultural development as they have not provided an unambiguous and exploitable right to land and resources.

Currently there is no mechanism to provide for the recognition of commercial rights to enable agreement making that delivers on the stated intent of the NTA "for securing the adequate advancement … of Aboriginal peoples and Torres Strait Islanders" by providing a vehicle for social and economic development. Furthermore, courts have appeared to take a view of customary Indigenous laws that does not properly recognise existing cultural economies and effectively distinguishes between customary or cultural rights and commercial ones.

This is at odds with a wealth of existing evidence of customary trade rights and practices which were based in customary rights to resources — including aquaculture, trade in clay and ochres and turtle shells, as well as crafts such as baskets and spears. It also includes strong evidence of a long-term trade relationship with Macassan fishermen from Indonesia.

The current Minister for Indigenous Affairs, Jenny Macklin, has stated that the Government considers that Indigenous communities should be able to use their native title rights to leverage economic development. However, as yet, this government has not sought to amend the NTA to strengthen the rights of native title holders in this or any other matter, and have largely confined themselves to amendments to the act that reduce the rights of native title holders.

The Leader of the Opposition, Tony Abbott, recently spoke of his "determination to ensure that the Aboriginal people of Australia finally get a fair go where their land is concerned" and went on to say that "the land which Aboriginal people have secured is obviously a cultural and spiritual asset but it should also be an economic asset." On the face of it, it would seem in principle that there is cross-party support for these measures.

To this end, item 19 the bill provides that native title rights and interests can be of a commercial nature, removing what is an unnecessary impediment to Indigenous economic development.

Conclusion

As with our previous bill, the reforms contained in this legislation put forward clear and specific measures to address a number of key areas of interest to native title claimants.

They address the barriers claimants face in making the case to demonstrate their pre-existing native title rights and interests and they tackle some of the procedural issues within the future acts regime that restrict the ability of native title holders to assert and exercise their native title rights.

As we stated before, native title has the potential to play an important role as a basis for the economic and community development of those of Australia's first peoples who have been able to maintain their connection to their traditional lands and culture in the face of dispossession.

It is clear that the original intention of the Parliament was that the Native Title Act would 'rectify the consequences of past injustices' and secure their 'adequate advancement and protection', however, it is equally clear that in its application this complex area of law has failed to deliver on those hopes.

The strong relationship of Aboriginal and Torres Strait Islander peoples with their land and sea country should provide a firm basis on which to strengthen their culture and build their future. To make this happen, native title reform is needed.

The Native Title Amendment (Reform) Bill (No. 1) 2012 is an important first step on that path — I commend it to the Senate.

Cape York Land Council, Submission 2, Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Native Title Amendment Bill (No. 2) 2009, p6.


Transcript, p20.

As recommended by Chief Justice Robert French.

AHRC, Native Title Report 2009, p106.


pp 104-107.


HREOC, Native Title Report 2002.

Les Malezer, 2009 Mabo Lecture.


Justice North & T Goodwin, Disconnection the gap between law and justice in native title, 2009.

AHRC, Native Title Report 2009, p82.

AHRC, Native Title Report 2009, p85.

Yorta Yorta v Victoria, High Court of Australia (2002) 214 CLR 422.


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

Leave granted; debate adjourned.

Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012

Reference to Committee

Senator CORMANN (Western Australia) (15:38): I move:

That the provisions of the Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Bill 2012 be referred to the Parliamentary Joint Committee on Corporations and Financial Services for inquiry and report by 13 March 2012.

Question agreed to.

MOTIONS

International Women's Day

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (15:38): I, and also on behalf of Senators Boyce and Cash, move:

That the Senate—

(a) notes that 8 March is International Women's Day (IWD) and that the theme for IWD 2012 is 'Empower Rural Women — End Hunger and Poverty';

(b) acknowledges the work that UN Women, the United Nations (UN) organisation dedicated to gender equality and the empowerment of women, undertakes to improve the conditions of women, both domestically and internationally;

(c) notes the statement made by Kofi Annan, former UN Secretary-General on International Women's Day 2005 that 'study after study has taught us that there is no tool for development more effective than the empowerment of women. No other policy is as likely to raise economic productivity, or to reduce infant and maternal mortality. No other policy is as sure to improve nutrition and promote health — including the prevention of HIV/AIDS. No other policy is as powerful in increasing the chances of education for the next generation';

(d) acknowledges:

(i) that despite the many rights and privileges Australian women enjoy, there remain challenges that we must strive to overcome, and

(ii) that rural women with disabilities are particularly at risk;

(e) notes, with concern, that in Australia, violence against women is still far too common, with Australian Bureau of Statistics data continuing to show that 1 in 3 women have experienced physical violence since the age of 15; and

CHAMBER
(f) recognises that Australians have a fundamental obligation to speak out and protect the human rights of women, both in Australia and overseas.

Question agreed to.

Assange, Mr Julian

Senator LUDLAM (Western Australia) (15:39): I move:

That the Senate notes that Australian citizen Julian Assange has been recognised as a journalist by the:

(a) Queen's Bench Division of the British High Court ruling of 2 November 2011;
(b) Australian Walkley Award for Most Outstanding Contribution to Journalism 2011;
(c) Martha Gellhorn Prize for Journalism 2011;
(d) Italian International Piero Passetti Journalism Prize of the National Union of Italian Journalists 2011;
(e) Spanish José Couso Press Freedom Award 2011;
(f) Spanish Voice of the West Freedom of Expression Award 2011; and
(g) Amnesty International UK Media Award 2009.

The DEPUTY PRESIDENT: The question is that notice of motion No. 666 moved by Senator Ludlam be agreed to:

The Senate divided. [15:44]

(The Deputy President—Senator Parry)

Ayes.................11
Noes..................25
Majority...............14

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

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

NOES
Arbib, MV
Birmingham, SJ
Cameron, DN
Crossin, P
Farrell, D
Feeney, D
Furner, ML
Kroger, H
Marshall, GM
McKenzie, B
Moore, CM
Polley, H
Sterle, G
Back, CJ
Brown, CL
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Gallacher, AM
Lundy, KA
McEwen, A (teller)
McLucas, J
Parry, S
Pratt, LC

Question negatived.

Senator LUDLAM (Western Australia) (15:45): Mr Deputy President, I seek to make a brief statement.

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

Senator LUDLAM: I would like to observe what motion No. 666 says. Perhaps there is some misconception that it is an attempt to compel the Senate to take a particular view or to compel the government to take a particular action. I would like to note that this motion, No. 666, says that the Senate notes that the Senate notes that Australian citizen Julian Assange has been recognised as a journalist by others. It is a fairly simple and straightforward expression of facts that other institutions and entities around the world recognise this individual as a journalist.

I am not asking the Senate to acknowledge that he is a journalist; I am asking us to acknowledge that these entities consider him as such and, for some reason, the parties have been unable to agree to even that. He has been recognised by and received awards from the following entities: the Australian Walkley for Most Outstanding Contribution to Journalism 2011; the Queen’s Bench Division of the British High Court ruling of 2 November 2011; the
Martha Gellhorn Prize for Journalism 2011; the Italian International Piero Passetti Journalism Prize of the National Union of Italian Journalists 2011; the Spanish José Couso Press Freedom Award 2011; the Spanish Voice of the West Freedom of Expression Award 2011; and the Amnesty International UK Media Award 2009.

These institutions have recognised Mr Assange for what he is, a journalist, and Wikileaks for what it is, a publishing organisation. Therefore they are protected by the First Amendment to the United States Constitution, and perhaps then he will not be dropped into a hole at Guantanamo Bay or somewhere that we do not even know the name of. As for doing the job of a journalist, I will perhaps try again with a motion that is even weaker and see if senators could support that.

Malaysia: Rare Earth Processing

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:48): I move:

That the Senate—

(a) notes:

(i) the public protests in Malaysia against the establishment of a rare earth processing plant by the Australian company Lynas Corporation Ltd, 

(ii) the protests are supported by the Malaysian Opposition leader Anwar Ibrahim, and

(iii) the concerns of the protestors include the radioactive by-product that will be produced by the plant and disposed of in Malaysia, the lack of benefit to the local communities particularly given the 12 year tax break granted to the project and the threat from the plant to the local environment, including the Balok River; and

(b) calls on the Australian Government to report to the Senate by Thursday, 1 March 2012 on what assistance has been provided to Lynas Corporation Ltd and what due diligence has or will be done on Lynas Corporation Ltd.

The DEPUTY PRESIDENT: The question is that motion No. 667 standing in the name of Senator Bob Brown be agreed to.

The Senate divided. [15:49]

(The Deputy President—Senator Parry)

Ayes ........................ 11
Noes .......................... 25
Majority .................... 14

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

NOES
Arbib, MV ............................... Back, CJ
Birmingham, SJ .......................... Brown, CL
Cameron, DN ............................. Colbeck, R
Crossin, P ............................... Edwards, S
Farrell, D ............................... Fawcett, DJ
Feeney, D ............................... Fifield, MP
Furner, ML ............................... Gallacher, AM
Kroger, H ............................... Lundy, KA
Marshall, GM ............................ McEwen, A (teller)
McKenzie, B ............................. McLucas, J
Moore, CM ............................... Parry, S
Polley, H ............................... Pratt, LC
Sterle, G

Question negatived.

Murray-Darling Basin

Senator MCKENZIE (Victoria) (15:51): I seek leave to amend general business notice of motion No. 665 standing in my name by amending (vii) and omitting (d), as circulated in the chamber, and I ask that it be taken as formal.

Leave granted.

Senator MCKENZIE: I move the motion as amended: 

That the Senate—

(a) notes the presence of the Women for a Living Basin delegation in Canberra on Wednesday, 29 February 2012, representing
women and families from Murray Darling Basin (MDB) communities in southern New South Wales;

(b) recognises:
  (i) the widespread concern that the draft Basin Plan is having on MDB communities, and
  (ii) that these concerns include mental stress, job and business uncertainty, loss of skills, bank pressure, impact on land prices and equity, families relocating and pressure on schools; and

(c) supports:
  (i) the call for more comprehensive consultation in all MDB communities by the Murray-Darling Basin Authority (MDBA) than allowed for by the number of meetings held so far,
  (ii) the call for the MDBA to publicly release details of planned consultation meetings weeks in advance to allow communities to plan ahead so that they can attend,
  (iii) deeply held community concerns at the MDBA’s decision to hold consultation meetings during various harvests making it difficult for farmers to attend,
  (iv) the call on the Parliament by communities, such as those represented by the Women for a Living Basin, to recognise the importance of MDB communities and their long-term survival, sustainability and certainty,
  (v) the call to ensure the final plan does not lead to significant economic impact in terms of loss of jobs, skills and the impact on families,
  (vi) the call by MDB communities to ensure a final basin plan balances the needs of communities with those of the environment, and
  (vii) the call on the Government to listen to, not ignore, community and farmer concerns about non-strategic water buybacks.

Question agreed to.

COMMITTEES

Scrutiny of Bills Committee

Report


Ordered that the report be printed.

Community Affairs References Committee

Report

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:53): I present the report of the Senate Community Affairs References Committee on former forced adoption policies and practices.

Ordered that the report be printed.

Senator SIEWERT: I move:

That the Senate take note of the report.

I present this report with great pleasure. I say 'pleasure' but it is pleasure in terms of finally having this issue addressed. The time I have to speak now will not do justice to the report and the evidence we have been given, so I urge members of the community to read the report.

I would like to start by quoting Ms Charlotte Smith, who we quote in our report. She said:

A mother whose child has been stolen does not only remember in her mind, she remembers with every fibre of her being.

I would like to acknowledge all the mothers, fathers, adoptees and family members who are in the galleries today. Some have for the first time shared their experience of their forced adoption with the committee and the community. I know how much it took for them to do that and what a toll it has taken. I would also like to quote from a mother who wanted her name withheld. She said:

A mother whose child has been stolen does not only remember in her mind, she remembers with every fibre of her being.

I would like to acknowledge all the mothers, fathers, adoptees and family members who are in the galleries today. Some have for the first time shared their experience of their forced adoption with the committee and the community. I know how much it took for them to do that and what a toll it has taken. I would also like to quote from a mother who wanted her name withheld. She said:

I'd lie in bed every night with my arms wrapped around my baby inside of me knowing that I would never hold him after birth. I'd feel his feet and hands through my own stomach as he moved around, knowing that I wasn't ever going to feel them after he was born. I'd talk to him and tell him that I would find him again one day and that
I and his father loved him and always would. I'd pray to God every night for him to send [someone] to get me out of there and show me a way to keep my baby, but no one did. I'd think of running away, but where would I run to, who would I run to.

That typifies so many of the stories that we heard from women who thought they could do nothing else but not consent. People did not always consent, but nothing else was going to happen than having their baby taken.

On behalf of the committee, I acknowledge and sincerely thank the mothers, fathers, adoptees and family members who contributed to this inquiry and shared their accounts—and these were accounts, not stories, of their experience; that was very clearly said during the inquiry—as I said, sometimes for the first time. These accounts had a profound effect on committee members and, I am sure, on all who heard them.

It is undoubted that past policies and practices have caused great harm and hurt to mothers, fathers, adoptees and their family members. You cannot come to any other conclusion when you are listening to the evidence. We received hundreds and hundreds of submissions, we spoke to dozens and dozens of witnesses—not everybody, because we just could not—and we received thousands and thousands of pages of submissions and evidence. We also had access to national archives and archives from various government departments. The evidence tells the accounts of mothers and fathers who were pressured into giving up their babies by their families, institutions—both state and territory and private institutions—social workers, doctors, nurses and those who they rightly expected to help them. There was evidence of consent not properly taken. There was evidence of coercion. All the pressure, practices and policies have had lifelong impacts on mothers, fathers, adoptees and family members.

To the adoptees I would like to say: we know that your mothers did not abandon you. You were not thrown away. This is what we have received evidence about as well: the babies who were adopted, who are now adults, felt that they had been abandoned. Mothers have told us that they do not want their now adult children to feel that. I quote from the report:

The committee received evidence from hundreds of women who gave birth in hospitals and other institutions between the late 1950s and the 1970s. Overwhelmingly, these women alleged that laws were broken or that there was unethical behaviour on the part of staff in those institutions. The common failings included applying pressure to women to sign consents, seeking consent earlier than permitted by the legislation, failing to get a consent signature or obtaining it by fraudulent means, and denial of reasonable requests, particularly for a mother to have access to her child. As explained—

in our report—
certainly after new laws were enacted in the mid-1960s, actions of these types would in some cases have been illegal. Other experiences that reflected unethical practices included failure to provide information, and failure to take a professional approach to a woman's care. It is time for governments and institutions involved to accept that such actions were wrong not merely by today's values, but by the values and laws of the time. Formal apologies must acknowledge this and not equivocate.

The committee believes that governments and institutions need to take a more credible approach to the former forced adoption practices. The committee does not express a view on any particular cases or on the prevalence of illegal or unethical actions, but apologies that deny them altogether lack credibility in the face of the weight of evidence. The committee agrees that official
apologies should also identify the key wrongs that vulnerable mothers were not given the care and respect that they needed during this difficult period of their lives, that mothers were poorly advised, that they were stigmatised by professionals and institutions and that organisations and their staff in positions of authority stood in judgment of these women instead of respecting them.

The committee recommends that the Commonwealth government issue a formal statement of apology that identifies the actions and policies that resulted in forced adoption and acknowledges, on behalf of the nation, the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents. The committee recommends that state and territory governments and non-government institutions that administered adoption should issue formal statements of apology that acknowledge practices that were illegal or unethical as well as other practices that contributed to the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.

We have heard it said that what happened reflected the standards and the views of the time. We believe that is in fact not true. The committee concludes—

An incident having occurred in the gallery—

Senator SIEWERT: The committee concludes that the government and institutions in the 1960s and 1970s were presented with a range of professional advice about adoption. Little of it challenged adoption as a practice; however, a great deal of it cautioned against placing pressures on mothers to encourage the surrender of babies for adoption, and some of it explicitly drew attention to the requirements of the law and the risks of it being violated. The evidence presented to us also shows that adoption should not have been treated as inevitable. We recommend that official apologies should include statements that take responsibility for the past policy choices made by institutions, leaders and staff and not be qualified by reference to values or professional practice during the period in question.

I am going to run out of time to address all of the 20 recommendations that are contained in this report. It also refers to the need for a national framework to address issues of reparation around the provision of professional support and counselling services, access to data and grievance procedures. I urge every member of this chamber and the community to read the report. I would like to specifically acknowledge the very hard work of my fellow committee members. This was a really, really hard inquiry. It was a very emotional inquiry. You could not help but take to heart the stories of the people, many of whom are in the gallery today. I would also very strongly like to thank the work of the committee secretariat: Dr Ian Holland, Dr Tim Kendall, Mr Gerry McInally, Ms Janice Webster and Mr Tim Hillman. These people went above and beyond the call of duty in order for us to get this report finished, particularly as our committee has a very heavy workload. We wanted as a committee to do justice to the accounts and experiences of the mothers, the fathers, the adoptees and the families who gave us so much evidence. For us, the evidence is overwhelming. The damage caused by these past policies and practices is overwhelming. It happened. We cannot deny it happened, and we need to apologise and put in place a framework that addresses it. (Time expired)

An incident having occurred in the gallery—

CHAMBER
The DEPUTY PRESIDENT: Before Senator Moore commences, I know that this is a very emotional issue, but I just remind people in the gallery that, whilst it was tolerated the first time and the second time, it would be nice if you would refrain from applauding. I understand that the emotional aspect is there, but we do need to maintain that decorum in the Senate. Thank you, and I hope you understand.

Senator MOORE (Queensland) (16:04): Thank you, Mr Deputy President. To the people in the gallery, to the people who are listening to this and to the people who have given us their lives, this is your report. Take it, read it and be proud, because none of this would have happened without each of you who have given us the incredible honour and the responsibility of putting on paper and putting into the community knowledge your histories.

Five years ago in my office in Brisbane, three women came to see me. They brought some pictures and a couple of books that they had written, and they brought their pain and their anger and their disgust, because no-one had believed what had happened to them. I was sitting listening to them at that time and I personally could not believe that in my country, in places that I knew, to people with whom I had worked, the experiences that they told me about had happened. In some ways, I was a bit fortunate because I live in Brisbane, and the first formal acknowledgement of the work that had happened and the horror that had occurred was made by the Royal Brisbane and Women's Hospital, a hospital I knew well. I think it is important that we recognise here that a number of people over the last five years have begun to formally acknowledge the horrors that occurred in our community.

That is not to say that people did not know beforehand. No-one can pretend that what appears in our report was completely unknown in this country. It was known. Either it was ignored or it was explained away that the way these women were treated was somehow for their good. They were looking to—and I quote this with great emphasis—'the best interests of the child'. When I heard the women who gave evidence to the inquiry, and when I heard particularly the children of those women who gave evidence, I could accept that some people in the past thought that they were acting in the best interests of the child. However, I challenge those people now, wherever they are, whatever their values base was and whatever their explanations were, to ask those children: was it actually in the best interests of the children, who had no choice? Was it actually in the best interests of the mothers, who were in some cases—and I do qualify it by saying 'in some cases'—given no choice? Was it actually in the best interests of the fathers, many of whom could not come to our inquiry because they did not know what had happened?

So often we found out during the process that fathers were dismissed and the knowledge that they were going to be parents was kept from them. In many cases the mothers and fathers were separated, but my particular horror was the fact that in many cases they were threatened with the law of the day so that if the mother gave the name of the father and they were under age their whole freedom, their legal record and their chance to have any future were all threatened. That they would know they were going to have a child was a risk.

What we have been able to do in this place is important, but it is only the first step. Sometimes, in the wonderful job we have in the Senate, we can be part of something that has real potential to change lives and to
I think today is one of those days. We can share in the Senate with the people for whom it is most important an opportunity to take a step forward. We have 20 recommendations. They will go through the processes and go to governments. However, the key aspect is that the history of what happened in our country, what happened to women, what happened to men and what happened to the children—who are now adults but I say at this stage 'the children'—over a long period of time will now be known and acknowledged.

One of the most poignant moments of our whole inquiry was when a woman stood before us and said: 'I just want to make sure that my child knows that I loved him. I want to make sure that he—she had found out through the system that her child had been born and was a boy—'knows that I did not give him away.' Every family deserves to know their own history.

Different senators will talk about different things and this discussion will go on, but I want to talk about knowing who you are and knowing that you have a birth certificate that indicates who you are. One of our key recommendations in this report is that people be able to seek and have true documents of identification—I almost gave a little clap there as well. I am not negating the role of adoptive parents. I am not negating the role of adoptive families. However, every person in this country has the right to know exactly who their birth parents are. There needs to be a genuine proof of identity for all purposes in our country. One of our key recommendations in 2012 is that that documentation should be available anywhere you live in this country. It should be there so you know who your mother was and who your father was—if that is known. People know, when original birth certificates are issued, there is no way you can separate a mother from a child. When a woman gives birth anywhere in this country at any time, you can have no mistake about who has given birth to a child. That is something we can certainly achieve in 2012 through the registry process and across the different areas.

I know that people will read this report. Sometimes you write a report in this place and you know it is going to go onto a shelf and someone will look at it in the future or it will be on some kind of record. I have no fear that people will read this report because of all of you—you will make sure that people read the report. What we need to do together, though, is move forward with the recommendations. Senator Siewert has pointed out clearly that we need to ensure there is a national apology to every one of you: the mothers, the fathers, the children, anyone who was adopted and all the people who were caught up in this horror of our history. We now can say that it is a horror of our history and not pretend that it did not happen. We have also said that that kind of knowledge should be entrenched in some way so that people outside the immediate community will know what happened. We are going to rely on everybody to see what is the best way we can do that.

There will be things that need to happen such as trained professional support for all of those who have been damaged by the process. There needs to be an acknowledgement in our history that this happened. There needs to be consideration for what the people who have been hurt need to have in their own lives, and we need to ensure that people can find one another and if we can help in any way.

I put on record as well my acknowledgement of the secretariat. We have a document here that, perhaps for the first time, looks at what happened as the
rules were changed in our country about adoption and adoptive processes.

I say to all of you that this has changed so much in my own life. I say to all of you: I am sorry. I am sorry for your hurt; I am sorry for your pain. I have been made stronger by hearing of the lives you have led and I want to work with each of you into the future to make sure that we have effective processes for people who have been so damaged and so hurt for so long.

Senator BOYCE (Queensland) (16:13):

The report of the Community Affairs References Committee entitled Common-wealth contribution to former forced adoption policies and practices is a unanimous report from the Labor Party, the Greens and the coalition. We worked very hard to achieve this outcome because this is such an important issue. It was not an issue where there should be any dissent. I add my thanks to those of Senator Siewert and Senator Moore: the people who travelled to be here today, all the submitters, the many dozens of people who appeared as witnesses and particularly the secretariat, who really did go above and beyond. When you get emails that are timed at 1.45 am from people trying to get drafts exactly right so that we could be here to release this report today, you know they are caring just as much as we are. There are, as we have said, 20 recommendations in this report, and seven of those 20 specifically deal with apology. They set out not only who should make formal apologies—the Commonwealth, the states, the territories, the organisations, the hospitals and the institutions that were involved in the forced adoption industry—but also how to make them. We thought this was very important. It is perhaps not uncommon now for general apologies to be made to people who have been harmed by behaviours of the past—but there are apologies and there are apologies. It is very important to acknowledge that, whether you think people were doing what they thought was the right thing at the time, you know it was not the right thing—to acknowledge that people need reparation, they need redress, to get on and to move on from the issues.

This inquiry took us 18 months. We started in November 2010. We were intending to report much earlier than this but there were the sheer volume of information, the type of information and the need to, in most cases, have a community forum. We had nine hearings; we went to every capital city and in most cases we had a community forum as part of our inquiry system. It was so important to give as many people as possible the chance to tell their story. As Senator Siewert said, there were a lot of people who had not told their story until this inquiry was held, and many found it very helpful to be able to give their account of what had happened to them.

Before we started this inquiry I knew of five people, three of them within my extended family, who had been affected by what I now call forced adoptions. It was not a term I had even thought about, and thank you for giving me that opportunity. Since we have started this inquiry, it is not just the hundreds of submitters but people who you meet in everyday life who tell you that this happened to them. I was even talking to an adviser to a senior politician yesterday and she said, 'My mother was one of those people' She has an older sibling that they cannot find.

Perhaps my first experience of the problems of forced adoption was a woman who worked for me many years ago. This was just on the cusp of the internet and she was looking for her son whom she knew had been adopted to the UK. She was 17 when she became pregnant with him. She put that child up for adoption because her parents
told her to, but she went on to marry the father and have two more children with that man. She was looking for the full brother or sister of her existing children, and it was something that got to her every day. She said: 'I was 17 and my mother said to me, "Come home without that thing or don't come home at all". I did not know what to do.' So she came home without 'the thing'. Luckily, she had repaired her relationship with her mother, but she had not at that time found her son.

In some ways that is a mild form of the stories that we heard around forced adoption. There were so many more violent stories about people being literally held down, being drugged and being smacked across the face in front of policemen. As Senator Moore said, some were threatened with their partner being jailed for carnal knowledge if they were to reveal his name, even though the two of them were teenagers together. Even amongst all of this, we cannot claim that we did not know what was going on, and there was quite a lot of evidence that we received around what was known at the time about what was the right way to go about it. I would like to quote briefly from Marie Coleman, who I think is probably well known to many people here as a great advocate for women. She said:

We had a situation where women who became pregnant outside of a marital relationship fundamentally had three options. One was a shotgun wedding, one was an illegal abortion and one was adoption. There were no benefits or supports to enable women to keep their children with them. When one looks at some of the other literature … the state of orphanages and children's homes through the 1940s, 1950s and 1960s was pretty shocking.

