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**SITTING DAYS—2012**

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FORTY-THIRD PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

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

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

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

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

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

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

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

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

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

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing

Clerk of the House of Representatives—B Wright

Secretary, Department of Parliamentary Services—C Mills
## GILLARD MINISTRY

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<tr>
<td>Minister for Social Inclusion</td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td>Minister for the Public Service and Integrity</td>
<td>The Hon Gary Gray AO MP</td>
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<tr>
<td>Minister for the Centenary of ANZAC</td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
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<tr>
<td>Minister Assisting the Prime Minister on Digital Productivity</td>
<td>Senator the Hon Stephen Conroy</td>
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<tr>
<td>Minister Assisting the Prime Minister on Mental Health Reform</td>
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<td>The Hon Wayne Swan MP</td>
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<tr>
<td>(Deputy Prime Minister)</td>
<td>The Hon Bill Shorten MP</td>
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<tr>
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<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td>Parliamentary Secretary for Higher Education and Skills</td>
<td>The Hon Sharon Bird MP</td>
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Thursday, 16 August 2012

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9:30, read prayers and made an acknowledgement of country.

BILLS
Migration Legislation Amendment (Offshore Processing, Protection and Other Measures) Bill 2012
Second Reading
Debate resumed on the motion:
That this bill be now read a second time.
to which the following amendment was moved:
At the end of the motion, add “but the Senate:
(a) notes that the Government has accepted the Coalition’s policy of offshore processing of asylum seekers on Nauru and Manus Island; and
(b) calls on the Government to implement the full suite of the Coalition’s successful policies and calls on the Government to immediately:
(i) restore temporary protection visas for all offshore entry persons found to be refugees,
(ii) issue new instructions to Northern Command to commence to turn back boats where it is safe to do so,
(iii) use existing law to remove the benefit of the doubt on a person’s identity where there is a reasonable belief that a person has deliberately discarded their documentation, and
(iv) restore the Bali Process to once again focus on deterrence and border security”

Senator HANSON-YOUNG (South Australia) (09:31): I rise today to speak to the bill currently before this chamber, the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012, that proposes to dump vulnerable men, women and children anywhere but here—a proposal put forward by this government that trashes Australia’s obligations under international law and, of course, our obligations under the refugee convention. I note that, interestingly, overnight the UN Secretary-General, Ban Ki-Moon, has reminded Australia that our obligations are not optional. Ban Ki-Moon is calling on Australia to do what it is that we have signed up to do: to treat people with dignity, respect, care and compassion when they arrive on our shores desperate for protection and safety.

Australia was the sixth country to sign and ratify the refugee convention in 1954 under Liberal Prime Minister Robert Menzies. In Geneva on 22 January 1954 Australia’s representative to the United Nations called it the Magna Carta of the refugee. He said, ‘I am glad now to offer further evidence of our compassionate concern with this problem by formally stating our binding adherence to a convention which will elevate the standard of treatment of refugees to the status of international legal obligation.’ Erika Feller, the UNHCR Assistant High Commissioner for Protection, has said that this convention is the wall behind which refugees can shelter. The importance of this convention and Australia’s adherence to its obligations are highly understood by Australians, by members in this place and by the international community.

The reason we are even having this debate on this piece of legislation is because we have vulnerable people fleeing persecution and brutality from places around the world. I want to give you a quick snapshot of one young man who is now living in Melbourne, Hatif, who had to flee the brutality of the Taliban in Afghanistan. He came to Australia seeking our protection and our help. Hatif was 15 when his father was killed by the Taliban. His father was an interpreter for the coalition forces in Afghanistan. His father worked with our own officers, our own brave men and women, in Afghanistan so that they could understand the language, the messages
and the important discussions that were being held Afghanistan. His father acted as our interpreter to the local administration of the leaders in Afghanistan. For that, it cost him a very high price: his father was killed by the Taliban. And the Taliban left a note on his father's body saying that his teenage son would be next.

Hatif speaks very good English, and being the son of an English interpreter who had worked for the armed forces in Afghanistan made him a direct target once his father had been killed. His mother, sadly, realised that she would have to get Hatif out of Afghanistan if he was to survive. He was detained on Christmas Island after arriving in Australia by boat. He is now doing brilliantly at a local school in Melbourne—he is the top of the class in specialist maths and IT. He wants to be an engineer for Australia, but he desperately misses his family. I have written to the minister about Hatif, about the fact that his family cannot arrive here because there is no effective family reunion for him. Regardless of the fact that he had no choice but to flee his country, the minister's bill is going to make it even harder for Hatif and people like him to seek the protection they deserve, the protection they need.

We have a debate in this country about the pull and push factors. The push factors are the persecutions, the brutality and the torture that the individual refugees have to flee. The pull factor is that Australia is a signatory to the refugee convention which, when we signed in 1954 under the Menzies government, we proudly stood by and said that it was because we understood compassion was important. That is the pull factor—that Australians live proudly in a fair country where we look after one another, where the vulnerable have a safety net. That is the pull factor in this debate.

The deterrence is the awful decision that refugees make to flee their homelands in the first place and take that dangerous journey. The deterrent is having to make the decision to leave, however that is done, whether in the dead of night or in the morning, and whether you take your family with you, where you go, who will accept you and what is the best avenue for safety. Having to make that decision to leave your home, your family, your community is the deterrent.

Unfortunately we have got ourselves into an awful state of affairs where both sides of this place and the other have locked themselves into a delusion that if we can deter refugees from seeking protection that somehow that relieves us of our obligations to help others. When there are no durable solutions for refugees, when there is no ability for safety after they have left their homelands, refugees will continue to flee and they will continue to run until they feel safe. Pakistan, where many of the Afghan refugees have been hiding in fear of the Taliban, is pushing those refugees back. They are no longer safe in Pakistan and they move on to the next place. They move to Malaysia, they move to Europe, they move to Indonesia.

In our region there is no protection for these people under law except for those countries that have signed the refugee convention. Many of the people are not even able to come to Australia by plane because we do not offer them visas to get here. If you are from Afghanistan, Iraq, Iran or from Syria, the government believes that you are at high risk of applying for asylum and you will not be given a visa to fly into this country. Our whole policy is designed to force people onto boats. The government do not want to talk about that because they would prefer to have the tussle with the opposition about deterring people who need our help from even asking for it. That is what
this whole debate is about. We do not want these refugees here. That is what the minister's legislation says. It is what John Howard's legislation said. John Howard said that he wanted the right to decide who came into this country and the means by which they came. This legislation says that the government will decide, and if you are a refugee coming by boat you will not be allowed into this country. This is John Howard's legislation, make no mistake about it.

There are a lot of mistruths about this issue. I heard the leader of the chamber here from the opposition, Senator Abetz, say yesterday that there is a 'tsunami' of refugees coming to Australia. That is a lie. It is not true. He knows that it is not true. Australia takes less than two per cent of the world's refugees. There is no tsunami. There are a number of boats of very poor, desperate people who have been forced to take that journey because they have no other, safer option.

The expert panel asked for submissions from experts in this field, and they got submission after submission after submission that outlined what could be done to save lives now. We need to be looking at what worked in the Fraser government years. We need to be looking at how at that very particular time—and there were many, many more people desperate for protection in our region—we managed their needs from a humanitarian perspective. We assessed people's claims effectively where they were with a commitment to take those who genuinely needed our help. We did not wait for them to board a dangerous leaky boat only then to be shunted off out of sight out of mind because the reality was we never wanted them here anyway. We had true leadership that said Australia is a signatory to the refugee convention and we will abide by our obligations. We would work with our regional neighbours to assess people's claims and keep them safe while that application process was undertaken, and then welcome them into our communities.

We asked other countries to take them too. They went to Canada and the United States, and many, many of them came to Australia. We took tens of thousands Vietnamese refugees back in those days because it was the right thing to do. The members of this place had the courage to do the right thing.

This bill that is currently before this chamber has nothing of our courage in it at all. It lacks courage, but is all about cruelty; it lacks compassion, but is all about harm; and it lacks decency, but is all based on a lie that these people do not have rights, that they are not our responsibility and that if we be as mean as we possibly can that will deter them. It is simply not the truth.

The countries from which these people are fleeing are places like Afghanistan, Iran, Iraq and Sri Lanka and, increasingly, Syria. These are people who we know are fleeing places where they are brutalised—places of persecution. They are not here simply because they thought it was the easy option. It is the hard option; it is a hard thing to decide to leave your family, to leave your community, to leave your home and to flee in fear of your life. That is not an easy option. That takes courage, that takes bravery and that takes a commitment to humanity—to save the lives of your family.

They are the people who, over the generations, have made this country great. People who understood hardship, loyalty and resilience. These are the people who have built this country, who have contributed so much to this country and who will continue to do so. When young Hatif becomes an engineer he will be a fine engineer. He will probably be rebuilding the infrastructure that this country desperately needs for the future,
because he understands loyalty, commitment and hard work.

The Houston report included many important recommendations, none of which this government or the opposition have said any word of since Monday. Where is the commitment to increase our refugee intake immediately? Where is the plan to resettle those who have been waiting for years in Indonesia? Where in this legislation is our commitment to upholding our commitment under the convention to treat people properly, to ensure that they are housed appropriately, to ensure that they have access to legal assistance and to ensure that we do not detain children? None of that stuff, none of those important safeguards which are listed in the Houston report, are in this legislation. The government say that they are implementing the Houston report and they have not even bothered to read the detail of the recommendations.

We can be doing things now to save people's lives. Those who submitted to the Houston panel said it very clearly: increase the ability to assess people's claims and give them an opportunity to apply for protection in Australia in the places where they are. We know they are in Malaysia and we know they are in Indonesia; commit to doing that there and bring them safely to Australia. This debate has become riddled with this issue of saving lives at sea. If we were saving lives at sea we would be bringing these people safely to our shores. We would be giving them an opportunity to apply for protection safely in the places where they are waiting, scared, frightened, helpless and desperate. And yet that is not what this legislation is about. This is going back to the horrors that we know happened in Nauru and Manus Island. It is not by staring into the tea leaves at the bottom of the cup that we know these things will happen, because they have happened before.

Mr Deputy President, before I wrap up I will table these really important pictures that were drawn by children last time they were detained on Nauru. Indefinite detention damages children, indefinite detention violates children's rights and indefinite detention kills people. This legislation will not save lives; this legislation will kill people. It will send brave, courageous and resilient people insane. We know it will because it did last time. Rather than learning from the mistakes of the past and learning from what worked in history, like the leadership that was taken by the former Prime Minister, Malcolm Fraser, this government have lost their way. This government have lost their moral compass. This government are doing what Tony Abbott asked for, and Tony Abbott cannot be trusted on people's human rights. Tony Abbott wants to be as cruel as possible to the most vulnerable people who reach our shores. I condemn the bill, and we will not be supporting it in this place.

I seek leave to table the documents I referred to.

Leave granted.

Debate interrupted.

DISTINGUISHED VISITORS

The DEPUTY PRESIDENT (09:51): Before I call Senator Ronaldson, I acknowledge the presence of the Rt Hon. Malcolm Fraser, former Prime Minister of Australia.

BILLS

Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012

Second Reading

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(iii) use existing law to remove the benefit of the doubt on a person's identity where there is a reasonable belief that a person has deliberately discarded their documentation, and

(iv) restore the Bali Process to once again focus on deterrence and border security"

Senator RONALDSON (Victoria) (09:52): I also acknowledge Malcolm Fraser's presence. I do not agree with him in relation to this issue, but I do acknowledge a former Prime Minister and fellow Victorian. What I do not need today is a lecture from the Australian Greens in relation to this issue—the crocodile tears of compassion that we have heard again today. Why doesn't Senator Sarah Hanson-Young tell us what is compassionate about 1,000-plus people languishing in refugee camps in Thailand, Malaysia and elsewhere? What Senator Sarah Hanson-Young and the Greens know is that all of those illegal arrivals in this country by boat from Indonesia—some of them—may well be genuine refugees. What Senator Hanson-Young and the Greens know is that every single person in those UNHCR camps is a genuine refugee. What the Greens want to do is to put the rights of those illegal boat arrival people above the rights of those in those UNHCR camps. That is not compassion, and I am sick and tired of the crocodile tears coming from the other side.

Two years ago the Prime Minister of this country made an unequivocal commitment to the people of Australia that there would be no carbon tax under a government that she leads, and straightaway after the election we found out that that was an unmitigated and clear lie on the part of the Prime Minister of this country and the government. But this is just one example of a government and a Prime Minister that simply cannot be trusted. Indeed, if you look at what their policies contain, they are designed only to keep or obtain government. There is no better example of that than in relation to this debate on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012.

There have been 22,000 illegal arrivals in the last four years, 1,000-plus deaths and a $4.7 billion budget blow-out. The Houston report made it quite clear what options were available to this government. This government had the option of putting in place all three streams of the Howard government solution, which stopped illegal boat arrivals in this country and stopped deaths among those arrivals by boat. Why not introduce the full suite of those measures? Why not, indeed, go the next step in relation to turning back the boats and temporary protection visas?

I will just go through some of the previous comments of the Prime Minister in relation to these issues. Julia Gillard, in a press conference on 3 December 2002, said:

The Navy has turned back four boats to Indonesia. They were in sea-worthy shape and arrived in Indonesia. It has made a very big difference to people-smuggling that that happened ... And we think turning boats around that are seaworthy, that can make the return
journey, and are in international waters, fits in with that.

That was the Prime Minister, back in December 2002. If you go further and look at what she has said since then, on 6 July 2010 all of a sudden she had changed her mind. She said:

I speak of the claim often made by opposition politicians that they will, and I quote: 'turn the boats back'. This needs to be seen for what it is. It's a shallow slogan. It's nonsense.

How does that equate to her comments back in December 2002? This is a Prime Minister and a government that will stop at nothing.

In the 45 seconds left available to me, I also want to speak about temporary protection visas and what the Prime Minister said about that, again on 3 December 2002:

The proposal in this document, Labor's policy, is that an unauthorised arrival who does have a genuine refugee claim would in the first instance get a short Temporary Protection Visa.

At the same conference she said:

We want a short first-instance Temporary Protection Visa.

This Prime Minister has taken up only one of the three legs of what she should be doing in relation to this issue. She has flip-flopped. She says one thing one day and she says another thing the next day. This Prime Minister cannot be trusted, this government that will stop at nothing. In government we will address those two outstanding and extremely important matters.

Senator SIEWERT (Western Australia—Australian Greens Whip) (09:57): I start with the question that my colleague Senator Milne started with, which was: how long? How long are we going to be inflicting on desperate refugees detention on Nauru, in an environment that we know causes extreme mental stress? It is all very well to say, 'It's not going to be the same as it was before.' Australians should not be fooled; it will be. It will be the same as before. We are stripping out of the act the ability to offer protections and the necessity and requirement to offer support and protections. That is the very issue that we are talking about here, because we cannot guarantee those legally binding protections, so we are stripping those away. So it is going to be even worse than before, because we cannot enforce those protections.

We know we cannot enforce those protections. So I go back to the question: how long? A decade? Longer? We know people have been in Indonesia, Malaysia and these other areas for that long, so how long do the government and the opposition think that we are going to be keeping people there?

My colleague Senator Hanson-Young demonstrated very, very clearly what impact it has already had on vulnerable refugees—people that are fleeing for their lives. Put yourself in their situation. They are being persecuted in their homeland. They are leaving their families and loved ones, often their wives, their children, their mothers, their brothers, their sisters, their fathers, their extended family—leaving them because they are being persecuted. Surveys showed that 96 per cent of Australians, when asked if they would do anything they could to protect themselves and their families, said that they would and, yes, they would flee.

And what happens when they flee when, as in a lot of cases, they have been tortured and subject to persecution? They get to a country that is saying: 'No; go. We don't want you here.' Because this is what this policy is about. Let's face it. This country is saying, 'We don't want those people here,' not that 'We understand your pain, we understand the torment in your homeland and we welcome you.' No. 'We'll lock you up even longer and punish you for wanting to have a better life and protect your family and your children. And we'll lock up your
children at the same time, indefinitely, so they grow up in detention.' And then, in the future, will we recognise that, like we have this time, and have to compensate them? Yes, we will, of course.

Why not treat people fairly now like we have in the past? Why not accept that people are being damaged, that people are fleeing persecution, torture and distress in their own homelands? We see it every night on our television. Those are human beings that are being impacted. They are being bombed, tortured, persecuted for what they say. We have been having a debate in this country about freedom of speech; but, when we see people doing that in other lands and then being persecuted for it, we want to turn a blind eye, punish them even further, lock them up again and torture and persecute them even more. It will end up leading to the inevitable lifelong consequences of poor mental health.

And we know these things have lifelong consequences. In this country we are dealing with other people who have been mistreated by the system, and we know of their lifelong consequences and are still dealing with it decades down the track. That is what we are going to be doing with this proposal.

The Greens are deeply committed to caring for and looking after refugees and people in general. That is where we come from. We have been working hard to find an approach to a complex problem. No-one is denying that it is a complex problem, but people take desperate actions when they are fleeing for their lives, and we need to recognise that. We are supposed to be a caring and compassionate society, and what is caring and compassionate about locking people up again indefinitely and stripping away our requirements under our legislation to look after and offer protection to people? I ask again: what is caring and compassionate about it? The government cannot even answer how long we are going to be locking people up for, how long we are condemning people for. That is not caring and compassionate.

The sorts of things that we are stripping away by this act are our requirements to provide access for asylum seekers to effective procedures for assessing their need of protection, providing protection for asylum seekers pending determination of a refugee solution, providing protection for persons given refugee status pending their voluntary return to their country of origin or their resettlement to another country and also making certain that countries meet certain human rights standards in providing that protection. Stripping those requirements out, we do not have to do that anymore. How does that make us a caring and compassionate country when we are amending those particular requirements? How does it make us a caring and compassionate country when we are amending the Migration Act and the requirements for guardianship of children, when we are allowing the transfer to countries and areas where we cannot guarantee protections for these desperate people? These are people we are talking about. We cannot guarantee those protections.

Weigh the fact that people have already taken their lives in their hands by fleeing their birth country. That is a huge commitment these people have made; and, instead of recognising that and recognising that people who are fleeing for their lives take desperate measures, looking at how we can address that in a much more compassionate and regional approach, we are saying: 'We don't want you here. We're going to do everything we can to stop you actually being in Australia. We're going to put you in an environment that we know damages you.
We know you're already damaged; we're going to put you in that environment again. We're going to repeat the mistakes of history because we are incapable of learning it—because we are so desperate not to have you in our country that we'll change our laws to make it so we don't have to ensure that these countries are complying with human rights measures and law. We'll change it because we're so desperate not to.' What does that say about our country?

It is a nonsense to wrap this up with, 'Oh, we're trying to stop people getting in boats.' People will continue to get in boats because they are that desperate. They will continue to get in boats and are going to have even fewer protections. Why are we not going back, as my colleague Senator Sarah Hanson-Young has said, to the countries these people have made it to, processing them and facilitating their applications, not making them wait for years and years where they have no protections?

These are desperate people and, over the years, their children will grow from small children to young adults. They will spend their whole lives in this unstable, dangerous situation where they do not have access to education, to adequate housing and to other protections that Australians take for granted. For all their lives all these children will know is poverty, desperation and in many situations cruelty. They will not be afforded basic human rights. By passing this legislation, this country is saying, 'That's okay with us.'

We need to put resources into addressing refugee applications and increase our humanitarian intake immediately. But, instead of doing that, we are saying to these people: 'We will punish you people some more.' We will punish you for what? 'We will punish you for coming from a country that is subject to strife, where the same democratic freedoms that we take for granted are not available to you. We will punish you for having the initiative to want to protect your family and your life. We will punish you some more for having the capacity, the initiative and the desire to live your life with the freedoms that we all take for granted in a democratic country. We will punish you some more because you have not found the mythical queue; you are not sitting in it being subject to persecution while we process your application.' When these people do try to find a place where there may be a queue, we make them sit there for years and years. What is our response to that? It is: 'We are going to change our legislation so that we do not even have to make sure that you are subject to human rights laws where you are staying.' We have gone that low in this country that we think that is acceptable. We think it is acceptable that refugees are treated in the manner that we are seeing them being treated now.

We have to remember what the term 'refugees' means. We think it is acceptable that we strip away our requirements for human rights to apply. What we are saying to the refugees is: 'You shouldn't be trying to get out of those desperate situations; sit there and suck it up.' That is what we are saying. Let us see this for what it is. We are prepared for Australia to participate in a process whereby we sink to such a low level that we ignore our commitment to human rights laws and conventions.

Attacks were made on us yesterday because of the position we are taking on this legislation. Me think is because the people who are making those attacks are too ashamed of the approach that their side has taken. They gave in. They did not try and push for what needs to be done. They caved in to ignoring our commitment to human rights conventions and laws. They have been shown up, even by the Houston report, on
the Malaysia solution. Instead of looking at the position they took, they want to come out and attack us for trying to find real solutions, because the solutions that the government and the opposition are proposing will not work. They will lead to the further degradation of desperate human beings and to the further damaging of these human beings. The way you stop people getting into boats is by dealing with them at the place where they land. You make sure that they are not sitting in the so-called queues. There are no queues. They are sitting in desperate situations and not being supported. We need to increase our humanitarian intake. We need to increase resources in order to process people more quickly rather than condemning them to indefinite detention. This legislation is about indefinite detention. I certainly have not heard any answers to the questions that have been posed on how long we will be condemning people to these circumstances.