She was dead right; it was pretty shocking.

As we have said before, this inquiry is about forced adoption. We attempted to flesh out and tease out some of the reasons why adoption became, I guess, the flavour of the decade. Adoptions in Australia peaked in 1971 and 1972. There were 9,798 adoptions in 1971-72. Last year there were 412. That gives you an idea of how we got very excited about adoption and how we have learned some of the lessons about the problems with adoption. Forced adoption is defined as meaning 'adoption where a child's natural parent or parents were compelled to relinquish a child for adoption'. So we are not talking about situations where an adoption may have been willingly entered into knowledgeably and in an informed way by people who did genuinely consent to having their child adopted, whether they were married or not. We are talking about where people were forced into the situation.

We talked also about the area of knowledge that was held at the time and the types of accounts that we have. The Royal Women's Hospital, for instance, has been criticised at some length in our report. We did not do this because we think it was a particularly bad example but simply because we have quite a lot of evidence from people who were affected by what happened at the Royal Women's Hospital. Perhaps I should clarify: it is an awful example but it is no worse than many, many others and perhaps better than some. We had a lot of evidence about it. The Royal Women's Hospital had 5,000 adoptions between 1940 and 1987, and we have significant evidence from some of the people there. Yet they could say in a report that they found 'no evidence of illegal practices' at the RWH and 'no evidence of hospital-wide policies that discriminated specifically against single mothers'. We go on to outline nine witness accounts—and there were many more that we could have used—which would suggest that there had been policy-wide practices and that there was knowledge at the time about the brutality of what was happening. One nurse
who worked in the Royal Women's Hospital in the 1960s and 1970s, who has apologised herself, said:

Yes, we had taken babies from their mothers at birth, without them holding or even seeing their child. The mothers were then admitted into wards without their babies and ostracised in many different ways, finally being discharged about 1 week later … I felt very sorry for what I had done even though at the time we believed what we were doing was “right” for the child and the mother. However I now believe that the process was very cruel, unjust and very dehumanising to both mother and child.

These are eyewitness accounts that the Royal Women's Hospital could use to perhaps re-examine the idea that they could find no evidence that forced adoption practices occurred in their hospital in the fifties, sixties and seventies. I hope that what our report does is add to what should already exist: the legitimacy of these eyewitness accounts of the treatment that went on not just of the women but of their children and the fathers of those children.

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (16:23): I rise today to speak on this very important inquiry by the Senate Community Affairs References Committee into the Commonwealth contribution to former forced adoption policies and practices. This inquiry has been a very emotional and traumatic journey and has involved a large number of personal stories which would have been very difficult to share. I would like to place on record my thanks and appreciation to all those people who have recounted their painful stories. Many of these stories had not been told before. You have all made a personal sacrifice, but it is a sacrifice that means your experiences can no longer be ignored. I would also like to acknowledge that, very understandably, some women found giving evidence too distressing and have yet to tell their story.

Since the beginning of the inquiry in November 2010, the committee has received hundreds of individual submissions and submissions from organisations, including boxes and boxes of archival material. Also obtained was a range of additional information, correspondence and answers to questions placed on notice with witnesses. A range of documentary records were also used. The committee held 10 public hearings and visited every capital city except Darwin. I will talk particularly about the hearing in my own home state of Tasmania a little later on. I would like to give my sincere thanks to the committee secretariat for their support and research for this important inquiry. Their hard work is evident, I believe, in the quality of the final report.

The term 'forced adoption' is as cruel as it sounds. For a period of time from the late 1940s up until, in some cases, the late 1980s, single mothers were made to give up their babies. This fact is indisputable. They were forced to do this through a range of different means, including being coerced, being drugged, being tricked into signing adoption papers or being physically shackled to beds. I think I can speak for all members of the committee when I say that the pain these young women must have experienced, and still continue to experience, is unimaginable for those of us who have not been through it. As evidenced by the stories told in the report, these women were also treated appallingly throughout their pregnancies by the very institutions that were meant to be caring for them. There are allegations of unethical or even unlawful practice. In some cases doctors, nurses, social workers and midwives showed no respect to these frightened and often very young women. There are also descriptions of poor medical treatment being provided to these mothers during the birth, with medical staff taunting them about their unwed status and not
providing proper pain relief or proper treatment. Some of the behaviour towards these mothers can only be described as unethical. One of the mothers who made a submission recalls:

I was treated inhumanely. A nurse even told me the pain I was experiencing was punishment for getting pregnant before marriage. I was ignored and left alone with the contractions until the birthing began. I had no idea what to expect. They shouted at me, and then pushed a gas mask onto my face. They made comments about me, but didn't talk to me at all.

To add to the pressure being exerted to adopt their child out, vital information was also withheld. Single pregnant women were not told of the social security benefits available to them were they to keep their baby; they were pushed towards adoption as their only legitimate choice. Added to this, many families sent women away to unfamiliar surroundings with no family or friends for support. Once babies were born, the 'clean break' theory on many occasions was implemented. The 'clean break' theory meant that mothers were often denied the right to hold or even see their child before it was taken away. They were given drugs to dry up their milk, their breasts were bandaged up and they were not told the gender of their child. When they asked to see their babies they were told it was in the best interests of their children that they were sent somewhere else and they were selfish to not want the best for their child.

At the hearing in Hobart I heard one of the mothers describe her experience in the hospital in an eloquent and powerful way. She said:

They created an unbalance of power: the power of hospital staff was lined up alongside that of married prospective adoptive parents who wanted a baby—my baby. Staff allegiance was to them, not to me. They did not hear or see me. I was nothing and no-one. I was in a place where I was supposed to be cared for—hospital—but I was ignored. I was guilty of nothing, yet I was made to feel ashamed, guilty, inferior and bad.

The Salvation Army representative at the hearing in Hobart also supported these descriptions. He spoke of recalling the great distress of mothers in hospitals at not being able to see their babies and of mothers not recalling signing consent forms and not being able to revoke the consent even within the legal consent period. Many, I have to say, never knew that revoking consent was even an option.

Many more similar stories were told. We heard that the ripple effect from these forced adoptions is huge and includes the mothers, their children and some of the nurses and social workers who look back on the practices with anxiety. We heard firsthand from mothers how the ongoing trauma of having their baby forcibly removed is still impacting on their lives. They also spoke of the successful and unsuccessful attempts to reunite with their children who were taken away and the anger that many of the children who were adopted still felt. The former chair of the joint select committee of the Tasmanian parliament that looked into adoption between the years of 1950 and 1988 told a story of a 17-year-old woman who had a loving supportive boyfriend and a grandmother she lived with and who was going to look after the baby so the girl could resume her work and study. Despite having all this, the baby was forcibly adopted because she was unwed.

In light of these practices that I have just outlined and the many submissions made to the inquiry, the report handed down today outlines some very clear recommendations. Perhaps the strongest of these recommendations is the call for the Commonwealth to issue a formal statement of apology that identifies the actions and policies that resulted in forced adoptions and that acknowledges the harm suffered by the many
parents and children who suffered from forced adoptions. This is because, despite adoption coming under individual state and territory jurisdiction, the Commonwealth is the only body that can legitimately encompass the states and territories in an apology, and the report finds it cannot completely absolve itself of responsibility.

Related recommendations advise that the apology should include statements that take responsibility for the past policy choices made by institutions' leaders and staff and not be qualified by references to values or professional practice during the period in question. The report also states that this apology should be presented in a wide range of forms and be widely published. There is acknowledgment of the other apologies that have already been made, such as the apology from the Western Australian state government and a handful of other institutions, and the recommendation that other state and territory governments and non-government institutions that administered adoptions should issue formal statements of apology. The development of a national framework through the Community and Disability Services Ministers Conference to address the consequences of forced adoption is also a recommendation.

Other recommendations are about ensuring greater access to records, making these searches easier, and that any institutions that hold records have the undertaking to identify all records and make the information available. The report also recommends that the Commonwealth commission an exhibition so that the experience of those affected by forced adoption practices are documented and not forgotten.

Finally, I would like to note that there is a recommendation that the Commonwealth establish as a matter of urgency affordable and regionally available specialised professional support and counselling services to address the specific needs of those affected by forced adoption as well as the establishment of Commonwealth funded peer support groups. Due to the lack of records, we cannot accurately say the number of forced adoptions that occurred in Australia, but we can estimate that the figure is many thousands. It is made very clear in the report that the practice of forced adoption was wrong, not just by today's values, but by the values and standards of the time. This report cannot change what happened, but it can go a small way towards recognising and righting the wrongs of the past.

I would like to extend my gratitude to all those who shared their accounts with us. It is only through hearing your stories that we can properly understand and acknowledge the practice of forced adoption. It will enable all Australians to know your stories, to understand the wrongs that were carried out on young mothers and young fathers and their children and that these unethical practices shattered lives and did happen. I commend the report to the Senate. I think a fitting way for me to conclude is by using the poignant words of one of the mothers who gave evidence to the inquiry. She said, 'Last but not least, I want people to know that I loved my baby, that she was wanted, and that I am her mother.'

Senator McKENZIE (Victoria) (16:34): Between the 1930s and the 1970s, there were about 10,000 babies adopted in Australia each year. In 1971 there were 9,798 adoptions. Twenty years later, by 1991, this had declined to a little over 1,000, and in 2006 a little over 500. Today the average is about three per every 100 live births. Something just does not add up.

The Senate Community Affairs References Committee report, Common-
wealth contribution to former forced adoption policies and practices, is a massive report. The issues have been complex and we have worked with a large volume of evidence—and it has been a privilege. The committee heard 418 submissions, many from individuals and others from organisations. The accounts received by the committee dated from the 1950s to as recently as 1987. The reports were very detailed, including a large number of accounts that clearly outlined that babies were taken for adoption against their mother's will.

Many women told us they were pressured, deceived or threatened in order to secure signatures on adoption consent forms—actions that were likely in breach of the policies and laws of the time. For many mothers, their experiences were harrowing. The accounts were very personal and traumatic for the mothers and the children involved. According to the Royal Women's Hospital, up to 45 per cent of Victorian unmarried mothers relinquished their babies for adoption between 1945 and 1975, a period often referred to as the 'heyday of adoption'—and many of these were forced. The dilemma facing the single mother was exacerbated by community attitudes and social values that embraced adoption as the solution to illegitimacy and infertility, and failed to provide viable alternatives.

As a result of the strong community interest and media coverage in this story and the number of submissions, we have taken 18 months to get today. I particularly thank the committee members, who worked extremely hard. Some of them cannot be with us today—and I think particularly of Senator Judith Adams and Senator Coonan, who both contributed to the production of this report. We also considered archival material from the 1950s to the 1970s and worked to shed more light on the Commonwealth's role in past adoption practices. We investigated the roles of the states and territories and the adoption information laws.

Nobody has the right to take a child from its mother. What happened in hospitals throughout Australia was wrong. Most of the 400 or more submissions heard by the committee were harrowing tales of regret, abuse, neglect and loss. People out there may be thinking, 'Not all children who were adopted had a harrowing experience,' and they are right. Given the thousands of babies who were adopted, the committee was not looking for and did not get submissions from happy families. We had a clear reference to look at, talk about and expose forced adoptions. Still, the practice was and remains misguided. Thousands of babies were taken from their mothers, and while there were probably many who had very ordinary childhoods, when you take a child by force or coercion you change a life journey. In many cases you take a part of the mother's soul, and you take the child's heritage. There is loss. I would like to briefly tell two stories of women who had their children taken without consent. Both women were from regional towns in New South Wales, just over the border from Victoria where I am from.

About 45 years ago, Joan discovered she was expecting a baby. She had not realised how babies were made, and when she told her boyfriend he ended the relationship. This was not unusual. In fear and trepidation, she gave her parents the news and asked if, with their help, she might keep the baby. They quickly organised a hospital appointment in Melbourne and she was very clearly told that it would not be possible for her to keep the baby. By the time the baby was born, Joan had a new boyfriend who was courageously prepared to accept the baby as his own. Sadly, the grandparents and the hospital
refused to allow it. The baby arrived; the boyfriend held her for a few minutes and the mother was given the forms to sign before the little girl was taken away. The couple were married and had two children of their own. No-one knew, including the couple's children.

Thirty years later, the child sent her mother a letter. She had been part of a loving family but her adopted parents had died and she was ready to learn about her own family history. After searching in Victoria for nearly 10 years, she thought to search the New South Wales registry and, with luck, the two names were connected. Sadly, Joan was very ill with cancer and she died just six months later. And I can tell you that there were some shocked whisperings in the Catholic Church that day when three children, rather than two, gave the eulogy.

In this case, the little girl could easily have been raised by her mother. Before she died, Joan explained that the hospital forced her to sign the adoption documents. The social workers were of the belief that the obstacles facing single mothers were insurmountable and that she could not be sure the young man would marry her now that she had delivered a baby. She was told that adoption was the best possible solution and that it would allow her to 'get on with her life' and 'pretend it hadn't happened'. This position was supported by the nurses and unanimously upheld by her parents. Joan felt enormous pressure to 'do the right thing'. Explaining this to her daughter so many years later and with only months to live, she felt enormous regret. The loss had been so great that she had not known how to explain it to her other children, who were now adults.

The daughter has been closely following the committee inquiry. She might even be here today. I know that she feels an enormous sense of loss for the life she might have led. She wanted more time with her natural mother. She expected the adoption system would keep the details of her birth and make them accessible when she needed them. She felt let down that the details about her arrival were so difficult to find. She is devastated that the system did not support her request to find her mother sooner than she did.

She still does not know anything about her natural father. There is nothing on the record. She does, however, have a brother and sister and a second chance to get to know the man who held her during those first few minutes of life.

The second mother had a relationship with a pilot towards the end of the Second World War. She was more determined than the first. She and the baby's grandmother travelled to Victoria to visit an ageing aunt, and they stayed for six months. When the baby was born, the mother flatly refused to sign the adoption documents. After much coercion, she finally agreed to sign a form that allowed the baby girl to be fostered—with an option to collect her later. The little girl was given to a foster family in Melbourne. They indulged her with love and kindness, opportunities and education until the natural grandmother decided it was time the child was returned to her mother. Sadly, the child was six.

At 65, she often talks about the trauma, confusion and loss of losing her foster family and being handed to the nuns in black on a train at Southern Cross Station on a Sunday afternoon. She was taken to a small country town and given to a mother who was humiliated and a grandfather who would not own her. She would argue that she should have stayed where she was.

I expect that these stories are similar to many thousands of stories where the
outcome was not as harrowing or as despicable as the tales we heard during the committee inquiry. Many are contained within the report. Each and every one of these Australians needs our sincere apologies and our acknowledgement. We need to acknowledge that, whatever the intentions and beliefs of the time, past adoption practices caused lasting consequences for many relinquishing mothers, and sometimes also for their children and their extended families. Irrespective of the mores of the time, the committee does not accept that it was legal or ethical to take a child from its mother for the purpose of adoption.

Today we recognise that this action was both illegal and unethical. I understand that many relinquishing mothers experienced, and continue to experience, feelings of grief, pain, anger, helplessness and loss, and for this I apologise unreservedly.

I would like to thank all the women and their children and all the professionals involved for telling us their stories. As the newest member of the Senate Community Affairs References Committee, I would like to thank the committee for its track record in bringing to light the issues of our nation, putting the matters on the table and exposing the things that we need to take a good, hard look at if we want to be serious about being true to ourselves as a forward-looking nation. It is a testament to the women involved on the committee. I commend the report to the Senate.

Senator STEPHENS (New South Wales) (16:44): As someone who was not a member of the committee and was not able to participate in this inquiry, I would like to congratulate all on the Community Affairs References Committee and everyone who participated in the inquiry. This was an incredibly disturbing Senate inquiry and an incredibly powerful report, entitled Commonwealth contribution to former forced adoption policies and practices. Only recently I became aware of the expression ‘the baby scoop era’, which is used to describe what has happened to these people. It is an awful expression, isn't it? It is quite visually challenging, the notion of wrenching a child from its mother's arms, but it is what happened, not just here in Australia but also in Canada, the US and the UK, and it was very much the method of the times. I have read many of the stories documented and I have read many of the submissions, and I am sure they are quite traumatising for everyone.

I have known other stories, personally, and I remember very vividly when I was growing up a young woman being sent to Brisbane. She left town as a wide-eyed, bright young thing and came back six months later distressed and depressed, and eventually she attempted to take her own life. At the same time, girls from an orphanage came to my school, and I remember a discussion in fifth form when one of the girls did not come back to school. There were lots of stories about what had happened to her, told with great fear and trepidation by her friends, and we were just gobsmacked that something like this could be happening. Not long ago, at a school reunion, the issue was raised again as three former classmates revealed to me something of the experiences of forced adoption within their families, which was really quite a shock to me.

As we have heard from the other speakers, the inquiry has received horrible testimony to dreadful evidence. The callousness is gut-wrenching. That is what really comes through. The personal accounts that we saw, and the practices revealed, on the Four Corners program this week really do attest to the courage of the women who are able to tell their story. They did that on behalf of
those who could not, and I congratulate them for their courage and their grace.

In 2002 there was a New South Wales parliamentary inquiry into adoption practices, where many similar stories were told of threats made, promises given and the sense of powerlessness and ensuing heartache. Dr Merryl Moor, at the beginning of her 2005 PhD thesis on the subject, to which she gave the title Silent Violence: Australia's White Stolen Children, quoted Jigsaw, that fantastic organisation from Brisbane:

In relation to adoption the question needs to be asked: In what other period of human history did young mothers willingly defy nature and give away their babies en masse to strangers?

It was an unspeakable act of cruelty. We know when we speak of forced adoption that we are talking about something that is culturally imposed and, as we have heard from Senator Boyce, this is very different from someone who makes the tough decision to have a child adopted.

The work of the Community Affairs References Committee is exemplary and so potent and powerful. Since 2007 we have seen acts of injustice recognised. The apology to the stolen generations was, I think, a potent moment in the healing of the Australian psyche. The apology to the forgotten Australians, children raised in institutional care, also helped to ease the pain and hurt of lost childhoods and identities. Today, through this report, I do not just hope but know that we are giving hope to the thousands of young women—and in many cases their parents, families, partners and children—who were forced to relinquish their babies that there can be some redress, some formal acknowledgement of their hurt and pain and some sense that governments, churches, communities and institutions were all wrong.

We all know that many of those involved in removing Aboriginal children from their homes did so in the belief that it was for the greater good. No doubt the same applies to those who thought adoption into a two-parent family was automatically a more desirable outcome than life with an unmarried mother. But the fact that a practice was followed in good faith does not necessarily make it right, and that is what we have heard today. This is the evidence, the culmination. The Four Corners program showed just how much this weighed on the minds of social workers, hospital staff and, I am sure, many adoptive parents.

In 1492, when 'Columbus sailed the ocean blue', as I remember it from my school days, one of the things he did when he got to America was to basically kidnap a Native American child. He later adopted him, had him baptised and called him Diego in order, he said, to save his immortal soul. It might have suited Christopher Columbus very well to have a local translator whom he could control, but I am also prepared to believe that he genuinely thought young Diego would be better off with him than with his own family. However, the sincerity of his belief certainly did not and does not justify the actions. The forced removal of babies in Australia may have been seen by many as an act of kindness intended to save those children from harmful environments but, just as in the case of Christopher Columbus, we know that is simply not good enough.

What we have seen in this Senate report is nothing less than a catalogue of human rights violations, and that is the truth. These were violations of the rights of mothers such as the wonderfully outspoken Christine Cole, whose experience as a 16-year-old inspired her to research the issue and to write her doctoral thesis. It is difficult to convey to people living in a society that values and enforces an individual's civil and human
rights what life was actually like 40 or 60 years ago for vulnerable young women who lacked knowledge, support and resources—and, frankly, even for those who did not. Girls were not instructed about pregnancy, labour and delivery. Pregnant girls were hidden away or sent away, to the eternal shame of their families. They were isolated and not provided with information, as we have heard already this afternoon. In short, they were not recognised as legitimate mothers and, when their babies were forcibly removed, nor were they recognised as legitimate mourners.

The work of psychologists such as John Bowlby and Elizabeth Kubler-Ross has taught us a lot about love and loss and grief, and the pages of this report bring those psychological theories vividly to life. It is not only the mothers whose human rights were violated; so were the rights of countless children who were denied access to their natural heritage. I would use the term 'ill-conceived' to describe the practice of forced adoption. It was ill-conceived because of the absence of integrity and respect. These values are fundamental to how a society should work: integrity is being forthright, accurate and honest with all partners involved in decisions; and respect is recognising each person’s right to autonomous decision making, or what some people call the ethic of self-determination. Adoption is a lifelong process, not a one-time event. When engaging in such a process the innate dignity of human beings—and this, of course, includes the children—must be considered.

Columbus might not have realised this, but we do. The report makes it abundantly clear that human dignity was not a consideration in the case of these young women and their babies. The dominant themes were of raw emotions—betrayal, humiliation, condemnation, abandonment, trickery, grief and, of course, abject loss. The report brings great heartbreak into the light from the shadows of the past—the not too distant past. And although, as Senator Siewert has said, this makes harrowing reading, it is always a good thing when the truth is revealed, even when the truth is what psychiatrist Geoff Rickarby has rightly described as ‘a stain on our history’.

Nothing can heal the experience of love and loss of these women, who carry it with them every day. But I sincerely hope that, through this report and the recommendations, we can help remove their sense of shame and restore their dignity and self-worth. My favourite poet, Leonard Cohen, would surely say of this report, 'Nothing's perfect, there's a crack in everything, that's how the light gets in.' I hope the light shines brightly.

The ACTING DEPUTY PRESIDENT (Senator Crossin): Before I call Senator Pratt, I remind the people in the gallery that we have a limited time to speak about this report. Senator Pratt has only a couple of minutes. But I want you to know that, at the end of her speech, she will move a motion to ensure that the report remains on our Notice Paper. That means tomorrow and the next time we come back for sittings other senators can stand up and add their contribution on this report. Senator Pratt.

Senator PRATT (Western Australia) (16:54): I rise to pay tribute to all the people who have given evidence to this inquiry and to thank the committee for its work. This is not an inquiry that I have been able to participate in but it is an issue I have followed closely over many years, having reviewed the Western Australian Adoption Act in the early 2000s. One of the issues that came to light then, and which still causes me distress, is the continuing existence of contact vetoes that are legally enforceable.
and have criminal offences attached to them. The idea that, in this day and age, we continue to criminalise the desire to contact your kin seems quite extraordinary to me.

I would like to thank all the brave people who have given evidence to this inquiry. I am sorry you even had to ask for an apology because I think the evidence speaks for itself. I certainly apologise. I am truly sorry for your experiences. I would like to pay tribute to brave women like Sue Macdonald, who came to speak to me in my office in West Australia about her experiences and about the need for the Western Australian government to apologise. I am very proud of my home state for having moved that apology and having led the nation in that regard, and it is time for the federal parliament to follow suit.

People deserve to know about their origins, and we need to be very careful that we do not repeat the mistakes of the past. Frankly, we are still in danger of repeating many of those mistakes. Adoption acts are certainly much tighter today, and we do realise what an extraordinary thing it is to separate someone from their kin.

I know that there will be a great deal of visibility towards this report today. I had many friends who were adopted, and I know many of them will not yet have reconciled their origins. I would like the visibility of this report to be a cause for all of those people to think about perhaps making contact and using this as that opportunity. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

The ACTING DEPUTY PRESIDENT: On behalf of the Senate, I thank those people who have come into the chamber this afternoon. Senator Pratt has been given leave to continue her remarks later. That simply means this report will stay on the Notice Paper so that other senators can talk to it in the days and weeks ahead. The report will stay on the Notice Paper as a reminder to us to pick it up, and other people might want to provide a contribution.

STATEMENT BY THE PRESIDENT

Standing Orders

The PRESIDENT (17:01): During the adjournment debate on Monday 27 February, Senator Brown raised a point of order in relation to remarks made by Senator Macdonald. I undertook to review the Hansard and consider the matter. Having done so, I consider that there was no point of order because there is no prohibition in the standing orders on referring to matters that are before committees.

However, in the general—and I hope that people listen and understand that I am speaking in the general—I remind all senators that I have made several statements relating to a particular matter before the Privileges Committee and that I have warned senators against continuing to canvass those or related matters whilst they are before the Privileges Committee.

All senators have a right to feel that any matter before the Privileges Committee that may concern them is dealt with in accordance with its well respected practices without any attempts to argue the case in the chamber. There is an issue of fundamental fairness at stake. I remind senators that privilege resolution 9, which enjoins senators to exercise the great privilege of freedom of speech responsibly, refers specifically to the damage that can be done by allegations made in parliament and to the need for senators to have regard to the rights of others.

Whilst it is not my intention to constrain the rights of individual senators to debate, within the Standing Orders, matters of their choice in the chamber, it is clearly my
intention to honour the spirit of privilege resolution 9. Therefore, as a matter of fundamental fairness, it is becoming intolerable to have contributions in the chamber refer to this matter whilst it is under consideration.