We will oppose this legislation. We will stand up for the rights of refugees. We will stand with all the refugee groups who are saying that this legislation is not the solution. We say: listen to the community; listen to the groups, to the organisations and to the people who have been working for years with refugees to find real solutions that are long term—not a short-term one where you get it out of the way for a little while and out of the headlines; where you say, 'It does not matter that we are condemning people to long-term detention and all that goes with that.' Implement proper solutions. Where is the commitment? Where is the government's announcement that it is immediately going to increase our intake? Do people know that they have an option: the hellhole where they are now or a hellhole somewhere else? Give people a future. Give people a bright future. Give children a bright future. The thing that we in Australia all think about for our children is that they have a bright future in a country where they have access to all of the services that we take for granted. That is what we want for the refugees and their children rather than them ending up in indefinite detention on Nauru or Manus Island or wherever else the government picks on next to shuffle off people so that they are out of sight.

This is not the way that a caring and compassionate country addresses the needs of people who are desperate, people who have been subject to persecution and torture. But what do we do about that? We prolong that as well. This is not good enough for Australia, and we say no to this legislation.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (10:14): I think too often in this place we accuse people and deride people when we should really take the opportunity to laud the wisdom in the chamber and acknowledge people when they have found an epiphany and made that turnaround. Many people have said that the Labor Left would stand up on this issue, but I said to them, 'You don't know the Labor Left the way I know the Labor Left, and you've got nothing to worry about there.'

We have to give credit where credit is due. I thank the people of the Labor Left who have come to the epiphany that they now support the coalition's policy—Howard's policy—on illegal immigration. It is very strong of them to now understand that John Howard was correct. It is incredible when you hear of people, such as Anthony Albanese, who said that he liked to fight Tories, but they got it wrong. Actually, he was trying to say that he likes to tell stories. I thank the people of the Labor Left for their silence on this issue. I thank them for being complicit on this issue. I thank them for their philosophical change of heart, and the
realisation that there is really nothing much there.

I have a strong view about strong border protection, but I know for a fact that they do not. It is a mockery in this place when there is a complete desertion of principles. It makes sense that that is what we would be saying. That has been our position but it has not been theirs. I start to wonder when all of these statements have been made—and there have been so many, from Doug Cameron and Julia Gillard—and they look like complete and utter hypocrites. People will start to wonder about where the plum of dignity is in this place when you have a complete and utter turnaround. I can understand how the Labor Right could have that position and maybe the Labor Centre, but how the Labor Left got to that position I do not know. It is peculiar in the extreme. It needs to be said. For the life of me, it is something that I cannot work out. What do we do? Do we thank Doug Cameron? Doug Cameron—

The ACTING DEPUTY PRESIDENT (Senator Fawcett) (10:16): Order! Senator Joyce, I remind you to address people by their appropriate title.

Senator JOYCE: Sure. Do we thank Senator Cameron? I can think of so many times when he was talking about Nauru, when Senator Cameron said:

… the closure of the disgraceful offshore processing centre in Nauru. It was a disgrace, it was an international shame and it brought nothing but loathing of this country …

And now he is voting for it. Again, Doug Cameron said:

… how Nauru could ever be contemplated as some kind of success.

And now he is voting for it.

I thank Senator Carol Brown for her support. I thank Senator Wong for the amount of work that she obviously did within caucus to fight for her beliefs. I thank her for that. It was quite laudable. I thank them for the discipline they have shown in saying absolutely nothing at all about their former beliefs. If you want to see what the archetypal view of a doormat is, it is the Labor Left—it is 'Roll over, lay down, but don't let me in.' That is the Labor Left.

However, it is a good outcome. I have to acknowledge that it is a position that is held by the Labor Right and it would be genuinely held by the Labor Right. It is genuinely held by us and it is genuinely held by the Liberal Party. We want stronger protections and we are willing to put in what is required to create the impediments, the disincentives, for people to get on a boat. We have had so many drownings. It has been an appalling debacle. The number of people drowning at sea is around the equivalent of our national road toll. That just cannot go on. That is a disgrace. We have always said that tough decisions were required. The coalition said this at the start. It is not that we wanted to revel in some sort of morbid or nasty approach; we just needed this disaster which was happening on our high seas to stop. We only have an estimation of how many people drowned. There is no real log of these people. God willing, it will, hopefully, now come to an end. That was our approach but, for the life of me, I never presumed it would be the approach of the Labor Left. You have to ask yourself: where is the philosophical soul of this movement? Is it gone? Is it finished? If it is, they should just announce it, fold up their banner and move on. It is a defunct movement.

We hope that those who are the benefactors of peddling human life across the seas start losing money. We hope that in this space we can exercise our role as humanitarians. That is definitely our role and we have to make sure that we maintain that. We need to make sure that we do what we can for people who are genuine refugees—
that we facilitate their movement from camps, wherever they are in the world, to the extent that we are able to look after them as a nation. This is the difference that we have with the Greens. I know that the Greens have a genuine feeling that this is as much as Australia can take. We have to determine our capacity to do that. We have to determine our budget to do that. We have to determine that we do not create social imbalances by being excessive. We have to make sure that we create a form of assimilation. We have to make sure that we create an easy path for people who arrive in the future. We have our responsibilities but we must know the limit of our responsibilities.

Australia as a nation has been extremely generous in the role that it has played. Per head of population, it is vastly more generous than so many other places. I acknowledge that other places have more pressure put on them, but that is by reason of their geography. It is an example of our capacity when we reach over the seas, find people in difficult areas, bring them into our nation and do everything in our power to assist them. Concerns are voiced that we must placate within our own nation when people feel that domestic concerns are not getting an appropriate amount of attention in comparison to the attention spent on refugees. I do not think that is correct, but that is a view and we must not exacerbate that view by letting the number of illegal boat arrivals, or refugees, or whatever term you want to use, get out of control. We had a position in our nation where the integrity of our borders was well and truly called into question. We were not able to enforce the integrity of our borders, and if we cannot enforce the integrity of our borders we are seen as a nation that cannot deliver to its people one of their fundamental requirements, which include the integrity of their borders, the sovereignty of their soil and the provision of basic services at an affordable price or free.

What is the story now for the Labor Party or the Labor Left when one of their own members, the Prime Minister, Julia Gillard, is yet again completely at odds with her own former statements? The need for offshore processing at Nauru might be my view, it might be Tony Abbott's view and it might have been John Winston Howard's view, but it was not Julia Gillard's view. The Australian people must be looking at their television sets and saying, 'Is there anything we can believe about this person whatsoever?' Is there any way that people can look at her and say: 'I might not agree with you, but I think you are succinct and genuine in your beliefs. You are reflecting to me your genuine and well-held beliefs and, in that, I have no doubt that you are a person of integrity. Although I might not agree with you, I believe that what you say is a truthful representation of your beliefs around where you are going to take us. When you say something that I disagree with, I know that is the end of it. When I say something that you agree with me on, I know that is where you are going to go. I have a reliable assessment of your character and who you are.'

However, sometimes the Prime Minister of Australia makes a complete 180-degree turn that works in the coalition's favour and we on the coalition side say, 'Hooray!' At other times it does not work in our favour. The only thing that is consistent is that she is completely and utterly inconsistent and there is nothing that you can rely on. No corner of reliability is left. The office of our Prime Minister has become a total and utter farce, and this farce has now infected this chamber. I can look across at Senator Marshall and say, 'That is not your view.' I can look at Senator Cameron and say, 'That is not your view.' I can look at Senator Carol Brown and say, 'That is not your view.' I can look at
Minister Wong and say, 'That is not your view.' I can look at Senator Carr and say, 'That is not your view.' But they are all going to vote for it. They are all going to support it. They are all going to stand silent on it. Where have we gone? What is the point, Senator Cameron, of doing doorstop interviews anymore? Just forget it—give up on it. You do not really have a view; it is amorphous. You have no ticker.

For the rest of you, there is no point getting bitter and twisted; just acknowledge that you are now purposeless, that you are now soulless and that you have never stood up. One of those endearing human traits that we always believe in, an Australian trait, is ticker. Whatever your views are, make a stand because there will be someone out there who has the same views as you and they are relying on you to stand up on their behalf. But those days are gone. Now the whole infection has spread from a Prime Minister who has just been so glib and frivolous and expedient with her personal views. She has given reassurances to the Australian people time and time again, where she has said: 'Look at me. Trust me. I'm believable. You can rely on me. There is something there.' It is quite obvious that there is nothing there.

Where to next? How on earth can the Australian people look at the representations given by our current Prime Minister and think, 'There is something I can believe in that'?—because there is nothing. You would have to be completely and utterly foolish to now believe any utterance that came from the Prime Minister's office. You can just forget it. It is without meaning. This bill is a classic example of that.

I am obviously genuinely happy with this outcome because it deals with the situation offshore. I am genuinely unhappy with the fact that we have become almost philosophically bereft and completely and utterly mercenary now with the espousal of views—not my views but views that I thought were genuinely held by the Labor Party and supported by people with ticker. But they do not have ticker. That is another casualty of this debate.

The former Chief of the Defence Force, Angus Houston, is a man of impeccable character. The moment he was appointed to conduct this review it was certain that he would be truly independent and we knew we would get a recommendation that would include Nauru and Manus. That was obviously going to be the case because his remit was to ensure that the boat arrivals stopped and, of course, this will begin the process of stopping them—there is no doubt about that. That can be seen already as people try to front-end load the situation and exploit what they see as the closing window of opportunity. If that was the outcome that Ms Gillard ultimately wanted, then why didn't the Prime Minister say it at the start? Why didn't she say, 'I'm putting everything on the table'? Why did we have to listen to all these other statements of hers, one after another? As recently as 2011, the Prime Minister said:

They believe they are coming to Australia, but they end up somewhere else. It is a virtual turnaround of boats.

Now she supports a virtual turnaround of boats. She also said:

Labor will end the so-called Pacific solution—the processing and detaining of asylum seekers on Pacific islands—because it is costly, unsustainable and wrong as a matter of principle.

A matter of principle? What principle are we working with now? What is the principle for today? It is Thursday; how long will today's principles last? Will they make it to 11 o'clock?
The Hon. SIR CLIVE HUNTER (Chairman—Standing Orders): Senator Evans is now calling. If there is no objection, he may take the chair, and the question will be put immediately.

Even Senator Chris Evans—a bloke I thought might have had something inside his chest—said:

Labor committed to abolishing the Pacific Solution and this was one the first things the Rudd Labor Government did on taking office.

And he went on to say, 'It was also my greatest pleasures in politics.' That is what he said. He said it was his 'greatest pleasure in politics'. Not one of the greatest, not equal with other things, but his 'greatest pleasure in politics'. It was his greatest achievement, as judged by him, by Senator Evans. So what is he doing to today? He is going to vote to bring back what he thought was his greatest achievement in removing.

What goes on in the Labor Party meetings? What happens? Do you have them any more? Where do you hold them—under a rug? Do they give you ear plugs? What happens in those rooms? It will be amazing to see who turns up for the vote. I hope the Greens call a division, but we will have to see what happens. It will be interesting to watch.

I have always supported stronger borders. It was naturally a position the National Party had and it was naturally a position that the coalition had. We have been unambiguous about it all the way through. We have been consistent about it. Like us or loathe us, you knew where we were on this issue. It was completely and utterly consistent. We did not want to revel in it. It has probably been noticed that we on the National Party have not been banging on about this. We knew where we were going and we just wanted it to quietly resolve itself.

My point today—and I think it has to be noted—is that we are now moving back to where we were, which was the coalition's position. Naturally enough, the coalition will go back to what the coalition position was, and we have been honest and succinct about it. There are other people within the coalition who have been honest and succinct about their disagreement with certain sections of it—for example, Judi Moylan and Russell Broadbent—and I think they have been consistent in their views. But what I worry about is how the Australian people must look up at this hill and say: 'What on earth is going on up there? Who is running this show? Where is the substance or the character of consistency of the people who have this most incredible honour and the weight of the nation resting on their shoulders to run the nation?' On the position of leadership, whether you like the leader or not, the leader must be a person who is held in respect and must act as a person who would be respected. A person will be respected when they are consistent, persistent and unambiguous in their core principles. But this is not what the Australian people have received from the Labor government.

Is it political expediency? At least be honest about your motives. Is it just about clearing the decks? Is that what you are doing? Is that what it is about? Just tells us. Tell us what the mechanism was that made you devoid of your principle. Tell us why? People want to know what is going on in the Labor Party. They are kind of fascinated. What has happened? Is it now the case that the Labor Left's position is merely theatrics and pointless babble? Does it have a position on anything anywhere anymore? One of the biggest casualties in this is the exacerbation of a loss of respect in the office of our nation.

The Hon. SIR CLIVE HUNTER (Chairman—Standing Orders): Senator HAYDON is now calling. If there is no objection, he may take the chair, and the question will be put immediately.

The Hon. SIR CLIVE HUNTER (Chairman—Standing Orders): Senator HAYDON is now calling. If there is no objection, he may take the chair, and the question will be put immediately.

Senator RHIANNON (New South Wales) (10:33): I rise to support my colleagues Senator Christine Milne, Senator Sarah Hanson-Young and the other Greens who have spoken so clearly on this bill, the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012.
We had the opportunity here, if Labor had been willing to work with the Greens, to come up with solutions that would have saved lives and that would have allowed us to ensure that refugee rights were respected and that we honoured our international obligations. Instead, Labor have chosen to work with the coalition and are returning us to the John Howard Pacific solution. But, when you look at it closely, there are aspects of this bill that make it even worse than what we saw in those years. Island prisons will be established. Countries like Nauru and PNG will be left to administer a policy that will violate the refugee convention. That would be unacceptable and unlawful if it occurred in Australia. We would have to conclude that one of the objectives here is to keep the whole refugee issue away from scrutiny. That is one of the reasons this is occurring.

In this debate there have been many myths, deceptions and lies that have been perpetrated—the claim that the Pacific solution made more boats come, that asylum seekers threaten our border—but that is just propaganda to put pressure on people, to scare people and to try to win support for a policy that is so inhumane. What the coalition and Labor are uniting here to do is not about saving lives or about compassion; it is a political fix. It is a political fix that is incredibly dangerous for so many individuals.

Also, if we look towards the future, we can anticipate that there will be many more refugees in the world, due to economy-collapsing countries, wars, pressure on different populations and the climate change impact. We know that there could be millions of refugees in this world, and Australia has a clear responsibility here. We are known by many people—and I think we like to think of ourselves—not just as a country with a fair go but also as being generous of spirit and generous in a very real way. But this piece of legislation takes us in a totally different direction.

When we consider what we have seen from the parties that are now pushing this legislation we need to remember that there is a long history of abuse of refugees behind this. We violated international maritime law with the way the Tampa crisis was handled and we are violating our own obligations under UN treaties. That means that so many innocent people have been treated appallingly—damage that will, in many cases, last all their lives. And we are about to continue that terrible pattern of treating refugees. What is happening is that we are imprisoning people who desire what I believe most people in the world desire—I am sure it is a common factor among all of us here—and that is to wake up in the morning and know that your family is safe, your friends are safe and your livelihood is fairly secure. That is what these people are trying to secure.

The other night in this parliament I read out extensive quotes from a statement that has been released by the Commission for Justice and Peace of the Catholic Diocese of Jaffna in Sri Lanka. It painted a deeply troubling, ongoing situation for the Tamil community in that country. I urge people to look up that statement if they want to understand why so many Tamils are fleeing Sri Lanka, because it becomes quite clear. The civil war in that country may have ended in 2009 but many people are now calling what is occurring in that country ethnic cleansing, with Tamil communities losing their land and their livelihood. There is a description in that statement of fisherfolk who can no longer exercise their daily fishing plans because they are not allowed to fish in certain areas, Hindu shrines that have been taken over or destroyed, and the army and sections of the Sinhalese community taking over businesses, land and
communities. This has much to do with why people from that land are fleeing to Australia.

If you look at the situation in Afghanistan, instability continues to be extreme. The war, the conflict and the violence are making life impossible for many people. We know that many Afghans get to a point where they realise that the only hope for them and for their families and communities is to leave. And they have a right to come to this country and to seek asylum. This morning I went to a very moving event in this parliament for World Humanitarian Day, and part of it was to remember the many aid workers who have been killed in the line of duty. I had not realised how many had died. Senator Bob Carr was one of the speakers, and he spoke about Afghanistan and the violence against women. He said that 80 per cent of women in that country continue to experience violence. The sexual exploitation and the ruthlessness of the Taliban and some of their supporters is driving people out of that country—again, they have a right to come here, and we have a responsibility and a duty under international law to accept those people who come to our country. One day I do believe—I always try to be positive—that we will get back to that, but right now the legislation before us is more than deeply troubling; it is deeply anti-human. That parties could unite on this is quite extraordinary.

With respect to the expert panel's recommendations, we were pleased that they picked up on some of the work that Senator Sarah Hanson-Young has been putting forward on safer pathways and taking more refugees, and I acknowledge that many other groups have advocated those positions. But so many of the recommendations are a huge setback, repealing the few human rights protections included in the offshore processing legislation that went through in 2001. We should never do that, and we are about to see all the Labor and coalition MPs voting for that to happen.

Punishing asylum seekers who arrive by boat is a breach of the refugee convention, and that should not change. We need to remember the mental health problems that occurred among so many of the refugees who were put into detention centres on Nauru and Manus Island. The people who are voting for this legislation are ignoring the lessons that we learnt about what that form of detention does to people. We know that most of those people settled in this country. Australia now has the responsibility of looking after them and trying to address those mental health problems that should never have occurred, but they did occur because we were holding people indefinitely with limited freedom of movement. This is what has happened in those island prisons in the past and this is what we are about to inflict on people.

Then we come to the issue of the expert panel recommending that the removal of child asylum seekers from Australia be facilitated. You would have to say that one of the darkest chapters in this is how we have treated minors and children. I pay tribute to Chilout. They worked for years to get children out of detention and that became a great rallying call for organisations like Refugee Action Collective, Chilout and Labor for Refugees. Incredibly important work was done, and there were achievements, but now it looks like it is going to be wound back. My colleagues have asked the questions. We know that 220 asylum seekers have arrived just recently, and they are the first ones to be moved to these islands. How many children are there? What is going to happen to them? There are no answers. The lack of humanity is one of the aspects of this that I have found most troubling, and we are going to inflict that on...
children and put them into these island prisons. There is an unwillingness to come clean about what will happen and how it will be managed. They talk about transparency, openness and health facilities but none of that is made clear. And, in the end, none of it is an answer when you are locked up in an island prison indefinitely and your rights have been removed so completely.

Another aspect of the expert panel’s recommendations that very much shocked me was that they left open the possibility that boats may be turned back in the future. We have heard the Leader of the Opposition, Mr Abbott, speak about this whole package, and this is where Labor has got its own tactics so wrong, let alone the approach to refugees. He said the boats will keep coming, which they will. People will want to escape the terrible situations in which they find themselves. Mr Abbott has said that the government will be to blame if the boats keep coming, even though what we have here is the coalition’s Pacific solution. But there is the further aspect of leaving it open to turn back the boats. We have heard naval people say that that simply should not happen.

I want to put on the record the organisations that this week made such a clear appeal to the government that this legislation, the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012, should not pass. These organisations have put so much effort into working on this issue, working with refugees to ensure their rights are recognised, helping them to settle in this country, often picking up the work that government should do: visiting the detention centres, giving the day-to-day support, often taking food to those people in those centres, trying to contact family—again, doing the work that the government should do. These organisations came together this week to call on the Prime Minister not to pass this legislation and to point out the very deep problems from the expert panel’s recommendations. It is important that their work is acknowledged and recognised.

The organisations that wrote to the Prime Minister are: Amnesty International Australia; Asylum Seeker Resource Centre; Asylum Seekers Christmas Island; Asylum Seeker Welcome Centre; Bridge for Asylum Seekers Foundation; Balmain for Refugees; Brigidine Asylum Seekers Project; Sonia Caton, migration agent; CASE for Refugees; Centre for Human Rights Education, Curtin University; Chilout; Coalition for Asylum Seekers Refugees and Detainees; Darwin Asylum Seeker Support and Advocacy Network; the Rt. Hon. Malcolm Fraser AC, CH; Sandra Gifford, Professor of Anthropology and Refugee Studies; Human Rights Law Centre; Hotham Mission Asylum Seeker Project; International Detention Coalition; Ged Kearney, President, Australian Council of Trade Unions; Melbourne Catholic Migrant & Refugee Office; Professor William Maley AM FASSA; Dr Anne Pedersen, Associate Professor; Refugee Council of Australia; Refugee and Immigration Legal Service; the Assembly of the Uniting Church in Australia; Welcome to Australia; Dr Savitri Taylor, Associate Professor and Director of Research; Tamara Wood, Nettheim Doctoral Teaching Fellow and PhD candidate.

I congratulate their extensive work for refugees in this country and, as you have heard from other Greens speakers, we remain deeply committed to continuing the work for refugees and working with these organisations to ensure that we return to a recognition of refugee rights.

I mentioned at the start of my speech that so much of the debate has relied on lies and deception in many of the comments that have been made about asylum seekers. I want to
deal with some of those myths: for example, that asylum seekers who arrive by boat are committing an illegal act. This is so deeply wrong. I believe the majority of the coalition members and Labor members who have spoken on this, like the Leader of the Opposition, must know that, but they continue with this deception. It is not illegal to seek asylum, regardless of how someone arrives in this country. The term, if you come by boat, is 'irregular maritime arrival'. That is the legal description but there is nothing illegal about it. The constant repetition of that lie relies on the old adage—if you repeat a lie long enough people will come to believe it. It is part of the propaganda that our borders are under threat and these people have no right to come to this country when they clearly have.