There will be time, when the committee reports, for the Senate to consider the committee's findings and recommendations and for there to be a robust debate. I therefore seek the cooperation of all senators to desist from engaging in any further comments and remarks on this matter until the Privileges Committee reports.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (17:05): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator BOB BROWN: Mr President, your ruling is correct, and your quote on the matter is quite correct. But the Senate needs to reflect that, as far back as 1984, the Privileges Committee noted the possibility that the reputation of senators might be damaged if matters such as this were to continue to be raised. Damage to the reputation of senators was clearly—one has only to look at the Hansard—an outcome of Senator Macdonald's contribution the other night. You are quite right, Mr President, to have called it to order and to have made a breakthrough ruling that it should not happen again.

The Privileges Committee's deliberations at the moment are unprecedented in that there has been no result despite the matter's having been referred to it some three or four months ago. That in itself, in my view, is a travesty, and I am sure that Senator Milne shares that view. Never should this chamber lend itself through its debate system to the sorts of repeated accusations that were earlier referred to the committee.

Your ruling is correct, Mr President, and I hope that it will be implemented in the future so that the behaviour which Senator Macdonald engaged in on Monday night cannot ever be repeated in this Senate.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:07): Mr President, I seek leave to make a brief statement on this matter.

The PRESIDENT: Leave is granted for two minutes.

Senator ABETZ: I thank the Senate. Mr President, the coalition accepts your ruling and understands the manner in which you have approached this. I might say it is fair and reasonable. I simply remind people listening in that those that complain about canvassing these issues should remind themselves that they issued media releases about this issue: for example, commenting that certain issues 'highlights the opposition's highly compromised position as accusers' or, on another occasion, 'We have absolutely nothing to fear from this fairly sleazy move'—statements in the media by the Australian Greens. When they want to attack the accusers, they do so publicly. Yet again it seems as though there is one law for the Greens and another law for everybody else.

I also briefly remind honourable senators of the occasion when I was referred to the Privileges Committee on a certain matter. Might I say they kindly, and unanimously, found that I had acted in good faith at all times and the matter was dismissed. But, whilst that matter was before the Privileges Committee, I am sure all honourable senators will recall that other senators took it upon themselves to do media, constantly referring to the fact that I was before the Privileges Committee—

Government senators interjecting—

Senator ABETZ: There are interjections from those opposite. Mr President, in this...
game every now and then these things occur, but what is astounding in this matter is—including the point of order that was raised previously by Senator Bob Brown—and I simply say to the Australian Greens, that those that live in glass houses should not throw stones. Were the Greens stopped from talking about me when I was before the Privileges Committee? No. But should others be stopped when they are before the Privileges Committee? Yes, and that is the double standard.

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (17:09): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for two minutes.

Senator MILNE: It had not been my intention to comment further, but the disingenuous remarks of Senator Abetz require a response. Firstly, the Australian Greens did not discuss any matter concerning Senator Abetz and its referral to the Privileges Committee at that time. Let me put that on the record. Secondly, Senator Abetz referred to media releases. What he did not say was that the media releases were in response to media releases and media coverage generated by Senator Abetz. Both in this chamber and outside on 6 July Senator Abetz put out lengthy press releases and chronologies which canvassed the matters which some months later became the subject of a reference to the Privileges Committee. Any media generated subsequently was in response to his attempt to beat up a story to besmirch the reputations of Senator Brown and me. I think it is important for anyone who is interested to realise that Senator Abetz on 6 July 2011 started the process in the media, and it was reported in Tasmania on the Tasmanian Times.
BILLS

Antarctic Treaty (Environment Protection) Amendment Bill 2011

Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011

First Reading

Bills received from the House of Representatives.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:13): I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:14): I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

ANTARCTIC TREATY (ENVIRONMENT PROTECTION) AMENDMENT BILL 2011

Antarctica has a unique place in Australia’s national identity. We are tied to Antarctica through our history, our geology and our climate.

This year marks the 100th anniversary of the departure of the first Australasian Antarctic Expedition led by Sir Douglas Mawson. Mawson stands alongside other giants of Antarctic discovery, like Scott and Shackleton, for his remarkable endeavours to explore Antarctica and claim a sizeable portion of the continent on behalf of all Australians.

It was Mawson who established Australia’s first scientific research base at Cape Denison in Antarctica. Over the past century, Australia has built on that legacy, establishing a strong reputation for Antarctic science in areas such as climate change, conservation, astronomy and geoscience.

Antarctica’s unique environment offers major opportunities for this scientific research. The continent is recognised as a key indicator of global climate change. Better understanding of Antarctic ecosystems, weather and climate is crucial to environmental protection in the region as well as understanding global climate trends.

Australia has also become a world leader in Antarctic protection. We were one of the 12 original signatories to the 1959 Antarctic Treaty, which enshrines the principle of peaceful use of the Antarctic. Fifty years on, the Antarctic Treaty remains a model for global cooperation.

Australia actively engages in the international governance of the Antarctic. We played a key role in the development of the broader system of international arrangements for the region, known as the Antarctic Treaty system.

Just two decades ago, former Prime Minister Bob Hawke worked with former French Prime Minister Michel Rocard to prevent mining in Antarctica. For the first time, we recognised that the last pristine continent on earth should remain untouched. The opportunity was nearly missed, but the decision changed the world’s way of thinking just in time.

Their efforts led to the Madrid Protocol, which now protects the Antarctic environment, bans mining in Antarctica and designates Antarctica as a natural reserve, devoted to peace and science.

In October this year, I was honoured to join Bob Hawke and Michel Rocard in Hobart to commemorate the 20th anniversary of that Madrid Protocol.

We will continue to build on protections for this unique and special part of the world.

This Antarctic Treaty (Environment Protection) Amendment Bill 2011 will amend the

The Bill will align the Act with Australia’s new obligations in relation to three measures adopted under the Antarctic Treaty and Madrid Protocol, namely:

1. Measure 4 relating to insurance and contingency planning for tourism and non-governmental activities in the Antarctic Treaty area that was adopted in June 2004;
2. Measure 1 relating to liability arising from environmental emergencies that was adopted in June 2005; and
3. Measure 15 relating to the landing of people from passenger vessels in the Antarctic Treaty area that was adopted in April 2009.

These Measures will establish more stringent arrangements to protect human and vessel safety in the Antarctic, and the Antarctic environment.

Key amendments included in the Bill include:

1. providing the ability for the Minister to grant a safety approval, an environmental protection approval, and to impose conditions on such approvals;
2. implementing new offences and civil penalties regarding unapproved activities, activities carried on in contravention of the conditions imposed by an approval, and offences and civil penalties related to environmental emergencies;
3. establishing a liability regime for environmental emergencies that occur in the Antarctic;
4. establishing an Antarctic Environmental Liability Special Account to receive payments from operators for the costs of response action to an environmental emergency caused by their activities in the Antarctic;
5. implementing new offences and civil penalties applicable to tourist vessels operating in the Antarctic;
6. making minor and technical amendments to the Act; and
7. amending the long title of the Act to extend the scope of the legislation;

As Australia prepares to host the 35th Antarctic Treaty Consultative Meeting in Hobart in June 2012, this Bill marks another chapter in Australia’s history of involvement in Antarctica and maintains our commitments under the Antarctic Treaty and Madrid Protocol.

CUSTOMS AMENDMENT (ANTI-DUMPING IMPROVEMENTS) BILL (NO. 2) 2011

I am pleased to present the Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011, representing the second tranche of legislation implementing the Government's reforms to Australia's anti-dumping system.

The package of reforms announced by the Government in June are designed to provide better access to remedies for Australian industry, and to ensure those remedies are available as quickly as possible. They aim to improve the robustness and transparency of anti-dumping decisions and introduce stronger compliance mechanisms.

The elements of the reforms that I am introducing into the House today are focussed on improving the robustness and transparency of anti-dumping decisions.

In particular, I am proposing a new appeals process to replace the existing mechanism, and provide more flexibility in seeking extensions of time during the course of investigations.

This Bill also provides a legislative basis for the International Trade Remedies Forum, which met for the first time in August this year.

These amendments were drafted in close consultation with the Office of International Law within the Attorney General’s Department, and the Department of Foreign Affairs & Trade, to make sure that they are consistent with Australia's international law obligations.

New Appeals Process

The Bill implements a number of changes to the process for appealing decisions of the Minister or the Chief Executive Officer of Customs and Border Protection.
Presently decisions may be appealed to the Trade Measures Review Officer, who was an employee of the Attorney-General's Department. The Review Officer will be replaced by a 3-member review panel able to take on a greater case work load. Members of the Panel will be appointed by the Minister based on their relevant expertise. Panel members will no longer be an employee of the Attorney General's Department, so will be independent of government.

The Government will make available resources in the form of administrative and research assistance, to support the effective functioning of the Panel.

Presently the Review Officer must accept an application for review, unless the applicant has failed to provide sufficient particulars of the findings to which the review application relates. This has resulted in approximately 80 per cent of Ministerial decisions being appealed to the Trade Measures Review Officer by one of the parties to the proceeding. The Government is proposing a higher threshold for appeal. Now, in order to initiate an appeal, the Panel will need to be satisfied that the applicant has established that the Minister did not make the correct and preferable decision.

Presently there is a perception that International Trade Remedies Branch is conflicted in reinvestigating its own decisions. When the Review Officer reviewed a decision, the officer would recommend a reinvestigation to the Minister who referred it back to the Branch which reinvestigated and made recommendations to the Minister as to whether to overturn or amend the original decision.

To address this, the Panel will now make recommendations directly to the Minister as to whether the original decisions should be affirmed, revoked or substituted. Where reinvestigation of a particular finding is required, the Panel will direct the Branch to reinvestigate that finding, and to report back to the Panel to inform their recommendation to the Minister.

Parties will now be able to appeal the Minister's decision to continue or not continue measures, and also the Minister's decisions to vary or revoke measures (or not) on review.

As part of the appeals process reforms, the Customs Act will be amended to allow for important stakeholder groups, such as downstream industry and trade unions to participate in administrative reviews.

The changes to the appeals system allow for a more robust system which is better able to identify and process meritorious applications for review.

**Extension of Time—Investigations**

Second, these reforms will allow for more flexible extensions to the timeframes of an investigation, review of measures, continuation inquiry or duty assessment.

Australia's anti-dumping system contains one of the shortest investigation timeframes in the world, at 155 days. At present only one extension to that timeframe can be sought, and it must be prior to the publication of the Statement of Essential Facts at day 110. This can mean that extensions, where required, tend to be for significant periods, to anticipate any possible further need for an extension.

Consistent with a recommendation of the Productivity Commission, the Bill will allow for more flexible extensions of investigation timeframes.

The Minister will still have to approve all extensions of time. Implementation of this proposal will be carefully monitored to ensure it does not result in a blow out of investigation periods, and that extensions are only sought in complex cases, not routinely.

The International Trade Remedies Branch will continue to provide in its annual report a consolidated summary of the timeliness of its investigations in the preceding 12 months.

This proposed change will improve decision making by allowing extensions to accommodate complex cases and to allow for the consideration of critical new information that could not reasonably have been provided earlier.

**International Trade Remedies Forum**

There is currently no stakeholder body to provide feedback to Government on the operation of the anti-dumping system.
The Government has established the International Trade Remedies Forum to provide strategic advice and feedback on the implementation of the reforms, the ongoing operations of the anti-dumping system as well as reporting to Government on opportunities for further improvements.

The Forum, which met for the first time in August, comprises representatives of manufacturers, producers, and importers, as well as industry associations, trade unions and relevant Government agencies.

The Government is establishing the Forum in legislation to ensure that this valuable dialogue with industry continues into the future.

The Forum will meet a minimum of two times a year.

**Concluding remarks**

This second tranche of reforms directly respond to stakeholder concerns about enhancing the appeals process, providing adequate time for investigations and ensuring stakeholder consultation going forward.

These amendments will further strengthen the anti-dumping system by enhancing the appeals process to allow for a more streamlined process better able to process meritorious applications, provide greater independence and afford new opportunities for parties to seek review for decisions they disagree with.

The International Trade Remedies Forum will provide a greater opportunity for Australian industries and other stakeholders to play a role in the development and operation of Australia's anti-dumping system.

The changes to extension of time for reviews will allow Customs and Border Protection more flexibility in dealing with complex matters and scope for consideration of new information.

Debate adjourned.

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

**Personally Controlled Electronic Health Records Bill 2011**

**Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011**

**First Reading**

Bills received from the House of Representatives.

**Senator JACINTA COLLINS**

(Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:15): I move:

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

Question agreed to.

Bills read a first time.

**Second Reading**

**Senator JACINTA COLLINS**

(Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:15): I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

PERSONALLY CONTROLLED ELECTRONIC HEALTH RECORDS BILL 2011

If you asked Australians if we should create a system where their health information can be easily transferred between their health practitioners—many would be surprised that such a system doesn't already exist.

The sad truth is that our medical information is not connected—despite how logical and possible it is to achieve.

In many ways, the absence of a system of electronic health records in Australia demonstrates the difficulties of health reform—the fragmentation, the vested interests and the balancing priorities.
But we clearly know the evidence of why we need to act.

Currently health information of individuals is fragmented across a range of locations rather than being attached to the patient. Consumers need to retell their story each time they visit a different clinician. This outdated approach can result in poor information flows, unnecessary re-testing, delays and medical errors.

Studies in hospital environments have indicated that between 9% and 17% of tests are unnecessary duplicates.

Medication errors currently account for 190,000 admissions to hospitals each year. Up to 18% of medical errors are attributed to inadequate patient information.

There are situations demonstrating every day in Australia why the introduction of eHealth records will lead to improved care for patients.

- A Victorian retiree on holiday away from his detailed medication history gets rushed by an ambulance to hospital.
- A mother with two children who both suffer from asthma struggles to remember the different medications they have tried.
- A carer tries to help their elderly mother with their healthcare who can't participate in her own health care.
- Or a man with a chronic disease like diabetes who wants to better manage their disease – and ensure his doctors are all working off the same information.

These scenarios reflect the kinds of real-life situations that occur all around Australia every day.

EHealth records can change all these situations for the better.

That's why clinicians, health consumers and the health technology industry are all united in the call for electronic health records.

The National Health and Hospitals Reform Commission recommended to the Government in 2009 that "by 2012 every Australian should be able to have a personal electronic health record that will at all times be owned and controlled by that person"

This is a proposition that had widespread support in the extensive health reform forums and consultations that the Government held throughout 2009 and 2010 around Australia.

 Australians saw the value in preventing errors and misdiagnosis. They saw the benefits in managing their own health and the health of their family members. And they saw the benefits in creating a more efficient and effective health system.

Our analysis shows that the net economic benefits of eHealth records are estimated at $11.5 billion until 2025.

To put it bluntly – there is widespread support for dragging the management of health records into the 21st century.

That’s why this Government committed $467 million in the 2010 Federal Budget to a two year program to build the national infrastructure for personally controlled eHealth records.

Records will have the capacity to contain summary health information such as conditions, medications, allergies and records of medical events created by healthcare providers. The records will also be able to include discharge summaries from hospitals, information from Medicare systems and some information entered by consumers.

Australians rightly do not want their privacy threatened. They do not want one single massive data repository for all their records. They also want the right to participate, but not be forced to do so.

That's why we are designing this project to take heed of privacy from the ground up.

- We are building a truly personally controlled record.
- We're establishing new consent settings for sensitive information and auditing that doesn't currently exist for any of our records.

It is how our system will strike the right balance between security and access. Many of these protections are about ensuring that patients have the same protections over the access to digital records that they do over paper based records.

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CHAMBER
The bias is placed upon linking data sources around the country - much of which exists already in various forms in general practices, at the pharmacy, with pathology groups or at hospitals. This also means that we won't be building every technology solution - but providing the national infrastructure that only the Commonwealth Government can do.

Already there have been significant achievements made in the past few years towards the implementation of eHealth.

This Parliament passed legislation last year to implement the Healthcare Identifiers Service which provides the backbone identification system for eHealth.

There's now 1.1 million of these identifiers downloaded - across jurisdictions and lead implementation sites.

Twelve lead implementation sites have been established and are working with clinicians and patients to deploy eHealth solutions.

Partners have been appointed and are busy working in the key areas of building the national infrastructure, change management and evaluating the success and effectiveness of the solutions.

The implementation approach is both swift and careful. We are developing infrastructure in a set period of time, but the rollout will happen in a staged manner.

All through the process there has been extensive consultation with clinicians, consumers and the health IT industry.

The finalised Concept of Operations released in September is the result of much of this consultation - but the engagement work now continues as the fine details are completed.

This consultation is important because establishing eHealth records is not an end in itself. It has to deliver for clinicians and patients. This is why we have embedded e-health within our health reform agenda.

We want to know what is going to work for the patients - as well as the doctors, nurses, allied health professionals and others who have to deliver care.

Now this legislation I am introducing today will deliver the legal basis for this new system from when it starts registrations from 1 July 2012.

To develop this legislation we have had two rounds of public consultations - both on the legal issues for the system, and then on an exposure draft version of this Bill.

The central theme of our system and this Bill is that any Australian will be able to register for an eHealth record, and they will be able to choose the settings for who can access their record and the extent of that access.

When registered, consumers may be represented by authorised and/or nominated representatives. This allows minors and persons with limited or no capacity to have an eHealth record which details their medical history. Patients can choose to have a carer, family member or friend assist them with their record.

Apart from consumers, the other participants who can choose to register include healthcare provider organisations and repository and portal operators.

A registration framework will ensure regulation of all these parties, verification of identity, assurance that minimum technical, security and administrative requirements are met, and system accountability.

The Bill prescribes the circumstances in which eHealth record information can be collected, used or disclosed and imposes civil penalties for knowing or reckless unauthorised collection, use or disclosure.

All registered consumers and organisations will be subject to the Privacy Act 1988 or state or territory privacy laws as prescribed. The Privacy Act will also apply to the System Operator including the ability of the Information Commissioner to investigate an interference with privacy and to penalise an offending party.

The Bill also sets out requirements which apply to protect the privacy and security of patient health information. This includes notification of data breaches and storing all information and in Australia. These requirements are also subject to civil penalties.
The System Operator will be responsible for the operation of the system. The Department of Health and Ageing will initially perform this role. The Bill allows for the System Operator to change in future to a statutory authority. This will be the subject of future discussions, both with states and territories and with stakeholders.

The System Operator will be responsible for establishing and maintaining the basic infrastructure of the system – including a register of participants, index service for documents and national repositories where appropriate.

There will also be important safeguards that the System Operator will deliver including audit logs for access to records, reports on the performance of the system and mechanisms for handling complaints.

An Independent Advisory Council will provide expert advice on the operation of the system and on clinical, privacy and security matters.

The membership will include consumers, health providers and people with experience in critical areas such as rural health, indigenous health, administration, technology and legal or privacy issues.

A Jurisdictional Advisory Committee will include representatives of the Commonwealth, states and territories and will provide advice regarding their perspectives of the system.

The Australian Information Commissioner will be the key regulator for the system and will have the capacity to conduct audits, commence investigations and impose a range of sanctions, accept enforceable undertakings and investigate complaints.

To ensure transparency of the system, the System Operator and the Information Commissioner will be required to provide annual reports on the practical operation of the system to the Minister and the Ministerial Council. The system is to be reviewed two years after the Bill commences.

This legislation being introduced is yet another sign that this Government is getting on with the job of rolling out eHealth records. He committed to establishing eHealth records. This of course didn't occur.

He recalled in 2005 (and I quote):

"Failure to establish an electronic patient record within five years, I said, would be an indictment against everyone in the system, including the Government. I hope to be judged against that somewhat rashly declared standard; not because it is likely to be fully met but because it would mean that, come next year, I remain the Health Minister!"

Of course this was a standard that he failed, much to the detriment of patients and clinicians alike.

However he failed a second test when in the lead up to the 2010 election, he promised that a Government he led would cut every cent of the $467 million that this Government had committed to eHealth.

This legislation presents another test. Will he do what is the right thing for this country and support bringing our health system into the 21st Century, or will he continue his well trodden path of just saying no.

For the sake of the future health care of Australians I hope that the Opposition can finally come on board.

Many people may see this system and legislation as being about technology. That's a mistake. It is about health care. It is about helping patients and doctors to prevent, cure and treat.

It also builds upon the other advances that are happening because of this Government's investment – namely the National Broadband Network and telehealth. Investments that are rolling out now and helping to better the lives of Australians.

The use of technology to improve care will have a similar effect to the other great advances in health care technology – such as antibiotics or x-rays. This is a once in a generation opportunity to deliver these important reforms.

I encourage this Parliament to support this improved health care through the passage of this Bill.
PERSONALLY CONTROLLED ELECTRONIC HEALTH RECORDS (CONSEQUENTIAL AMENDMENTS) BILL 2011

This Bill makes a number of minor, consequential amendments to existing Acts to support the introduction of the Personally Controlled Electronic Health Records Bill 2011.

The system will enable patients who register to access their health information and make it available to participating healthcare providers, online, where and when it is needed.

To manage the information from different sources, a consumer's individual healthcare identifier number is used to ensure that only information relating to that consumer can be viewed through their eHealth record.

This Consequential Amendments Bill will ensure that the system is able to operate appropriately and effectively.

In order to enable the system to operate, a number of amendments to existing Acts are required, including to the Healthcare Identifiers Act 2010 to allow the system to take up and use healthcare identifiers. Using healthcare identifiers will allow more accurate matching of health information to the correct consumer record and allow more accurate identification of healthcare providers.

The amendments to the Healthcare Identifiers Act 2010 will authorise the System Operator, and other entities such as Medicare acting on behalf of the System Operator, to handle healthcare identifiers in various ways including the capacity to:

- collect, use and disclose healthcare identifiers for the purpose of registering consumers in the system; and
- use healthcare identifiers to verify the identity of individuals during the registration process;
- Similarly, authorisations are also sought for repository providers to:
- disclose healthcare identifiers for the purpose of indexing documents uploaded to a consumers electronic health record; and
- adopt healthcare identifiers as the main identifiers in their repository for information that is to be used within the system.

There will also need to be amendments to the Health Insurance Act 1973 and the National Health Act 1953 to allow a range of health records stored by Medicare to be included in a consumer's eHealth record if the consumer so chooses.

The consequential amendments proposed in this Bill will allow a range of records created by Medicare to be included in a consumer's eHealth record. Consumers will be able to choose to have their Medical Benefits Scheme, Pharmaceutical Benefits Scheme, organ donor and childhood immunisation information included in their eHealth record. Both the Health Insurance Act 1973 and the National Health Act 1953 contain certain prohibitions regarding the linking of Medicare and Pharmaceutical Benefits Scheme information, and the amendments will displace those prohibitions only for eHealth records system purposes.

This Bill seeks to make these amendments so that consumers can have the health information they choose included in their eHealth record to support their better coordinated and better informed ongoing healthcare.

Debate adjourned.

Social Security Legislation Amendment Bill 2011

Stronger Futures in the Northern Territory Bill 2012

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

First Reading

Bills received from the House of Representatives.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:16): I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

**Second Reading**

**Senator JACINTA COLLINS**

(Victoria—Parliamentary Secretary for School Education and Workplace Relations)

(17:17): I table an explanatory memorandum relating to the Stronger Futures in the Northern Territory Bill 2012. I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

**SOCIAL SECURITY LEGISLATION AMENDMENT BILL 2011**

This Bill makes amendments to social security law to improve the operation of the income management system, and to improve school attendance.

In regards to income management, the Government believes all Australians should be able to share in the benefits of this strong economy, and enjoy the financial and social benefits of work.

The Government's Building Australia's Future Workforce package addresses entrenched disadvantage in targeted locations by helping to stabilise families and remove barriers to participation in work and the community.

The amendments in this Bill will expand income management in five of the most disadvantaged locations in the country.

They will give greater flexibility to the operation of income management. For example, the refinements would allow the Vulnerable Welfare Payment Recipients Measure to be activated on its own in a particular area, instead of in conjunction with the Long-term Welfare Payment Recipients Measure and the Disengaged Youth Measure, as is currently the case.

A new external referral income management measure, known as Supporting People at Risk, is being introduced. This will allow referrals from a wide range of State and Territory authorities on a similar basis to referrals under the current Child Protection Measure, and will help ensure income management assists those people most likely to benefit.

For example, to support the Stronger Futures in the Northern Territory alcohol measures, this Bill will enable people referred by the Northern Territory Government's Alcohol and Other Drug Tribunal to be placed on this new measure of income management, thus reducing the proportion of income available for alcohol.

Additionally, the rules applying to a person who is subject to income management in a declared area and who moves to another location will be clarified, as will the school exemption criteria for the Long-term Welfare Payment and Disengaged Youth Measures.

A second measure in the Bill amends the provisions in social security law that underpin the Government's Improving School Enrolment and Attendance through Welfare Reform Measure, or SEAM.

SEAM is one aspect of the Australian Government's strategy to improve school attendance and engagement. The amendments allow the possibility of an income support suspension to be integrated into the Northern Territory Government's Every Child, Every Day attendance strategy.

School attendance in parts of the Northern Territory is unacceptably low – as low as 40% in some schools. With such a level of absence, a child cannot build a sufficient foundation in literacy and numeracy to enable them to succeed in later schooling and in the modern world.

The Gillard Government has invested significantly to improve the quality of education in schools in the Northern Territory. On top of base funding provided to government and non-government education authorities, our additional investments in the Northern Territory include:

- $16 million to expand pre-school services
- $70 million in funding for Northern Territory schools in disadvantaged communities
• $50 million for teacher quality and literacy and numeracy initiatives
• $46 million for 200 additional teachers
• $256 million under the Building the Education Revolution program for school infrastructure
• A further $10 million for classrooms in remote schools, and
• $12 million to build Trades Training Centres.