I also want to address some of the comments that, disappointingly, have been made by Senator Doug Cameron. He spoke on the Migration Legislation Amendment (The Bali Process) Bill 2012 back in June when we were coming to the end of that session. He spent quite a bit of his argument trying to blame the Greens for a solution not being found. Let us remember that what he was pushing for then was the Malaysia solution, which asked the Greens and all of us to break the law and our responsibilities under the refugee convention. The High Court made a very clear ruling on this and here we saw Senator Cameron take a very irresponsible position and try to blame the Greens for not achieving a solution.

Now we have Senator Cameron going for the Pacific solution. It is worth remembering, when he spoke in June on that bill, that he said he had argued his opposition to the Pacific solution continually over many years. Yes, he has, and for a lot of the period we were able to work with Senator Cameron and others in Labor on this issue. I acknowledge that, as part of the Labor caucus, members have to vote for legislation that their caucus has decided will come through. But we know that Labor members of parliament—senators and members of the House of Representatives—can speak against bills that their caucus has decided on and cannot be expelled for that. Over the years we have seen many courageous members do that when wrong legislation, like this, comes through. That is what Senator Cameron should have stuck with, rather than run the scam that it is all the Greens' fault because we would not vote for the Malaysian solution.

We will continue to work, and are always ready to work, with Labor people like Labor for Refugees. They are critical of what the Labor government is doing here and have recognised the importance of the Greens' position, including what we have advanced around safer pathways and regional assessment. We have seen in how Labor has conducted this debate in recent months that it has not been a compromise. It has not been a compromise to improve the situation for refugees. Again, they could have worked with my colleagues Senator Christine Milne and Senator Sarah Hanson-Young to come up with solutions that provided those pathways, that helped ensure that there were positive solutions. But they have not made refugees welcome. They have moved to a position where they have provided no option but for refugees to get onto boats. As I described in those situations in Sri Lanka and Afghanistan, when people are desperate to leave because of violence, and the abuse and the exploitation have got to that point, deterrence according to laws in Australia are meaningless; they are thinking about how they can escape their situation. The issue of saving lives is absolutely paramount for us. We could have achieved that by recognising the rights of refugees and our responsibilities
under the convention, and we will continue to return to that work.

Senator JOHNSTON (Western Australia) (10:52): In the short time I have to speak today on this Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012 I want to deal with an aspect that has been seldom referred to in this very emotive debate. There has been a lot of hand wringing and a lot of reference has been made to the rights of people who have voluntarily paid quite large sums of money and gone upon the high seas of their own free will and then, with information received from Australian supporters, telephoned various Customs, naval and other officials in Australia to come and get them.

The people I am referring to who have rights and who have been needlessly put in harm's way are, of course, those very fine members of the Australian Defence Force, particularly the Royal Australian Navy. They have been needlessly exposed to extreme danger and risk by this massive policy failure, probably the greatest policy failure in the history of our country. It is all very well for people to get up and talk about the rights of these refugees, these illegal entry people who are coming upon the high seas and expectant of first-class treatment, putting our Navy personnel at enormous risk, but those sailors have lives to live. Those sailors have wives, husbands and children, and this policy has put them at enormous risk.

Twenty-two thousand people have arrived by sea since 2007. All of them, almost without exception, have been processed successfully and, may I say, compassionately and professionally by members of the Royal Australian Navy. What about the rights of those sailors, needlessly put in harm's way? Many of them undertake a nine-day turnaround from home base Darwin out to Christmas Island then a number of days patrolling, picking up these boats and then delivering them to Christmas Island or to whenever they can. Several members of the Armidale class Force Element Group regularly work through their eight-week on/four-week off cycle on the high seas—many of them work 12 weeks straight—doing nothing more or less than operating a taxi service for this massive policy meltdown and failure. What about the rights of those people?

I read an article by Chris Kenny in the Australian in July this year and I put on the record some of the things that he said. Of course, this is something that senators opposite do not want to hear because they are hideously embarrassed by this massive backflip, this classic policy failure that has brought derision and scorn down upon all of them. The journalist said:

For these people at the front line of the border protection dilemma, the day-to-day practicalities are more important than the parlour games of the political debate. The crews typically rotate for eight weeks onboard then four weeks onshore, although the pressures are so high now that five sailors recently had to sail through their rostered onshore period.

He further said:

They observe that many asylum-seekers appear well clothed and organised. Apparently a sailor recently was admonished by an asylum-seeker who wanted more care taken with his bag because it contained a laptop. Another sailor lamented: 'Last I checked, I was not a baggage handler at the airport, but a sailor in the Royal Australian Navy.'

I share some empathy and sympathy with that sailor and with all of these sailors who have been reduced to nothing more or less than taxi drivers. What about their rights? It is all very well to be talking about the rights of people who pay large sums of money—what about the rights of sailors?
I now turn to the coronial inquest into the death of five Afghans on board a boat in April 2009. Mr Greg Cavanagh, the coroner in Darwin, a very learned and respected jurist, delivered his decision on those deaths when a boat, SIEV36, was blown up in April 2009. I quote some of the aspects of what that learned coroner found. In paragraph 11 on page 5 of his report, he said:

By way of overview only and having regard to all the evidence I have concluded that the explosion was caused when a passenger or passengers deliberately ignited petrol which had collected in the bilge area below the deck of SIEV 36. Unleaded petrol in a container housed in a hatch near the bow of the boat had been deliberately splint into the bilge. The ignition of the petrol resulted in almost instantaneous ignition of petrol vapour emanating from the spill.

He goes on to describe the magnitude of a very serious explosion, which blew nine Royal Australian Navy personnel into the water. It is not enough to come here on one of these boats, having paid for the privilege, but when they get here they want to blow the boat up with Australian people on board. The coroner made distinct findings as to the cause of that explosion—and I will deal with that in a little while.

Let us talk about what Navy did and how they responded. On page 38 of the coronial inquest report the coroner says in paragraph 89:

When the explosion occurred, many of the passengers and navy personnel were thrown into the water. Again the video depicts what occurred. Keogh—a Navy man—

a Navy man—

can be seen on the starboard side of the boat trying to direct passengers to leave the boat. He was very brave as were many others that day. He was unable to save one of the passengers who drowned in front of him. Standing Orders required that he remain on the boat and not enter the water unless directed to do so. He tried to help and took hold the seat of the wheel house which he intended to throw to the drowning man but it melted in his hand. Thereafter he remained on the burning vessel until he was extracted, despite the obvious danger of further explosions and him being injured himself.

The coroner goes on to set out more acts of extreme heroism and bravery. In paragraph 91, on page 39, he says:

In the process of the rescue, Corporal Jager was in danger because her life vest did not inflate and she believed she was drowning. Medbury and Boorman, who were crewing the RHIB that was portside of the SIEV at the time of the explosion, rescued her. In the process of doing so, they had great difficulty. She was clearly struggling, they were finding it difficult to get her on board. Shortly before they succeeded, a passenger was hanging on to her and preventing the rescue. Medbury either kicked the RHIB or kicked towards the passenger. Corporal Jager says that the passenger was kicked in the head. However, she conceded it happened in a split second and she could be mistaken. Medbury agreed that he was kicking towards the passenger to stop him from preventing Jager's rescue. I do not need to make any specific findings about this incident. The incident must be seen in the context of what was happening. There had been a violent explosion, people were screaming in the water. Corporal Jager was struggling and have drowned but for prompt action, the passenger concerned was in fact rescued anyway.

The coroner goes on at paragraph 92:

After high alert had been sounded, HMAS Albany returned to the scene. Albany's two RHIBs were launched and assisted with the rescue of ADF and passengers. The rescue was efficient, effective and in my opinion saved lives. There were many heroic acts that morning in the process of saving the passengers and crew of SIEV 36 and also in their treatment thereafter. For example, Corporal Jager, notwithstanding what she had been through, attended to the needs of several injured people with the Medical Officer Darby with seemingly inexhaustible energy and precision. Many passengers were saved because of their efforts. It can be said that but for the combined efforts of the Australian Defence Force, Border Protection Command, Australian
Maritime Safety Authority (Rescue Co-ordination Centre), Off Shore Gas Installation Front Puffin, Truscott and medical teams from around Australia, many more lives would have certainly been lost.

The coroner goes on:
I have already commented on the great efforts, professionalism and bravery of ADF members collectively in rescuing survivors from the SIEV 36. In my view, the individual efforts of ADF members Jager, Keogh and Faunt are worthy of specific mention; 1) I have already mentioned Jager in the previous paragraph; after being on the boat for some time during the night, she was blown off the back of the boat into the water by the explosion, she was in a state of shock and her life vest did not inflate, she was close to drowning with other survivors attempting to swim over her in order to be rescued, she was terrified. Yet, despite this trauma, after her rescue with her specialist medical training she attended to the survivors for the next 10 hours …

And the coroner goes on:
2) I have already mentioned the efforts of Keogh in paragraph 89 … 3) Faunt had only been on the SIEV 36 for a short time on the morning of the explosion, he realised the dangers of an explosion, he called “high alert”, he attempted to appropriately deal with the developing situation, he was standing on top of the roof of the boat's coach house, the explosion blew him from the roof into the air and into the water, despite the shock and confusion engendered by this trauma, after rescue he remained on duty for several hours supervising the men under his command in relation to the rescue.

That is what this failed policy has delivered to the Royal Australian Navy. It is a disgrace. And they sit over there with their smug looks and think: ‘Oh, yes, this is a political game. Our ideology will prevent us from adopting the Howard solution.’ Australian naval lives were put at risk wilfully by this negligent and derelict government. That is what has happened here. And I, for one, will not allow it to go without saying that, but for the fact of the professionalism and the dedication of these Navy people who have had to endure this policy fiasco, there would be many, many more deaths.

How do we measure the level of incompetence and callous disregard of this government in the face of a boat in April 2009 being wilfully blown up, with nine naval personnel on it—how was that not enough to convince this crazy, neglectful, incompetent government that their policies had to change? Four years later here we are, dragged, kicking and screaming, by Angus Houston. That is what this has come to. The events of April 2009 should have woken them up, as any normal person would have been woken up, to the fact that this policy of compassion, the removal of the Pacific solution, was going to lead to disaster, to death and end in tears—and it has. But, no, they know better.

This Prime Minister will not do or say anything that acknowledges the successful governance for 11 years by John Howard. That is the problem; that is what sticks in their craw. And don't we know they are paying for it today? They are an absolute laughing stock. Their incompetent governance skills are probably the world's worst in a Western country. Everything they have touched has turned to mud because they do not know what they are doing. They think about what the spin doctors tell them first and foremost, without concentrating on the outcome and the practical application of policy.

So what did they do with all those people who deliberately blew up the boat? The coroner said that most of them lied, so what did they do with them? They gave them visas. They welcomed them into Australia. That is the level of incompetence we have dealt with from this government. It is a measure of their extreme and callous
disregard, neglect and political spin-doctoring that they welcomed into this country those criminals who tried to kill nine Australian sailors.

In closing—because I am very annoyed about what we have had to endure for the last four years, as any reasonable, normal person would be—I want to say to the men and women of the patrol boat FEG out of Darwin a huge thank you for the loyal professionalism they have continued to display year after year in dealing with this classic and massive fiasco of policy. Their dedication to duty has been an example to all of us and on this side of the chamber we all want to congratulate them and say thank you for their work. They are the people whose rights we should have been thinking about.

Senator WRIGHT (South Australia) (11:08): I rise today to speak on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. I am deeply saddened that here we are yet again debating legislation which is designed to punish and demonise people merely because they arrive on our shores by boat instead of arriving by plane or waiting patiently in mythical queues in intolerable living conditions where they have no hope or a sense of the future.

The last time I spoke about this issue in this place, just six weeks ago in relation to the Bali process bill, I described the experience of just one refugee I recently met in Adelaide. In desperation he came to Australia after waiting for resettlement in the Philippines. He waited for 20 years. There was no queue. He was waiting in limbo, a no-man's-land where he could not work, he could not form relationships and he had no sense of a future, and he chose ultimately to come to Australia.

It was with deep shame that I witnessed the imposition of mandatory detention on refugees, commenced by the Keating government in the 1990s, and then the more punitive regimes inflicted on refugees and asylum seekers by the Howard government into this century. Like many other Australians, I raised my voice and took what action I could and then I celebrated the lifting of temporary protection visas and the closing of Nauru. We thought that the worst excesses of these nasty exploitative policies were finally over. Certainly we knew that there was a legacy of people who had harmed and hanged themselves, and there are many survivors from that time who went on to be granted refugee status and who live in Australia today. But they still bear the mental scars of long periods in indefinite detention—our fellow Australians. At least, we thought, the bad old days were over. Now, here we are again in 2012 being urged to support this legislation because it represents a 'compromise' in order to find a 'solution' to a wicked dilemma.

It is true that there is a dilemma. People around the world will flee situations of terror, violence, torture and threat. And they will try to reach a safer place like Australia. And their journeys will be hazardous. But it is not surprising; it is exactly what many of us would do in the same situation if we were faced with the same horrors, if that was what was necessary for us to save our partners or our children or ourselves.

The big lie is that there is a simple solution to this dilemma—like the 'Pacific solution' or the 'Malaysian solution'. Pretending that there is a simple solution is misleading and cynical, because it causes false expectations in the Australian public and then leads to pressure for drastic action like what we have before us in this bill. It will appear that something decisive and effective is happening even if the consequences are ineffectual, harmful and cruel. Let us not be misled here. This is a
political solution but it will not save lives or reduce suffering.

On Monday at the cross-party parliamentary meeting on asylum seekers, I had the chance to hear from some of the most experienced and compassionate advocates for refugees in Australia. These were people who have considered this issue over long periods of time and their overwhelming message was that this is a complex and intractable challenge and there is no simple solution. There are just ways to manage it in the most humane way possible while maintaining the values that motivated us in Australia in 1954 to sign up to a convention to assist some of the most vulnerable people on the planet.

Now we come to this idea of a 'compromise'. What is it, I wonder, that we are compromising on? Compromising is good we are told: agreeing to something we do not want for some greater result. But what if it won't be effective and will cause untold harm and suffering? Where is the virtue and the sense in that? To support this legislation we must compromise on obligations that Australia voluntarily assumed when we signed the United Nations convention on refugees. They were very clear obligations to respect the rights of people to seek asylum under certain conditions and to ensure that they are treated humanely and compassionately when they do so. Here we are being asked to compromise so that we can treat some people so harshly that it will send a message of punishment and deterrence to others contemplating making the journey. We will have to treat them so harshly that it compares with the situations they are fleeing from—persecution by the Taliban, for instance, or years of statelessness in limbo with no sense of purpose and no sense of hope.

Desperate people will do what is necessary. The best deterrent to making a risky boat journey is the belief that there is another viable option, an alternative that will result in a better life. Refugees in Indonesia have indicated that they are willing to wait, sometimes two or three years, if they know they have a good chance of being resettled—if they have some hope.

The Australian Greens are serious about protecting refugees, saving lives and encouraging people not to risk their lives on boats because they have a better option—because they have a real chance of a future. The Greens have proposed a series of measures designed to give people hope and to work with our neighbours so that we have the credibility and good faith in our region to develop a long-term, truly regional approach to what we know is a regional phenomenon. These measures would include increasing Australia’s humanitarian intake to 25,000 people a year and urgently resettling at least 1,000 people from Indonesia and at least 4,000 from Malaysia. We would uncouple the link between the number of onshore refugees and the number of offshore refugees who are eligible for humanitarian visas—something that the refugee advocate community is constantly saying is necessary.

We would significantly boost the number of family reunion places within the humanitarian program. We would review carrier sanctions and visa impediments for people seeking protection by air, to overcome what is often a racist discrepancy when it comes to the status of people who arrive by air. We would increase funding to the UNHCR in Indonesia so that they have a stronger capacity to assess asylum seeker applications and vastly speed up the process. We would develop a new regional plan of action with our neighbours on a respectful basis—not on a basis where we are essentially being hypocritical, pointing the
finger at them for their human rights abuses and breaches and yet not being prepared to abide by the convention that we signed up to in good faith in 1954. Finally, if we were serious about saving lives at sea we would codify our obligations to protect life at sea when people are on those boats.

I am very pleased that some of these Australian Greens measures have been taken up by the expert panel but the fact remains that their recommendations also contain some of the worst aspects of punitive, Howard-era policies, designed to deter people from coming to Australia— wherever else they may go, but not to Australia—dressed up as compassion.

I cannot support this legislation. It will not prevent people from boarding boats and it will not save lives. Further, it will remove the few human rights included in the offshore processing legislation passed in 2001. It will open the way for any country to be designated for offshore processing, regardless of whether it is a party to the refugee convention or not. It will allow the displacement of people to hellholes like Nauru, out of sight, away from scrutiny by the public and by the media, and away from independent legal and mental health assistance. It will allow the transfer of child asylum seekers from Australia and the transfer of unaccompanied minors, who will not necessarily have a guardian to act in their best interests—in breach of the Convention on the Rights of the Child. It will allow banishment to Nauru, or Manus Island or, essentially, anywhere but here.

In my first speech in parliament a year ago I noted how over time our Australian map has been redrawn to pretend that some parts of our country are not Australian territory at all—Christmas Island, for instance. The legal term for this process is ‘excision’. This noxious policy was introduced by John Howard in 2001, and it requires us effectively to renounce part of our territory so that we can disavow our responsibility for those who come to us seeking responsibility. As a lawyer I always found this legal fiction, designed purely to worm out of our international obligations, shameful. What this bill will require is that the entire Australian land mass be excised to enable the refugee arriving by boat anywhere on our continent to be transferred elsewhere for processing.

What does this say about us? Does this renunciation of our territory chillingly reflect the gradual erosion of core Australian values of generosity and compassion?

One of the most concerning aspects of this legislation is the possibility of unlimited detention. Under John Howard's so-called Pacific Solution people spent up to four years in detention in Nauru, but under the new Pacific Solution this could be even longer because there is no time limit on how long people will be in these detention centres. We know that indefinite detention deprives people of hope, their sense of autonomy and their sense of a future. And we know that it leads to mental health problems on a massive scale. We know what happened to the people on Nauru. The mental health experts who visited the island confirmed that asylum seekers on Nauru had a history of suicide attempts and incidents of self-harm. The centre psychiatrist was finding it difficult to manage the psychotic features that he was seeing among the residents there and their suicidal thoughts.

Many, many mental health experts have condemned the effects of mandatory detention both in the past and in response to this proposed legislation, especially the effects of indefinite detention on the mental health of human beings. Respected psychiatrist Professor Pat McGorry has said:
… we know that after about six and certainly 12 months in detention, mental health will deteriorate, and there's very good evidence for that.

We also know that people who have been through previous detention and torture and severe trauma of other kinds—which many of these asylum seekers have experienced—

... are especially vulnerable to these effects, and particularly children and adolescents.

What we also know is that over the last 15 years, 90 per cent of the people in immigration detention were ultimately found to be genuine refugees and became Australian citizens. And yet before we do that we leave them in limbo with all sense of hope destroyed, often separated from their family, their friends and their community and with no certainty about the future.

This is the ultimate folly. When they finally settle in Australia we are then faced with people with ongoing mental health problems. Professor Louise Newman, on the radio this morning, was saying that in 2012 she is still treating people who are suffering the mental health effects of detention on Nauru. It is almost as if this process is designed to destroy the very resilience, courage and initiative that people who have the wherewithal to flee from persecution to find a better future bring with them. They have such a capacity to make good, grateful, strong and resilient citizens in Australia. It is as if our processes and policies were designed to destroy that very inherent core.

That is why the Greens have an amendment that, if detention is to occur, we will limit the length of detention to 12 months.

Finally, I would like to finish by reminding people, in case people have forgotten, about the legacy of offshore, indefinite detention. Let us briefly revisit Nauru. There is an article by the Age journalist Michael Gordon that he wrote back in 2005, when he was the first journalist into the Nauru detention centre after three years of trying—and doesn't that say something about a government's willingness and ability to prevent scrutiny and accountability by having people locked away so far from our shores and not allowing journalistic access? After three years of trying, he was able to get into the Nauru detention centre. His article has been republished this week in the online journal Inside Story. It is very, very moving and graphic and reminds us of the debilitating effects of long-term detention in an isolated place on the morale, health and wellbeing of fellow human beings.

There is one particular person that Michael Gordon refers to, a young man called Ali Rezaee. He began his life in offshore detention at the age of 17—still a kid. He told Michael Gordon that when he was consumed by despair he would go to a corner of the camp and cry at the sky. He said:

… where are my family? Where are they now? What are they feeling now? They might think that I am dead. They think that they have lost me.

He wrote to help cope with what he was going through, and he wrote in an email to a woman called Halinka Rubin, a Polish-born Holocaust survivor in Melbourne who was also a tireless supporter of those on Nauru and in mainland detention. One of his emails included these lines:

I am a boy, who just sees dark and dark, and a minute is passing like one hour, a month is passing like a year. And have no sleep without tablet, no medicine available for reducing the pain, except rolling tear on my cheek.

I am a boy who in the mid of night, most of the time lonely sitting in the corner side the fence, looking at blue sky, at stars, weeping tears, during that time none is moving around.

If this bill is passed, we will condemn many like Ali to wretchedness, despair and, in
some cases, mental illness and death. Instead, this parliament can choose to offer refugees safer pathways by taking a true leadership role in our region and genuine responsibility for our share of some of the world's most vulnerable people.

Senator RYAN (Victoria) (11:25): I will not repeat what my colleagues have stated before me on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012, other than to say that I think Senator Johnston's contribution, regarding the burden of the failed policies of this government on our Defence Force personnel, is particularly worth noting. Our Defence Force personnel are a long way from home, in very dangerous situations, performing their duty without taxpayer-funded lobby groups or bumper stickers advertising the trauma they go through. The consequences of the policy failures of this government and the policies of the Greens that this government adopted are very personal for those people, and I think people should seriously take note of the trauma that Senator Johnston outlined. They do not have the same voice of organised, taxpayer-funded lobbyists or lawyers. They do not have press conferences on the steps of Parliament House to put that case, but it is a very, very important element that we should note for the people who serve in our name, defending our national security.

Senator Wright before me talked about the 'big lie'. The big lie is this: that the policies of the Greens that the Labor Party adopted and implemented would have no consequences. The big lie is that weakening the policies of the previous government would not encourage more people to take this dangerous journey to Australia. The big lie was that there is no such thing as pull factors. We have seen over the last four years the consequences of that big lie, and the consequences are enormous. They are people who have been denied the opportunity to come to Australia. They are the people who have lost their lives—those we know about and those we do not. They are the personal stories of people serving in our Defence Force that Senator Johnston has outlined. That is the big lie: that there would be no consequence from weakening the policies that worked. This crisis in policy is entirely a creation of this government, and it is important that the government be held accountable for this failure. The next time we are asked to rely upon the judgement or the good word of the Prime Minister or a member of this government, we can judge people by their track record.

I was not in this parliament before July 2008, but I have been a Liberal Party activist for a long time, and I remember the vilification of people in the then Howard government undertaken by those opposite and their second cousins or first cousins in the Green corner of this place—not just accusing their policies of being cruel but going to their very motivations and alleging they intended to be cruel. I have been at polling booths with representatives of the Labor Party and the Greens where they will insult, attack and vilify those doing nothing but supporting the policies of the Howard government, because it is never enough for the Greens or the Labor Party to address someone's policy; one must allege they are somehow motivated by the darker angels of human nature. I want to know where the apology is—in particular to the member for Berowra, because he was subjected to some of the most intense vilification and personal attacks that any minister in the Commonwealth has ever been subjected to, and it was by those opposite and their Green friends. Part of the reason this was undertaken was for political purposes, to try to generate a political advantage. Rather than just criticise the policy, in football parlance...
you played the man rather than the ball, and you threw a lot of high elbows. What the member for Berowra, the then minister for immigration, went through was nothing short of a disgrace, and that should be noted. I noticed on Monday that there was not even an acknowledgement from this Prime Minister that they had got it wrong. There was not even an acknowledgement—a courtesy—that the previous government’s policies worked. I cannot help but think that one of the reasons this government has changed policies is that it is so obvious that the previous government's policies worked.

It is true this government has backflipped. There is nothing wrong with admitting one is wrong. But one needs to admit it to have the credibility to argue for the U-turn in policy. On Monday the Prime Minister and Minister for Immigration and Citizenship used a constant emphasis on the words 'expert' and 'compromise'. The hubris of this government is not limited by some sort of honest commitment to apology even for the personal attacks made, but that constant reference to expert and compromise stood out. I do not think compromise on something to do with our national security is something to be proud of. Our national security is something that we should not be compromising upon. Compromise for the sake of it is not something that governments should strive for. Admit that the previous policies worked and admit that the policies need to be reinstated, but this government has the hubris never to do that. Its relationship with honesty and the truth is very limited.

We on this side know that history tells us that temporary protection visas are a critical element of managing our asylum seeker policy and our border security. I hope that this policy works, but I fear that it will not because that element in particular is lacking. I share the scepticism Greg Sheridan outlined in today's Australian that the endless process of a regional solution will not actually deliver an outcome. I note that the constant references to a regional solution could as much be an illusion for political activity as they are going to achieve a genuine outcome, because it has been going for a very long time and I fail to see the interest of some of those nations in cooperating purely for Australian domestic purposes.

I am concerned at proposals to raise the quota without a full consideration of what that means. I have the privilege of working in some areas of Melbourne where there are a great number of people who have been granted asylum by this country. I met a gentleman from Kenya last week who had left home in South Sudan at nine years old and spent years before he went to another part of Africa and then came to Australia. His story was sad but at the same time uplifting because he knew he had been given an opportunity in our nation. One of his concerns was that the services we are offering, because of the strain on our policies because of the failures of this government, are not where they were years ago, that people arriving now are not getting the same support as he did when he arrived under the previous government. I am concerned that raising the quota without a full analysis of what we are doing to support those who are being resettled here will not do justice to us or to the services we wish to provide those people with.

Many of my colleagues wish to speak, so I will not take up much of the Senate's time other than to say that we hope this policy works. I fear that it may not, but it is true to say that the policies of the previous government worked and we know that we need to stop this trade in people coming to our borders.
Senator WATERS (Queensland) (11:33): It is with a heavy heart that I rise to speak on the migration bill today. In my short time here this parliament has achieved some great things. Today would have to be the lowest day, and it deeply saddens me to be standing here as this parliament goes back to John Howard's evil, cruel and ineffective refugee laws.

The Greens had an alternate solution—one that would work, one that was legal and one that had humanity at its heart. The government had a choice. It could have worked with the Greens to implement the ways to discourage asylum seekers from getting onto risky, leaky boats by giving them other, safer options. But they made a choice to bargain with the coalition and to bring back the Pacific Solution. And, while they have said they will adopt the aspects of the Greens' plan which the Houston report endorsed, where is the progress on those fronts? We just have this unseemly haste to force people out of sight, out of mind, onto Nauru and Manus Island to indefinite detention.

I heard today and yesterday some members of the opposition call asylum seekers 'illegal arrivals', and obviously we hear that quite a bit. It really aggravates me. It is not illegal to seek asylum. These desperate people are completely within their legal rights to seek our help. It is Australia that is shirking our obligations to deal with them fairly and to uphold their human rights.

There has also been a lot of talk about push and pull factors and a solution to this intractable problem. Sadly, there is no solution. We will always have asylum seekers. Wherever there is war, conflict or persecution on religious grounds, people will be moved to flee their homes, their countries and everything they know to seek safety for themselves and their families. Deterrence will not work unless the circumstances they are met with are just as heinous, destructive and life threatening as the circumstances they are fleeing from. Australia would have to be as inhumane as the Taliban for asylum seekers to be deterred from seeking a better and safer life here.

I want to quote from the submission by the University of New South Wales Gilbert + Tobin Centre for Public Law to the expert panel:

"All that deterrence strategies can achieve is to divert asylum seekers into equally irregular, equally risky routes to other countries in which protection may be found or to trap them in places where they receive little or no protection. We are unlikely through such means to spare asylum seekers from unnecessary suffering and premature death. We will simply spare ourselves from having to witness that suffering and death."

We saw with the last time we had the spuriously named Pacific Solution based on the tenet of deterrence that it simply did not work. Boats still sank after we opened Nauru. Three hundred and fifty-three women and children died on the SIEV X after we opened Nauru. Desperate people will keep seeking our help because they feel they have no other option to save the lives of their families and to give their children a chance at a better life.

The Refugee Council of Australia share this view. They say in their submission to the expert panel that 'a resumption of removing asylum seekers to Nauru would be virtually valueless as a deterrent'. In their submission to the Senate committee, the Refugee Council elaborate on this. They say:

"Under the offshore processing arrangements in place under the Pacific Solution, access to legal advice was extremely limited and the credibility of refugee status determination procedures was highly questionable. Many asylum seekers whose claims for protection were rejected under offshore status determination processes experienced persecution or serious threats to their safety and..."
security after returning to their countries of origin. As many as 20 of them are believed to have been killed … Asylum seekers affected by the Pacific Solution were detained in remote facilities for often lengthy periods (up to six years in some cases), to the serious detriment of their health, particularly mental health, and general wellbeing. Throughout the life of the Pacific Solution, there were multiple incidents of self-harm, 45 detainees engaged in a serious and debilitating hunger strike and dozens suffered from depression or experienced psychotic episodes.

So clearly there were lasting mental health effects that will stay with those people forever. Yet they have no other option. Conditions in transit countries are not safe, and because Australia takes so few people per year from Indonesia and Malaysia it can take years and years for them to be processed and resettled. People live in those processing facilities in limbo. They cannot work, they cannot go to school and they have no entitlement to health care. They are in absolute limbo and sometimes with no prospect of being resettled for 20 years. Of course they get on a leaky boat to try and speed that up. Who could face the mental anguish of that uncertainty and that stultifying, oppressive situation of no work, no home, no school and no hope. So of course they risk their very lives for a chance at certainty, freedom and a new life.

The way we get them not to take that chance on a leaky, dangerous boat journey is to give them another option; it is to give them some hope that they will be processed and resettled more quickly. They do not have to risk their lives on a boat because they do not have to face years and years of debilitating, demoralising, soul destroying limbo. It is to give them a safer pathway.

Australia can afford to lift its refugee intake. We take 1.3 per cent of the world's refugees. It is a miniscule amount. We can do better. The Greens propose increasing our humanitarian intake to 25,000, including 5,000 immediately from Malaysia and Indonesia to ease that inhumane backlog. We need to better resource and have more UNHCR assessment processors so that there are not just two officers as there are in Indonesia assessing asylum applications. We need to resettle more people directly, work with our regional neighbours to care for asylum seekers better and ensure they have legal safeguards protecting their human rights in Malaysia and Indonesia so that people are safe while they wait. This approach has worked in the past, under the Fraser government. I had the pleasure of meeting Mr Fraser earlier this morning and congratulating him on having a heart and some courage.

The Greens welcome those aspects of the Houston report that endorse our approach to increase our intake and better resource UNHCR processing facilities. But why have we seen no movement to implement those aspects? It does not need legislation. Why this unseemly rush, instead, to legislate the Pacific solution before even adopting those other more humane aspects to the response? Now we have indefinite, mandatory detention. The Greens amendment to limit detention in Nauru, Manus Island and Malaysia, if it ever gets up, to 12 months was voted down by both big parties in the House. They have another opportunity to change their minds on that today.

The Greens position is backed by the experts. Amnesty, the Refugee Council and former PM Malcolm Fraser have all written to the PM expressing their concerns about this bill. I want to read into the public record those concerns:

Dear Prime Minister
We are united in our opposition to the Migration Legislation Amendment (Offshore Processing and Other Measures) Bill currently before Parliament. We are also concerned that other legislative
changes required to implement the recommendations of the Expert Panel on Asylum Seekers will, if passed, see the Australian Parliament remove legislative safeguards for asylum seekers, reverse previous measures implemented to protect vulnerable people and breach Australia’s international obligations. We oppose any form of offshore processing and policies centred on deterrence and punishing people based on their mode of arrival.

They go on:

We are particularly concerned that implementation of the Expert Panel’s recommendations will:

- Repeal the few human rights protections included in the offshore processing legislation passed in 2001.
- See any country designated for offshore processing, regardless of whether it is a party to the Refugee Convention.
- Punish asylum seekers who arrive by boat in breach of the Refugee Convention.
- Implement a return to assessing asylum applications in Nauru and Manus Island, ignoring past lessons regarding the mental health impacts of holding people indefinitely with limited freedom of movement.
- Facilitate the removal of child asylum seekers from Australia.
- Facilitate the transfer of unaccompanied minors who will have no guardian to act in their best interests, in breach of the Convention on the Rights of the Child.
- Prevent IMAs (whatever their age) from proposing family members for the Special Humanitarian Program (SHP), creating greater incentive for families who want to stay together to travel by boat to Australia.
- Leave open the possibility that boats may be turned back in the future, contravening the Convention for the Safety of Life at Sea.

The Greens share those concerns. I have already outlined what we believe is a much more humane and effective solution.

I now want to take the opportunity to put on record some of the perspectives of an organisation from my home state of Queensland that does some really wonderful and inspirational work with refugees. I want to share their perspectives in this debate as, so far, sadly, there has been far too much demonisation of people who simply want our help. The debate seems to have completely missed this key point—the richness and wealth that comes with being a caring, compassionate society that acts in accordance with international law and that accepts people who come to us when fleeing persecution. I think a greater acknowledgment of this by both sides of politics throughout this ugly debate may have helped us come to a more compassionate outcome than the abomination that is currently before us.

The Multicultural Development Association, MDA, is Queensland's largest settlement agency for migrants and refugees. It was established in May 1998 and it does truly fabulous work in promoting multiculturalism and empowering people from culturally and linguistically diverse backgrounds. MDA settles approximately 1,100 newly arrived refugees annually and it currently works with 3,500 migrants and refugees. Most of MDA's clients are from Africa, Asia and the Middle East.

In their 2011 submission to the Inquiry into Multiculturalism in Australia, MDA shared some great insights into the valuable contributions that migrants and refugees have made in their new communities. I want to share some of these. MDA states:

In MDA’s experience many refugees and migrants are motivated to integrate into the Australian community, to adopt and share Australian values and beliefs and are eager to work hard to contribute to and ‘give back’ to their new country. Many of the clients and communities MDA works with also dedicate considerable time to volunteer activities within their community while maintaining jobs and undertaking study in order
to create better lives for their families. Indeed, it is estimated that nearly 30% of people in Australia who were born overseas participate in formal volunteering—the number of informal volunteers is unable to be measured.

During the 2011 Queensland Floods the strength of Australia’s multiculturalism was demonstrated when, during the flood clean up MDA was inundated with offers from Brisbane refugee communities who were eager to help with the clean up, despite feeling traumatised by the flood event. Over a period of four days, MDA had approximately 120 volunteers from nine refugee communities contribute approximately 780 hours to the clean up process. Refugee communities assisted with all tasks from sweeping out muddy houses to carrying furniture and providing food in their local communities. One local community even held a BBQ sausage sizzle in a nearby park and provided much needed food and drink to over 200 weary local volunteers. For some refugees, being able to help others in the community was a practical way for them to show their support for their local community.

I continue the quote:

MDA received significant positive feedback from members of the community about the efforts of refugee communities. One elderly couple whose business premises was severely impacted by the floods told MDA workers that having scores of refugees helping them clean their premises and being able to talk to them about their experiences had completely changed their perspective and opinions about refugees.

The MDA shared one particular story that I think really demonstrates how much richer our communities are for being welcoming and doing the right, caring thing by people who seek asylum on our shores. I quote: On Wednesday 19 January 2011, the streets surrounding Milperra State High School's flooded campus at Chelmer, Brisbane were inundated with construction workers, residents and a significant army presence to control the traffic and surrounding areas. Over 20 Rohingya men (from Burma) arrived to volunteer in the clean-up efforts to prepare the site for the massive construction to take place the following week. Many of the men and youth were at different stages of resettlement and each carried with them different stories from their refugee experience, all touched in some way by the heavy military presence from their time in Burma and in refugee camps in Bangladesh. While there was some trepidation about coming into contact with military personnel, it soon dissipated when our community members were greeted with warm smiles and friendly handshakes from the men and women in uniform. The community worked hard all day, barely stopping for breaks, reporting to their community development worker that they would stay all day if they were needed as they were working by choice as opposed to the forced slave labour they endured back in their home country.

The MDA also brought to the fore the significant economic contribution that our migrant and refugee communities provide to Australia by citing statements by former Acting Race Discrimination Commissioner Tom Calma, who said: … economically, multiculturalism has also brought significant benefits through creating global economic links and relationships; developing export markets; enhancing creativity and innovation through access to a range of cultural perspectives and diverse skills; introducing new goods and services; and increasing economic growth. Other considerable economic contributions by refugees and migrants are outward remittances to support families and communities in developing countries, which amounted to over US$2.815 billion in 2006 alone, and the establishment of businesses and entrepreneurial initiatives in Australia.

I thank the Multicultural Development Association for helping refugees new to Australia, and to my state of Queensland, feel welcome and at home. Clearly their work is invaluable.

In conclusion, the Greens will not be supporting this bill. In this place we have each searched our conscience. Those of us who are parents are particularly moved by
the plight of refugee children. But we simply cannot support a bill that will not work. It will not save people's lives; it will relegate them to horror houses, years in limbo and a lifetime of mental anguish. The thought of children growing up in detention is abhorrent to me, as it should be to everyone in this place. Put yourself in the shoes of those desperate refugees and ask yourself whether you would flee for a better life for you and your family. Of course you would. So let's give these people a safer option, save their lives and show them that we have enough decency, humanity, grace and generosity to welcome them to this most lucky country.

And let's show Australians that their representatives have hearts and the courage to make decisions that in years coming we can be proud of.

Senator SMITH (Western Australia) (11:49): I will use the limited time available to add my support to the government's Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. At last Australia is back on track to restoring the integrity of Australia's border protection and, importantly, removing the incentives for people to risk their lives and the lives of their families by undertaking risky journeys by sea in search of a better beginning. Let me be clear: I wholeheartedly endorse the historical fact that Australians have been willing, over many years, to give sanctuary and hope to those fleeing persecution. Australia's record of providing hope to those seeking asylum is well documented and one that we can be proud of.

I have sympathy for the recommendations in Air Chief Marshal Houston's expert panel report that propose to increase Australia's humanitarian program to 20,000 places per annum and that a minimum of 12,000 places should be allocated for the refugee component, as well as the report's emphasis on asylum seeker flows moving from source countries into South East Asia. But I direct my remarks to the expert panel's recommendations concerning offshore processing at Manus Island in Papua New Guinea and at Nauru.

In 2002, I had the opportunity to visit both Manus Island and Nauru with the then Minister for Immigration and Multicultural Affairs, the member for Berowra, and the then opposition spokesman for immigration, today's Prime Minister. For me the experience was powerful. It was formative in shaping my attitudes to border protection policies. There were some elements I was unable to accept, most particularly the policy at the time to detain women and children. It is a testimony to the government at that time that it was quick to read, respect and respond to the growing community discomfort with the detention of women and children. That same responsiveness has been absent in the government's desire to respond and put in—

Debate interrupted.
Vice President of the ALP New South Wales Branch and Trustee of First State Super, and

(ii) findings by Mr Ian Temby, QC and Mr Dennis Robertson, FCA that, while Mr Williamson was General Secretary of the Health Services Union (HSU) East Branch, he, his family, his company and his close associates benefitted from $20 million in union members’ funds which was spent without proper financial control;

(b) condemns this use of union members’ funds at the HSU by Mr Williamson as found by Mr Temby and Mr Robertson; and

(c) calls for stronger penalties under the Fair Work (Registered Organisations) Act 2009 than the present $6 600 monetary penalty and to include penalties under the Corporations Act 2001.

Senator Brown to move:

That the order of the Senate of 15 August 2012 authorising the Joint Standing Committee on Electoral Matters to hold public meetings, be varied by omitting “Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012” and substituting “Australian Electoral Commission analysis of the Fair Work Australia report on the Health Services Union”.

Senator Hanson-Young to move:

That the Senate—

(a) notes the position statement on the Murray Darling Basin (MDB) draft plan launched by South Australian environmental groups, including the Conservation Council of South Australia, The Wilderness Society, Trees for Life, National Trust of South Australia, National Parks and Wildlife, Nature Conservation Society of South Australia and Friends of the Earth Adelaide, on 27 July 2012;

(b) notes that these groups identify that 4 000 GL must be returned to the river in accordance with the best available science to provide for healthy MDB communities and economies; and

(c) calls on the Government to instruct the Murray Darling Basin Authority to model at least 4 000 GL against the requirements of the Water Act 2007 and undertake feasibility studies on constraints to delivering 4 000 GL as requested by the South Australian environmental groups.

COMMITTEES
Selection of Bills Committee
Report
Senator McEWEN (South Australia—Government Whip in the Senate) (11:52): I present the ninth report of 2012 of the Selection of Bills Committee and I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 9 OF 2012

1. The committee met in private session on Wednesday, 15 August 2012 at 7.15 pm.

2. The committee resolved to recommend—

That the Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012 be referred immediately to the Economics Legislation Committee for inquiry and report by 31 October 2012 (see appendix 1 for a statement of reasons for referral).

3. The committee resolved to recommend—

That the following bills not be referred to committees:

- Fisheries Legislation Amendment Bill (No. 1) 2012
- Tax Laws Amendment (2012 Measures No. 4) Bill 2012.

The committee recommends accordingly.

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

- Broadcasting Services Amendment (Public Interest Test) Bill 2012
- International Monetary Agreements Amendment (Loans) Bill 2012
- Protecting Children from Junk Food Advertising (Broadcasting and Telecommunications Amendment) Bill 2011

CHAMBER
Special Broadcasting Service Amendment (Natural Program Breaks and Disruptive Advertising) Bill 2012

APPENDIX 1

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee

Name of Bill:
Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012

Reasons for referral/principal issues for consideration:
In undertaking the inquiry, the Committee should consider:
The possible human health risks from exposure to excessive noise from wind farms (defined as power stations that generate some or all of their power from wind).
The acoustically accepted definition of excessive noise in respect of wind farms.
The type of noise monitoring currently conducted on wind farms.
The type of noise monitoring these amendments will require wind farms to conduct in the future.

Possible submissions or evidence from:
Various State Government Departments
Local Government Associations
Pacific Hydro
Acciona
Infigen
AGL
TRUenergy
Vestas
Keppel Prince Engineering
Clean Energy Council
Community Associations

Committee to which the bill is to be referred:
Senate Standing Committee on Economics (Legislation)

Possible hearing date(s):
September 2012
Possible reporting date:
November 2012

(signed)
Senator McEwen
Selection of Bills Committee member

Senator McEwen: I move:
That the report be adopted.
Question agreed to.

BUSINESS

Rearrangement

Senator Jacinta Collins (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:52): I move:
That the following general business orders of the day be considered on Thursday, 23 August 2012 under the temporary order relating to the consideration of private senators’ bills:
No. 86 Health Insurance (Dental Services) Bill 2012 [No. 2]
No. 51 Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011.
Question agreed to.