In four years we have made substantial progress in addressing shortages of early childhood services, teachers, teacher housing and classrooms in Northern Territory schools. The COAG Reform Council's recent report shows progress in being made in pre-school participation and early years literacy. The recent evaluation of the Northern Territory Emergency Response found that some 57% of people surveyed strongly agreed that the school in their community was better now than it was three years ago.

This work must continue, but it is clear that for these improvements in schools to translate into improvements in educational outcomes for students, regular school attendance is essential.

Improving attendance can never be done by governments and schools alone. For all the funding that governments invest and all the skills that teachers bring to their schools, we still ultimately rely on parents to get their children ready and to the school gate each morning.

While the overwhelming majority of parents understand the value of education and are making sure their children are in class and learning for their future every day, there are a number who do not.

The overwhelming opinion of Aboriginal people who participated in the Stronger Futures consultations in the Northern Territory was that they wanted action to hold to account those parents who do not send their children to school.

The amendments in the Bill enable a new, integrated approach to managing cases of poor school attendance in the Northern Territory.

According to this approach, if a child is not attending school regularly the school will convene an attendance conference with the family to talk through barriers to the child's education. The conference will agree on an attendance plan. The attendance plan will include actions that the family commit to undertake, for example, walking the child to school in the mornings or providing a place for the child to study at home. Support from a social worker will be available to help the family meet their obligations under the plan.

Importantly, the attendance plan can also include actions that the school or other parties will undertake, for example, providing a school uniform or resolving an issue around bullying that may be contributing to the child's disengagement.

This is a collaborative approach that attempts to improve attendance in partnership with the family.

However, it is important that there be a lever to ensure families engage in this process. If a family refuses to participate in the attendance conference, or refuses to agree to an attendance plan, or fails to live up to their agreed actions in the attendance plan when other parties to the plan fulfil their commitments, then their income support payments may be suspended until they do.

If the family complies within 13 weeks, their income support payment can be reinstated with full back pay.

This is a sensible approach that apportions responsibility for school attendance appropriately between the school and family.

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2012

The Stronger Futures in the Northern Territory Bill 2012 is being introduced alongside its companion, the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011.

The Social Security Legislation Amendment Bill 2011, which complements measures set out in these Bills, is being introduced separately.

Together, these Bills form a part of our next steps in the Northern Territory, undertaken in partnership with Aboriginal people and the Northern Territory Government.

These are steps taken with a clear eye to the future.
A stronger future which sees a substantial and significant change for Aboriginal people in the Northern Territory.

Where people live in good houses, and in safe communities.

Where parents go to work, and children go to school each day.

A stronger future, grounded in a stronger relationship between government and Aboriginal people in the Northern Territory.

A relationship built on respect for Australia’s first peoples, for their custodianship of the land, for their culture and for their ongoing contributions to our shared nation.

This is a respect that is about much more than sentiment. It is about the approach we take to our work, and the approach we take to working together.

This is the approach we took to consultations after we first came into government.

These conversations revealed the depth of hurt felt by Aboriginal people by the sudden and rushed implementation of the Northern Territory Emergency Response.

And informed our amendments, including the reinstatement of the Racial Discrimination Act 1975 in the Northern Territory.

As we have built houses, as we have built health services and preschools, we have also set about rebuilding the relationship with Aboriginal people.

Let me be very clear: we must achieve real change for Aboriginal people in the Northern Territory.

Because the situation in the Northern Territory remains critical.

Yes, important progress has been made.

The independent evaluation of the Northern Territory Emergency Response shows that there have been real and positive improvements over the last three years.

People have said that their communities are safer than they were three years ago. New police stations and night patrols have improved community safety.

The introduction of the basics card has been positive, showing that income management is a useful tool for people.

It has helped them to stabilise the family budget and make sure that money is being spent on housing, food and clothing for children.

More than 350 new houses have been built and another 275 are underway. More than 1,800 rebuilds and refurbishments of houses are also complete.

Our investment is delivering improved living conditions – better and safer houses – to more than 2,000 Aboriginal families in the Northern Territory.

And more people are working – in properly paid jobs – than three years ago.

But the fact remains that Aboriginal people in the Northern Territory continue to face significant levels of need on a daily basis.

Some children are still not receiving proper care, and that is completely unacceptable.

The child protection substantiation rate has doubled for Indigenous children in the Northern Territory since the start of the Emergency Response.

Three in four of these cases related to child neglect.

The increased rate in reporting reflects our increased investment, with the Northern Territory Government, in child protection services.

This includes additional funding from both governments delivered in response to the Bath Report last year, which recommended additional child protection workers in remote communities, stronger alcohol controls and new intensive family support services for families referred for child protection income management.

We have enabled referrals from the child protection system for income management in the Northern Territory to ensure all the tools are available to child protection workers in ensuring that children are not neglected, that they have food and clothing and housing.

With increased visibility of the extent of child neglect in the Northern Territory must come our reaffirmed commitment to do all that we can to ensure that children are safe.
Similarly, with our increased visibility of school enrolment and attendance, we must do more to ensure that children are going to school.

The Evaluation Report shows us that there has been no overall improvement in school attendance – and while we are starting to see good signs in reading, the Northern Territory still lags behind the national standards for reading, writing and numeracy.

Aboriginal people in the Northern Territory still experience the widest gaps by a large margin across the Closing the Gap indicators.

They have a lower life expectancy than anywhere else in the country.

And a higher infant mortality rate.

We see that much more needs to be done – and we hear it too.

Across the Territory, people have told us that more needs to be done to achieve the change we all want to see for Aboriginal people there.

People in the Northern Territory want for their children what each of us, right across the country, want for our children:

That they will grow up healthy and safe and get a good education.

That they have a bright future that includes a roof over their heads, food on the table, and a good job.

That they will be strong people, proud of who they are.

It is clear that, if we are to see these stronger futures take shape, we must not walk away and we must continue to work hard.

Existing legislation for the Northern Territory is due to cease in August next year.

But our efforts cannot cease, because we know – and Aboriginal people have told us – that much more work needs to be done.

Work to consolidate our progress to date.

And work to build on these achievements, to build a stronger future with the Aboriginal people of the Northern Territory.

The measures I bring forward in these Bills today reflect our determination to continue this work.

All of the measures in this Bill have been designed to comply with the Racial Discrimination Act 1975.

They reflect our understanding that our efforts cannot cease with the existing legislation.

They reflect our appreciation of just how critical the situation in the Northern Territory is.

And they reflect the many conversations we have had with Aboriginal people in the Northern Territory over the past few months, and the past few years.

**Stronger Futures in the Northern Territory**

In the six weeks of our Stronger Futures in the Northern Territory consultations, we held meetings in one hundred communities and town camps and public meetings in major towns.

Hundreds of smaller discussions with individuals, families and other groups took place across the Territory.

The consultations were overseen by the independent Cultural and Indigenous Research Centre Australia, who agreed that the discussions were fair, open and accountable.

The outcomes of these consultations have been recorded in the Stronger Futures in the Northern Territory Report on Consultations, which was released last month and which forms an important part of this Government’s policy statement on our path forward.

I personally participated in a number of these discussions, and want to place on the record my appreciation for the openness and the frankness with which people shared their stories and their hopes for a stronger future for themselves and for their children.

What is clear from these conversations is that we are united in our desire for change; and that there is much more work to be done.

What we heard in the course of our conversations is that the path to change is laid with barriers, which we must break down if we are to create that change.

The barriers people described to us in this consultation were about the lack of services, yes.

But they were also about attitudes.
They said that we as government had to do more, but that we must also expect more – that people would find a job and keep it; that children would go to school; and that people would sober up.

Because if children don’t go to school, the best teachers and the best classrooms can’t give them a good education.

The strongest work ethic and the most driving ambitions will be wasted if there are no jobs.

If people can’t get sober, they can’t set the best example for their children – a parent who goes to work each day and brings home a pay cheque each fortnight.

The measures in the legislative package I am introducing to the Parliament today help tackle the barriers to change. They clear the path for us to walk together and to work together for the change we all want to see.

They make clear our expectations of parents – that they will send their children to school to get a good education.

They support more jobs in the Northern Territory.

And they do more to tackle alcohol abuse.

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

The Stronger Futures in the Northern Territory Bill 2012 contains measures aimed at breaking the back of alcohol abuse – to help individuals, their families and communities get back on their feet.

When people spoke to me of barriers, they spoke of alcohol and the havoc it wreaks on remote and urban communities alike.

They spoke of the harm caused by alcohol abuse – of loved ones lost to alcohol-related disease, road accidents and the violence it causes in families and communities.

Alcohol abuse is at the heart of dysfunction, violence and abuse in many communities.

There is extensive hard evidence of the harm being caused by alcohol in Aboriginal communities, and of the huge economic and social costs of alcohol to the Territory.

Communities have called for their ‘dry’ status to remain in place.

The hard evidence and what we heard during the consultations have persuaded the Government that the alcohol restrictions must not be relaxed.

The Stronger Futures in the Northern Territory Bill provides for the current alcohol restrictions to be continued.

It requires respectful signage so that everyone is clear about the alcohol management arrangements in place, and communities will be consulted about signs.

It responds to the concerns people raised – their frustrations with grog runners undermining the restrictions. So we are introducing tough new measures to clamp down on grog runners.

We are proposing to increase the penalty for liquor offences under 1,350 millilitres, to include six months’ imprisonment.

Northern Territory laws will then permit the option of referral to the Substance Misuse Assessment and Referral for Treatment Court for this offence.

We have heard from people across the Territory that, if we are to break the back of alcohol abuse, we must empower individuals, families and communities to take control.

This Bill strengthens the ability of communities to take control.

The Bill provides that alcohol management plans established by local communities be directed at minimising alcohol-related harm.

To ensure that alcohol management plans are able to contribute to reducing harm, the Bill includes provision for rules on the minimum standards an alcohol management plan will need to meet before it can be approved.

In future AMPs will be approved by the Commonwealth Minister for Indigenous Affairs.

Where an alcohol management plan is approved and in place, consideration will be given to lifting the restrictions under the Stronger Futures legislation. If the restrictions are lifted, the Northern Territory Liquor Act will continue to apply.
Where communities want to retain these Stronger Futures restrictions, they will be able to.

This measure is designed to support communities get control of the drinking problem and forge their own path — to make the grog, the despair and the violence that comes with it a thing of the past.

To assist the Northern Territory Government to clamp down on alcohol traders who may be linked to substantial alcohol-related harm to Aboriginal people, the Bill provides that the Commonwealth Indigenous Affairs Minister may request the Northern Territory Government to appoint an assessor under the Northern Territory Liquor Act to examine their practices and report back on findings.

The Bill also provides for a joint Commonwealth-Northern Territory review to be conducted two years after commencement of the Stronger Futures legislation.

The review will examine the effectiveness of the Stronger Futures and the Territory laws in addressing alcohol-related harm to Aboriginal people.

This will allow both Governments to continue working together to make progress.

The review report will be tabled in this Parliament.

Alcohol-related harm is not confined to the Northern Territory.

The Government is also increasing the tools available to governments across Australia to tackle alcohol-related harm.

We are proposing to amend income management legislation to allow referrals by recognised State or Territory authorities to trigger income management.

This non-discriminatory measure is intended to commence in the Northern Territory as a first step, to support referrals for income management from the Northern Territory Alcohol and Other Drugs Tribunal.

These proposals are included in the Social Security Legislation Amendment Bill 2011.

Alcohol abuse is a serious problem in the Northern Territory.

It is causing real harm to individuals, to families and to communities.

And it is a barrier to the positive changes we all want to see.

We are responding with serious measures.

The Social Security Legislation Amendment Bill 2011 will also boost our efforts to tackle the barrier created by children not going to school.

A good education is a firm foundation for a stronger future.

And yet, we know that levels of enrolment and attendance for Indigenous children in the Territory remain unacceptable.

Aboriginal people in the Northern Territory have made clear their expectation that Indigenous children need to get a good education.

They have been equally clear about their expectations of parents.

Parents have a responsibility to send their children to school.

Parents of children everywhere.

Whether in a remote community in the Northern Territory, a regional town in Victoria or in the middle of Brisbane — parents have a responsibility to give their children the best start in life.

They have a responsibility to send their children to school.

The School Enrolment and Attendance Measure already applies to all parents on income support in some areas in the Northern Territory and Queensland.

The Australian Government will extend SEAM to the townships of Alyangula and Nhulunbuy, and to Alice Springs, Tennant Creek, and remaining schools in Katherine and the communities of Yirrkala, Maningrida, Galiwin’ku, Ngukurr, Numbulwar, Umbakumba, Angurugu, Gapuwiyak, Gunbalanya, Milingimbi, Lajamanu and Yuendumu.

**Other measures in the Bill**

The Stronger Futures in the Northern Territory Bill 2012 paves the way for change by supporting strong communities.

We heard in consultations that remote community stores have improved over the past
four years. They now offer healthier food and are better managed.

We will continue to improve community stores licensing arrangements.

Licensing will focus more clearly on supporting food security in remote communities. In the future, a community store may be required to have a licence to operate if it is an important source of food, drink, or grocery items for Aboriginal communities.

We will also introduce a range of new penalties to encourage stores to improve their performance and crack down on unscrupulous practices.

We have long been clear that secure tenure is a foundation stone for our work to improve housing in remote Indigenous communities.

We have been determined not to replicate the mistakes of the past that saw ownership and responsibility for houses uncertain and unclear.

In the past, no one made sure homes were maintained; no one made sure proper tenancy management was in place.

This is now being fixed through systemic reforms in the delivery of remote housing under the National Partnership Agreement on Remote Indigenous Housing.

Leases which run for 40 years now form the foundation for housing in 15 larger communities. Tenancy management is now the clear responsibility of the Territory Government.

And tenants now have a clear responsibility to pay their rent, just like tenants anywhere else in Australia.

The Australian and Northern Territory Governments will continue to negotiate leases with Aboriginal land owners to enable the Territory Government to manage public housing in remote communities.

This means that there is clear responsibility for the upkeep of houses – and that no longer will they fall down around peoples’ ears through years of neglect.

In this Bill, we make clear too that the Australian Government will not be extending the compulsory five-year leases acquired under the original legislation, and instead will negotiate voluntary long term leases.

The Bill provides the Australian Government with the ability to make regulations removing barriers in Northern Territory legislation to leasing on town camp and Community Living Area land.

Currently, there are restrictions on how this land can be used – even where the community agrees they want to put it to different uses.

This will enable the Aboriginal land-holders of town camps and Community Living Areas to make use of their land for a broader range of purposes, including for economic development and private home ownership.

This Bill builds on what Aboriginal people in the Northern Territory have told us about the change they want to see, for themselves and for their children.

The measures have been designed for the long haul – to reflect our belief that over time these measures will provide better opportunities for Aboriginal people.

Over time, they will break down the barriers.

Over time, they will pave the way for the path ahead.

And, over time, they will achieve their objective.

These measures are designed so that, when they achieve their objective, they will not continue.

Accordingly, we propose that the new Stronger Futures in the Northern Territory Act sunset 10 years after its commencement.

After seven years of operation, the Government is proposing a legislative review of the Stronger Futures legislation.

The findings of this independent review will be tabled in the Parliament.

The timeframe for the review has been planned so that we could reasonably expect to see changes in the key priority areas that were outlined in the Stronger Futures in the Northern Territory discussion paper – outcomes such as education, jobs, alcohol related harm, and housing.
Across each of the closing the gap targets, the gap remains the greatest for Aboriginal people in the Northern Territory.

Progress is being made but much more remains to be done.

This Bill is part of our next steps in the Northern Territory, steps taken in partnership with Aboriginal people.

STRONGER FUTURES IN THE NORTHERN TERRITORY
(CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2011

This Bill is the companion Bill to the Stronger Futures in the Northern Territory Bill 2012.

This Bill amends existing Commonwealth legislation, and sets out transitional arrangements, to complement the new primary legislation established under the main Stronger Futures in the Northern Territory Bill.

This Bill seeks to repeal the Northern Territory National Emergency Response Act 2007.

The earlier speech described our clear commitment to put new housing on firm foundations through secure tenure – so responsibility for maintenance, responsibility to pay rent and responsibility to build new housing is clear for the first time.

We have made clear our commitment to no new five year leasing arrangements, and our intention to move to long term voluntary leasing arrangements to give communities and governments certainty as we plan for the future.

This Bill includes savings provisions which make this transition possible. These provisions will preserve the current leasing arrangements as necessary until their planned sunset date – so that we can work with communities to transition to new, voluntary leases.

This provision also makes sure that rent can continue to be paid to the Aboriginal land owners of the five-year leases.

The Bill will also allow land owners of Community Living Area land to receive the help of Land Councils in managing their land, including negotiating lease arrangements.

This is designed to support the voluntary leasing arrangements – so that communities and governments have certainty and can accept responsibility for land and housing.

The measures we introduce today reflect our evaluation – of what is working and what is not.

They also repeal those measures in the existing legislation which haven’t worked or which are no longer needed.

This Bill repeals statutory rights provisions that provide rights to carry out works in a construction area, and to occupy, use, maintain, repair or make minor improvements to the buildings and infrastructures in the construction area.

These are not consistent with our approach to voluntary leasing, and have never been used.

This Bill also includes transitional arrangements for the measures to tackle alcohol abuse and to improve licensing arrangements for community stores that are considered in the Stronger Futures in the Northern Territory Bill 2012.

This Bill will continue measures which have helped make communities safer and to protect their most vulnerable members, women and children.

The recently released evaluation of our work in the Northern Territory showed that nearly three out of every four people said that their community felt safer than four years ago.

The Bill continues and makes minor changes to the restrictions introduced by the Northern Territory Emergency Response on sexually explicit and very violent material (the pornography restrictions) in remote Aboriginal communities in the Northern Territory.

This measure will be subject to the 10-year sunset applying to measures in the Stronger Futures in the Northern Territory Bill and the review to be undertaken at seven years after the legislation commences.

The Bill continues the prohibition on taking customary law and cultural practice into account in considering the seriousness of an alleged offender’s criminal behaviour in bail and sentencing decisions for Commonwealth and Northern Territory offences.
However, some changes are proposed to exempt offences that protect cultural heritage, such as offences around damaging sacred sites and cultural heritage objects.

Debate adjourned.

Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Bill 2012

Social Security and Other Legislation Amendment (Income Support and Other Measures) Bill 2012

First Reading

Bills received from the House of Representatives.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)

(17:18): I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations)

(17:18): I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (DISABILITY SUPPORT PENSION PARTICIPATION REFORMS) BILL 2012

This Bill introduces two key reforms to the disability support pension announced in the 2011-12 Federal Budget as part of the Building Australia's Future Workforce package of measures. These are significant reforms—reforms that will, for the first time, introduce new participation requirements for certain disability support pensioners, and allow disability support pensioners to work more hours without having their payment suspended or cancelled.

Other amendments made by this Bill include more generous rules for overseas travel for people with severe disability, and some minor amendments.

The Government is improving support for Australians with disability, to help them into work where possible, while ensuring we continue to provide an essential safety net for those who are unable to support themselves fully through work.

I believe we can do better than a lifetime spent on income support for Australians who have some capacity to work. Many people with disability are great contributors in the workforce, and many more want to do more.

This Government recognises that working benefits people in many different ways. It helps boost people's self-esteem, improves social contact, provides more income, and leads to improved health and financial security. The Government is committed to ensuring that people with disability can access these opportunities wherever they are able to do so.

These reforms introduce new participation requirements for certain disability support pension recipients with some capacity to work and more generous rules for existing disability support pensioners to encourage them to work more hours. These measures will be combined with extra support for people with disability, including more employment services, and support for employers to take on more people with disability through new financial incentives.
Many people with disability want to work if they can, but they may need extra support.

In the first of three disability support pension measures in this Bill, all effective from 1 July 2012, more generous rules are introduced to allow all disability support pensioners to work up to 30 hours a week without having their payment suspended or cancelled. These people will be able to receive a part pension, subject to usual means testing arrangements.

Currently, disability support pension recipients granted on or after the previous Government’s introduction of the Welfare to Work changes on 11 May 2005 can only work up to 15 hours a week before their payment is suspended or cancelled. Recipients granted before this date were ‘grandfathered’ under the Welfare to Work changes and can work up to 30 hours a week before their pension is suspended or cancelled.

Disability support pension recipients subject to 'the 15 hour rule' can find it difficult to find work limited to less than 15 hours a week. Many want to test whether they can work more hours but are worried about losing qualification.

This change will remove the disincentive for disability support pension recipients to take up work or increase their hours if they are able to do so, and will help address the low workforce participation rate of people with disability.

We estimate that this change will encourage around 4,000 disability support pension recipients to take up work, and 3,900 recipients who are already employed to work extra hours.

The Bill’s second measure will introduce new participation requirements to encourage the workforce engagement of certain disability support pensioners who have some capacity to work.

Disability support pension recipients under age 35 with a work capacity of at least eight hours a week will be required for the first time to attend regular participation interviews – engaging with Centrelink to develop participation plans, tailored to their individual circumstances, to help build their capacity.

Participation plans could involve working with employment services to improve job readiness, searching for employment, or undertaking training, volunteering or rehabilitation.

The participation interviews will also help make sure disability support pension recipients are connected to other services and supports they need to overcome barriers to participation, such as drug and alcohol rehabilitation, mental health services and other community services.

While attendance at Centrelink interviews will be compulsory, participation in activities identified in the plan will be on a voluntary basis. There will also be exceptions to the new participation requirements for pensioners who are manifestly disabled or have a work capacity of zero to seven hours a week, or while a pensioner is working in an Australian Disability Enterprise or the Supported Wage System.

In the third measure, the Government recognises that the disability support pension is an essential safety net for those who cannot work. New, more generous, rules will allow people receiving disability support pension who have a permanent disability and no future work capacity, to travel overseas for more than 13 weeks, while retaining access to their pension.

In addition, a disability support pension recipient who has a severe disability and is required to accompany a family member who has been posted overseas by their Australian employer will retain their pension for the period of the family member’s posting. These pensioners will not be eligible for add-on payments such as the pension supplement or rent assistance while they are overseas.

Existing portability rules will continue to apply to disability support pension recipients who may have some ability to work. Other working age payments will not be affected by these changes to portability arrangements.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (INCOME SUPPORT AND OTHER MEASURES) BILL 2012

The Social Security and Other Legislation Amendment (Income Support and Other Measures) Bill will give effect to important reforms contained in the Building Australia’s Future Workforce package announced in the
2011-12 Budget. These measures will provide greater incentives and support for young Australians to engage in education, training and employment, and will reward single parents who re-engage in the workforce.

Around 320,000 or 10 percent of Australians aged 15-24 are not in education, training or employment and many young people face challenges to entering the workforce. Australia’s strong economic fundamentals and balanced approach to the challenges of the past four years has seen the economy growing solidly. With the unemployment rate expected to stay low there is the opportunity for many more young people to find work – given the right encouragement and support.

The Australian Government wants to ensure that our young people get the best possible start to their adult life. A good education and a connection with the workforce are critical to achieving this goal.

Census data shows that people of prime working age who have competed Year 11 or 12 have an unemployment rate less than those whose highest educational level was year 10 or less.

That is why the Australian Government is introducing changes to Youth Allowance and Newstart Allowance that will provide greater incentives for young Australians to engage in study or paid work, and reduce their reliance on welfare.

Under the Building Australia’s Future Workforce reforms 21 year old job seekers will receive Youth Allowance from 1 July 2012. Currently these young people may be eligible for Newstart Allowance. This means that the same rate of income support payment will apply to 21 year olds whether they are unemployed, training or a student.

The Earn or Learn participation requirements will also be extended to include 21 year olds on Youth Allowance who do not have a Year 12 or equivalent qualification.

This will mean that they will have to participate in a combination of education, training or other approved activity, such as paid work, (usually for 25 hours per week) until they turn 22.

Through other measures announced in the 2011-12 Budget, the Government is assisting young people to strengthen their foundation skills, through Transition Support for Early School Leavers and more places in the Language, Literacy and Numeracy Program, as well as to take up career opportunities in the trades.

From 1 January 2012, more generous Family Tax Benefit A assistance provides support for eligible families with children in their final years of school.

These changes will provide greater opportunities for these young people through education and training and remove the incentive to stop studying and instead receive unemployment benefits.

Young people who take up work will be rewarded more for their efforts. From 1 July 2012 job seekers receiving Youth Allowance will be able to earn more and still retain their payment. The income free level will be increased from $62 a fortnight to $143 a fortnight and the Working Credit limit will be increased three and a half fold from $1000 to $3500. This means that young job seekers will be able to earn more than twice as much before their income support payments are affected.

To ensure that all young people under similar circumstances are in receipt of the same income support payments, changes will also be made to the age requirements for Sickness Allowance, the Youth Disability Supplement and the Longer Term Income Support rate for students.

The Building Australia’s Future Workforce Package also includes important changes to income support payments for parents to provide greater incentives and opportunities for parents, particularly single parents, to re engage in the workforce and share in the benefits that work brings.

With around 520,000 dependent children in jobless families at risk of the social and economic disadvantage that is associated with joblessness, this is more critical than ever.

The Government is making a number of changes to Parenting Payment to encourage parents with school age children to re-enter the workforce sooner and to ensure greater
consistency in the Parenting Payment eligibility rules.

Since 1 July 2011, children born to or coming into the care of parents who have been receiving Parenting Payment since before July 2006 have not extended these parent’s eligibility for payment.