COMMITTEES

Legal and Constitutional Affairs Legislation Committee

Meeting

Senator McEwen (South Australia—Government Whip in the Senate) (11:53): At the request of Senator Crossin, I move:
That the Legal and Constitutional Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 21 August 2012, from 4.30 pm, to take evidence for the committee's inquiry into the provisions of the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.
Question agreed to.
Community Affairs References Committee
Meeting

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:54): I move:

That the Community Affairs References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 16 August 2012, from 4 pm.

Question agreed to.

MOTIONS

Vietnam War

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (11:54): At the request of Senators Ronaldson and Johnston, I move:

That the Senate—

(a) commemorates the 50th anniversary, in 2012, of the arrival of the Australian Army Training Team Vietnam in South Vietnam, beginning Australia's decade-long commitment to the Vietnam War;

(b) commemorates the 46th anniversary, on 18 August 2012, of the Battle of Long Tan, in which 18 Australian soldiers were killed and 24 were wounded in action;

(c) pays tribute to the 521 Australians killed in action in the Vietnam War and the thousands of veterans who returned home to the care of their families;

(d) acknowledges that many Vietnam War service personnel were very poorly treated by certain sections of the Australian community on their return, and that this treatment was unjust and, in many cases, affected their ability to resume life after wartime service; and

(e) welcomes the arrival in Australia of the Long Tan Cross, which will be displayed at the Australian War Memorial until April 2013.

Question agreed to.

Solzhenitsyn, Mr Aleksandr

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (11:55): At the request of Senator Mason, I move:

That the Senate—

(a) notes the 4th anniversary of the death of Aleksandr Solzhenitsyn, the most influential Russian writer and dissident of the 20th century, who:

(i) was imprisoned, denied medical treatment and finally exiled from the Soviet Union for daring to expose the truth about the horrors of communism;

(ii) struggling against great obstacles managed to write and eventually publish The Gulag Archipelago, a classic of anti-totalitarian literature that drew the world's attention to the atrocities committed by the Soviet Union against its own people,

(iii) after his deportation from the Soviet Union in 1974, continued to remind the world about the importance of rights and liberties enjoyed in the West but denied to the citizens of the Soviet Union and other communist states, and

(iv) received the Nobel Prize in Literature in 1970, as well as numerous other prizes and awards for his contribution to literature, and the fight for freedom and against tyranny and oppression; and

(b) conveys its remembrances to the people of Russia.

Question agreed to.

Coral Sea

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (11:55): At the request of Senators Boyce, Colbeck, Macdonald and Boswell, I move:

That the Senate—

(a) notes that:

(i) the Gillard Government proposes to seriously damage Australia's fishing industry and harm Australia's tourism industry by establishing the world's largest marine reserve without any scientific foundation,
(ii) the Gillard Government proposes to make the Coral Sea a no-go zone to Australians, but other countries, whose fishing practices are not as sustainable as Australia's, will still be able to fish in the Coral Sea,

(iii) Australians will be deprived of a vital food source from the Coral Sea, which covers more than 989,842 square kilometres, more than half the size of Queensland,

(iv) almost 78 per cent of east coast Queensland waters will be in marine parks, almost 8 times the international benchmark,

(v) Australia's oceans are amongst the healthiest and best managed in the world due in large part to the sustainable practices of our fishers,

(vi) scientists have agreed that fishing is not putting the Coral Sea at risk and that Green groups have also acknowledged this, and

(vii) the proposed network has nothing to do with science but everything to do with appeasing the Australian Greens politically, who keep the Labor Government in power; and

(b) calls on the Australian Government to:

(i) halt the current process of expanding marine parks to ensure that any future marine parks are based on objective scientific research and stakeholder input, and

(ii) undertake a risk assessment of the threats to Australia's marine environment from existing and future uses to assess the need for the proposed marine parks.

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:55): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator SIEWERT: This motion is a complete nonsense and has so many misrepresentations of the facts that when I read it I was simply astounded—for example, the suggestion that the government is making the Coral Sea a no-go zone for Australians but other countries can fish there. It is largely a multipurpose zone, not a green zone. Again, this misrepresents and tries to run down marine protected areas wherever possible and does not acknowledge that marine protected areas are absolutely essential for the future of the marine environment and for the very future of fish stocks. This continual misrepresentation of marine protected areas and their values shows how the coalition does not seek the protection of the environment and does not care about the future of our fish stocks in this country or, in fact, world fish stocks, because that is what this proposal does. (Time expired)

Senator COLBECK (Tasmania) (11:57): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator COLBECK: I was not going to say anything in respect of this, but the rubbish that has just been put up by the Greens forced me to say something. This continues the complete misrepresentation that they continue to peddle about Australia's fisheries management and the way that we operate in Australia's marine environment. There are huge green zones, both commercial and recreational, which lock the Australian fishing industry in the Coral Sea into this process. It is a complete lie to say that is not the case. The misrepresentation that the Greens continue to peddle—that the only way you can protect the marine environment is to lock it up—is just not true. It is a complete and utter load of rubbish that they continue to misrepresent in relation to Australia's marine environment.

The coalition, like all other parties in this room, believe that we need to look after our own marine environment. We need to look after it all, not just bits of it that the Greens might, in conjunction with US based organisations, decide need to be locked up.
The misrepresentation that the Greens have just put on the table needs to be responded to.

Question negatived.

**Trans-Pacific Partnership Agreement**

Senator WHISH-WILSON (Tasmania) (11:58): I, and also on behalf of Senator Ludlam, move:

That the Senate—

(a) notes:

(i) negotiation of the Trans-Pacific Partnership Agreement (TPPA) between the United States of America, Canada, Mexico, Chile, Peru, Vietnam, Malaysia, Singapore, Australia, Brunei and New Zealand is being conducted in secret,

(ii) draft texts of the agreement are selectively aired to AT&T, Verizon, Cisco, the Motion Picture Association and other industry lobbyists, but blocked from democratically-elected parliamentarians, advocacy organisations and citizens,

(iii) concern expressed by experts and citizens from countries participating in negotiating the TPPA regarding its potential impact on access to medicines, local content media rules, high-tech innovation and limitations placed on governments to make policies and regulations on health, safety and economic stability, and

(iv) reports of the latest text of the intellectual property chapter being leaked, revealing the Australian Government's intention to defeat a proposed clause protecting domestic intellectual property laws; and

(b) calls on the Government to:

(i) make the full TPPA draft texts and negotiations available to the public,

(ii) support the proposal of New Zealand, Chile, Malaysia, Brunei and Vietnam to permit a signatory to carry forward and appropriately extend into the digital environment limitations and exceptions in its domestic laws,

(iii) reject trade agreements that put the civil liberties, environment, public health and welfare of Australians at risk, and

(iv) commit to ending the exclusionary and undemocratic process of selectively including stakeholders in trade negotiations while blocking others, by making all trade negotiations public.

Question negatived.

**BILLS**

**Fair Work Amendment (Small Business—Penalty Rates Exemption) Bill 2012**

First Reading

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

That the following bill be introduced: A Bill for an Act to amend the Fair Work Act 2009, and for related purposes.

Question agreed to.

Senator XENOPHON: I present the bill and move:

That this bill be now read a first time.

Bill read a first time.

Second Reading

Senator XENOPHON (South Australia) (12:00): I present the explanatory memorandum and I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

**FAIR WORK AMENDMENT (SMALL BUSINESS – PENALTY RATES EXEMPTION) BILL 2012**

It is with both great pleasure and a little trepidation that I introduce this bill.

I am pleased because I believe this bill will trigger a discussion we urgently need to have.

But I also know this is an issue that some people consider 'too hot' to touch.
Penalty rates are a contentious subject. There is no doubt that workers deserve a fair day's pay for a fair day's work, and penalty rates have played a part in that concept since the 1950s.

But things have changed in the last sixty years.

In many industries, we now have a seven day working week. While weekend penalty rates were originally intended to acknowledge employees' work outside the standard five-day working week, there are now many employees who consider their ordinary hours to include weekends, evenings and early mornings.

This bill is an attempt to balance the need for penalty rates and the strain they are placing on small businesses.

A Benchmarking Report by Restaurant and Catering Australia conducted late last year found that 18.2 per cent of respondent businesses reduced their hours because of the increase in penalty rates. Almost one third of the businesses said they employ fewer staff because of high labour costs.

And a significant 70.9 per cent of businesses indicated they would reduce the number of staff further if labour costs rose in the next twelve months.

Based on the average shift length of four hours, it means 509,356 shifts were lost during the year as a result.

That equals 2,945 jobs in the industry.

The same report found that 90.5 per cent of businesses ranked wage pressures as a major difficulty in running their business.

It is also important to note that Peter Strong, Executive Director of Council of Small Business Australia, has indicated his support for this bill. Mr Strong has worked closely with the Gillard Government on small business issues for many years, and I appreciate his support. I should also point out that he has recently shut his own business, a bookshop, on Sundays.

Mr Strong said in the media: "We need a workplace relations system that reflects the realities of the modern world. The current approach to penalty rates has cost the jobs of people who can only work on weekends and was not developed with a view of the needs of the whole community. University students, school students, women who can only work on weekends and others have lost income."

The aim of this bill is to acknowledge that many small business employees are missing out on shifts or even jobs because small businesses simply can't afford to open on days with high penalty rates.

My office is located on Rundle Street in Adelaide, an odd mix of high end designer stores and quirky small businesses. But recently, it's become much quieter on weekends.

I've spoken with small business owners from that precinct and elsewhere who have had to downsize to stay open on Sundays, and others who have decided to reduce their employees' shifts and close on Sundays.

And I've spoken to casual and part-time employees who say that, while they love their penalty rates, they'd be happy to get more shifts and work an extra day in exchange.

I appreciate not all people will feel like this. I do not like the idea of anyone being disadvantaged, but I believe this is a debate we need to have. It's clear there are many employees who are already being disadvantaged and being deprived of extra hours of work on weekends.

The provisions in this bill state that an employer in the restaurant and catering or retail industries who employs fewer than twenty full-time equivalent employees will not have to pay penalty rates during a week except where employees have worked more than ten hours in a twenty-four hour period or thirty-eight hours in one week.

The aim of this is to compensate employees who work outside the traditional thirty-eight hour week, or over what could reasonably be considered a working day. The definition of a small business as fewer than twenty full-time equivalent employees comes from the definition used by the Australian Taxation Office, as the general consensus in the industry is that the Fair Work Act definition of fifteen FTEs is too low.

These conditions will apply to all relevant current and future modern awards.
I look forward to the submissions, both for and against the bill, to the Senate Inquiry that I trust will ensue.

I know this bill will start a furious debate, and I hope it can be a constructive and useful one.

If it is not, if we cannot find some sensible common ground, then both small businesses and employees, including prospective employees, will end up being disadvantaged.

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

Leave granted; debate adjourned.

DOCUMENTS

Great Barrier Reef Marine Park
Order for the Production of Documents
Senator WATERS (Queensland) (12:00): I move:

That there be laid on the table, by the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, no later than 11 September 2012, the following:

(a) documents relating to all current conditions for the operation, use, maintenance and monitoring of each current sea dumping permit issued by the Authority in the Great Barrier Reef Marine Park (GBRMP);

(b) any document that details all current sea dumping sites in the GBRMP and Great Barrier Reef World Heritage Area, including coordinates and size of the dumping area;

(c) all documents relating to the consideration or analysis of land-based disposal alternatives for each current sea dumping permit issued by the Authority in the GBRMP, including the initial consideration/analysis plus any subsequent analysis in light of additional or changed dumping requirements or new or changed information;

(d) all documents that provide a long-term analysis of the impacts of the dumping, including direct, indirect, distal and cumulative impacts for each current sea dumping permit issued by the Authority in the GBRMP; and

(e) any documents relating to breaches of conditions and responses to those breaches, including compliance measures, such as remediation, changed conditions, fines or litigation, for each current sea dumping permit issued by the Authority in the GBRMP.

Question negatived.

MOTIONS

Australian Small Pelagic Fishery
Senator WHISH-WILSON (Tasmania) (12:01): I move:

That the Senate—

(a) notes, in regard to the introduction of the factory ship FV Margiris to the Australian Small Pelagic Fishery, the range of significant and justifiable concerns, including but not limited to:

(i) the localised depletion of fish stocks,

(ii) mammalian by-catch, including seals and dolphins,

(iii) impacts on other industries, including tourism,

(iv) the assertion that this super trawler is only economically viable because it previously received European Union subsidies and the Australian Fisheries Management Authority (AFMA) has lifted the fishery quotas,

(v) public access, transparency and scrutiny of any operational compliance data, and

(vi) the non-compliance of AFMA quota-setting processes with the Fisheries Administration Act 1991 (the Act); and

(b) calls on the Government to:

(i) reverse the decision to lift the quota for the Small Pelagic Fishery and examine the compliance of the AFMA-led process that led to this decision with the Act,

(ii) demonstrate that it has fully examined and mitigated the impacts of localised depletion that the FV Margiris will have and ensure that a bioregional approach has been taken in setting the harvest strategy under which this ship would operate, and

(iii) demonstrate that 100 per cent observer coverage will be achieved on-board to ensure compliance and minimal by-catch, given that the
ship will operate 24 hours a day, and ensure all compliance data will be publically available.

The PRESIDENT: The question is that the motion moved by Senator Whish-Wilson be agreed to.

The Senate divided. [12:05]

(The President—Senator Hogg)

Ayes......................10
Noes......................34
Majority..............24

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

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

NOES
Abetz, E
Boswell, RLD
Bushby, DC
Colbeck, R
Cormann, M
Edwards, S
Feeney, D
Furner, ML
Hogg, JJ
Kroger, H (teller)
Landy, KA
McEwen, A
McLucas, J
Nash, F
Pratt, LC
Smith, D
Thistlethwaite, M

Bernardi, C
Boyce, SK
Cameron, DN
Collins, JMA
Crossin, P
Farrell, D
Gallacher, AM
Joyce, B
Ludwig, JW
Marshall, GM
McKenzie, B
Moore, CM
Parry, S
Singh, LM
Sterle, G
Williams, JR

Leave granted.

Senator RHIANNON: I move the motion as amended:
That the Senate—
(a) notes that:

(i) family planning is key to achieving all Millennium Development Goals, especially Goal 5 which seeks to reduce maternal mortality by three-quarters and is the least likely goal to be achieved;

(ii) maternal mortality is a leading cause of death and illness for all women worldwide, with complications during pregnancy the biggest killer of girls aged 15 to 19;

(iii) over 200 million women who want to avoid pregnancy are not using a modern method of family planning;

(iv) in line with the International Conference on Population and Development (ICPD) Programme of Action, and the Convention on the Elimination of All Forms of Discrimination Against Women, all couples and individuals should have the right to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so;

(v) at the London Summit on Family Planning, hosted by the United Kingdom Government and the Bill & Melinda Gates Foundation in July 2012, the Australian government announced it will double its funding for family planning services to more than $50 million per year by 2016, up from $26 million in 2010; and

(b) calls on the Government to continue to fund family planning, including funding for initiatives that assist developing country governments to improve access and reduce barriers to family planning in the 2012-13 budget and beyond.

Question agreed to.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (12:08): Mr President, I seek leave to make a short statement of no longer than two minutes.
The PRESIDENT: Leave is granted for one minute.

Senator JOYCE: Thank you very much, Mr President. I want it noted that the coalition voted no on that motion. It is an issue of great concern to so many people on this side. Those who delivered their names to be noted as voting no, amongst so many others who would say no, are: Senator Boswell, who holds this issue extremely near and dear to his honourable time in this place; Senator Bernardi; Senator Abetz; Senator Sinodinos; Senator Cormann; Senator Fierravanti-Wells; Senator Bushby; Senator Parry; Senator Cash; Senator Smith; Senator 'Wacca' Williams; myself and many others. We find it extremely concerning when issues which should rightly be the realm of conscience votes come in here and start to be shanghaied around. I think we deserve the dignity of time and consideration that these issues undoubtedly require.

COMMITTEES

Australia's Food Processing Sector Committee

Report

Senator COLBECK (Tasmania) (12:10): I present the report of the Senate Select Committee on Australia's Food Processing Sector, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator COLBECK: I move:

That the Senate take note of the report.

Often these report presentations end with thanks but I think it is appropriate today that I commence my comments with thanks, because this has been quite a project over time, and the gestation of the report, and even the terms of reference, took some time. I start by thanking the secretariat; it is appropriate that there are some members of the secretariat in the advisors box this morning, because they have done a fantastic job on this inquiry for us. I specifically say thank you to all of the members of the secretariat. We have had a bit of a changeable time. We have had, I think, three secretaries over the time of the inquiry, but to pull together a substantial report like this one has taken a fair bit of work and I certainly appreciate the work that the secretariat has done in assisting the committee with this inquiry. I also thank the submitters and the witnesses who appeared before the inquiry over the last 12 months.

I have seen this as an important piece of work for some time, as I know other members of the committee have, and I hope that the work we have put out through the report bears justice to the industry—an industry that is very important to Australia.

I also thank my colleagues on the committee. Coalition members, crossbench members—Senator Xenophon, Senator Madigan and also members of the Labor Party who participated in the inquiry. Obviously there were a number of perspectives represented around the committee and that is manifested in a minority report from the opposition and a minority report from Senator Xenophon. I thank them for their input. This is an important issue. I particularly thank Senator Xenophon and former Senator Fielding for supporting the motion that put this inquiry into train. The government did not support this inquiry going ahead; nor did the Greens, but I appreciate the fact that Senator Xenophon and former Senator Fielding saw that this was an important issue for the Senate and I thank them for that. As I said, I note that the government did not want this inquiry to go ahead and voted against it, as did the Greens, who played absolutely no part in the entire inquiry, unfortunately, despite their discussions around this
particular matter. As I said, a number of senators have been concerned about this for a considerable period.

The terms of reference took a bit of time to put together and they were deliberately broad. This report provided us with the opportunity to have a good look at the industry across a number of elements to consider where we might take it. There are 35 recommendations and they cover a fairly wide range of issues, but I hope that there is something in the recommendations for everyone, and I certainly hope that the report provides the opportunity to dispel a few urban myths that were presented to us as part of the overall inquiry process.

I am not going to be able to deal with all the recommendations in the 10 minutes I have, but I will deal with some of the key issues that were raised through the inquiry. The taxation regulatory environment was certainly an important part of the process that we discussed and the issue of carbon tax inevitably came into that discussion. Our recommendation is not so much critical of the carbon tax, although there was plenty of evidence to demonstrate the impacts of the carbon tax through the food processing supply chain. I know one company is spending $17 million to mitigate the impact of the carbon tax and, after they have done that, they will still have a $7 million a year bill. The impact that that will have down the supply chain is concerning to me. We have asked the government to look at how the big emitters pass the cost down the food supply chain, how the profitability of small businesses is impacted and how those businesses can work that through to recoup some of those costs that the government is imposing on them through the carbon tax.

Importantly, from my home state of Tasmania, which is significantly impacted by transport, we heard from a number of places about transport costs. I urge the government to continue to move quickly on the Deegan report, which talks about the fundamental efficiency and the cost-effectiveness of transport across Bass Strait. It is a significant factor for my home state of Tasmania and we urge the government to move on with that.

The issues of supermarkets, creeping acquisitions and the operation of the Competition and Consumer Act was inevitably an important part of the report and there were a number of opinions around the table. The significant recommendation arising, from an opposition perspective, was that there needs to be a comprehensive review—a root and branch review, if you like—of the Competition and Consumer Act. It has been a long time since there was one; the market continues to evolve and it is appropriate that we go through that process again. There were a number of issues that were continually raised with us about misuse of market power, creeping acquisitions, predatory pricing and unconscionable conduct. I know the ACCC is looking at these matters now and I look forward to its report when it comes out later in the year and the contribution that it makes to the overall debate.

The supermarkets send us glossy brochures referring to their performance and the way they look after their customers, which is vitally important as part of this overall discussion, but one thing they do not measure, and which I have not seen any measurement of, is their suppliers' satisfaction. They have asked me how they deal with that—we have had conversations about that in the past—and the perception that they are not looking after their suppliers. We are recommending that they establish, as part of their benchmarking and as part of their corporate reporting, a mechanism through their independent reporting process, which is already in place, to measure,
benchmark and report on supplier satisfaction. It will help them deal with some of the perceptions that are out there in the market and, as well, will give the broader market a better idea of what is going on.

The cost of government to industry was a significant concern right through the inquiry. It did not matter whether it was export fees and charges, the carbon tax or regulation. I know the government has processes in place to deal with, say, transport across the country and providing national systems to reduce costs, but we need to continue to do as much as we possibly can to reduce the input cost of government to business. That has to be a fundamental role that government plays as part of the way it operates. So there are a number of recommendations that deal with that and which also to try to take some of the red tape and duplication of costs out of the supply chain. We recommend that the government get involved, and industry also, in the global food safety initiative so that some of the multiples of certification that are required for businesses can be condensed to remove the number of times that businesses are imposed upon for audits and things like that, and also to try to take some of the cost of doing business out of the system.

In respect of education, we are really concerned at the engagement of the agricultural and food processing sectors with the education system and Australians’ more broad understanding of the food system. Where their food comes from and how it is generated is lacking. We recommend that the government work with industry—we know there is some work already occurring there—to try to draw those understandings together and to make sure it is properly funded—because it is funded in a very piecemeal way at the moment, causing divisions within the sector—to give Australians a better understanding of where all these things lie.