From 1 January 2013, these parents will cease to qualify for Parenting Payment when their youngest eligible child turns 12 or 13 in 2013, or 12 in subsequent years, rather than the current 16.

Current recipients whose youngest eligible child was born before 1 January 2000 will be exempt from this change.

We need to act now to ensure that these parents have the opportunity to benefit from our growing economy, to increase their self-sufficiency and achieve greater financial security, and to provide their families with good working role models.

This is why the Government is reforming the income test that applies to single principal carer parents on Newstart Allowance.

The introduction of a more generous income test will allow these parents to earn over $400 more per fortnight before they lose eligibility for payment.

This will provide stronger incentives for parents to undertake paid work by allowing parents to retain more of their income support as their employment income rises.

To ensure that individuals and families, particularly those affected by the Parenting Payment changes, are not disadvantaged when transitioning to new payment arrangements, the Government is streamlining the claim provisions that apply to Newstart Allowance.

This change will enable claims for Newstart Allowance to be lodged up to 13 weeks prior to the day on which the person will become qualified, in line with the rules that apply to other income support payments.

This will not change the date from which Newstart Allowance is paid; it will however provide a smoother claim process for those transferring to Newstart Allowance.

In recognition that affected parents are likely to have spent significant periods on income support and out of the workforce, the Government is also providing additional support for these parents to ease their transition back into the workforce.

This includes additional training places and community based support for single parents as well as access to professional career advice through Job Services Australia providers.

The Government believes that together these changes provide parents with the right balance of support and incentives to make the most of the employment opportunities available, to find meaningful work and provide themselves and their families with a better future.

An important element in the way that support is provided to job seekers is the job seeker participation requirements and compliance arrangements. These arrangements help job seekers move off income support and into paid employment by reinforcing education, vocational training, and work experience opportunities.

To simplify the compliance framework and reinforce the requirement that job seekers move towards gaining a skill and getting a job, the different daily penalty amounts for short-term financial penalties will be aligned at one-tenth of a job seeker’s participation payment. This will simplify the compliance framework and ensure job seekers are not penalised because a weekend happens to fall before they can re-engage.

The Bill also makes a minor technical amendment to a cross reference in a rate calculator in the Social Security Act.

Finally this Bill will amend the Indigenous Education Targeted Assistance Act 2000 to provide the appropriation to fund the 12 months extension of the Student Education Trusts measure as part of the extension of the Cape York Welfare Reform Trials announced by the Minister for Families, Community Services and Indigenous Affairs in 2011.

The Student Education Trusts are a financial management service which supports and encourages parents and care-givers from the remote Indigenous communities of Aurukun, Coen, Hope Vale and Mossman Gorge on Cape
York in Far North Queensland to save for their children’s education costs from the early years through to tertiary education. The Trusts are an important part of the Closing the Gap strategy in Indigenous education in Far North Queensland.

The changes in this Bill form an important part of the income support reforms included in the Government’s Building Australia’s Future Workforce Package. These reforms will encourage more Australians to participate in and share in the benefits of paid work, equip them with the necessary skills to improve their future employment prospects and will result in more consistent treatment of income support recipients and better support and assistance to parents and jobseekers.

Ordered that further consideration of the second reading of these bills be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

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

Appropriation Bill (No. 3) 2011-2012

Appropriation Bill (No. 4) 2011-2012

First Reading

Bills received from the House of Representatives.

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:19): I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator JACINTA COLLINS
(Victoria—Parliamentary Secretary for School Education and Workplace Relations) (17:19): I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

APPROPRIATION BILL (NO. 3) 2011-2012

There are two Additional Estimates Bills this year:

Appropriation Bill (No. 3) and Appropriation Bill (No. 4).

The Additional Estimates Bills seek appropriation authority from Parliament for the additional expenditure of money from the Consolidated Revenue Fund. These funds are sought in order to meet requirements that have arisen since the last Budget as well as to take into account impacts on Australia’s economic and fiscal outlook that have arisen as a result of the European sovereign debt crisis and instability on the Global financial markets. The total additional appropriation being sought through Additional Estimates Bills 3 and 4 this year is a little over $3.1 billion.

The recent Mid-Year Economic and Fiscal Outlook identified several impacts on the Australian economy that have implications to Australia’s near term outlook.

Since last year’s Budget, the European sovereign debt crisis has had an increased impact on International growth and overall market stability. Despite the pressures this has placed on the Australian economic and fiscal outlook, Australia continues to outperform the developed world in economic growth, low unemployment, resources investment and strong public finances. The Government remains on track to deliver a budget surplus in the 2012-13 financial year.

Turning now to Appropriation Bill (No. 3); the total appropriation being sought in this Bill is $2.8 billion. This proposed appropriation arises from: changes in the estimates of program expenditure; variations in the timing of payments; forecast increases in program take-up; reclassifications; and from policy decisions taken by the Government since the last Budget.

I now outline the major appropriations proposed in the Bill:
The Government will provide $1.3 billion in appropriations across several agencies to support its commitment to a Clean Energy Future for Australia.

The Government will provide $1 billion to the Department of Climate Change and Energy Efficiency to provide cash payments to highly emissions-intensive coal-fired power stations to assist their transition to a carbon price.

The Department of Climate Change and Energy Efficiency will be provided with $106 million to complete remaining complex inspections and rectification services under the Home Insulation Safety Plan.

The Department of Climate Change and Energy Efficiency will receive $37 million for the establishment of the Clean Energy Regulator which will administer the carbon pricing mechanism. The regulator will be responsible for monitoring and assessing the emissions data as well as enforcing compliance with the carbon pricing mechanism.

The Government will provide a further $100,000 in 2011-12 for the Department of Finance and Deregulation to conduct Gateway reviews of the establishment and operation of the Clean Energy Regulator.

The Government will also provide the Department of Climate Change and Energy Efficiency with $6 million to assist the delivery of information about the implications of a carbon price on small businesses and other community organisations.

The Government will provide the coal mining industry, through the Department of Resources, Energy and Tourism, with $222 million to assist the most emissions intensive coal mines to transition to a carbon price. The assistance includes a Coal Sector Jobs Package and a Coal Mining Abatement Technology Support Package.

The Department of Sustainability, Environment, Water, Population and Communities will receive $36 million to establish a Biodiversity Fund. This fund will support the establishment, restoration, protection and management of biodiverse carbon stores, for example reforestation and revegetation in areas of high conservation value including wildlife corridors and action to prevent the spread of invasive species across connected landscapes.

The Department will also be provided with $2 million as part of a package to support the Tasmanian Forest Industry as it transitions to a more sustainable and diversified industry.

The Government will provide $49 million to the Department of Sustainability, Environment, Water, Population and Communities to support the management of extractive industry activities, particularly coal seam gas and major coal mining developments. This initiative aims to build scientific evidence and understanding of the impacts on water resources of coal seam gas extraction and large coal mines.

AusAid will receive $30 million in Official Development Assistance as part of Australia’s contribution to the Horn of Africa as it deals with drought and famine. This humanitarian assistance will be provided through various organisations such as the United Nations High Commission for Refugees, the World Food Programme and other Non-Government organisations.

AusAid will also receive $10 million of funding to implement the International Mining for Development Centre, provide scholarships through the Australian Mining Awards Program and build administrative capacity in Africa.

The Department of Human Services will be provided with $36 million to facilitate payments to assist households in meeting the additional costs associated with a carbon price. This funding supports the Government’s commitment to helping families with children, the aged, pensioners, and people with a disability adjust to the carbon pricing mechanism. The Government will also provide support to other income support recipients and low income earners.

The Department of Agriculture Fisheries and Forestry will receive supplementary appropriations to support businesses within the live cattle exports industry. The Government will provide $24 million of assistance to businesses affected by the temporary suspension of live cattle exports to Indonesia and to improve animal welfare outcomes. The assistance will include a combination of assistance payments and the subsidisation of low interest loans to support...
businesses directly affected by the interruption in trade.

The Department of Agriculture Fisheries and Forestry will also be provided with $30 million to extend the Carbon Farming Initiative to include two new programs, Carbon Farming Futures and the Indigenous Carbon Farming Fund. The Department will also receive $45 million to support the Tasmanian Forest Industry support initiative being led by the Department of Sustainability, Environment, Water, Population and Communities.

The Government will provide the Department of Industry, Innovation, Science, Research and Tertiary Education with $9 million to assist the manufacturing industry transition to a low carbon economy. The assistance will comprise direct assistance to manufacturing businesses with an energy consumption of at least 300 megawatt hours of annual electricity or 5 terajoules of natural gas. The assistance will include grants to trade exposed industries such as metal forging and foundry industries as well as targeted assistance to improve energy efficiencies within these industries.

The Government will provide $14 million to Norfolk Island through the Department of Regional Australia, Local Government, Arts and Sport. The funding will support the Norfolk Island Government in the provision of essential services. The funding will also help the Norfolk Island Government to develop reforms that will improve its efficiency and effectiveness.

The Department of Regional Australia, Local Government, Arts and Sport will also receive $16 million to support the Tasmanian Forestry Industry support being led by the Department of Sustainability, Environment, Water, Population and Communities.

The Government will also provide the Department of Regional Australia, Local Government, Arts and Sport with $15 million for the redevelopment of Bellerive Oval in Tasmania. The redevelopment will include an increased capacity for the venue and upgraded facilities. This project will ensure that Tasmanians will get to see more sporting events in Hobart.

The Department of Human Services will be appropriated $10 million to facilitate payments to strengthen incentives for parents to have their children immunised. This funding supports changes to the eligibility criteria for the Family Tax Benefit Part A as well as expanding the immunisation programme to include meningococcal C, Pneumococcal and Chicken pox vaccines.

**Movement of Funds Information**

I now outline the major reclassifications proposed in Bill 3:

The Government will reappropriate $45 million across six Departments.

The Department of Education, Employment and Workplace Relations will be reappropriated $20 million related to providing employment services to job seekers.

The Department of Regional Australia, Local Government, Arts and Sport) will be reappropriated $7 million relating to the sport and recreation program.

The Department of Agriculture, Fisheries and Forestry will be reappropriated $6 million across several programs including those that support the fishing industry, drought relief programs and sustainable agricultural resources.

The Department of the Treasury will be reappropriated $2 million related to the Education Tax Refund Campaign.

The remaining amounts that appear in Appropriation Bill (No. 3) relate to estimates variations, minor reclassifications and other minor measures.

**APPROPRIATION BILL (NO. 4) 2011-2012**

Appropriation Bill No. 4 provides additional funding to agencies for:

- payments direct to local government, and some national partnership payments through the states, the Australian Capital Territory and the Northern Territory;
- requirements for departmental equity injections; and
- requirements to create or acquire administered assets and to discharge administered liabilities.
The total additional appropriation being sought in Appropriation Bill (No. 4) 2011-2012 is a little over $341 million, the more significant amounts of which I now outline.

The Department of Regional Australia, Local Government, Arts and Sport will be reappropriated $53 million of funds directed to Local Governments and Regional Development. This reappropriation, in part, will be used to offset the amounts provided to the Department earlier in the year through the Advance to the Finance Minister mechanism.

The Government will provide $29 million of capital funding for the establishment of the Clean Energy Regulator which, as outlined in the second reading speech for Appropriation Bill (No. 3) 2011-2012, will administer the carbon pricing mechanism.

The Department of Education, Employment and Workplace Relations will be provided with $37 million. This is a result of a transfer of $50 million from Appropriation Act (No. 1) 2011-2012 for the Reward for Great Teachers program, offset by payments to government schools that have been transferred to the Department of the Treasury.

The Department of Industry, Innovation, Science, Research and Tertiary Education will provide a $25 million loan to Howe and Company Proprietary Limited and its parent company Howe Automotive Limited. The loan is to be fully repaid over ten years with annual interest and principal payments. The provision of this loan and its subsequent repayment have no impact on the Government’s fiscal balance but affect the composition of the Government’s assets.

The remaining amounts that appear in Bill 4 relate to estimates variations, minor reclassifications and other minor measures.

I would like to turn now to the general drawing right limits for the Nation-building Funds, which specify the maximum limit on payments from the funds in a financial year exclusive of GST. The general drawing right limits for the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund proposed in this Bill will replace the limits declared in Appropriation Act (No. 2) 2011-12. The limits for the Building Australia Fund and the Health and Hospitals Fund have been increased. The limit of the Education Investment Fund has been decreased. These changes recognise adjustments in the timing of payments to better reflect project milestones and previously announced funding.

The remaining amounts that appear in Appropriation Bill (No. 4) relate to estimates variations, minor reclassifications and other minor measures.

Ordered that further consideration of the second reading of these bills be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

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

COMMITTEES

Education, Employment and Workplace Relations Legislation Committee

Reference

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (17:20): I move:

That the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2012, as passed by the House of Representatives on 16 February 2012, be referred to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 8 May 2012.

It has been said:

Anybody who breaches the law should feel the full force of the law. Each and every breach of the law is wrong and each and every breach of the law should be acted upon.

So spoke the then Minister for Workplace Relations, Ms Gillard, in introducing legislation into this place to get rid of the Australian Building and Construction Commission.
As a result of this legislation being put forward, the Senate had an inquiry into the bill. After the Senate had finished its inquiry and was busily writing its report, the Labor government in the House of Representatives, at one minute to midnight, introduced a Greens-inspired amendment to absolutely gut that which would have remained of the Australian Building and Construction Commission. And the issue that needs to be reviewed by the Senate committee is not only a workplace relations issue. This goes to the very issue and fundamentals of the rule of law in our country. Indeed, that which Ms Gillard promised—like she promised with the carbon tax—has now been shown to be an empty promise. But this is even more serious than the carbon tax, because it undermines the very fundamentals of the rule of law. Allow me to explain. The amendment that the Greens inspired and the Labor Party passed in the other place means that a prosecuting authority can no longer pursue the prosecution if the parties have come to a settlement between themselves. Just imagine if the police were no longer allowed to charge somebody who drove through a red light, settled up with a person whose car they damaged—and paid them a bit of extra money—and as a result the police were denied prosecution of the case. Or imagine an arson case in which somebody does not want to go to jail, does not want to be prosecuted and goes to the person whose property he has burnt down and says, 'I'll pay for all the damages plus $100,000,' and the police are then denied prosecution of that person for arson.

That is what the Labor Party and the Greens want to introduce into the industrial law of this country. What it means is that big unions and big business—with big wallets—will be able to buy themselves out of prosecution but the individual worker will not be able to, because they will not have the money. The small subcontractor on our building sites will not have the money to do that. There will be institutionalised corruption and institutionalised pay-offs. What is more, this has been such a deceptive move. Indeed, when we as the coalition senators wanted the hearing to go on for a bit longer than we had been allowed we were told, 'All this has been canvassed for ages.' If it had been canvassed for so long—for ages—then why this last-minute amendment?

Let us be quite clear. The government must have known it was going to move this amendment but deliberately hid it from the Senate and the public to ensure that this amendment, which is just so fundamental in undermining the rule of law in our country, was hidden from the inquiry so it could no longer be investigated. Or it was a genuine last-minute amendment. And if it was a genuine last-minute amendment then, given that it is of such consequence that three state Attorneys-General have come out to condemn it as undermining the whole basis on which the rule of law runs in this country, this is worthy of further examination by the Senate.

The Australian Greens, I have no doubt, will be voting against this matter going to a Senate committee, as will the Labor Party. If they do so it will be proof positive that they knew about this beforehand and that it was deliberately denied to the Australian people. Either way, this matter should be going to a Senate committee for further consideration.

Senator URQUHART (Tasmania) (17:25): The government does not support this motion. In fact, the opposition knows that the Senate does not support the motion. Regardless of that, here they come again, the old relics of the Work Choices era, all lined up trying to stop one of the last bastions of fear from their terrible era in government
from being abolished. They are so desperate to cling to this relic of the past, so desperate that—although a report on this bill is due to be provided to the Senate next in the schedule—they seek to send it off again to the same committee and for the same purpose, no doubt wasting the time of the industry in again making submissions and again appearing before the committee.

The government's position on the ABCC has been clear for a long period of time. Unlike the coalition with Work Choices, which was thrust upon an unsuspecting electorate, the Labor Party made a commitment to the Australian people prior to both the 2007 and the 2010 election that we would replace the ABCC with a new body, that we would provide a balanced framework for cooperative and productive workplace relations in the building and construction industry, that we would provide a body that is part of our fair work system. There can be no doubt that the government has a mandate to abolish the ABCC. We won the 2007 election and, much to the chagrin of those opposite, were able to negotiate confidence and supply from some of the Independents in 2010 because those Independents decided that the Labor Party was the best party to govern this country and progress reform for the betterment of hardworking Australians.

You also know full well that we have consistently stated that anyone who breaks a law should feel the full force of the law. As a responsible government we will not tolerate an environment in which people choose which laws to obey and which ones to ignore. But we expect this to apply for all industrial participants, and we expect that an industrial regulator will use its resources fairly and not just single out workers and their democratically elected representatives. They waltz in here with their attempts to stifle the work of the Senate with procedural debates and with this motion, which is to come just before the release of the report by the Senate committee.

Those opposite cannot accept that they lost the argument in 2007. The people spoke. The people said they wanted a fair industrial relations system in this country. This bill, the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2012, moves well in that direction. This bill strikes a balance of fairness. It is sad for this country that those opposite are so committed to obscuring fairness in the workplace for everyday Australians—those workers who are building Australia. The construction industry is a dangerous and arduous industry to work in. It is characterised by a system of subcontracting, many small employers, widespread use of a labour hire workforce and intense competitive pressures. They can contribute to compromises on safety issues, breakdowns in the chain of responsibility and difficulties in maintaining effective employee representation on safety issues from job to job. Injury and fatality rates remain unacceptably high.

But it is a fact that there is a positive link between trade union involvement at workplaces and improved OH&S outcomes. Workers are best placed to know what issues make their workplace unsafe and workers should have the right and the power to seek changes to bad practice before accidents occur. If workers feel intimidated about raising issues of safety concern, everyone working at a site is at a higher risk of an accident.

The ABCC has its origins in the recommendations of the Cole royal commission into the building and construction industry. This was set up by those opposite in a desperate attempt to attack unions in the lead-up to the 2001 federal election campaign. The royal commission was an intensely politicised
process from the outset. The focus was almost exclusively on union conduct. No serious attempt was made to balance the inquiry with an examination of employer conduct. Interestingly, despite its enormous cost to the public, of the 392 instances of so-called unlawful conduct in the final report only one was ever pursued and it was ultimately dropped without being prosecuted to finality.

The government understands that the industry contains unique challenges for both employers and employees and as a result we have always supported a strong building industry regulator to ensure lawful conduct by all participants and a strong set of compliance arrangements for the building industry. This bill honours those commitments but, as the coalition fails to understand, it strives to strike a balance.

Senator BACK (Western Australia) (17:30): As the deputy chairman of the committee that investigated this issue—the Education, Employment and Workplace Relations Legislation Committee—I wish to register in the strongest possible terms my absolute disgust at the attempt by the government and the Greens to try and pervert what I would call the course of justice in relation to this late amendment. It has been said that we wanted a range of people to appear before that committee and, of course, we were denied access to it. We went through this whole process in the best of good faith. To see now that this has appeared minutes before midnight and to see that it has been made public in a media release from a House of Representatives member, being a Greens member, is a travesty and something that this chamber should not accept.

It was then Minister Gillard, now the Prime Minister, who made these statements to the National Press Club:

Anybody who breaches the law should feel the full force of the law.

She went on to say, and what empty words they were, as we know now as a result of her performance with the carbon tax:

… there should be absolutely vigorous, hard-edged compliance and no tolerance at all for unlawfulness. … each and every breach of the law is wrong and each and every breach of the law should be acted upon.

What this amendment does is go right to the core of those comments that Ms Gillard made. It emphasises again her absolute emptiness when it comes to any attempt with regard to justice and honesty and fairness in this process.

Yesterday I asked the minister with responsibility, Senator Arbib, if he could respond and, of course, in his final days in this place he has lost interest so therefore he was not only not across the issue but was not able to answer my question. But he made one allegation to me, and that is that my interests are with workers and small businesses and contractors. If he wants to apply that to me, I will accept that with pride, because what this committee tried to do was to absolutely protect the interests of workers, small businesses and contractors—and this amendment goes completely to the heart of those three particular groups. All Senator Arbib could do was bleat about a tough cop on the beat. If indeed the government knew that this amendment was coming on why was it not presented for the committee to debate? I am bitterly disappointed that my Senate colleague and chairman of this committee did not see fit to come into this place and to actually defend it. Why? Because I believe he would be as embarrassed as I, as the deputy chairman, am angry to have been dealt with in such a tawdry fashion.

So what are we going to have now if this is not going to be the subject of a reference back to our committee? What we are clearly
going to have is pay-off money. We are going to see pay-off money at every level and it may well apply on the union side and it may well apply on the employer side. It does not matter what side it applies on. The fact of the matter is that this amendment, if passed, will remove the right of the police and other law enforcement agents to actually prosecute the case. We could think of many instances—as Senator Abetz has said, in a road accident or in a drug related situation—in which somebody is apprehended, they go to the other side, they put pressure on them and they may or may not offer them money in return for the case being dropped. Well, isn't that wonderful, given the level to which we have descended in this country where you can have a bit of a backroom deal between two parties, whether it is fair or whether it is not fair, and this Senate of the Australian parliament is actually going to endorse this! The Senate is going to improve it! The Senate is going to deny the police and other parties the right to actually investigate aberrant and illegal behaviour be it of employers, unions, contractors or whomever. And who are the losers in this? The ones that I spoke to Senator Arbib about yesterday. It will be workers on sites, it will be employees, it will be small contractors. They are the ones who will be the losers and they will look to this chamber and say, 'A pox on you for your failure to protect us.' This must go back to a reference to the committee.

(Time expired)

Senator THISTLETHWAITE (New South Wales) (17:35): I must say that I find the opposition's hysteria on this particular issue somewhat amusing indeed, because if we did accept this motion from Senator Abetz we would find ourselves having this matter referred to a Senate inquiry not for the first time, not for the second time, not for the third time and not for the fourth time but for the fifth time. It would be the fifth time that the Senate would have looked at this particular issue. It was first looked at in 2003, then in 2005, in 2008 and in 2009 and we have done an inquiry that has just been completed and is the subject of a report before the Senate—and now Senator Abetz is asking for another inquiry into these provisions. I am all for scrutiny in this place, but this is beyond the pale. This is gilding the lily. This is an unbelievable waste of the Senate's resources, particularly in the context where in 2007 the Australian public made it very clear indeed that they had had enough of the Howard government's regime of workplace relations. They thoroughly rejected the Work Choices regime, the forcing of people to bargain as individuals, which cut rates, cut penalty entitlements and cut other entitlements, particularly for younger workers. They had had enough of the coercive powers of the building and construction industry commissioner. They said quite clearly at that election that change was required, and of course in the wake of that election the government acted on the Forward with Fairness election policies that we had taken to the 2007 election. The suite of reforms that are finally being introduced through the legislation and through the subject of this report deliver on that commitment that we made to the Australian public.

But we have also ensured that a process was undertaken in the building and construction industry to ensure that there would not be unintended consequences of the reforms. In that respect, the Hon. Murray Wilcox, QC, a former Federal Court judge, was instructed to conduct an inquiry into the transition to Fair Work Australia for the building and construction industry. He made a number of recommendations which are enshrined in the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2012, which
will see established the Fair Work (Building Industry) Act. We have gone through the process three or four times. We have been through the arguments when it comes to reform in this area. We have been through the arguments in respect of the coercive powers and of differential penalties, and we have found, based on the recommendations, that we are implementing a fair and balanced system.

There is no greater example of that than in the recommendations that were made and the provisions that are being enacted with regard to coercive powers. This legislation will still include the capacity for the director of the building inspectorate to obtain an examination notice authorising the use of powers to compulsorily obtain information or documents from a person who the director believes is relevant to an investigation. However, there will be a strong set of safeguards which will enshrine the principles of fairness and natural justice, and those powers will not be able to be used unless a number of safeguards have been satisfied, including a presidential member of the AAT being satisfied that the case has been made for their fair use.

In respect of the points made by Senator Abetz, the amendment will ensure that the building industry participants are not subject to multiple proceedings, that matters that have been the subject of litigation and are settled will not be reinvestigated and will not be the subject of further litigation. That is in accordance with accepted civil law principles. (Time expired)

Senator FISHER (South Australia) (17:40): The government should cease and desist from trying to wave the spectre of Work Choices at the opposition because there has come a time when we will no longer be cowed by that. Senator Thistlethwaite and Senator Urquhart, you suggest that we are trying to go—

Senator Thistlethwaite: You're trying to go back to it!

Senator FISHER: Exactly! He just said it again: 'back to it'. Back to the past. This government with this amendment to the legislation is trying to take the entire country to a place that we have never been before. This government with this amendment, which was, as Senator Abetz said, snuck in—a dirty deal between the government and the Greens to buy the Greens' support for the bill in the Senate—five minutes before midnight, takes the entire country and the laws of this country to a place they have never been before, and it is a whole new low. As Senator Abetz said, this goes way beyond workplace relations. It even takes workplace relations itself to a whole new realm and of course, just as the CFMEU wants, it takes the building and construction industry to a whole new realm which did not even exist in the circumstances that led to the creation of the Cole royal commission into the building and construction industry. How so?