Inevitably, workplace relations comes as part of this. I know the government is not going to support our recommendations on that but it is a significant issue for industry and was expressed to us a number of times. One of the other things we hear a lot from government is that Australia will be the food bowl for Asia. I can tell you that at the moment there are some real inhibitors to being part of that market. The government has a significant role to play in making that easier. Our recommendation, that we embark on a ‘brand Australia’ type program to start promoting us into the Asian region, is a very, very positive one.

Senator URQUHART (Tasmania) (12:20): I rise to speak on the report of the Senate Select Committee on Australia’s Food Processing Sector and I begin by also recognising the work of the secretariat—Richard, Ruth, Erin, Robert, John, Sandra and Tim. Thank you, and to others who assisted the committee members. I also recognise the work of Matt from my office and Frances from Senator Stephens’ office: thank you both. I recognise the work of the Chair, a fellow senator for Tasmania, Richard Colbeck, for proposing the committee and the broad terms of reference.

However, I have to express government senators’ disappointment that all of the terms of reference are not covered as comprehensively as they should have been. It is no secret to this place that my background is the food processing industry, both working in and later representing workers in the industry. For the opposition senators to place such importance on stripping away the wages and conditions of Australians working in the food processing industry flies in the face of the purpose of Senate select committees, which, to my knowledge, are meant to leave politics at the door and investigate issues. The sections of the report on wages and conditions show the true
colours of those opposite. They are not interested in working Australians. It is clear from Senator Colbeck's, Senator Edwards's and former Senator Fisher's efforts that, as much as the Leader of the Opposition tries to pretend, if the opposition is elected WorkChoices is definitely not dead, buried or cremated. Those opposite think that the only way to increase productivity in business is to drive down wages and conditions of working Australians. To that I say: think harder and think smarter.

The committee report references the comments of McCain Foods. They said:

The current penalty rates regime in Australian award structures do not encourage continuous 24 hour 7 day processing. Overtime and shift penalties are much higher in Australia than in New Zealand, which again contributes to lower productivity and lack of competitiveness in Australian made products

By including this quote, coalition senators are supporting a notion that people who work shift work should receive no extra support, no extra assistance to cope with the irregular sleeping patterns and no extra assistance to cope with not being able to access services during normal hours—just get the worker in and flog them until they drop.

The government senators' dissenting report catches out the coalition senators on their selective quotes in relation to workplace relations. Three instances are provided where a coalition senator asked a business representative about the impact of the Fair Work Act and modern awards on the business, and on each of these occasions the business representative did not express the kind of approach outlined by McCain. When questioned by former Senator Fisher on whether the Fair Work Act had hindered business, Mr Vincent Pinneri of SPC Ardmona, a major food processor, said:

No, it has been irrelevant.

Further, at the same hearing that McCain appeared at, Mr Mark Kable of the Tasmanian Agricultural Productivity Group said:

Everything seems to be more efficient over there—in New Zealand—than what it is here in Australia. The whole costing structure of production, packing, road transport, sea transport—every sector is cheaper than what it is here in Australia when you break every component down.

It is not just about wages and conditions, is it? It is definitely not. Further evidence of that came from the Sydney hearing of the committee, where not one question was directed by coalition senators to the AMWU about wages, conditions or flexibility—not one question to the union representing workers in the food processing sector about wages, conditions or flexibility let alone the impact of the Fair Work Act and modern awards on their members and their members' workplaces. It is as though opposition senators had already made up their minds.

As the senators are aware, the government have recently released a comprehensive independent review of the Fair Work Act. The review found that the legislation provides a number of avenues for flexibility. Under the Fair Work Act, an employer and employees can negotiate an enterprise agreement on any matters that pertain to their relationship. There are no unnecessary restrictions on what can be included in an agreement. The Fair Work Act requires that such an agreement leave employees better off overall compared with the applicable modern award. This provides flexibility to change award conditions, so long as employees are better off overall.

The independent review found that labour costs have not increased, with overall wage growth since 2009 around its decade-long
average. It rejected claims that flexibility is created by cutting wages and conditions. It did not recommend the reintroduction of AWAs, or any form of individual contract that coalition senators in their recommendation No. 26 are so desperately asking for. In fact, the review identified that AWAs were bad for many employees, especially for low-skilled and vulnerable workers. The review found many of these workers have suffered the unilateral removal of conditions, a reduction in their take-home pay and were worse off overall compared with the relevant award. AWAs undermined the safety net, often for those who needed protection most. The review had no appetite to reintroduce this arrangement. Further, the review found no convincing evidence that the act impedes productivity growth. In fact, it cautiously noted some recent figures indicating improvements in productivity.

The review found that, since the act came into force, important outcomes like wages growth, industrial disputes, the responsiveness of wages to supply and demand, the rate of employment growth and the flexibility of work patterns have been favourable to Australia’s continuing prosperity. Government senators noted in our report that Fair Work Australia is currently undertaking a review of modern awards, including in relation to penalty rates and flexibility. I once again express my disappointment that so much emphasis in the committee report reflects highly selective evidence on industrial relations matters.

I now turn to the other highly politicised section of the committee report: energy costs. Government senators fundamentally disagree with much of the evidence presented to the committee on the carbon pricing policy. There are many examples in the food processing sector that highlight the potential for innovation and opportunities being harnessed through the clean energy technology package. Government senators note that a significant portion of the revenue from carbon pricing is spent on industry assistance. Of particular relevance to the food processing sector is the Clean Technology Investment Program for manufacturing businesses, which provides government co-investment into new capital which lowers energy costs and improves competitiveness.

In evidence to the committee, Mrs Mac’s, a large-scale bakehouse, expressed appreciation for the range of government grants to assist businesses. Mr Beros said that through investing with government Mrs Mac’s had a 28 per cent decrease in water heating costs, a 25 per cent increase in one of their line speeds using the same level of energy input and a 30 per cent efficiency gain in some of their condensers. I also refer to Crafty Chef from Emu Plains in New South Wales who had received nearly $500,000 from carbon pricing revenue to install a new commercial blast freezer. This will reduce the carbon intensity of its operations by 54.1 per cent, reduce energy intensity by over 56 per cent and boost turnover by 150 per cent to $50 million.

In our dissenting report, government senators refuted claims made by Campbell Arnott's using modelling from the Australian Food and Grocery Council that pricing carbon will have about a 4.5 per cent impact on industry operating profits. This modelling did not include the assistance measures to industry and is an overestimate of the actual impacts on the sector. We also highlighted that, although Lion Pty Ltd is blaming the carbon price for increased admin costs as it is not a directly liable business, there should not be any additional administrative burdens.

The evidence throughout the report on carbon pricing indicated the extent of
community misunderstanding about the actual impacts on Australian businesses. Treasury modelling of the food manufacturing industry forecasts growth of 108 per cent by 2050 and also forecasts that carbon pricing will result in food processing outputs two per cent higher in 2050 than without it. Treasury's broad conclusion is that carbon pricing will drive a shift of economic activity towards low emission intensive sectors of manufacturing like food processing. The government senators consider that the food processing sector needs further assistance to understand the real implications of the carbon price on the food supply chain and the mechanism for determining those costs and how to pass them on to consumers.

The report highlights some areas of reform that will be critical for the food processing sector. We were provided with inspiring examples of new and emerging products that are capable of transforming parts of the sector. We need to remember, however, that the industry is best served by an innovative and adaptive business culture and a trained and supported workforce.

Senator EDWARDS (South Australia) (12:30): I rise also to speak on the inquiry report tabled by the Select Committee on Australia's Food Processing Sector. This nearly year-long inquiry took us the length and breadth of this country, where we spoke with myriad businesses, industry organisations, grower groups, academics and government agencies. We visited a diverse number of businesses across Australia, including vegetable growers in Tasmania, chocolatiers in Adelaide and the seafood industry in Western Australia.

The food industry is currently in a 'perfect storm', confronted by a high Australian dollar, making exports harder and increasing competition from cheap imported products; increasing input costs, including labour, energy and ingredients; complex regulation and taxation; high market concentration; and growing private label market share. Prospects for future growth are good, based on Australia's clean, green, safe reputation for food, a burgeoning Asian middle class and a growing global population. The industry employs around 194,300 people across 10,000 businesses. There is much work to be done if the industry is to realise its full potential and harness this prosperity. This report begins that process, but there is much more that can and should be done.

This report is nine chapters long, with 34 recommendations, and is a comprehensive investigation of the industry. I congratulate our chair, Senator Richard Colbeck, and the secretariat for preparing such a massive report that is sound and perceptive. The recommendations reflect what I believe the industry and Australia needs going forward in the food processing sector.

I first turn my attention to the skills development and labour market issues chapter. What industry told us is that there is a large shortage of suitably qualified labour. For example, there is a large shortfall between the 4,000 to 5,000 job vacancies for agricultural and food science positions and the 700 to 800 science graduates each year, so we have some work to do in this area. One reason for this shortfall, we believe, is a lack of promotion in primary and secondary schools of the careers available in the food industry. Yes, that is right—it goes right back to primary schools. Some kids think that milk is grown in a packet, that chops come from a place where they also produce polystyrene trays. Poor advice from careers advisers is also to blame for the shortfall, as is the perceived 'unsexiness' of the industry with these people which is leading them away from career choices. This is profound. This is why I am currently working with the
University of Adelaide and the food industry in my home state to build stronger links between tertiary institutions and industry, assist in delivering graduates who are more job ready and foster more research with practical industry outcomes.

We have just heard a dissertation from Labor Senator Anne Urquhart about the Fair Work Act and what it is doing to protect this industry. We also heard from her about energy costs and how they are not really to blame. These people have been marginalised by retail market consolidation and lack of export ability because of the high dollar that is favouring imports into this country. I am not sure what parallel universe Senator Urquhart was in during the hearings because she was sitting there on the committee with me. Further, we have been chastised about the fact that we interrogated witnesses based on their experiences with the Fair Work Act. Well, the evidence flowed and flowed, and it kept coming the length and breadth of this country. However, there were Labor senators involved in this inquiry and they failed to interrogate those witnesses. I am not sure they thought they were going to get any other evidence. We have been chastised here in this chamber about a biased level of questioning but we were on equal time during the inquiry. They had the perfect opportunity to interrogate those witnesses themselves and they failed to do so. I am not sure that they thought they would find out anything different. So I will not accept that criticism at all.

The inflexibility of the Fair Work Act impacts on the food industry disproportionately due to the nature of the industry. Harvest time, production shift work and the seasonal nature of the industry mean that flexibility is needed to ramp production up and down quickly. For example, penalty rates are having a disproportionate impact on the wine industry. I can bear witness to that experience myself, when we shut a winery because rates have become too expensive to keep it open over the Easter period and long weekends. What happens to the fruit out there that is ripe? It just has to wait. That is evidenced in the length and breadth of the wine industry, let alone in the broccoli industry and the carrot industry through Tasmania. Broccoli does not wait, but it has to wait until you can afford to pick it. Coles and Woolworths do not pay you more because you picked it on a Sunday. You cannot recoup those costs. This is a serious problem.

One of the other experiences was backpackers being employed and superannuation being taken from their pay and producers writing cheques—in one case in Shepparton—for $30,000 for the harvest season for superannuation to people who have no hope of ever collecting that money. Where are they going to find them—somewhere in Central Europe? That was an impost on business—excessive red tape. Further reforms are required. A renewed commitment to the national, seamless economy through COAG and the simplification of taxes will help improve the competitiveness of this industry. The government's carbon tax is another impost on business, which is why we have recommended that its impact be closely monitored. And of course, this tax is something which the coalition is committed to repealing, easing some of the burden which is quite obvious out there in the evidence we took on this industry sector.

The Competition and Consumer Act 2010 is designed to address anticompetitive conduct but has largely failed to serve everyone in the food processing sector. Through this inquiry we have heard how the act has seemingly failed with regard to unconscionable conduct, predatory pricing, the use of trading terms in contract
negotiations and creeping acquisitions. There is a climate of fear within the industry preventing it from bringing breaches forward, and the Australian Competition and Consumer Commission have thus far failed to address industry's concerns and provide adequate anonymity and protection for people to come forward. I must say that there has been some progress and there is some level of optimism out there in industry, with the new chairman seemingly taking a new approach to this issue. The industry strongly advocated for a supermarket fair trading ombudsman similar to that operating in the United Kingdom. The report's recommendations did not go this far, instead recommending a review of the Produce and Grocery Industry Ombudsman as to its effectiveness or lack thereof.

I and a number of the other committee members considered more interventionist regulatory changes including: structural separation of supermarkets' private-label businesses, mandatory divestiture—highly controversial—of the supply chain assets and businesses, preventing retailers achieving a market share greater than 40 per cent, and other things including price monitoring, prohibiting the sale of food below cost, and trading terms all came into the conversation. These options were strongly supported by some sectors of business and peak industry bodies but were not supported by the majority of the committee.

Food labelling in this country is confusing and misleading for consumers and prevents some businesses from gaining the benefits of being wholly Australian. The Blewett report and its findings several years ago again reinforced that the momentum must be maintained. The cost pressures put on industry have meant that the investment in research and development has been dramatically cut particularly by small to medium enterprises. R&D is critical for the future innovation, productivity and competitiveness of the industry. I seek leave to continue my remarks.

Leave granted.

Senator XENOPHON (South Australia) (12:40): It was a real pleasure to serve on this committee and I am grateful to Senator Richard Colbeck as chair who proposed this inquiry, which has been a very important and valuable inquiry. I also thank Richard Grant and the team of the secretariat—they have done a terrific job in supporting us in relation to the work of this inquiry. I have provided a minority report—it is not so much a dissenting report—to add a number of recommendations, and I will run through those very quickly in the limited time available.

There is a crisis in our food processing sector. It is a sector that has so much potential. It is a sector that needs support, and I do not think that it is getting that support now. There is a whole range of measures that need to be dealt with. We need to deal with issues such as food labelling. We do not have truth in food labelling in this country, and that will make a real difference. Australians want to buy Australian produce. They want to have that choice. They want to make an informed choice from the supermarket shelves, and currently our food labelling laws are positively misleading. That needs to be addressed.

There is also an issue of the market duopoly we have seen in the grocery market with Coles and Woolworths. We saw what Master Grocers Australia said just a few days ago and we heard evidence—and I will be careful in my choice of words—that could not be published that raised concerns on the part of food processors. I think it says it all. When Lateline did a story about the work of this inquiry about the food processing sector, they approached over 100 food processors
and not one was willing to come forward to speak on camera. In fact, one did, but pulled out at the last minute. That says that there is a real issue. It is not because Coles and Woolworths are intrinsically bad people; it is a function of the market. They have so much market share, so much market power, that it is unhealthy in terms of a competitive environment. That is why in my minority report I say that we need to go down the path of giving the courts a divestiture power where there is a proved abuse of market power. I think we actually need to look at that and it is something that I want to do more work on.

There are also issues raised in terms of unfair contract terms. We heard a lot of evidence about how terms appear to be unilaterally changed and how some producers and food processors felt they could not raise an issue about that because they relied so heavily on one or both of the big two supermarkets. That is a big issue and I think it needs to be dealt with. What is very telling is that so many food processors and farmers are saying that they do not want their kids to be involved in this business because it just is not worth it.

But there are real glimmers of hope in this industry. The produce and the quality that is produced are second to none and we need to encourage that. We need to look at our free trade agreement with New Zealand in terms of what 'product' actually means in New Zealand. That needs to be scrutinised, because the concern is that we are getting foreign goods, purported to be New Zealand goods, as part of the CER, and I think we need some greater clarity and transparency in relation to that.

Australian consumer law needs to provide greater protection for suppliers who have suffered detriment after making a complaint to the ACCC. In other words, if somebody is a whistleblower, they need to be protected. There needs to be a reverse onus of proof, in a sense, so that if they do suffer detriment it is up to the supermarket chain to show that it had nothing to do with their complaint. These are just some of the matters that need to be dealt with.

The issue of the dominance of the big two is important but there are other issues in terms of productivity. I am glad that the government had a review of the Fair Work Act. I supported the abolition of Work Choices, but I am worried that the pendulum has swung too far in some cases, particularly for small businesses in this country, and that is why I introduced a bill earlier today. I do not want to see a return to Work Choices but we need to acknowledge that small businesses in this country are doing it tough and that those small food processors that are the future of this industry in terms of innovation and quality are suffering, and they need to have some flexibility where they can pay fair wages but have the ability to survive in an increasingly globalised market.

Madam Acting Deputy President, I seek leave to continue my remarks later and I hope that other members who participated in this inquiry can make a contribution as well. It was, again, a very worthwhile inquiry and I congratulate the mover and the committee for their work.

Leave granted.

Debate interrupted.

**BILLS**

**Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012**

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.
to which the following amendment was moved:
At the end of the motion, add:

but the Senate:
(a) notes that the Government has accepted the Coalition's policy of offshore processing of asylum seekers on Nauru and Manus Island; and
(b) calls upon the Government to implement the full suite of the Coalition's successful policies and calls upon the Government to immediately:
   (i) restore temporary protection visas for all offshore entry persons found to be refugees;
   (ii) issue new instructions to Northern Command to commence to turn back boats where it is safe to do so;
   (iii) use existing law to remove the benefit of the doubt on a person's identity where there is a reasonable belief that a person has deliberately discarded their documentation; and
   (iv) restore the Bali Process to once again focus on deterrence and border security.

Senator SMITH (Western Australia) (12:45): I will continue my remarks on this week's developments for improving Australia's border protection, and in particular my visit in 2002 to both Manus Island and Nauru in the presence of the now Prime Minister.

I am staggered that despite having been and seen the success of offshore processing herself in 2002, the Prime Minister and her government have been slow, reckless and belligerent in returning to policies that have clearly worked. A decade ago this Prime Minister saw for herself the success of these policies when she visited Manus Island and Nauru. Her views of what she saw are for every Australian to see. The Age newspaper reported on 6 February 2002:

On Sunday, Ruddock and his Labor counterpart, Julia Gillard, visited the base, free of any prying media.

Yesterday, both were united in their praise of the facility. To the surprise of some of her colleagues, Gillard went out of her way to declare that she saw nothing wrong with how things were operating.

On the same day the Canberra Times stated: She said people had shelter, health care, adequate food, …

Not surprisingly, she commented that conditions were tough and that there needed to be more attention to the adequacy of schooling for children. So how can the Prime Minister not feel deeply, deeply ashamed that 10 years ago she witnessed firsthand a policy setting that she has now agreed to endorse?

The tardiness of her handling of this issue has come at considerable cost: not just the $4.7 billion cost to the Australian taxpayer but the 22,000 illegal boat arrivals, the almost 400 illegal boats and, most tragically, with the loss of almost 1,000 lives at sea. After a catastrophic policy failure only now has the Prime Minister finally seen a better path—a path that was not hidden from her, but one that she saw firsthand for herself 10 years ago in 2002 when she visited Manus Island and Nauru.

I am afraid to say that the newsletter of the Socialist Left of February 2002 was prophetic in its commentary on Labor's border protection policies. It said, 'Labor's indecision on the border protection bill exposed a policy-on-the-run approach and a lack of leadership. A sorrier story of policy failure mixed with political self-preservation we have not ever seen.'

This legislation is not perfect, nor is it a complete remedy for Australia's border protection dilemma, but it is a necessary first step. The next steps must be the imposition of temporary protection visas and turning back the boats when it is safe to do so.

Senator BERNARDI (South Australia) (12:48): I welcome this move towards offshore processing. This has indeed been part of the coalition policy agenda for over
10 years. But what the government has done here this week is simply not enough. The government must implement all the coalition's proven measures in order to establish an effective policy against people smugglers and illegal boat arrivals.

What we have here today is a one-legged stool. It has the beginnings of a functional object, but without the other legs it will never be stable or effective. Unfortunately, that is something that this government is good at doing—not being stable or effective.

In contrast to the disarray of Labor I am proud to be part of a party that has consistently supported good border protection policy and opposed bad border protection policy. Year after year we have stood firm in pursuing the policies that worked in deterring the people smugglers' trade, but I cannot say the same for this Labor government. They have backflipped and flip-flopped to such an extent that I wonder whether they know which way is up these days. Let us just have a look at their track record.

In opposition, the Prime Minister supported turning back the boats. Three years ago she said that turning back the boats was a shallow slogan. Now she seems to support a virtual turnaround of the boats. In opposition, the Prime Minister talked of temporary protection visas as part of Labor's policy; now her government does not support temporary protection visas. The number of empty words from the Prime Minister and her colleagues is simply astounding. Those on the Labor side should indeed hang their heads in shame at the intransigence of the last four years.

Just look at the damage and tragedies that have occurred: over 22,000 illegal arrivals on 386 boats; an increase in the people-smuggling trade that puts people's lives at risk day after day after day; a $4.7 billion blowout—for those Australians who are actually listening to this, that is $4.7 billion of your taxpayer dollars being spent because of Labor's failures—and, tragically, there were hundreds—perhaps even thousands—of deaths at sea. In just four years, Labor has easily eclipsed the number of illegal boats and arrivals that came during the entire 12 years of the Howard government. Labor took a policy that was working and they created an enormous problem. They put their own ideological bent before the interests of this nation. Such a grievous error of judgement is simply unforgivable.

The travesty that Labor has allowed over the last four years is proof that this Prime Minister is not fit to hold the highest office in this land. Those on the other side of this chamber will eventually wake up to this fact, just as they have finally woken up to the fact that offshore processing on Nauru is important to stop the people smugglers' trade, just as they will wake up to the fact that temporary protection visas are a necessary element of stopping these boats and just as they will wake up to the fact that turning the boats back where it is safe to do so is also an essential part of effective border protection policy.