As to how this takes the country to a whole new place beyond workplace relations, the Australian Securities and Investments Commission retains discretion to prosecute, even in the event that the alleged victims of breach of the law might have reached agreement with the alleged perpetrator. ASIC still retains discretion to prosecute. No matter what the alleged offence, no matter what an alleged victim or an alleged offender might say about cease and desist or whatever else, the police properly retain a discretion to proceed. Nowhere in this country is there legislation that says that if there is some sort of settlement the authorities—be it ASIC, be it the police—are legislatively prevented from proceeding. But the government wants to
have it in the building and construction industry.

What then of the victim of repeated domestic violence? Look only at the history of that terrible type of crime, where victims often say, 'No action, thank you.' Is the government saying that police should not have the discretion to prosecute nonetheless in that scenario? What about in workplace relations itself, where the Fair Work Ombudsman has the discretion to prosecute, for example, an employer who underpays workers? Is Senator Cameron really saying that if the employer underpays workers the Fair Work Ombudsman should be legislatively prevented from prosecuting the employer for breaching the law? I would like to hear him say so. Is the government really doing with this legislation what it tries to say it is doing in its attempt at justification for the bill?

The report says, 'The committee remains opposed to industry-specific legislation as a matter of broad principle. The goal should be coverage of all workers in the building and construction sector by the provisions of the Fair Work Act.' Are you going to make the provisions of the Fair Work Act in this respect apply to all workers? Do not be silly. No, no, no—the government is not only giving the CFMEU legislative encouragement to do dirty, dirty deals and legislative sanction to do dirty, dirty deals; it is encouraging it to do so in a way that was not even done before the commissioning of the Cole royal commission. This bill should be sent back to the Senate committee for inquiry. We are entitled to get the answers to questions like, 'How does this keep Julia Gillard's promise about the industry? She is disappointed that there are still pockets of the industry where people think they are above the law. Well, you are going to be legislating that the CFMEU can do a deal to take people out of the law. It allows sidestepping of the law. We are entitled to ask Mr Noonan if he thinks this is a good thing, because it would be a waste of taxpayers' money to prosecute when there is a deal. Does he say the same of an ASIC prosecution if there is a deal? Does he say the same of a police prosecution if the alleged victim and alleged perpetrator reach a deal? I hardly think so. (Time expired)

Senator CAMERON (New South Wales) (17:46): If any worker is listening in then they should understand why other workers are very, very afraid of the coalition ever having anything to do with workplace relations law in this country. I did not hear Senator Abetz's contribution, because I had constituents in my office, but I suppose Senator Abetz took his usual professional approach on this, which is very, very dangerous for workers. They should read between the lines of what Senator Abetz says every time he is on his feet, because Senator Abetz is one of the original work choice warriors.

I have to say that the contributions from Senator Back and Senator Fisher were absolutely over the top. That must be how the debate goes on in the coalition party room, with people being really strident to make sure that workers do not have any rights, to make sure that they can get back to Work Choices and to make sure that they can get the ABCC to act in a way that disadvantages workers from having a fair go in the building and construction industry.

I thought it was quite amazing that Senator Fisher said, 'There will come a time that we will not be cowed by it.' What she meant was that I was raising the spectre of Work Choices. You have got every reason to be cowed by Work Choices. You have got every reason to be cowed by that terrible legislation that was the ABCC. I have worked in the building and construction
industry. I actually know the industry, and it is nothing like what you are saying and what is being promoted here. It is a tough industry. There are tough people in the industry amongst the workers, the unions and the employers.

I draw to your attention the number of judicial criticisms of the ABCC. The ABCC was headed up by a guy called John Lloyd. John Lloyd was a professional Tory, a professional union buster, a professional who was there to make sure—

Senator Fisher interjecting—

Senator CAMERON: You have just heard how this craziness from the other side becomes actual fact for workers on the job. When you get highly respected judges like Justice Spender saying that the ABCC were not performing in an even-handed manner then you have got to ask the question. When Justice Spender was commenting on the Steven Lovewell and Bradley O'Carroll case, he said:

The case, as brought and as evidenced by the evidence yesterday, was misconceived, was completely without merit and should not have been brought. There is room for the view that if the commission—

that was the ABCC—

was even-handed in discharging its task of ensuring industrial harmony and lawfulness in the building or construction industry proceedings, not necessarily in this court and not necessarily confined to civil industrial law, should have been brought against a company, Underground, and its managing director and possibly another director.

I have not got the time to go into all the details but there is case after case after case where senior judges of this country say that the ABCC have acted in a biased manner against union officials and against workers—case after case. It is an absolute disgrace. It is an absolute tragedy for democracy and a fair go in this country. What will it mean for workers if Senator Abetz, the work choice warrior, Senator Back, who does the bidding of the Western Australian mining companies, and Senator Fisher, who has made her career off the back of trying to destroy workers' rights, were in charge of industrial relations in this country? It will mean that their penalty rates will go. Their rights will go. They will be subjected to some of the worst law that will be seen not only in this country but in any comparable country overseas. No modern country has legislation like theirs. It is Tory legislation. It is conservative legislation. It is bad legislation. And we will not have a bar of it. (Time expired)

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

Senate divided. [17:55]

(The President—Senator Hogg)

Ayes .................30
Noes .................36
Majority.............6

AYES

Abetz, E
Birmingham, SJ
Boyce, SK
Bushby, DC (teller)
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Heffernan, W
Johnston, D
Macdonald, ID
McKenzie, B
Payne, MA
Ryan, SM
Williams, JR

Back, CJ
Boswell, RLD
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Fisher, M
Humphries, G
Kroger, H
Parry, S
Ronaldson, M
Sinodinos, A
Xenophon, N

NOES

Arbib, MV
Brown, CL
Cameron, DN
Collins, JMA
Crossin, P
Farrell, D
Feeney, D

Bilyk, CL
Brown, RJ
Carr, KJ
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
BILLS

**Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011**

**Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011**

**Education Services for Overseas Students (TPS Levies) Bill 2011**

**In Committee**

Bills—by leave—taken together and as a whole.

**Senator MASON** (Queensland) (17:59): Minister, you will be aware that the legislation is designed such that moneys are drawn down proportionately as courses are progressing. That is what the legislation allows for. One of the concerns I brought forward in the committee was that in some cases—for example in aviation training—the capital costs can be quite significant. One of the concerns expressed to the committee was that there may not have been sufficient time for some providers to restructure their debt arrangements prior to the commencement of this scheme. I was wondering if the government has paid heed to that, Minister.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (18:01): I understand that the legislation was moved in September last year and that since that time there has been targeted consultation with key stakeholders. I am further advised that the fees structure is only 50 per cent up front and so contains flexibilities that will greatly alleviate the burdens you are describing.

**Senator MASON** (Queensland) (18:01): I thank the minister for his answer. That is helpful, but the problem is this: the capital
outlays in some particular courses are much greater than in others. I am receiving feedback all the time from higher education providers—and, indeed, it was among the evidence received at the hearings of both the Senate and the House of Representatives committees—that with this change in the fee structure the cashflow crisis that could occur in cases of great capital outlays has not been fully addressed. You say, Minister, it has been addressed, but I cannot answer that. Let me tell you, Sir, that there is still great concern within the sector about this. I thought you should know that.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (18:02): I will take that as a remark and I thank you for the comment. By leave—I move government amendments (1) to (4) on ZA281:

(1) Schedule 1, item 1, page 8 (line 10), omit "24 hours", substitute "3 business days".

(2) Schedule 1, item 1, page 8 (after line 10), at the end of subsection 46B(2), add:

Note: For the definition of business day, see section 2B of the Acts Interpretation Act 1901.

(3) Schedule 1, item 1, page 13 (line 9), omit "24 hours", substitute "5 business days".

(4) Schedule 1, item 1, page 13 (after line 9), at the end of subsection 47C(2), add:

Note: For the definition of business day, see section 2B of the Acts Interpretation Act 1901.

Senator MASON (Queensland) (18:03): It is true that the government's amendments today broadly reflect the views of both the House and the Senate committees. I draw the minister's attention to (1), which omits '24 hours' and substitutes 'three business days'. It is a good amendment. The committee certainly supported it and so does the opposition. I let the Senate know that the opposition will be supporting the government's amendments.

Question agreed to.

Senator RHIANNON (New South Wales) (18:04): by leave—I move the Australian Greens amendments (1) to (3) on sheet 7193.

(1) Schedule 1, item 1, page 12 (line 19), omit "Note", substitute "Note 1".

(2) Schedule 1, item 1, page 12 (after line 19), at the end of subsection 47A(1), add:

Note 2: For an exception to subparagraph (1)(c)(iii), see subsection (3).

(3) Schedule 1, item 1, page 12 (after line 24), at the end of section 47A, add:

(3) An overseas student or intending overseas student does not default under subparagraph (1)(c)(iii) unless the registered provider accords the student natural justice before refusing to provide, or continue providing, the course to the student at the location.

These amendments essentially deal with the issue of natural justice. When these international students are in our country, they will clearly get into trouble at times—there will be misbehaviour, defaults on their commitments—and at the moment the way the system plays out results in students falling foul of the expectations and rules they are supposed to abide by. They end up being treated as second-class citizens. The amendments before us seek to deal with this situation. At the moment a student who is refused provision of their course because they have misbehaved is considered as defaulting and thus is not necessarily eligible for a refund of their prepaid tuition fees. Given that the bill is about ensuring the rights of overseas students are sensibly protected, we are seeking to raise the standards and ensure that international students are given a fair deal and are given a first-class education, that their rights are protected and that, if things go wrong, they are not going to lose out financially. Our amendment will insert: 'provider accords the student natural justice before refusing to provide, or continue providing, the course to
the student on the grounds of misbehaving. This allows due process because it allows students to appeal such a charge and it provides some surety that the student will not suffer disadvantage while waiting for the resolution of an appeal. It really is quite a simple mechanism. I think it is what any of us would expect to occur if we were in a similar situation in Australia or elsewhere. For students who default or where there is some form of misbehaviour they are allowed a fair form of justice so that they are not disadvantaged in the way that they are currently disadvantaged, with very few rights as it plays out. It could damage not only their immediate education but also their view of how these courses play out in Australia. I would be interested in the minister's response because it seems a necessary measure that is in keeping with the overall intent of the bill.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (18:08): Senator Rhiannon, I begin by saying that I think the government is seized of the issues that you are describing. The government says that your proposed amendments are redundant because of existing protections that are found in the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007—'the code', as it is generally referred to in this space. The code is enforceable under the ESOS Act. The government also notes that late last year the government established the Overseas Students Ombudsman to provide strong complaints handling for students. Notwithstanding those important facts, the government is happy to agree to the amendments proposed. I guess that is the happy end of it, Chair.

Senator XENOPHON (South Australia) (18:10): I indicate that I support these amendments. I think it is important to enshrine, make clear and make explicit the principles of natural justice, as these particular amendments do. Therefore, it is desirable that they are supported. I am pleased that the opposition is supporting the amendments. They would strengthen the intent of the bill and the framework of the bill. For those reasons, I support them.

Senator MASON (Queensland) (18:09): I thank Senator Rhiannon for her contribution. It does add an important dimension. I just add this: my understanding, like the minister's understanding, is that natural justice is implicit in the surrounding legislative framework. That is my understanding. Secondly, be alive to the fact that such additions in this contest can add to the regulatory burden for providers. Having said that and with that understanding, the opposition will support these amendments.

The TEMPORARY CHAIRMAN (Senator Fawcett): We are dealing with amendments (1) to (3) on sheet 7193, moved together. The question is that the amendments be agreed to.

Question agreed to.

Senator XENOPHON (South Australia) (18:10): by leave—I move amendments (1) to (5) on sheet 7197, together:

(1) Schedule 1, item 1, page 20 (after line 9), after subsection 50A(4), insert:
Student incidental costs

(4A) A call is made on the OSTF if:

(a) a call is made on the OSTF under subsection (2), (3) or (4); and

(b) the Minister determines that the student should be paid an amount in respect of reasonable incidental costs (including accommodation fees and travel expenses) incurred by the student in connection with the course; and

(c) the Minister notifies the TPS Director of the determination and the amount.
(4B) The Minister must consult the TPS Director before making a determination under subsection (4A), and must not make such a determination if the TPS Director advises the Minister that to do so would jeopardise the sustainability of the OSTF.

(2) Schedule 1, item 1, page 20 (line 13), omit "or (4)"; substitute "; (4) or (4A)".

(3) Schedule 1, item 1, page 20 (line 17), after "OSTF", insert "(other than under subsection 50A(4A))".

(4) Schedule 1, item 1, page 21 (after line 15), after subsection 50B(4), insert:

(4A) If a call is made on the OSTF under subsection 50A(4A) (incidental costs), then, as soon as practicable, the TPS Director must pay out of the OSTF an amount equal to the amount determined by the Minister under that subsection.

(4B) The TPS Director must, in accordance with a legislative instrument made under subsection (5), pay the amount to the student.

(5) Schedule 1, item 1, page 21 (line 30), after "section 50B"; insert "(other than under subsection 50B(4B))".

These amendments provide the minister with the discretionary power to make payments to cover incidental costs where an education provider has failed to deliver services. These costs could include travel, accommodation and the like. The amendments provide that the minister must consult with the TPS director and that the payment may not be made if a director advises that doing so would jeopardise the financial sustainability of the Overseas Students Tuition Fund.

Amendment (1) provides that a call can be made on the Overseas Students Tuition Fund if the minister determines that a student should be paid a reasonable amount with respect to incidental costs. The minister must also notify the TPS director of the determination and the amount. Under this item, the minister must also consult with the TPS director and must not make such a determination if doing so would jeopardise the financial sustainability of the fund.

Amendment (2) provides that such a determination may not be made after 12 months, so there is a reasonable time frame. Amendment (4) provides that the TPS director must pay the determined amount to the student in accordance with the minister's decision. Amendments (3) and (5) exclude the discretionary payments from the provisions in the bill relating to course refunds. That sets out the technical aspects of this bill.

They are similar to amendments I have previously moved which Senator Hanson-Young, from the Australian Greens, supported in substance. They are very similar amendments in terms of the general principle of ministerial discretion. This sends a signal to overseas students that, in the event that something goes wrong, the minister has the discretion to say, 'Your losses go beyond tuition fees.' If there are accommodation expenses and the like, the minister has the discretion to set what that amount could be. It could be capped, but in this case—and this is where it differs from previous amendments I have moved, which were supported by the Australian Greens, and I am grateful for their support—I have bent over backwards to ensure that there is a link back to the financial viability of the fund so that this would be seen to be consistent and responsible regarding the fund and the financial constraints of the fund. All it does is give the minister the discretion to say that additional compensation or additional matters can be considered. The minister does not have to use that discretion. If the minister chooses to use his or her discretion, the minister can determine to cap the amounts of compensation payable.

I note that Minister Evans, in his summing-up to the second reading contributions, said that he was not inclined to support these amendments. I have tried to engage constructively and positively with the
minister's office because I, the government, the opposition, the Australian Greens and the DLP in this chamber all believe very much in the overseas students sector. It is an important part of Australia's economy and it is an important part of our education system. There does not seem to be any logical reason to reject an amendment that simply gives the minister the discretionary power. The minister does not have to exercise it; it just gives the minister the power to provide additional compensation if the minister sees fit. In the absence of the government providing support for this, what undertaking is the government inclined to give to ensure that this live issue of an adequate level of compensation is dealt with? You may have an overseas student—and I have heard these stories—who, when their college collapses, can get their tuition and enrolment fees back but has just forked out for rent, incidental expenses, airfares and a whole range of expenses that they are lumbered with as a result of the collapse. Getting back just the tuition fees is still going to cause significant hardship for these families. Some of these families, from the Subcontinent, for instance, make great sacrifices for their children to come to this country. I think that simply giving the minister that level of discretion would strengthen the intent of the bill in a substantial way.

I am sorry that Senator Feeney, and not the minister, is here to take this question. I am always glad to engage with Senator Feeney; I am not sure that the feeling is mutual on Senator Feeney's part!

Senator Feeney: Always mutual!

Senator XENOPHON: It is always mutual, he said—I am not sure if he has misled the chamber! But I just want an explanation of why the minister does not even want the discretion for the minister to make certain determinations from time to time as he or she thinks fit.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (18:16): Thank you, Senator Xenophon. As always, it is a pleasure dealing with you. Indeed, perhaps on a more serious note, I do honour the sentiments and the motivations that have encouraged you to bring these amendments, but, alas, as indeed you appear to understand, the government does not accept this amendment.

Senator Xenophon: I don't understand your reasoning, though.

Senator FEENEY: I will do my best to carry you through the government's reasoning. The government has implemented the Baird recommendation on this issue to allow regulators to impose any condition on a provider based on risk, including stopping them from collecting accommodation fees from the student. In addition, this issue has not been raised in submissions to the two inquiries that were conducted into this bill. Thirdly, the travel cost issues, we would submit, are easily managed through normal commercial travel insurance and do not require Australian government provisions. Fourthly, this proposed amendment would have financial implications for the TPS and for providers through the TPS levy. Fifthly, the reforms that the government is pursuing have at their heart the objective to deliver sustainable tuition protection. Your proposal, we would submit, seeks to expand the liability and it is worth noting, I think, that in the last two years the taxpayers of Australia have had to support the ESOS fund by injecting some $30 million into it. Lastly, the government believes this amendment is not straightforward and does not place any obligation on providers to refund a student's accommodation and travel expenses but instead expects the TPS to pick up that cost.
I might add further that the government have done, we would submit, a great deal in order to protect overseas students from unscrupulous providers. This is the third piece of legislation in two years to strengthen regulations under the ESOS. The government undertook systemic reregistration of all providers in 2010—I am sure you will remember that—which led to the removal of some 180 providers from the sector, and the government established two new national regulators for higher education and VET. They are taking over full responsibility for regulation under ESOS from 1 July 2012.

In summary, Senator Xenophon, while the government has resolved to not support your amendment, it certainly maintains that the concerns you have are not only fair, legitimate and, as I say, genuinely held but something that the government believes it has ably dealt with.

Senator XENOPHON (South Australia) (18:19): Let us demolish some of these arguments once and for all. You do not need a bobcat or a big demolition thing; just one of those toy demolition trucks you can buy from Toys R Us for $29.95 would do. Let us deal with some of these arguments. Firstly, you say that these issues were not raised in the inquiry. I think it is implicit that, if there is a loss, the inquiry did deal with the issue of losses. If there are incidental losses, I would have thought that would have been within the remit of the Baird inquiry. I think Bruce Baird did a terrific job in dealing with a whole range of issues, but this is something that still is left untouched. I take your point about travel insurance, but if they do not have travel insurance it is still an incidental cost.

In terms of the financial implications for the TPS levy, that argument verges on the Orwellian—it is not quite Orwellian, but it verges on the Orwellian—for this reason: the amendment actually specifies that there cannot be any payment made if it would jeopardise the fund and that there must be consultation with the TPS director. In terms of a sustainable tuition fund, it actually acknowledges that. It says you cannot make any determination unless you consider those factors.

You mention that $30 million of taxpayers' money has been spent on the ESOS fund. That is a lot of taxpayers' money, but also very significant is the risk if we continue to have a slide in the number of overseas students in this country. It is a multibillion dollar industry, I do not know whether Senator Mason off the top of his head can provide me with some gratuitous assistance, but I think it is about $15 billion a year.

Senator Rhiannon: Sixteen.

Senator XENOPHON: Thank you—I should have asked Senator Rhiannon. It is a significant industry in my home state. If it means that we pay out another $10 million or $15 million a year, it is a very small insurance premium to pay to give certainty and confidence to overseas students, so students the world over will know that the responsible minister has the power, at his or her absolute discretion, to allow for additional compensation payments. Why is the government afraid of giving the minister a discretion that the minister can choose to use or not use? I do not understand why the government is so frightened of this amendment. Senator Feeney is not a man who knows the word fear—

Senator Feeney: I'm frightened all the time!

Senator XENOPHON: He is frightened all the time!

I just do not get why the government will not give this level of certainty to overseas students by saying, 'If worst comes to worst,
the minister has the discretion to make additional payments. I would be very grateful if the parliamentary secretary, Senator Feeney, can respond to that, and I am looking forward to Senator Mason's contribution. If, by chance, he disappoints me with the position he takes, I would like to find out why he does not want to give overseas students that level of protection.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (18:22): A great deal of what you said was obviously rebuttal and I do not have much more to add to what I said in my earlier remarks, but let me say at least a couple of things. Firstly, the minister is aware that the joint committee on education which operates under SCOTESE—I am advised that is an acronym standing for Standing Council on Tertiary Education, Skills and Employment, which is education ministers—is considering the issues described by you. Further, Senator Xenophon, the minister is willing to give an undertaking that he will review this issue again and report back to the Senate. So while the government remains of the view—

Senator Xenophon: In my lifetime?

Senator FEENEY: I am not in a position to talk to you about timing, alas—not for the absence of goodwill in my heart, Senator Xenophon, but probably for the fact that I do not have instructions to go further than I have.

Senator Xenophon: In 2050?

Senator FEENEY: I guess if you are still here in 2050, Senator Xenophon, I suspect you will be able to do whatever you please! On the one hand the government says that the amendment is not accepted by us, at least at this juncture, because of the issues I outlined earlier; but, above and beyond that, the minister is willing to undertake a review so that the issues exercising your concern will at least be able to be addressed. And I hope and trust you will all be thrilled with the demonstrable process and success of the bill.

Senator MASON (Queensland) (18:24): Senator Xenophon may find the minister's arguments somewhat Orwellian or dystopian, but the opposition finds them, if not compelling, at least persuasive. I concede that it is a matter of balance and it is not clear-cut. I think even the minister would concede that. It is about the price of insurance and the regulatory burden on the one hand versus the convenience or the confidence of students on the other. Senator Xenophon, you are right to suggest that the last time we debated this group of bills on ESOS the opposition voted against a similar amendment. We did, not because we do not believe that, as the minister said, it is well intentioned; we do think it is well intentioned. These are often close calls. But on this occasion the opposition does agree with the government that it is a bridge too far for the providers and the Tuition Protection Service.

Senator XENOPHON (South Australia) (18:25): I will direct this to the opposition because they are the alternative government. Firstly, is Senator Mason, as the shadow minister responsible for this, saying that simply giving the minister the discretion, circumscribed by protections to ensure consultation with the fund and affordability of the fund, to deal with matters is a bridge too far? Is he honestly saying that? Secondly, does he concede—and this is a question for the government as well—that unless this amendment is passed there will be no mechanism to compensate students, in the event of a failure of an educational institution, for ancillary expenses or losses such as for accommodation? If there is a direct mechanism to cover other consequential losses, please outline that. There may be certain circumstances, but, as I
understand it, there will be a whole range of loopholes where students will not have the ability to be compensated for the failure of an institution because at the moment that is constrained within the terms of the legislation. This discretion would allow for a safety valve for students that have been hard done by, that have been let down by an unscrupulous operator, to actually seek some redress.

Senator MASON (Queensland) (18:27): To address Senator Xenophon's concerns, my point really was this: the price of insurance and the regulatory burden to be borne by higher education providers has to be balanced against other consequential losses for students. The point I am making, and I suspect the government would agree, is that it is not a one-way street; it is a very tough balance. Thus far, the opposition has been persuaded that it is appropriate that the current amendments as recommended by Mr Baird are enough. If the minister says he is going to review the situation at some stage, I am interested in that. But, thus far, the opposition is not persuaded that the balance should move any further.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (18:28): I support the comments just made. Senator Xenophon, I would finish on this note. It is about striking the correct balance and it would seem to me that at some point here the government has to be firm about the fact that is not going to be the insurer of last resort for the sorts of failings that you are describing. Obviously the government is committed to establishing a regulatory framework that protects all the participants where possible and practicable, but at some point the balance has to be struck so that taxpayers are not continually exposed for what I might describe as market failure.

Senator XENOPHON (South Australia) (18:29): I should perhaps tell the chamber that I have just got a text message from someone who has been listening in, an academic who asks, 'What have you got against Orwell?' I do not have anything against Eric Blair, or George Orwell. I understand the parliamentary secretary's instructions are very limited, but there will be some review of undefined terms and with an undefined time frame. Will it be in the next 12 months? If it cannot be in the next 12 months then I cannot see that the government is serious about it, because it will then push it to a new parliament. I would have thought that a six- or 12-month time frame would at least be a useful exercise. Would it be undertaken by Mr Baird? Would it be undertaken by the department or some other mechanism? Or would the government be open to a Senate standing committee looking at this as a discrete issue? I do not know why you laughed then, Parliamentary Secretary, but I am interested in finding out why.

Senator FEENEY: I only laughed, Senator Xenophon, because the proliferation of committees in this place, I am sure, is driving many of my Senate colleagues to distraction.

Senator Xenophon interjecting—

Senator FEENEY: That is true. I am not denouncing your remarks, but I am chuckling at them! Notwithstanding what you say about a standing committee—and I cannot possibly comment on that—all I can really say about the review, based on the instructions I have, is that, yes, it would be conducted within the time frame of the next 12 months and it would be conducted by the department.

Senator RHIANNON (New South Wales) (18:31): The Greens will support Senator Xenophon's amendments. We have amendments that also cover this issue. We
actually think that it needs to go further than Senator Xenophon has set out, but we will certainly still support this. In doing that, Senator Xenophon and I have had a bit of a chat about this, which he has outlined, because what he is putting forward is quite minimal. The senator has set this out, but I think it is worth unpicking this a little bit further because it is extraordinary that this amendment is not being supported.

As Senator Xenophon said, it merely gives discretionary powers to the minister—powers that could possibly deal with losses additional to the tuition fees.

Senator Xenophon interjecting—

Senator RHIANNON: Yes, that is the emphasis here: that the minister could do nothing. It is the sort of thing that is amazing that the government did not come up with itself, so it would appear that it was doing something and then probably nothing would happen at all. I think we need to remember that what this ESOS bill is all about is seeking to strengthen protection of international students' interests. That is what many of us have spoken about here and that is what we are trying to achieve.

This issue does need to be addressed, because the damage that is being done to the education sector with regard to international students deciding if they will come to Australia is not just with regard to tuition fees. Many of them have been ripped off in other ways, and accommodation is a big one. I come from Sydney. I know how expensive accommodation in our city is, and this is so in many other areas. It can be a real burden on students and they often lose out. So here we have a minor regulatory mechanism that could be used if the minister so chose.

The fact that the government and the opposition about the need for balance here, we are not seeing them striking a correct balance. What we are seeing is the balance being pushed to the providers and away from the students. The students are being left high and dry here. You can predict now that some international students are going to lose out when they are up for costs; they have put money forward and the services are not there. Accommodation is one of those areas where we know this will happen.

The failure of the government here again shows that while we have got a regulatory mechanism, which is essentially what this bill is all about, it is very minimal and in too many areas the providers are favoured over the students. I think the response we are hearing from the government and the opposition on this is actually very informative.

The TEMPORARY CHAIRMAN (Senator Fawcett): The question is that amendments (1) to (5) on sheet 7197 proposed by Senator Xenophon be agreed to.

The committee divided. [18:39]

(The Temporary Chairman—Senator Fawcett)
Question negatived.

Senator RHIANNON (New South Wales) (18:42): I move Greens amendment (4) on sheet 7193:

(4) Schedule 1, item 1, page 31 (after line 17), after subsection 55C(2), insert:

(2A) In appointing a Board member under paragraph (1)(b), the Minister must ensure that the Board members appointed under that paragraph, as a group, have qualifications or experience relevant to the operations of providers from across the international education and training sector, including providers of ELICOS courses, which provide major pathways into further Australian studies for overseas students. Picking up English language courses is clearly needed here, but it is not just about that; it is about making it clearer about representation on this board in terms of the non-department participants. So I recommend the Greens amendment to my fellow senators because it is an area that needs to be tightened up, because the loose wording at the moment is a concern.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (18:44): Before I respond to Senator Rhiannon, I indicate that procedurally we have to report progress to then come back to get the extra half an hour to 7.20, which should allow us to complete the bill. So I am not being rude to Senator Rhiannon; I will respond to her after I move the procedural motion. Progress reported.

BUSINESS

Rearrangement

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (18:45): I move:

That the committee have leave to sit again at a later hour.

Question agreed to.

Senator CHRIS EVANS: by leave—I move:

That consideration of government business continue from 6.50 pm to 7.20 pm today.
I note that if we finish this bill we will then adjourn.

Question agreed to.

**BILLS**

**Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011**

**Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011**

**Education Services for Overseas Students (TPS Levies) Bill 2011**

In Committee

Debate resumed.

Senators resumed.

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (18:46): I thank Senator Rhiannon for her contribution. I do not think there is any disagreement here about the board needing to be representative. We have not actually specified in the bill the cohorts that would be represented, and this amendment, Greens amendment (4), seeks to add one particular group—that is, the ELICOS group—without actually considering the others.

We have not gone for something that is prescriptive—that says that there must be one representative of this and one representative of that. So I cannot support the amendment in its current form, in the sense that it just specifies one group and other groups will say, ‘Well, why aren’t we specified in the bill?’ What I would suggest is that either I am going to have to oppose it and say that this is naturally what we will do, that my intention would be to have a cross-sector representative group, or, having looked at the amendment, I would be happy to support the amendment if the senator was prepared to move it with a full stop at the end of ‘sector’ and not put ‘including providers of English language intensive courses for overseas students’—on the understanding that they, of course, would be one of the groups represented. But under this amendment only one of them is named and the others are not named. So the intent I agree with—that it be broadly representative—and, if the senator is prepared to drop that last bit out of the amendment, I will accept the amendment. That would give her a broad policy intent, which is to have recognised that we need a broader group with a range of experiences. But I do not think we should just name one group that ought to be representative without thinking about the overall balance.

So if the senator is prepared to do that, to put a full stop where the comma is before the last bit, I am prepared to accept the amendment; otherwise, I will have to oppose the amendment.

**Senator RHIANNON** (New South Wales) (18:48): I seek leave to amend Greens amendment (4) on sheet 7193 by deleting all words after ‘sector’ and replacing the comma after ‘sector’ with a full stop.

Leave granted.

The **TEMPORARY CHAIRMAN** (Senator Fisher): The question is that Greens amendment (4), as amended, be agreed to.

**Senator RHIANNON** (New South Wales) (18:48): I would like to make a brief comment. Thank you, Minister, for making that suggestion as a way forward. You spoke about the different cohorts, and I thought that it might be useful to get on the record a clarification. I understand that you did specify the need for providers of English language intensive courses to be one of those cohorts. If you could share with us, so it is...
on the record, what those cohorts are that should be represented, I think it would be useful.

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (18:49):

Thank you, Senator Rhiannon. The reason I objected to the last part of your original amendment is that we have not done that consideration and I was not able to be clear yet which groups ought to be represented—so I did not want to do that on that run. Clearly, your amendment, which will now become part of the bill and hopefully the act, provides for people having 'qualifications or experience relevant to the operations of providers from across the international education and training sector'. So it will be representative of the various sections across that—obviously, university, VET, private and public—but I do not want to try on the run to define those things.

I can give you an assurance that someone with experience in the ELICOS area would need to be part of that, and we will work our way through the group. But, clearly, by the insertion of this clause it has to be representative of the breadth of the sector, and I am quite happy to indicate that ELICOS is an important part of the sector and it will need to be part of that representative group.

**Senator MASON** (Queensland) (18:50):

I again thank Senator Rhiannon. The opposition agrees that the minister should, of course, in appointing the board ensure that people appointed do have a great knowledge and understanding of the sector. So you are quite right, Senator Rhiannon. I am sure that the minister's undertaking is heartfelt, and the opposition, of course, will be supporting this amendment.

The **TEMPORARY CHAIRMAN**: The question is that Greens amendment (4), as amended, moved by Senator Rhiannon, be agreed to.

Question agreed to.

**Senator RHIANNON** (New South Wales) (18:51): by leave—I move Greens amendments (5) to (23) on sheet 7193 in globo:

- (5) Schedule 3, item 2, page 90 (line 10), after "tuition fees", insert "and accommodation fees".
- (6) Schedule 3, item 4, page 91 (line 1), after "tuition fees", insert "and any accommodation fees".
- (7) Schedule 3, item 5, page 92 (line 12), after "begun the course", insert ", or accommodation fees in relation to a study period before the student has begun the study period.",
- (8) Schedule 3, item 5, page 92 (line 25), after "begun the course", insert ", or accommodation fees in relation to a study period before the student has begun the study period.",
- (9) Schedule 3, item 5, page 93 (line 6), after "tuition fees", insert "and accommodation fees".
- (10) Schedule 3, item 5, page 93 (line 8), after "tuition fees", insert "or accommodation fees".
- (11) Schedule 3, item 5, page 93 (line 23), at the end of subsection 29(4), add:
  
  ; or (d) the amount is withdrawn to make a payment directly related to the provision of accommodation to a relevant student.
- (12) Schedule 3, item 5, page 93 (line 24), after "Tuition fees", insert "and accommodation fees".
- (13) Schedule 3, item 5, page 94 (after line 10), after paragraph 30(a), insert:
  
  (aa) accommodation fees for a study period for a course received by a provider, in respect of an overseas student or intending overseas student, before the student has begun the study period; or
- (14) Schedule 3, item 6, page 95 (line 14), after "tuition fees", insert "or accommodation fees".
- (15) Schedule 3, item 7, page 96 (line 3), before "The amendments", insert "(1)".
(16) Schedule 3, item 7, page 96 (after line 7), at the end of the item, add:

(2) The amendments made by this Schedule apply in relation to any accommodation fees for a study period for a course that are received, after Division 1 of Part 1 of this Schedule commences, by a registered provider, in respect of an overseas student or intending overseas student, before the student has begun the study period.

(17) Schedule 4, heading, page 97 (line 1), at the end of the heading, add "and accommodation fees".

(18) Schedule 4, page 97 (after line 3), before item 1, insert:

1A Section 5
Insert:

accommodation fees:

(a) means fees a provider receives, directly or indirectly, from:

(i) an overseas student or intending overseas student; or

(ii) another person who pays the fees on behalf of an overseas student or intending overseas student;

that are directly related to the provision of accommodation to the student; and

(b) without limiting paragraph (a), includes any classes of fees prescribed by the regulations for the purposes of this paragraph; and

(c) without limiting paragraph (a), excludes any classes of fees prescribed by the regulations for the purposes of this paragraph.

(19) Schedule 4, item 5, page 98 (line 2), after "tuition fees", insert "and accommodation fees".

(20) Schedule 4, item 6, page 98 (line 4), after "tuition fees", insert "or accommodation fees".

(21) Schedule 4, page 98 (after line 8), after item 8, insert:

8A At the end of subsection 21(1)
Add "or any accommodation fees for a study period for a course provided by the provider".

(22) Schedule 4, item 11, page 99 (line 3), before "The amendments", insert "(1)".

(23) Schedule 4, item 11, page 99 (after line 5), at the end of the item, add:

(2) The amendments made by this Schedule apply in relation to any accommodation fees for a study period for a course that are received by a registered provider after this item commences.

Some of these issues were canvassed in the discussion that we had when we considered Senator Xenophon's amendment. The Greens have taken a somewhat different approach but it does deal with the same issue, which is largely about accommodation costs that international students incur when they are in our country.

The Greens do believe that this should be a key aspect of these bills. What we are dealing with here is protection of overseas students to ensure their unexpended tuition fees are available for refund should their education provider default on course provision. We are arguing that the protection does need to go further, because there is nothing in these bills to protect students when they pay other upfront substantial fees, such as accommodation fees to providers—and that does happen. These can disappear if there is a shonky provider. There have been examples of that—and, sadly, we know there will be further examples. A key issue here is that there needs to be some measure of protection in this legislation.

We propose amending the bill to afford prepaid accommodation fees the same protection as tuition fees. That is the question that the minister does need to answer here. Except for our item 11, where providers can draw down below the protected amount in order to make advance payments to accommodation suppliers, and may do so before a course commences, that protection does need to be in place.

I would put to senators that these amendments recognise the reality of paying upfront accommodation bonds and rent while ensuring the money is used only for
accommodation, which is what the student has paid for. Again, the essence of this is about protecting the upfront money students have paid—in this case, in the main for accommodation. If we are willing to put protection in place for tuition fees, why do we not give greater certainty and confidence to students who come here? As Senator Xenophon said, so many families make enormous sacrifices for their children and their loved ones to come and study in this country. Surely we need to be rebuilding the reputation of our education services. At the moment, this legislation goes only part of the way to achieving that. If this protection is not put in place, it again suggests that the providers are having too much say in how this government brings forward legislation.

I would very much like to hear from the minister. Obviously I hope that the government will support these amendments. From previous comments made by Senator Feeney before Senator Evans arrived, it was set out that the issue of accommodation costs would not be picked up in the legislation. Why have we got two ways of handling the issue between tuition costs and accommodation costs if that is the way that the government is going to go?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (18:55): I think the first thing to say, Senator Rhiannon, is that this is a policy response to the concerns about protection of tuition fees. That is the first answer. The second answer is: as I understand it, the issues you raise have not been raised in the debate around the bills in the committee inquiry, so I have been quite surprised by Senator Xenophon's and your focus on this. These are not issues that have been raised with me in recent times. It is of course factually the case that while there are some people who accept accommodation packages as part of the student's tuition and enrolment processes, the majority do not. This is not an issue that has been at the forefront of anyone's attention in recent times. We did, I understand, have one bad case where a provider with those sorts of arrangements in place did become insolvent.

This is not an issue that has been consulted on. We have had a consultative process with people and we have had the committee inquiry. We would now be saying, 'By the way, we are going to add in this major change to the legislation.' Normally people say to me, 'You have not consulted enough,' but if the parliament is going to say, 'Throw this in the mix as well' and 'By the way, it is also going to pick up those issues,' I think that is not a good way to do business. Secondly, the financial implications of this have not been costed. I do not know what this would cost the Commonwealth. I think this is not the appropriate response to a problem which you say exists but which has not been generally talked about nor generated concern.

I am obviously concerned that we get the best system we can in place. This is the last of a whole set of reforms responding to the Baird review and the terrible situation that developed in the international student area a couple of years ago. As you know, as immigration minister at the time I took a keen interest in these issues, because I think a lot of bad practice had developed with a small number of providers. We have done our best to clean it up both from the immigration end and the education end. I think things are vastly improved, but we have got to constantly be vigilant about these issues; because, as I said earlier, this is about 'brand Australia'. Every time there is a bad student experience it impacts on all providers and on Australia's international reputation. So as well as the impact on the student there
is the impact on the international education sector.

One of the things we have done is to set up the Chaney committee, which is reviewing the international education sector to make sure we have got a more holistic view of how that sector is managed, of government's engagement with the sector and where we see that sector going in the longer term. It is a very large industry; it is a huge export earner for Australia, and we have never thought about it in those terms. I think that the rapid growth without any structure around the actual industry led to some of the problems we have seen. Hopefully the Chaney report will give us that context. I understand that Senator Feeney, on my behalf, gave an assurance about reviewing the impact of the issues around accommodation that you raise. I am happy to do that. If there is a genuine problem, we will address it. I indicated that I am happy to address any issue that is there, but this is not something that has been raised with me. It is not something that was raised beyond the Baird process or in the committee inquiry. So I am not inclined to say, on the run, that we ought to do this without consulting anybody—without clear evidence of a problem or what you suggest is the solution. I am happy to take the issue seriously and to see what we can do to analyse if there is a problem, what is the problem, and what might be a policy response. We will put the assurances we gave in place, and obviously I will find a mechanism for reporting back to the Senate about how that is going. If there is a problem, I am happy to address it.

Senator RHIANNON (New South Wales) (19:00): Minister Evans, could you inform the Senate when the review will report back, and any other aspects that you would envisage the review would take?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (19:00): I am doing this a bit on the run because it was only today that I was informed that people saw this as a big issue. It is not something that anyone has been raising with me since I have been in the portfolio.

We will be able to do that by the end of the year. I am happy to set the wheels in motion. We have not had submissions on this and we have not had people raising it with us, but I will get the department to get out there. I just said to the department for Senator Feeney to represent me in saying we are happy to take it up, and if there is a problem we are happy to address it. I do not have an announcement in terms of the review, but I am happy to let you know.

We will put something in place that allows us to go out and test the waters, and to see whether this is a big issue, or what the aspects of the issue are. I will write to each of the senators with an interest in the matter when I have had a look at how best to do that. I am sorry I cannot be more helpful. As I said, this was raised with me this morning, but we have undertaken to do a review and I will write to you in the next week or two about how I intend to conduct that, once I have worked it out.

Senator XENOPHON (South Australia) (19:01): Firstly, I indicate my support for this amendment. Whilst it is quite a different approach to the approach in my amendment it still covers the same principle, in a sense; that is, what do you do in circumstances that go beyond where there is a loss of accommodation expenses, particularly prepaid expenses? I understand the government’s position, and that was also traversed in my amendment with Senator Feeney, but my question to the minister is, is
there any scope at the moment in this bill to cover a loss that a student may sustain as a result of prepaid accommodation expenses? In other words, is there any capacity for that student, who has paid accommodation upfront in addition to tuition fees, to receive some form of recompense or compensation?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (19:02): The answer is no. It is not designed to pick up accommodation, air fares, medical expenses or any of the range of other expenses a student might incur in coming to Australia. It is designed as a tuition payments protection scheme. It does not pick those other matters up.

It is the case, though, that we have the capacity to make some decisions about a particular provider based on risk. That potential is there. One could conceivably make a decision that a particular provider or set of providers should not be accepting payment for accommodation because they are seen as being of risk, but I am not sure how successful or appropriate that would be. I am not suggesting it as a policy response, just that there is some capacity there. But no, the bill is not designed to pick up this question of accommodation.

As I said, it has not been raised with me in recent times and it has not been raised as part of the committee process, so it has come as a bit of a surprise to me that there is so much focus on it. I am happy to go out there and see how big the problem is. I have no idea, for instance, how many providers actually provide accommodation packages as part of that provision. I have no idea how many people have been affected in the past. It raises the question of what happens if someone then transfers to another provider. There is a whole lot about this proposition that you and the Greens are advancing that, quite frankly, I do not think we know enough about. I am unwilling to accept amendments when no-one has raised it with me and no-one has provided any evidence in recent times about this issue. I just do not think we have the factual understanding to move to implementing legislation regarding the issues being raised. As I have given an undertaking to do the review, if Senator Xenophon, Senator Rhiannon or anyone else has issues, examples or experiences they want to bring to our attention I would be happy to receive them, because that would give us some context.

Senator XENOPHON (South Australia) (19:04): I appreciate the minister's undertaking to look at this, but I think it is fair to say that it is not as though this matter is one that has come as a total surprise. When part of this tranche of bills was dealt with a year or two ago there was an amendment about the minister's discretion to deal with issues, which Senator Hanson-Young co-sponsored with me. It is not as though it has come entirely out of the blue, but I understand what the minister has said, and I agree with him about the Baird review process.

The intention for this amendment, as with my amendment, Senator Rhiannon's amendment and the Australian Greens' amendment, is to give a higher degree of certainty and comfort to overseas students in the event that something goes wrong. We cannot take it any further, but I can indicate again my support for this amendment.

Senator MASON (Queensland) (19:05): I assure both Senator Rhiannon and Senator Xenophon that the opposition is not opposing either of their amendments this evening reflexively—not at all. We are not doing it on behalf of education providers or anyone else. It comes down to balancing the
regulatory and financial burden that providers would suffer versus the consequential projections for students and, indeed, the uncertainty of how much it would cost, and what the cost impost would be on providers.

It is really a matter of us not having the information. It is certainly fair to say that the proposal by Senator Rhiannon on behalf of the Greens is an extension of an insurance scheme for fees that is not provided in other, similar contexts. For that reason, the opposition will not be supporting this amendment.

The TEMPORARY CHAIRMAN (Senator Fisher) (19:06): The question is that amendments (5) to (23) on sheet 7193, moved by Senator Rhiannon, be agreed to.

Question negatived.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (19:08): I move government amendment (5) on sheet ZA281:

(5) Schedule 3, item 5, page 91 (line 23) to page 92 (line 6), omit subsections 27(3) and (4), substitute:

Limit on when remaining tuition fees may be required

(3) Once an overseas student begins a course, the registered provider for the course must not require any of the remaining tuition fees for the course to be paid, in respect of the overseas student, more than 2 weeks before the beginning of the student's second study period for the course.

This amendment is to do with the limit on when remaining tuition fees may be required. We think this will clarify the legislative drafting on prepaid fees. It is an issue that was raised with us, and we are seeking to address it. It provides that up to 50 per cent of total course fees, or 100 per cent for a course of 24 weeks or less, can be paid upfront at any time before the course commences. Once a student has begun a course, the provider cannot require the student to pay any further tuition fees more than two weeks prior to the second study period. If a student chooses to pay earlier, there is no requirement for the provider to return the tuition fees to the student and they would not be found non-compliant. This will protect the interests of students and reduce refunds flowing to the TPS without imposing unworkable requirements on providers.

The changes will give greater clarity to the sector in understanding their obligations. There was concern raised about how clear this was in the legislation. This is designed to give that clarity and to reassure people of what their obligations are. So it is just a response to feedback we have had from people with an interest. There is no change to the rules, as it were; it is just to make it clear. I thank the minister for clarifying that.

Question agreed to.

Senator RHIANNON (New South Wales) (19:11): by leave—I move Greens amendments (1) to (8) on sheet 7192 in globo:

(1) Clause 4, page 2 (line 18), omit "registered".
(2) Clause 4, page 3 (line 1), omit "registered".
(3) Clause 4, page 3 (line 10), omit "registered".
(4) Clause 5, page 4 (lines 29 and 30), omit paragraphs (a) and (b), substitute:

(a) the provider's administrative fee component for the year (see section 6);
(b) the provider's base fee component for the year (see section 7).

(5) Clause 6, page 5 (line 2), omit "registered".
(6) Clause 6, page 5 (lines 5 and 6), omit paragraph (b), substitute:

(b) $2 multiplied by whichever of the following applies:

(i) for a registered provider—the total enrolments for the provider for the previous year;

(ii) for a provider who is not yet registered—the likely total enrolments for the provider for the year (assuming the provider becomes registered).

(7) Clause 7, page 5 (line 10), omit "registered".

(8) Clause 7, page 5 (lines 13 and 14), omit paragraph (b), substitute:

(b) $5 multiplied by whichever of the following applies:

(i) for a registered provider—the total enrolments for the provider for the previous year;

(ii) for a provider who is not yet registered—the likely total enrolments for the provider for the year (assuming the provider becomes registered).

These amendments are framed as requests because they are to a bill which imposes taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation.

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

Senator RHIANNON: These amendments deal with a failure in the legislation to bring new providers into the TPS levy. What we have right now is a system where new providers are effectively exempt, and that really is a major anomaly for legislation that is supposedly bringing in a tighter regulatory framework for how this industry operates.

I put it to my fellow senators that these amendments are essential. New providers really are at greater risk of defaulting, leaving students high and dry. How this works is that the administrative fees we are dealing with here are set at $100 plus $2 per enrolment for the previous year. The base fees are set at $200 plus $5 per enrolment for the previous year. But when it comes to new providers, clearly there is not a previous year. So what is happening is that they are being left out. How the system works is that new providers seeking registration are in effect exempt from the $2 and $5 per student components because they do not have a prior history of enrolments. You would have to say this is an absurd contradiction in risk assessment terms. Again, I would be interested to hear from the minister. How did they miss this out? Surely it can be easily solved—and that is what our amendments attempt to do.

As I understand it, new providers must already provide projected domestic and overseas student numbers with their application for CRICOS registration. So our amendment to this bill would ensure that new providers are also charged per student using their projected likely total enrolments to complete the calculation. So it really can be sorted out quite easily. It is a serious anomaly; it leaves out new providers. We all know that, when businesses first get going, it is more likely that they will default, that they will in some way fold. We also know that these new providers have to put forward their likely total enrolments. So let us use that to bring them into the current system with regard to the setting of administration fees. I look forward to the minister's comments about this, because surely it is an anomaly that needs to be fixed up.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (19:14): The government cannot support this request for
amendment. I think I understand what Senator Rhiannon is trying to do, but we are not able to support it. This amendment effectively puts a cost on providers before they have registered or have any enrolments, and somehow we have to estimate how many enrolments they are going to get and reconcile that. I am not quite sure what Senator Rhiannon would be trying to achieve by this amendment.

We do require new entrants to the market to pay a $7,500 entry fee as part of their registration process, but we do not require them to pay the TPS levy until they are effectively enrolling students. That is the logic of it—they have to get registered by following the normal processes to provide assurance about themselves as a provider, but they are not required to pay the TPS levy until 1 January when they are registered.

I think that what Senator Rhiannon's amendment does is say, 'You've got to pay the levy when you do not have any students.' But it is not clear how you are going to estimate and reconcile that. The system provides that they start paying the levy when they have students, and I think that that is a fairly sensible proposition.

**Senator MASON** (Queensland) (19:16): I join the minister. What concerns me about this amendment is that there could be unintended consequences arising from it for providers, particularly small providers who are setting up. That is why the opposition cannot support this amendment.

**Senator RHIANNON** (New South Wales) (19:16): I think we can probably wrap this up fairly quickly, but I would like to hear from the minister because I understand that these new providers have to put forward projected enrolments. On the basis of that, why aren't they brought into the system with regard to administrative fees? They are not going to be penalised by this amendment which really does create a fairer playing field and make the TPS levy more effective.

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (19:17): As I understand it, the registration may set a capacity limit, but it does not require projections. We do not know how many students are going to enrol. There is a limit on capacity, but we do not have information about how many students are going to enrol. You are asking us to charge people on the basis of the number of students that they may enrol, but we do not know the number. That is the bottom line, so we do not see that we can agree to the amendment request.

I appreciate that you are trying to be constructive, Senator Rhiannon, but the amendment does not seem to us to be practical and we cannot support it. I would appreciate it if we could get the bill passed this evening, because I think that would facilitate the business of the Senate.

**The TEMPORARY CHAIRMAN:** The question is that Senator Rhiannon's requests for amendments, Nos 1 to 8 on sheet 7192, be agreed to.

Question negatived.

**The TEMPORARY CHAIRMAN:** The question now is that the bills be reported.

Question agreed to.

Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011, Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 and Education Services for Overseas Students (TPS Levies) Bill 2011 reported with amendments; report adopted.
Third Reading

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (19:19): I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

DOCUMENTS

Tabling

Senator FIERRAVANTI-WELLS (New South Wales) (19:20): During the debate on motions to take note of answers, in the course of an exchange between Senator Arbib and me, reference was made to a photograph which Minister Arbib invited me to table. I was happy to table it and thought I had done so, but I had omitted to seek leave. I now seek to rectify that omission by tabling the photograph.

Leave granted.