But we all know that Labor find it really difficult to recognise sensible policy. It is simply deplorable to deliberately trash established, sensible, effective policies in order to replace them with weak and futile attempts at ideological policy. We would not be here today trying to clean up this mess if the government had done the right thing and left the established policies as they were. We would not have had four years of an influx of boats, with thousands upon thousands of people paying people smugglers and risking their lives on a perilous journey, and we would not have had the hundreds—perhaps thousands—of deaths at sea.
However, finally the government have seen sense about how damaging their policy failures have been, with the flourishing of the people-smuggling trade and so many of these deaths. Yet, I regret to say, the delusional Greens party, championed by Senator Hanson-Young, continue with their cavalier attitude to protecting our borders and protecting asylum seekers from harm. This is perhaps best—or worst, I should say—summed up by a comment from Senator Hanson-Young just last year. When asked whether the Greens accepted any responsibility for the loss of life in the sinking of an asylum seeker boat off the coast of Java, she replied: 'Tragedies happen. Accidents happen.' That is hardly the compassionate view that the Greens constantly talk about. In this place I have seen Senator Hanson-Young cry her crocodile tears for the cameras while both she and her party blindly refuse to accept any responsibility for the dysfunctional nature of this country's border protection policies. They are just as culpable in this fiasco and this disaster as the government is.

Australians have every right to be outraged at the conduct of this government and their partners the Greens in respect of protecting Australia's borders. They also have every right to question the judgement and integrity of the Prime Minister and her government. But, in short, the buck does stop with the Prime Minister. The Prime Minister owes the people of Australia an apology. She should apologise for her perfidy. She should apologise for her mendacity. She can no longer hide behind the claim of being young and naive, as she has in the past. She now needs to do the honourable thing and resign or call an election.

Senator MASON (Queensland) (12:55): Since coming to office, the Australian Labor Party and their allies the Greens have failed our country in two important public policy challenges. We all know what they are: first it was the carbon tax and second, of course, it was border protection. They are the two conspicuous failures from the government and from the Greens. The root cause of Labor's failure is, of course, the same. What is that? It is the conspicuous moral vanity of the Australian Labor Party. In both cases, the Labor Party and the Greens have put forward policies that are not in our national interest just so they can show the world—and most importantly, perhaps, themselves—that they really are morally superior. They are the ones with a conscience. They are the ones who are enlightened. They are the ones who are ethical. They are the ones who are superior. The coalition on the other hand, they argue, is ignorant, unenlightened, mean and morally bankrupt. That is the left-wing narrative. That is the narrative of the Greens and the Australian Labor Party. That is the narrative of the Gillard government and the Rudd government since 2007.

So the Labor Party and the Greens mortgage our national interest with the introduction of a carbon tax. They mortgage the competitiveness of our economy, the jobs of our children and the balance of our trade and introduce a carbon tax. Why? So that they can feel good about themselves and show the world how enlightened they really are. No-one actually believes that the carbon tax is in our national interest. The Labor Party and their allies the Greens do it anyway.

Then the Labor Party and the Greens do it again. They do the same thing with border protection. They mortgage our national interest, the security of our borders, the integrity of our immigration program and, indeed, even the broad support for the humanitarian and refugee program. That is all mortgaged by reversing the Howard government's successful Pacific solution. Our national interest is all mortgaged
because the Labor government just could not bear to admit that the Howard government was not morally bankrupt. They just could not bear to admit it. We were morally bankrupt, but of course the Labor Party were all sweetness, light and morality! They just could not bear it. Instead the Labor Party and the Greens are willing to sacrifice the integrity of our borders and our migration program and create a dangerous, unsustainable policy—this was the aim—so they can tell the world how compassionate and enlightened they are and so they can feel good about themselves. That is why they do it. It was all very cosy—terribly, terribly cosy way up there on their high moral ground and their moral high horse—because from up there you could not even see people drowning.

'Houston, we have a problem,' says the Prime Minister. Finally, reality intrudes. The horrors become apparent. Even the Australian Labor Party can see there is a problem out there, and what do they do? They outsource their conscience to Air Chief Marshal Houston. That is what they did, and it was pathetic. Politics should not be a giant psychodrama just so Labor politicians and Greens politicians can feel good about themselves. Our country's national interest should not be subject to that psychodrama. Right now the government is having to eat their moral vanity as humble pie, and I suspect it will be a little hard to swallow.

Senator BOYCE (Queensland) (13:00): I am indebted to the Australian for a report in the last few days on a mad snake virus which is affecting pythons in the US. It is causing them to tie themselves in knots and 'stargaze'. This mad snake virus is thought to be caused by rats and is being considered to be a mysterious new virus. I would like to suggest that in fact it has been a well-known virus affecting the Labor and Green parties of Australia for a long time and that it is only in the last few days that the Labor Party has finally worked out how to stop tying itself in knots and stop stargazing by accepting the sensible coalition suggestion of adopting what has in the past been a proven policy. Unfortunately, I do not think that we now have an antidote for mad snake virus. We have some concerns that going forward we have yet more problems to overcome with this policy that the government has finally seen fit to adopt.

It is concerning to see that the way they have gone about this has caused yet another deluge of people attempting to get to Australia by boat. It is concerning to see that people will initially be housed in tents. Certainly, if the government had accepted the coalition's view on using Nauru and Manus Island when they were first suggested two or three years ago, this would not have happened. We have had a very difficult period for everyone whilst the government was too proud, too affected, too virally unwell to see sense on migration. I am going to keep my remarks very brief because we are interested in getting this legislation passed and getting on with the job even though we apparently already have a mad-snake-type implementation of the legislation happening from this government.

I would also like to very briefly acknowledge another good point in the legislation other than the fact that it will re-establish offshore processing, and that is the significant improvement that the government will make to our humanitarian migrant intake. I think this is one of the most important ways of demonstrating to refugees and others seeking better lives for their families that this is the route to take to seek to come to Australia.

So I would like very much to support the legislation. We intend to move amendments to it, but the coalition supports the legislation
and wants to support its rapid passage so that we can get past what has been a shameful stargazing effort from the government, manipulated by the Greens over the last 12 months.

Senator WHISH-WILSON (Tasmania) (13:04): I have only been a senator in the chamber for three sitting weeks, but I am learning a lot about government, parliamentarians and the responsibility that we all share. I reflect upon what is going through my mind sometimes when I come into the Senate chamber as someone who is new. I think about what people outside the big house may think when they see parliamentarians—I prefer to use that word rather than 'politicians'—on television. That is that perhaps we make decisions that might seem light and fluffy or frivolous at various times or that we somehow serve an administrative function, passing bills and legislation that may relate to the running of government. I can see clearly now the responsibility that goes with government.

All the decisions that we make affect people. Sometimes there may not be direct correlations with the decisions we make. There may be trickle-down effects or things may be fairly general. But I think this debate on refugees has a different human dimension. To me, the decisions we make in this parliament today on this legislation will not only directly impact people and their livelihoods but will also impact people who are probably in the least fortunate position to be put under even more psychological stress. For my feeling, all decisions we make in parliament are important but there is something very special about this debate today and the gravity of the decision we make.

I attended the cross-party refugee meeting on Monday with a number of my colleagues, and it occurred to me not just during that meeting but also in previous discussions with my fellow Greens senators and friends and family just what a complex problem this is that is facing Australia. It is a problem that is not going to go away. During that committee meeting we heard from a number of people who work with refugees. My position and the Greens' position of strength in this debate is from values based on the same values as those people who work with refugees. They are based on the same principles that those people who work with refugees adopt. Our position is based on the realities of what faces refugees. We have not taken this view for political purposes. We have taken this view after campaigning and working for a number of years with people who are on the ground and whose everyday lives are impacted by working with refugees. They see the angst, the destruction and the sadness. I think that is the Greens' position of strength here. It is a position based not on the broader political factors but on the reality of what is confronting us in that situation.

Earlier today Senator Hanson-Young talked about push factors. On Monday, the Refugee Council and Amnesty International discussed the potential push factors in Afghanistan when Western, NATO and allied troops are withdrawn from there in a few years time. We have discussed what has happened in Vietnam; it has been mentioned several times in several speeches. It has been made very clear that we possibly do not know what we will be in for in terms of the number of people who will be seeking political asylum here.

My question is: is this legislation a mistake from the point of view that we are picking on the most unfortunate people in the world when we are in such a fortunate situation? Also, is the solution we are putting in place today—the bill that will be tabled here—practical? Is it going to work? From a quick look at the numbers—and this was
mentioned earlier by a coalition senator; I apologise that I have not learnt everybody's names yet—we have seen 22,000 people arrive since 2007. Last year alone, we saw 7,983 people arrive. From the best information that I can collect, Nauru can currently house 1,500 people and, at peak capacity, potentially 3,000 people. Manus Island, PNG, has a capacity to house 600 people. The nearly 8,000 people who have arrived in the last 12 months is a reflection of a future year—

Senator Fifield: Hopefully we won't. That's the point.

Senator WHISH-WILSON: Hopefully we won't. None of us want to see refugees getting onto boats and taking dangerous journeys. That is something we all share in common. If we are wrong on this and the numbers keep increasing, simple arithmetic says that both these places which are to house refugees will be quickly filled. The answer I got from people when I spoke to them about this issue was that this deterrent will work and the refugees will stop coming. No matter what your ideological view is on this issue, the reality of the situation is a lot more complex than that. It was also mentioned on Monday that problems are developing in Sri Lanka—the ongoing issues there with the Tamils. So it seems to me that a rational, logical person might question whether the boats will stop and whether this solution will be able to (a) house refugees and (b) process them. The Greens have asked for an amendment to limit the time refugees are in detention. That we consider putting a time limit on how long these people spend in detention seems entirely reasonable in managing the risks of this new legislation and what it will mean for these people's lives.

It is also reasonable to look at the costs associated with keeping people in detention. The establishment and operation of the regional processing capacity in Nauru in accommodating 1,500 people—so not at peak capacity—will cost between $1.2 billion and $1.4 billion over the forward estimates. The full establishment and operation of the regional processing capacity on Manus Island, PNG, in accommodating 600 people will cost in the order of $900 million over the forward estimates. Detaining people is expensive. I and the Greens would like to see more comprehensive economic work done on the costs of detention versus processing domestically. This is an issue that has got very little attention.

I was in the chamber when Senator Di Natale spoke last night. I was moved by his speech, as I was by Senator Hanson-Young's speech today. In that speech Senator Di Natale said, 'I think this is a mistake.' Have we sold the Australian public—and I use the word 'sold'—a quick-fix solution for this problem to go away? Do we want people to consider this legislation as a silver bullet to solve the problem? My concern is that, as parliamentarians, we have not managed the expectations of the Australian public. If we do see a continuation of boats—and, once again, I stress that we all hold the common belief that we do not want to see more refugees coming—and if we understand that the world is going to be wracked by conflict, then we can boil this problem down to its most basic cause and effect. It is simple human nature: this is not going to change. If we believe the climate change forecasts of disruption from extreme weather events such as drought and the projections of increased refugee numbers right around the world then I suspect how we manage this problem could be the single biggest issue facing this country over the next 100 years. Once again, it makes sense to me to say that this legislation is a quick-fix solution for a very complex
problem. I wondered whether I would say this today but I do really want to say it: I doubt whether there is a solution to this problem. Looking at it every possible way, rationally, I am not sure how we can stop people in the future from coming to this country seeking asylum, seeking a better life, but I do know that claiming that this is a victory is stupid. We need to be a lot more grown-up about our debate, particularly in this chamber. There is blaming of the government, glib statements and politics when this issue is so serious—and I am speaking as someone who has only recently come into politics. It is not a good look for people outside the House who rely on us to make important decisions.

I want to comment on three other things that I feel are important. Firstly, there are the words 'border security'. What is it exactly that is a threat about poor, disadvantaged people, not carrying any weapons, from what I understand, and not intent on damaging our national infrastructure or hurting people in this country? What is the security threat from that? If you are talking more about a threat to our lifestyle—that as a nation we cannot afford to have significant numbers of people coming to this country—at least say it. Do not hide behind rhetoric. Come out and say, 'We can't afford to have these people,' and at least we can have that debate and look at it sensibly and rationally through a number of different measures.

The second thing is that I heard here today that people have a choice—it is their choice to get on boats. I must say that I was horrified, as I attended a press conference nearly six weeks ago, when my two fellow senators, Senators Hansen-Young and Milne, were speaking to the media. A journalist said: 'These people were told to turn back their boats. They didn't. They drowned. Why are we to blame for that? It's their fault.' My immediate thoughts were for the children below deck who would not have had any part in a decision to not turn back that boat. Let's put ourselves on that boat. Who would have? The captain, possibly, who is getting paid; the people smuggler that we all rightly demonise? Who would have made the decision not to turn back the boat or who would have made the decision to scuttle the boat? I very much doubt whether there was a democratic vote amongst refugees to continue on a dangerous voyage. Did they really understand the risks? Once again, we are not really thinking these things through very well.

Lastly—and I have said this to lots of my friends who disagree with my point of view on this and the point of view of my party—I would like you to do one simple thing: imagine yourself in the shoes of these people for just one minute, because, if you can imagine, then you can understand. That is the basis of empathy. With empathy comes human compassion and an understanding of what these people go through. For lots of Australians, possibly the best way to make that connection and to imagine and understand is on Sunday night by watching—I am not sure if I am allowed to promote a TV program in the Senate but I will anyway—SBS's Go back to where you came from. It was very hard to watch the first series and not feel compelled to put oneself in the shoes of these people. The next series starts on Sunday night. It is a shame it was not screened prior to this debate and the passing of this legislation because I think most Australians who watch that will feel and understand the pain and misery that these poor people are going through.

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (13:19): There was such an inevitability to the debate that we are having today on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. It
was inevitable from the moment that the Australian Labor Party won office in 2007. It was inevitable from the moment that they started to systematically dismantle the policies that the Howard government had in place. It was inevitable that, every day between then and now, reality would come crashing down on the heads of those in the Australian Labor Party that this is a problem, this is a situation of their making and only legislation of the sort that we are debating today could undo that damage. It was entirely inevitable that we would end up at this point. That is why the Australian Labor Party say: 'Let's not talk about the past. Let's just talk about the future. Let's not play the blame game. Let's just pass this legislation.' And pass this legislation we should. But the reason the Labor Party do not want to look back is that they would have to confront their culpability for the sheer volume of boats and individuals who have been put in harm's way.

I well recall the current Prime Minister railing, along with Mr Rudd, the then coalition government's policies before 2007. They denied the existence of pull factors; only push factors existed, apparently. They were outraged at the very concept of offshore processing. It was immoral—we heard that more than once. And the hideous regime that the coalition had in place of offshore processing, temporary protection visas and turning back the boats where it was safe to do so was so reprehensible that dismantling those policies had to be one of the first things that the Labor Party did in office, and they did. I, like many colleagues on this side of the chamber, have been very critical of many policy areas of the Australian Labor Party, for not honouring their election commitments, but there is one election commitment that they honoured in full—lock, stock and barrel—and that is the systematic dismantling of the deterrents that we had in place, deterrents that were effectively shutting down the people-smuggling business.

The Australian Labor Party have spoken often about breaking the people smugglers' business model. They should know how to break the people smugglers' business model because they are the people who designed the people smugglers' business model through their policy. There is a direct relationship between the Labor Party's policy going into the 2007 election and the people smugglers' business model. This legislation today seeks to undo that damage and undo that business model.

One of the things that has frustrated me no end—it has driven me to distraction over the last six to eight months—is hearing members of the Australian Labor Party continually talk about the need for compromise and the need for a grand bargain, as though there is some innate virtue in compromise for compromise's sake, as though there is some innate virtue in a grand bargain, as though there is some innate virtue in making people feel a little better about politicians and the parliament. There is no innate virtue in any of those things. The only virtue is in good policy that shuts down people smugglers and makes it less likely that people are put in harm's way. We on this side of the chamber have never been interested in just reaching an agreement. This should never have been approached on the basis of some sort of industrial negotiation where one side makes an ambit claim and the other meets them halfway or it is treated like haggling over the price of a house in a sale. We have stood firm. No, we are not just going to reach compromise for compromise's sake; we are going to hold and stand firm until the government agrees to good policy and agrees to a return to the policies we had before.
We are part of the way there with this legislation. Offshore processing on Nauru and Manus Island is a good thing, but we still need temporary protection visas and a commitment to turning back the boats where it is safe to do so, because it is not only policy that matters; it is also the strength and resolve of government that matters. Those other measures will, if they are adopted, send the message to the people smugglers that the government again has the strength and resolve to stamp out this evil trade of people smuggling. It will ensure that people are not put in harm's way or advantaged by approaching Australia in an irregular way. The coalition will be supporting this legislation, as my colleagues have indicated. It is important that the chamber as a whole does.

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (13:25): I, too, rise to make some very brief remarks following the comprehensive and heartfelt contributions of my colleagues on this side of this place on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. Notwithstanding some of the emotional speeches made from the crossbenches, the continued loss of asylum seekers' lives at sea is a matter that fundamentally strikes at the heart of us all. We are at one in our determination to do what we can to ensure the disgraceful practice of people trafficking is stopped—period—and that the most humanitarian approach is taken in dealing with refugees. The coalition has consistently argued for and demanded the adoption of the former Howard government's Pacific solution for one reason and for one reason alone: history has demonstrated that it works. The Pacific solution worked. It is compassionate, notwithstanding the histrionics of those who have decried it in the past and continue to decry it today.

I feel impelled, though, to put on the record a couple of points. I will make them fairly brief because it is important that this legislation be passed today. Firstly, political parties are elected to office to govern. That is something that this Gillard government does not seem to get. It is the responsibility of an elected government to make the necessary tough decisions that are in the interests of all Australians to ensure that we fulfil our international and moral obligations. What worries me most, though, is that, whilst the coalition has continually sought to sit down with the government to discuss the policies that worked under a coalition government, the Gillard government, firstly, refused to do so—

Senator Feeney: You refused to participate in the committee!

The ACTING DEPUTY PRESIDENT (Senator Fawcett): Order! I remind senators that speakers have the right to be heard in silence.

Senator KROGER: Thank you, Mr Acting Deputy President. Rather, the Gillard government chose to contract out that responsibility to a committee to make the decisions for it.

The former Chief of the Defence Force, Angus Houston, Michael L'Estrange and Paris Aristotle are all highly respected and eminent individuals, so my comments in no way reflect on them personally. Rather, I believe that the approach that the government took is a damning indictment on the Prime Minister and her cabinet. They were incapable of reaching a solution and needed the involvement of a third party to come up with a proposal—elements of which, I hasten to add, we have been calling for now for some years. This government continues to fail every test when it comes to leadership.
My second point, just in closing, is how incensed I get in this place when I listen to the Greens and some of those on the other side of the chamber who constantly champion the furphy that they are the guardians of the moral high ground—and you all know who you are because you do it consistently in this place. What absolute bunkum! Clearly, they believe that if they say something long enough it becomes a fact. But history will continue to demonstrate that actions and facts actually speak much louder than words.

There would not be one person—not one person—who has not been deeply moved by the images or accounts of men, women and children who have lost their lives at sea. Just as we are concerned about the millions housed in refugee camps across the globe, it is compassion and common sense that drives our support for this bill. Compassion drives our support for a system that seeks to break the people-smuggling model and a system that does not disadvantage those people who seek asylum through the UN sanctioned refugee camps. It is a system that seeks to be fair and equitable, and I support this bill.

Senator MARSHALL (Victoria) (13:31): The modern history of the migration debate in Australia began when 438 Afghani asylum seekers were rescued from a 20-metre wooden fishing boat in international waters by the MV Tampa in August 2001. The events following that rescue, the reluctant involvement of Australian Special Forces personnel and the cynical political exercise now known as the 'children overboard affair' are well known to us here, so I will not dwell on them. However, it is necessary to acknowledge these events in order to make sense of where we find ourselves today.

I had hoped that by now, over a decade later, the migration debate would have recovered from its malignant origin. Sadly, the events of the last year, and of the last few weeks in particular, have proven otherwise. As the chair of the Parliamentary Joint Committee on the Christmas Island Tragedy, I have a better understanding than many of the challenges faced by asylum seekers and the risks that they take in their attempts to flee persecution. The tragedy of SIEV221 demonstrated the inherent dangers of the people-smuggling business in a horrific way and at great human cost. But we cannot forget what motivates asylum seekers to face these risks. They are fleeing racial persecution, religious persecution, political persecution, torture and oppression. The decision to board a leaky boat bound for Australia is not a decision that anyone takes lightly.

I cannot honestly say that the legislation we consider today, the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012, sits comfortably in the narrative of the Labor Party—a party based on social justice, compassion and the fair and equitable, and it does not sit well with me. I know that many members of the party and of the Australian public more broadly share the sense of disappointment and frustration that I feel today. But, equally, I am not so naive that I can support the continuation of the shameful political deadlock that currently exists—a legislative environment in which we might expect the tragic events of the 2010 Christmas Island tragedy to recur.

That is why I welcome the findings of the report of the Expert Panel on Asylum Seekers; not because I agree with all of their recommendations—because I do not—but because I believe that it at least offers us a way forward. I welcome the report’s proposal to increase Australia’s humanitarian intake to 27,000 people and to build capacity through a cooperative, regional approach. As a party we have long maintained that a regional approach is necessary. This is the
real answer and the one that will stand the test of time. I am encouraged by the words of Amnesty International’s Graham Thom, who states:

As long as refugees have little chance of finding safety through official channels many will be forced to seek protection through dangerous unofficial channels. A successful regional approach can only work if refugees and asylum seekers' access to protection is improved, as evenly as possible, across all regional countries.