ADJOURNMENT

The PRESIDENT (19:21): Order! It being past 7:20 pm, I propose the question:

That the Senate do now adjourn.

Denison Electorate

Reynolds, Hon. Margaret

Senator SINGH (Tasmania) (19:21): I rise this evening on adjournment to speak about some of the fantastic activities happening in the electorate of Denison supported by the Gillard Labor government. King George V Oval—or KGV as it is fondly known by Tasmanians—is home to local AFL team, the Glenorchy Magpies. The Magpies receive a huge amount of support from the local community, with thousands of people braving all kinds of weather to support their team. This is a place that is the hub for the sporting community in Glenorchy. Thanks to the Gillard Labor government, change is afoot and a redevelopment of this important community hub will commence later this year.

We are investing $8.7 million in this important redevelopment which will result in a significant rejuvenation in the municipality of Glenorchy. The redevelopment includes health and wellness centres, including a hydrotherapy pool. It also includes a sports house and upgrades to the Glenorchy District Football Club facilities; a theatrette, a meeting room and training room; function rooms, including bar and bistro; café and commercial kitchen; changing rooms; kiosk and public amenities; transport museum shed; refurbished cricket training nets; multipurpose synthetic spots pitch; and a new pedestrian entrance and landscaping.

The new KGV precinct will also offer a new home to the Migrant Resource Centre. The Migrant Resource Centre is such a key service provider for migrants and refugees in Tasmania that it has outgrown its Hobart premises. Under the CEO, Cedric Mannen, and staff, the Migrant Resource Centre is a vibrant place and, with a base in the Glenorchy municipality where many migrants settle, I am sure the influence and value of the Migrant Resource Centre will only increase.

Importantly, the King George V redevelopment complex will be open to all. I know the community will embrace the opportunity to make use of these first-class facilities. This important redevelopment, made possible thanks to the Gillard Labor government, will add another place for the community to gather, to participate in sport and wellbeing—be it playing, supporting, celebrating or even meeting. I look forward to joining the community at the redeveloped KGV precinct, cheering on the Glenorchy Magpies, as well as seeing the great benefits
of the other new facilities that will be open to all ages in Glenorchy's broader community. I thank those members of the community who have worked and lobbied to make this become a reality.

Another exciting initiative taking place in the municipality is the Glenorchy on the Go project. This program is run by the Glenorchy City Council, thanks to a $700,000 grant delivered by the Gillard Labor government under the Healthy Communities Initiative. Glenorchy on the Go is about improving the health and wellbeing of the people of Glenorchy. Glenorchy on the Go is a free program which encourages participants to be physically active, teaches them the importance of maintaining a healthy diet, and how best to go about this through cooking classes, walking groups, sports sessions for those with a disability and the development of community gardens.

This program is as much about social interaction as it is about promoting healthy lifestyles. Glenorchy on the Go offers people who may otherwise be isolated within their community an opportunity to seek friendship and improve the quality of their health at the same time. To date, more than 575 people have participated in Glenorchy on the Go programs. Seventy-five per cent of these participants are over the age of 55 and one in seven of them have a disability. Currently Glenorchy on the Go offers 15 walking groups, 10 Heartmoves—a gentle exercise group—and four sessions of sport ability for people with disability. There are also come and try activities such as archery, linedancing and bowls, and chronic health education sessions, which I understand will commence in March. I want to make special mention and commend the work of the Heart Foundation for their involvement in this project as they run the walking groups taking place around the Glenorchy municipality.

I was fortunate to attend the launch of Glenorchy on the Go. The community turned out in force. Together we spent about 10 minutes being put through our paces with some fun exercises and interactive movements. It was wonderful to hear the stories of those who have been involved with Glenorchy on the Go since its inception and to hear how people's energy levels have increased. I have also met with program coordinator, Elisa Ryan, and project manager, Len Yeats. Their enthusiasm is boundless. I have no doubt that this program will continue to build momentum and change lives, thanks to the passion of all those involved and the funding they received.

I want to acknowledge the work and dedication of former senator Margaret Reynolds, especially in her role as state director of National Disability Services, a post that she has recently moved on from. Margaret is well known in this place, having served as a Labor senator for Queensland from 1983 to 1999. Margaret served as the Minister for Local Government and also as the Minister assisting the Prime Minister for the Status of Women. History shows that Margaret made a valuable contribution during her time in this place and the Senate's loss has been Tasmania's gain as Margaret has now returned to her home state.

In the 13 years since Margaret left this place, she has worked on many projects. In East Timor, Fiji and Africa she worked to give women an understanding of decision-making at local, national and international levels. In Australia, Margaret engaged with young people, encouraging them to engage with our democracy and to be active and involved with the political process, particularly through Youth Parliament. Margaret was President of the United Nations Association of Australia at a time when the international community were struggling to understand why Australia
needed to send what was considered a small number of asylum seekers to isolated detention centres.

I had the privilege of serving on the National Council for the United Nations Association of Australia with Margaret and also at a local level in the Tasmanian branch of the UNAA. I also served under Margaret's chairing of the Tasmanian Women's Council to help improve access and equality for women in Tasmania. Margaret has also written two books. Margaret gave me a copy of her book *The last bastion* for my 30th birthday, now some 10 years ago, before I entered state parliament. It was a great read about the challenges facing women in political life and gave me a good understanding of the challenges which lay ahead for me. I have regarded Margaret as a mentor and a friend. She has certainly inspired me to want to be in this place, and if I can make the kind of contribution she made in this place then I would certainly have achieved a great deal.

In 2004, Margaret accepted a position with National Disability Services, Australia's peak body representing disability service providers, and she retired from this role just last week. Through hard work, Margaret and her colleagues across Tasmania and Australia put disability services firmly on the political agenda. She began this role at a time when mental institutions were closing in a bid to give intellectually disabled people the opportunity to live in their community, yet little money was directed towards supporting this endeavour. Margaret retires at a time when disability reform is firmly on the government's agenda—with the National Disability Insurance Scheme set to become a reality under the Gillard Labor government.

Margaret will continue her contribution to the Australian community as chair of the Australian Centre of Excellence in Local Government. She will also build upon her good work in disability reform as a member of the National People with Disability and Carers Council. I wish Margaret well and thank her very much for what I know will be an ongoing contribution to the Australian community.

**Senator McLUCAS:** I thank the Senate for this indulgence, but I do want to take the opportunity to associate myself, for a number of reasons, with the comments of Senator Singh.

**Murray-Darling Basin**

**Senator BIRMINGHAM** (South Australia) (19:31): One of the first issues I addressed in the parliament was the future of the River Murray. It was partly out of my own personal concerns for better management of the Murray, it was partly as a result of it being the top issue confronting people in my home state of South Australia and it was partly a result of the groundbreaking announcement made by then Prime Minister John Howard in his Australia Day speech of 2007 committing to deliver national management of the Murray-Darling Basin.

John Howard sought to end 120 years of argument and mismanagement by the states that saw the resources of the basin over allocated. He budgeted $10 billion to make the transition to a sustainable, national plan happen and he passed the Water Act through this parliament to provide the legislative framework in which the development of that national basin plan could occur. Murray-Darling reform was the last great reform of the Howard years.

I was passionate as a new, young senator about seeing it implemented when I came to this place in 2007 and I remain passionate about seeing it implemented today. That is why I am concerned that this important reform appears to be at risk, thanks to...
chronic mismanagement and severely misdirected funding by the Labor government that took power shortly after the passage of the Water Act in 2007. This mismanagement is creating a crisis of confidence in the water reform agenda across the communities of the Murray-Darling Basin, upstream and downstream. Of the $10 billion allocated, Labor has spent in excess of $1.7 billion on water buybacks but only $650 million on infrastructure. This is actually the inverse of what had been intended under the Howard plan in terms of the proportionate spending. Indeed, much of the so-called infrastructure spending for water saving projects is not spending on water saving infrastructure projects at all. Much of the spending on so-called infrastructure does not return water to the system. In fact, the government’s spending total even includes management costs for the bureaucracy associated with the Commonwealth Environmental Water Holder and the costs of the advertising campaigns that have been undertaken on water reform by the government—hardly infrastructure projects at all.

Minister for Sustainability, Environment, Water, Population and Communities Tony Burke in particular is losing the confidence of stakeholders in all parts of the basin, upstream and downstream. A constant failure to deliver on the infrastructure projects that I have mentioned has diminished confidence throughout the basin, especially for those looking for water recovery that best maintains levels of food production in Australia. The growth of food in Australia by Australians, for Australians and for our export market is something that people throughout Australia are really passionate about. They want to see that when government embarks on recovering water for the environment it does so in a way that keeps food production happening throughout our prime agricultural lands, especially those of the Murray-Darling.

Labor promised to the downstream states, and South Australia in particular, that they would deliver John Howard’s water reforms and they have campaigned on it at two elections, but all the words and slogans in the world cannot hide their failure to deliver. The recently broken promise to freeze buybacks in the southern basin has seriously damaged confidence among irrigation communities in New South Wales, Victoria and South Australia. For example, the Victorian Farmers Federation last week expressed its shock at learning that Minister Burke without any consultation had launched yet another buyback in breach of the promise. The VFF highlighted that Mr Burke promised just last November that the Gillard government would not just wade into the water market and that they see this as a ‘random scatter-gun approach that risks the viability of irrigation communities throughout the southern basin’.

The conduct of the minister and his newly appointed chair of the Murray-Darling Basin Authority after the release of the guide also raised false expectations in many irrigation communities that the draft plan may have significantly less impact on them than the guide that had been released 12 months earlier. The shattering of those false hopes when the draft plan was released late last year further dented confidence in this reform agenda and in those delivering it. Meanwhile, the failure to adequately explain what the environmental implications and differences are of the different sustainable diversion limit reductions—such as the 3,000, 3,500 or 4,000 gigalitre figures mooted in the guide to the plan or the 2,750 gigalitre figure proposed in the draft plan—has all hurt confidence, especially in downstream states, such as mine of South Australia.
Another issue for confidence in the plan is the constant delays with the draft plan now having been delayed five times—and it appears unlikely that the basin plan will be finalised much before the very end of this year, if at all. We see that the ultimate implementation of the Murray-Darling Basin national plan has been dragged out from a 2014 implementation date to a 2019 implementation date. These delays have also hurt confidence. We also have the unexplained explosion in allowable groundwater extractions, which has drawn criticism from the likes of the Wentworth Group of Concerned Scientists and thereby undermined the confidence of those looking for environmental outcomes. Indeed, the increased allowable extraction of groundwater of around 2,600 gigalitres is comparable to the proposed surface water extraction cuts of 2,750 gigalitres—a change that has been ill-explained and, again, undermines the confidence of people in this process. We now have a crisis of confidence that has manifested itself in unhelpful threats that jeopardise these reforms—threats that come from the states, both upstream and downstream.

South Australian Premier, Jay Weatherill, has threatened a High Court challenge to any plan he considers unsatisfactory, saying in October:

... if there is not an adequate response in relation to the Murray-Darling Basin plan, South Australia will pursue its rights in relation to the river system.

In November, New South Wales retaliated by threatening to withdraw altogether, with Minister for Primary Industries, Katrina Hodgkinson, saying:

... we will not support a plan that is not in the best interest of NSW, our primary producers and Basin communities.

So we have counterthreats now coming from the states. It seems that not only can Labor not agree on who should be the Prime Minister but South Australian state and federal Labor representatives cannot agree on the process of basin reform.

Basin reform faces a lot of challenges and needs real commitment and leadership if it is going to succeed. The Prime Minister likes to tell South Australians that she is one of us and understands the importance of basin reform, but, on performance to date, South Australians just cannot trust her words. As Kevin Rudd said of the Prime Minister just a few days ago, 'Julia has lost the trust of the Australian people.' With such a crisis of confidence, it may be time for the Prime Minister to look for a new face to handle the Water portfolio. It may be time for the Prime Minister to look at who the minister for water is as she undertakes the reshuffle caused by the warfare in Labor ranks. It may be time for the Prime Minister to look at who the minister for water is as she undertakes the reshuffle caused by the warfare in Labor ranks. It may be time for the Prime Minister to look at who the minister for water is as she undertakes the reshuffle caused by the warfare in Labor ranks. It may be time for the Prime Minister to look at who the minister for water is as she undertakes the reshuffle caused by the warfare in Labor ranks. It may be time for the Prime Minister to look at who the minister for water is as she undertakes the reshuffle caused by the warfare in Labor ranks.
Bowen would find the politics of water—not exactly an easy area—a walk in the park compared to the politics of the Immigration portfolio that he seems to eager to leave.

Whatever the Prime Minister does, this reform must be put back on track and 120 years of arguments must be brought to an end. This parliament must finish what John Howard started in 2007 and deliver a fair, balanced national plan for the Murray-Darling that secures the health of both our river system and the communities who rely on it. All I ask of the Prime Minister, at least for this week, is that she makes sure she has a minister for water who has the confidence of communities to deliver on this objective.

Abortion

International Women's Day

Senator RHIANNON (New South Wales) (19:41): All women should have the right to access abortion services with privacy and dignity and without harassment and intimidation. As we approach International Women's Day, this issue remains very relevant. Over the past week, just a few blocks from my office in Sydney, there has been a gaggle of protesters stationed outside an abortion clinic. There is a very large banner urging people to pray and fast for an end to abortion, and there are leaflets. I can only guess what disturbing images and guilt-making rhetoric they may contain.

This clinic and others throughout Australia are being targeted as part of the 40 Days for Life campaign. This campaign was started in 2007 by a US based anti-choice group. It calls for people to spend the 40 days of Lent praying outside abortion clinics. On the website they list their so-called achievements since 2007: 21 abortion facilities completely shut down following local 40 Days for Life campaigns; 61 abortion workers have quit their jobs and walked away from the abortion industry; and reports document 5,045 lives have been spared from abortion.

In 1980 I was working with some women's organisations and was also part of the New South Wales Women's Advisory Council. I was often approached about this very issue. I vividly remember taking calls from extremely distressed women who had faced lines of protesters and had been harassed, intimidated, often abused and sometimes obstructed from walking to and from clinics, all because they had made the choice to visit an abortion centre. It is 20 years on and it is deeply sad that not much seems to have changed. The decision to have an abortion is not easy for women. Women and their partners deserve privacy, dignity and security when visiting clinics.

Governments in parts of Canada and the US have sought to limit the presence of protesters through what have become known as 'bubble zones'. Bubble zone legislation creates a physical zone around a clinic that protesters may not enter or where there are conditions on speech or action. Their purpose is to provide for the safety of patients and workers at abortion clinics, ensure safe access to health care and ensure privacy and dignity for those involved. Acting to create bubble zones would be a proactive and clear step that governments and local councils around Australia could take up to protect women's rights. In response to 40 Days for Life, there is a growing movement of women turning 40 Days for Life into '40 days of treats', taking baked treats into the clinics for workers and patients to show solidarity and hopefully go some way to neutralising the effect of having to run the gauntlet outside. I congratulate these women and, when I get back to Sydney, I will certainly take a baked treat up the road, past the protesters, the banner and the leaflets, and through the front door. I would like to move on to the issue of
International Women's Day. As a woman MP, I have many reasons to celebrate International Women's Day. One hundred and two years ago, courageous women kicked off what today is arguably the most famous and influential of international events. Reflecting on the history of International Women's Day is a reminder of how equality for women has been won through struggle and sacrifice. I pay tribute to our forebears who have campaigned for women's rights. It is a great credit to these women, and the men that have supported their campaigns, that today people of diverse political persuasions come together to mark IWD. It is a day that has a rich and proud history. It has been a century of sacrifices and achievements.

International Women's Day was initiated as a strategy to promote equal rights. The proposal was put forward in August 1910 at an international women's conference that preceded the general meeting of the socialist Second International in Copenhagen. The 8th of March was chosen, as on the same date in 1848 the King of Prussia had promised votes for women. Interestingly, though, the promise had been made but not kept and so the women decided to revive that date. Clara Zetkin, a famous leader of the social democrat women's movement in Germany, moved the motion. In March 1911, the first IWD rallies were held and our sisters certainly went into action. History records that over one million participated in rallies and meetings in Austria, Denmark, Germany and Switzerland. In Vienna, women honoured the martyrs in the Paris Commune. Today, International Women's Day is celebrated around the world and is a national holiday in many countries, including Afghanistan, Russia, China, Uganda, Madagascar, Cuba and many countries in Central and South-East Asia.

Born at a time of great social turbulence and crisis, International Women's Day has a rich history of protest and political activism. At the beginning of the 20th century, women in industrially developing countries were entering paid work in large numbers. The jobs were sex segregated, mainly in textiles, manufacturing and domestic services, where conditions were shameful and wages were low. Many of the changes taking place in women's lives pushed against the political restrictions surrounding them.

The first IWD event in Australia took place in Sydney's Domain on 25 March 1928. Organised by the Militant Women's Movement, the key demands were for equal pay for equal work, an eight-hour day for shop workers, no piecework, the basic wage for the unemployed and annual holidays on full pay. The movement spread, especially among trade union women. Equal pay, including for servicewomen, became a major issue during the war years from 1940 to 1945. IWD was a continuing vehicle for discussion about the key issues of equal pay and child care, but the main emphasis was on the war effort, including support for women's resistance in occupied countries and campaigns such as Medical Aid to Russia. In 1944, issues such as housing and education and the rights of Aboriginal women were being raised at IWD events.

In the years after the war, women's pay rates were generally set at 75 per cent of the male rate. Many of the comprehensive full-day nurseries and other childcare centres which had appeared during the war started disappearing, with federal funding being cut to such projects. These discriminatory practices were taken up by International Women's Day committees.

This brings us to the Cold War period. During the 1950s, politics of all kinds were played out against a background of intolerance and dwindling democratic practice. It was a time during which anticommunism
was used to smother political dissent or to vilify opponents. A one-off development was that left and radical groups, including International Women's Day committees, were often refused the use of public halls.

I remember International Women's Day rallies in the 1960s and the early 1970s, when small groups of women rallied in Australian cities. They often faced bigotry, harassment and discrimination when they celebrated and protested to mark International Women's Day. I would like to thank some of the women who were involved and inspired me throughout my political life: Mary Wright, Ina Heidtman, Audrey Macdonald, Joyce Stevens, Freda Brown, Edna Ryan, Paula Sharkey, Jessie Street, Vera Deacon, Kath Walker, Henrietta Greville and Della Elliott. Their contributions to women's struggle has been immense.

International Women's Day continues in so many forms. An exciting year that I remember was 1975 because it was in the previous year that International Women's Day was for the first time officially recognised, and it was by the Gough Whitlam government. Then, in 1975, the start of International Women's Decade, thousands and thousands of women came to the streets for the first time in such large numbers in Australia to celebrate International Women's Day.

Now International Women's Day provides a common day for globally recognising and celebrating women's achievements. As I said in my opening remarks, there is still so much to be done to ensure that women's full equality is achieved in terms of our rights at work, our rights in the home, our health rights and our education rights. But I do warmly congratulate the women who have achieved so much for those of us who stand here today.

Regional Australia

Senator GALLACHER (South Australia) (19:50): Last week I had the pleasure of attending Building the Education Revolution program openings in the electorate of Grey. In that period I was also able to visit various people and organisations in order to get a better understanding of the communities they work closely with. In that time I was amazed by the hard work and passion of many individuals who have dedicated their lives to their communities. This is very obvious when travelling in regional areas; you truly feel a sense of community. I believe this sense of community is at the core of regional Australians, and this is a reason why the Australian Labor Party has a key focus on regional communities and putting investment back into them.

Regional Australia is often held back by distance but also by the lack of investment made by governments of all persuasions, and this has certainly changed under a Labor government. Regional Australia also faces challenges not seen in urban Australia. For example, certain schools have a particular number of students coming from a position of severe disadvantage, often stemming from entrenched unemployment.

In light of these challenges, communities unite and are strengthened. Leaders emerge out of this to the benefit of the children, individuals and families they engage with. One of the schools that I visited was Flinders View Primary School. The school received just over $2 million for classrooms, a shade structure and school refurbishments as part of the Building the Education Revolution, which according to the opposition is a waste of taxpayers' money. I suggest the coalition go to this particular school and say it was a waste of money because, in fact, it is a prime example of opportunity created for the school and the children.
Flinders View Primary School is in Port Augusta with over 70 per cent of the children coming from Indigenous Australian families. It was explained to me that these children come from very disadvantaged backgrounds, and, although the parents of these students recognise the importance of education, there are some that do not make it a priority for their children. This has meant the school has had to work exceptionally hard with not just the core of education, numeracy and literacy, but in areas like making sure the students are eating correctly and arriving on time. These sound simple to many of us, but are significant in a child's development. This school has worked hard in creating a community within, where students are made to feel like they are a part of a bigger family, and to keep the students coming to school and arriving on time.

The school is also working exceptionally hard in engaging with parents so they work with the school to improve outcomes for their children's education. One person who is really driving these objectives is the school principal, Mrs Anna Nayda. Her dedication to the school is second to none. It is not just her devotion to the school but her dedication to the children which is simply amazing. The sense of community that you get in the school has meant that past students are always welcomed back. I must also acknowledge her deputy, Bec Mueller, and all the teachers working exceptionally hard to make a difference to these children.

It was also interesting to note that the new classrooms went to an early childhood learning centre. The reason for this was quite simple: Indigenous children are allowed to start kindergarten at three years of age rather than at the normal four years of age. This new state-of-the-art facility for very young children is to get them into the facility at a younger age. It is a wonderful development and I am sure will be of benefit to students and the community.

The second school I visited was Solomontown Primary School at Port Pirie and this is also a school that faces very significant challenges. This school not only has students from disadvantaged backgrounds but also a reasonably high number of disabled students. Like Flinders View Primary School, there is a dedicated bunch of staff—including the new principal, Sandra Mauger, who is driven to get results. The school is very picturesque. It was built in 1897. Twenty-first-century facilities have been brought into a beautiful historic building. The once-in-a-lifetime BER spend on this school was $2.6 million—on refurbished classrooms and library. While the principal was walking the dignitaries around the school, she stated, 'This was a once-in-a-lifetime opportunity that we would never, ever believe could happen.' The school community and the parents are so proud of the new facilities; it gives the students a sense of pride in their school. Hopefully, with this infrastructure, numeracy and literacy will improve. This is something that the principal stressed personally to me.

On this trip I was able to visit many other community groups, in particular, the Port Augusta RSL. Again this is a group of passionate individuals often dedicating their time and work to something they believe in. A real testament to the work of the members of the RSL is their outstanding museum. There is no doubt that the members have worked extremely hard in building that facility to the condition it is in today. The Labor government, through the Veteran and Community Grants program, has aided the RSL of Port Augusta with a grant of nearly $50,000 to refurbish their ablution facilities. This will further develop the everyday infrastructure of this wonderful RSL, which will be a benefit to the community, the wider
public and many of the school children in the area who utilise the museum for school excursions. I urge all Australians travelling through Port Augusta to stop by and visit this great museum. You cannot miss the building; there is a huge tank sitting right out the front. I must congratulate President Mario Caresimo of the Port Augusta RSL on the success of the branch, and I thank Frank Florvat for showing us around.

Finally, I would like to speak about the UnitingCare Wesley Men's Shed in Port Pirie. I have previously spoken about the Men's Shed in this place when speaking about the Regional Australia Development Fund. It is a fantastic initiative which will support many disadvantaged students and individuals within that community. I was able to sit in with some of the Men's Shed volunteers who just finished their weekly meeting. These men are at different stages of their lives but what brings them together is their desire to help the community. Some of the initiatives involve bringing kids without a male role model in their lives into the shed and simply teaching them basic skills. They are mentors to individuals who are disadvantaged or who simply need some company. The men's shed is also involved in skills training for unemployed and disadvantaged individuals through UnitingCare Wesley.

One person I would like to mention is Gus Wohlschlager, who has been awarded the AOM for his volunteer work. This is another great example of a passionate individual working hard to bring a community together. He volunteered his time to the Port Pirie Regional Health Service as a transport driver; Port Pirie Regional Council community as a bus driver; UnitingCare Wesley as a truck driver; and as a Men's Shed volunteer in the position of coordinator and fundraiser. Gus is a former emergency service volunteer; former community bus driver for the Port Pirie Regional Council and State Emergency Service; and, finally, a patron, driver and committee member of the Special Olympics, Port Pirie, since 2004.

These are fantastic stories that show the dedication many regional Australians have to their communities. It also shows the great work the Gillard Labor government is doing in regional Australia, providing infrastructure that would otherwise have been a great burden for the community to fund. I enjoy bringing these stories to parliament and feel that it is so important to give the recognition necessary to celebrate these individuals and their communities. I can only thank these individuals and communities for telling their story to me.

Senate adjourned at 19:59

DOCUMENTS
Tabling

The following document was tabled by the Clerk:


Indexed Lists of Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2011—Statement of compliance—Office of the Official Secretary to the Governor-General.

Departmental and Agency Contracts

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended:

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Medicare
(Question No. 1539)

Senator Cash asked the Minister representing the Minister for Health, upon notice, on 8 February 2012:

With reference to the department's review into the situation of holders of the Retirement Visa (subclass 410) and Investor Retirement Visa (Subclass 405) and access to Medicare through Reciprocal Health Care Agreements, when is the final report due.

Senator Ludwig: The Minister for Health has provided the following answer to the honourable senator's question:

The Department's review is considering a range of technical matters which require consultation with the Department of Human Services and the Department of Immigration and Citizenship. It is anticipated that the Review will be completed by mid 2012.