Amnesty International believes that Australia has a key role to play in developing a regional approach to refugees that in the long term reduces the need for people to flee their homeland, in the medium term reduces the need for refugees to flee countries of first asylum and in the short term provides refugees with more access to official migration routes throughout the region.

He goes on to say:

This approach must never be viewed as a substitute for the long-established obligation to offer protection to vulnerable people asking for our help.

It is a lack of safe options across the region which forces refugees onto boats to Australia. Improving this situation is absolutely key to stopping people taking dangerous boat journeys.

Australia has no shortage of critics when it comes to our migration policy and no doubt some of this criticism is justified. But we should also acknowledge that the commitment to increase our humanitarian intake will make Australia second only to the United States in refugee resettlement and world leaders on a per capita basis. Australia is and remains a generous country.

I must also put on record my grave concerns about the punitive aspects of the legislation. I understand the need to discourage asylum seekers from undertaking the perilous journey to Australia by boat. And it is clear that the Houston report is well intentioned when it suggests the no-advantage principle as the best means to do this. But, whilst the idiom of 'cruel to be kind' is easy to understand, we cannot allow such simplistic thinking to cloud our judgment on this issue. I am concerned about the effectiveness of the no-advantage principle as a disincentive when asylum seekers are, by their very definition, fleeing serious persecution, often in fear of their lives.

International law requires us to respect the needs of those who seek asylum here, and as a nation we have a responsibility for their protection. I was unsurprised to read in the Age this morning that my concerns are shared by the regional representative of the United Nations High Commissioner for Refugees, Richard Towle. Mr Towle is quoted as stating:

Resettlement is based on individual protection needs, it's not a mathematical formula and it's not based on time spent in a queue … We've got to make sure that if people who are genuine refugees are having to wait for solutions, it's not so long as to cause damage.

I could not agree more. As former member for Fremantle Dr Carmen Lawrence has written:

Not surprisingly, every independent inquiry into immigration detention has drawn attention to the poor mental health of detainees and the particular risks to children's well-being … Such research has revealed high rates of post-traumatic stress disorder, depression, anxiety and panic attacks, attempted suicides and self harm. The longer people are held in detention, the worse the symptoms are likely to be, adding to the already high levels of psychopathology among those who've experienced persecution, harassment, torture and physical assaults.

The very fact that I should feel the need to repeat this is a sign of how low this debate has sunk, but once again I must draw the attention of the chamber to the fact that asylum seekers simply do not have universal access to an orderly migration path or queue. That is a convenient myth, a symptom of the poisonous atmosphere of intolerance and
misinformation that continues to pollute this debate. For those refugees who lack access to an orderly migration path, their alternative is to never arrive. This should not be used to justify a policy of arbitrary, indefinite detention, and it is this aspect of the bill that disturbs me the most.

It gives me no satisfaction to support this bill. These last few weeks have been a very difficult time for me and for my Labor Party colleagues. The caucus decision on this matter was not unanimous. Many of us have had great difficulty reconciling this decision with our personal values and I will admit that it conflicts with my own. But, as the party of government, we do not have the luxury of indulging our self-righteousness. And, as the party of government, we are bound to act on this issue, even at our own political cost and against the judgment of some caucus members like myself.

I doubt that there will be a lot of public sympathy for this view. It lacks the immediacy of both the self-serving moral outrage of the Greens Party and the cynical triumphalism of the coalition. But the parliament was called upon to act with maturity in this debate and we had a commitment to make the best of a challenging situation. This legislation is far from perfect and there is still much work to be done and detail to work through. I, along with many of my colleagues, will continue to face the challenge of humanitarian reform of Australia’s migration policy and the challenge of ensuring that we do not lose sight of the fact that asylum seekers are neither a mathematical problem nor pawns in a political game. They are real people, decent people, who arrive on our shores asking only for help and protection for themselves and their families.

Senator MADIGAN (Victoria) (13:40): It has been roughly six weeks since we left this chamber and since we debated this legislation: the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. Quite frankly, I think the debate reached a very low point in this chamber. I sincerely believe that nobody in this place bears any ill will or malice towards asylum seekers, but there has been political gloating on the point we have reached today. We must remember that we are speaking about people; we are not speaking about figures in a book. Even when we debate things in this chamber that affect Australians here today, we are speaking about people and how we affect their lives, their families and their communities. The politicisation of the misery of others is a pretty low point to reach.

Whether it is current Australians, new Australians, refugees, asylum seekers or people who seek humanitarian relief in our country, all people in this country need jobs, they need housing and they want a good environment. It is incumbent upon us to deliver these things in the best possible way that we can. We do not live in a perfect world, and no legislation that comes out of this chamber is perfect, but people in this place genuinely try to do the best that we can. Messrs Houston, Aristotle and L’Estrange are, I believe, honourable men and they have produced a report for this parliament under incredibly difficult circumstances. Now it is up to us to judge that. I believe they have done the very best they could under the circumstances.

In recent times I have visited Villawood detention centre to try to get some understanding of what refugees and asylum seekers experience when they come to our shores. Quite frankly, I would not like to be there. I acknowledge that they are fed and they are housed and everything, but it strikes me that it is a bit like Jurassic Park. I hope that the refugees, the asylum seekers and
people seeking humanitarian relief are treated equitably under this legislation and that they are not used as political pawns. I believe that the Senate must continue to review this legislation over the coming months and years to make sure that we deliver a fair, equitable and humane system for all Australians.

Senator FIERRAVANTI-WELLS (New South Wales) (13:43): I also rise to make a contribution in this debate on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012, and to put on the record my view as a former shadow parliamentary secretary in this area, having had over my lifetime the benefit of experience in the migration area as a lawyer with the Australian Government Solicitor and having spent a lot of time dealing with constituents in the broader community and sharing their views and concerns about this important issue.

The only way to stop the boats and to end the needless deaths that we are seeing at sea is to adopt fully the coalition's proven record in this area. Yes, we have seen the government finally dragged kicking and screaming to adopt one plank of that policy—that is, offshore processing—but there are two other very important aspects: temporary protection visas and ordering the boats to be turned back when it is safe to do so. In the end, this has been supported—flip-flopped in the past but still supported—by Kevin Rudd prior to the last election. There he was in the Australian a few days before, advocating this policy.

All we have seen by this Labor government is years of 'policy failures'. To use the words of Julia Gillard, every boat arrival was a policy failure. Finally, this week we have seen part of an adoption of policies that worked but, unless you adopt fully the Howard government policies, you will not see the same results. An important feature of that is the temporary protection visa framework.

We saw Senator Evans so effectively dismantle a system. In estimates, I trawled through repeatedly with him and his department the many changes that they effected to this area of policy and we saw that bit by bit it was dismantled, whether it was the detention costs or the paying of legal fees and leaving a debt to the Commonwealth. Over my years, having done my fair share of migration law in the past, I have watched millions and millions of dollars of Australian taxpayers' money just forfeited, and people leave Australia with those debts. Now, even if they leave those debts, they can still apply to come back to this country. I think the taxpayers of Australia should know that. For every piece of dismantling that Senator Evans and those after him undertook, the people smugglers were probably watching it on their own websites, following it via the internet and changing their model accordingly.

However, nothing pales beside the vitriol and the verbal abuse that those of us who stood by went through, maintaining the need for order and process in immigration. The vitriol came from those on the other side and the Greens, and we have always had it and will continue to have it. Today, those positions have been vindicated. But we have not heard one word of remorse from the Prime Minister or those on the opposite side who verbally abused and vilified those of us who have been advocating these policies for a long time. We copped that abuse and now there is nothing from the Prime Minister. As one person said to me recently, 'What would you expect from a woman that is a cross
between Lady Macbeth and Lucrezia Borgia?"

The ACTING DEPUTY PRESIDENT (Senator Fawcett): Order! Senator Fieravanti-Wells, I remind you it is not appropriate to reflect on the character or nature of the Prime Minister.

Senator FIERAVANTI-WELLS: Thank you, Mr Acting Deputy President, I withdraw those comments. Immigration has always been about order and process. Millions of people have come to this country and abided by those processes. They have come here after waiting in queues. People who come to this country understand about queue jumping. They understand what it means to wait in those places for up to 10 or 12 years and be the next person in the queue to come to Australia and then to watch somebody jump you in the queue because they have undertaken an illegal process and paid a people smuggler.

As I go out, particularly to those people who have come to Australia, and speak to people who have come via the front door, they understand. It is interesting: I bet some of those constituents have told those opposite that that is how they strongly feel about this issue. There are many migrants in Australia who feel very strongly about this issue and those opposite have finally, obviously, been told by the focus groups brought to this process to—kicking and screaming—change their position. Having said that, even with the passage of this legislation on offshore processing, the question remains: can the government be trusted to properly implement these changes? Only time will tell.

Senator LUDLAM (Western Australia) (13:50): As a number of my colleagues have remarked, it also gives me no pleasure whatsoever to rise in opposition to the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. I will briefly reflect, as many of us have, on the circumstances that brought us here. In 2010, new Prime Minister Gillard delivered a speech on the question of boat arrivals and expressed the need to protect our way of life. Thereby, she bought entirely into this disingenuous conflation of two completely distinct issues, that of asylum seekers—refugees, people fleeing war, violence, ethnic cleansing in our region or other parts of the world—and border protection, as though these were somehow the same issue.

The conflation of those two issues was very effectively developed and deployed by a former Prime Minister, John Howard, and former immigration minister Philip Ruddock. It has been extraordinary listening to contributions from the other side over the last 24 hours celebrating the fact that 'we are back; we were right and we are here again'. Prime Minister Gillard went on to say, 'I understand the anxiety in the community around boat arrivals' and it is on this foundation that the notion that refugees are a threat to our way of life, and that the anxiety around them is therefore justified, should even be talked up or encouraged. All subsequent Labor and coalition discussion has rested on this policy. The ALP has completely accepted the toxic and inaccurate premise of the debate set by the coalition. The premise goes virtually unchallenged within the public pronouncements of the major parties. It has been left to the Greens to put what seems to us so obvious into the public record.

The ethical thing for the new Prime Minister to have done would have been to show leadership on the issue. I think that is what former Prime Minister Rudd and his frontbench had attempted to do in the moves that they made, when they came to power, to formally and legislatively reject the Pacific solution that was in place. Prime Minister
Gillard could have continued down that course and she did not. By validating people's fear of this tsunami, as some coalition MPs have said, of illegal arrivals, this flood of people, the queue jumpers—and we heard that phrase again from the speaker before me—Labor has fallen into the trap predicated on an assumption that not only does the Australian public not know any better but we also cannot know any better. It preaches to a base and, I think, a completely wrong understanding of Australian culture and of the Australian tradition of the fair go. I think it sells us all short.

Senator Ian Macdonald interjecting—

Senator LUDLAM: I am going to ignore you, Senator Macdonald, lest I say something that I will regret.

Senator Cash interjecting—

The ACTING DEPUTY PRESIDENT (Senator Fawcett): Order! Senators on my left are reminded that senators have the right to be heard in silence.

Senator LUDLAM: The proclamations and the policies from the ALP and the coalition suggest that they believe a solution is something that frightens asylum seekers away from Australia. We have heard a great deal from both sides of the chamber on that premise in the last few days. The problems are that people flee their homelands, that the processes for application abroad are painfully and dangerously slow, if they exist at all, that other countries are ruthlessly cruel to refugees and that the heads of the smuggler rings take advantage of a ready supply of desperate people, to fleece them of their savings and offer them a cramped spot on a voyage that might kill them. Until the major parties publicly accept this entire picture and not just one convenient element of it, there will not be any solution.

We have always opposed Labor's Malaysia solution because it is a people-dumping proposal. Put quite simply, it is a live people trade of 800 asylum seekers—who are to be made an example of to other people who might be seeking to make a voyage, to rot behind barbed wire, effectively forever—in exchange for 4,000 people who had already been accepted as refugees, living freely but not particularly welcome in Malaysia. In August 2001, as senators know, that disastrous people-dumping scheme was rejected by the High Court in a case brought by David Mann of the Refugee and Immigration Legal Centre. Mann is the grandson of refugees who fled the Nazis—with the help of people smugglers. To him, the notion that people could reach Australian waters to claim asylum and then be sent to a third country where the human rights, on the balance of the evidence, would put them in very serious danger was morally and legally repulsive, and fortunately the High Court agreed. The decision not only rendered the Malaysian people-dumping project illegal; it also cast doubt on the legality of all offshore processing, including on Nauru.

For that reason, the Greens opposed Mr Oakeshott's bill, which effectively stripped out what little protections exist in the current law, and we therefore oppose this bill. To support either would have marked a 180-degree turn on long-held principles and policies, and it would have been an offence to reason and decency and a betrayal not only of the people who are seeking refuge here in Australia but also of the many Australians who trusted us with their votes, knowing where we stand.

A real regional solution would involve supporting human rights abroad not only in the countries from which people originally fled—some that we have recently invaded—but also in those countries through which people pass on their way to Australia. That means overhauling Australia's overseas
asylum application system so that it is no longer prohibitively slow, and significantly increasing Australia's humanitarian intake. Some of these recommendations were taken up by the recent expert panel and some of these recommendations, we hope, will not be lost in the appalling furor that has erupted in this parliament over the last few days.

The UNHCR’s annual budget in Indonesia is around $6 million. If the government and the opposition are serious about saving lives, why not support the UNHCR in providing a safe pathway to asylum for genuine refugees. Most of the people who do find a way here are genuine refugees—as everybody knows and I think most senators on both sides acknowledge this—and are seeking to escape the kind of violence that we would not subject ourselves or our families to were it occurring here.

The word 'queue' is thrown around to depict boat arrivals as sneaky and unjust—or even unchristian, one of the strangest contributions to the debate that I have heard so far. In Indonesia, the wait in the queue to be resettled from refugee camps is 76 years. An immediate increase in UNHCR funding of at least $10 million from Australia would at least increase the capacity to assess asylum applications. This was rejected by the major parties.

Early last year a Hazara refugee in the Leonora detention centre told a journalist this:

The people of Australia must understand we are not criminals, we are homeless. If peace in Afghanistan come back, we can’t stay (in Australia) because we love our country, we all want to help our nation. If Afghanistan have peace—no body come across a big ocean with 99 per cent chance of death for 1 per cent chance, in small boat come here and many Afghani died in Malaysia to Indonesia trip, this ocean … All Afghani people take risk and our life risk because they want to work here for peace … Their life in danger—because of this they cross the ocean to reach here and want protected in Australia.

That is something that has been so completely lost in this debate. How dangerous and how serious does your deterrent have to be? If you want to break the so-called business model of the people smugglers you need to be scarier than drowning, war, ethnic cleansing and torture, and more of a deterrent than the things that these people are justifiably fleeing from. We all know that that simply will not happen.

These processes that are combined with the oppressive and dangerous conditions in Sri Lanka, Pakistan, Afghanistan, Iran, Iraq and other states from which people arrive here seeking refuge provide the customers for the so-called business model of the people smugglers. Instead of making the alternative more accessible so that people do not climb onto these vessels in the first place, the major parties' approach is to make the smugglers' path undesirable by making the destination scarier than war, ethnic cleansing, torture, systematic rape and violence that these people are fleeing. The major parties believe a successful policy is one that makes refugees believe that they are better off facing repression in Iran, violence in Afghanistan or persecution in Malaysia than they are by reaching Australia's waters by boat. We have reached a point where this is how Labor and the coalition define success and history I believe will see it differently.

Debate interrupted.
'there will be no carbon tax under the government I lead'.

Government senators interjecting—

The PRESIDENT: Order!

Senator ABETZ: Very touchy, aren't they?

The PRESIDENT: Senator Abetz, you are entitled to be heard in silence. Order on my right! Senator Abetz, like anyone in this place, is entitled to be heard in silence. Senator Abetz, continue.

Senator ABETZ: Thank you, Mr President. Today marks the second anniversary of the Labor Prime Minister's solemn promise to the Australian people that 'there will be no carbon tax under the government I lead'. Does the minister agree that this broken promise is now easily the Prime Minister's best-known quotation, that it is seen by Australians as the defining statement of her prime ministership, that it constitutes Australia's most infamous political betrayal and that her own personal and her government's legacy will be forever besmirched by the false statement she shamelessly made five days before the 2010 election?

Senator CHRIS EVANS: They cannot even get the date right, apparently. Not only can't the tactics committee come up with a sensible question but the best they can do is convince themselves: as they all sat around they said, 'This is brilliant question. This is a real killer. Everyone's going to love all that political rhetoric.' Well, I don't know; I haven't met anyone on the street or at the footy or at my kids' sport who is interested in that nonsense. They are not interested in that.

Honourable senators interjecting—

The PRESIDENT: Order! Senator Evans, resume your seat. Order on both sides!

Senator CHRIS EVANS: I could equally talk about how it is one year since the shadow finance minister made clear that there was a $70 billion black hole in the Liberal Party's costings. One year ago, and apparently it is the anniversary. Happy anniversary! But I suspect those listening would say, 'What's that got to do with anything? It's just like Senator Abetz's question.' They want to know what is happening with the NDIS, they want to know what is happening with the cost of living, they want to know what is happening with their health and they want to know what is happening with the education services that the Commonwealth provides.

Senator ABETZ: That is pretty brazen. That is pretty arrogant. What is the Prime Minister doing?

Senator CHRIS EVANS: Senator, we have had a lot of arrogance from you guys in the last two days. Mr President, the opposition would be better served by focusing on policy on how we meet the great challenges that Australia faces, rather than by convincing themselves they sound brilliant with that really shallow rhetoric.

Senator ABETZ: Tasmania—Leader of the Opposition in the Senate) (14:03): Mr
President, I ask a supplementary question. I refer the minister to the words of Ms Gillard in 2005, and listen to this:

... the Labor Party is the party of truth telling. When we go out into the electorate and make promises, do you know what we would do in government: we would keep them.

Was Ms Gillard's promise that there will be no carbon tax an example of her truth-telling?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:04): It is a shame. I think Senator Abetz did not take my advice and continued to ask his prewritten supplementary question which had been carefully crafted in the tactics committee, because they had found a quote from 2005 and they had thought, 'This is the killer. We'll ask them about something the Prime Minister said in 2005.' So it is seven years ago and somehow this is important to Australians; somehow this is of vital interest to Australians. What we know is this parliament has introduced a price on carbon that will set up Australia for dealing with the threat of climate change and the need of our economy to adapt to that. We have acted, we have delivered good policy and the Australian people and the Australian economy will reap the benefit of that for many years—and we know that the Liberal Party will never ever rescind that legislation.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:05): I can put the leader out of his misery. We will repeal the carbon tax if the Australian people give us a mandate to do so. My further supplementary question is: was the Prime Minister similarly engaged in truth-telling when she promised loyalty to Prime Minister Rudd, a citizens assembly, cash for clunkers, offshore processing on East Timor and many other issues? This is an issue that goes to the honesty and integrity of the government.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:06): Mr President, I was tempted to go to Godwin Grech—but I won't—when we think about honesty and appropriate behaviour because Senator Abetz reminds me of his own behaviour. I think the Australian people, as I said earlier, are more interested in focusing on the issues that confront them. We know the Liberal Party once supported a price on carbon. They negotiated a deal with us. They ratted on that deal as a result of a party room coup that was won by one vote when Andrew Robb ratted on his leader. What we know is John Howard, in 2007, said we needed to price carbon. What we also know is the right-wing Luddites inside the Liberal Party decided to reverse that sound public policy. The carbon price will serve Australia well and we all know the Liberal Party will never rescind that carbon price because it is good public policy. (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT (14:07): I draw to the attention of honourable senators the presence in the chamber of a parliamentary delegation from Laos led by Her Excellency Madam Pany, President of the Lao National Assembly. 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 would ask the President to take a seat on the floor of the Senate.

Honourable senators: Hear, hear!

QUESTIONS WITHOUT NOTICE

Higher Education

Senator MARSHALL (Victoria) (14:07): My question is to the Minister for Tertiary
Education, Skills, Science and Research, Senator Evans. Can the minister advise the Senate on how the government's investment in Australia's higher education system has been reflected in the Academic Ranking of World Universities?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:08): I thank the senator for his question. Yesterday's release of the Academic Ranking of World Universities was an outstanding demonstration of the quality and depth of the Australian university system. Australia now has the third highest number of universities in the top 100 worldwide—a fantastic result. It is remarkable when you consider that that is only behind the United States and the United Kingdom, which have many more universities than Australia.

Senator Joyce: Are you ahead of Nauru or behind Nauru?

Senator CHRIS EVANS: Senator Joyce, you may not be interested in regional education but this government is. That is why the numbers are up so much and that is why they are thriving. The National Party may not think education is important but 19 of Australia's 37 public universities are now in the top 500. It is a testament to the leadership, the staff and the students of those universities but it is also a reflection of a government that has invested in those universities—invested in their quality and invested in their research. We know that under the Howard government they stripped funds out of the universities. It is their favourite place to go when they are looking to fill their funding shortfalls, and we know they will go there again if they get the chance. We have had record investment in universities and it is paying off. We know that we have increased funding to universities for research, including infrastructure, by 60 per cent.

Senator Joyce interjecting—

Senator CHRIS EVANS: We also know, Senator Joyce, that there are more country kids going to university, and more of them on youth allowance.

Senator Joyce interjecting—

The PRESIDENT: Senator Joyce, you will cease interjecting.

Senator CHRIS EVANS: Senator Joyce, have a look at the rural and regional figures. Why are they doing so well? It is because we funded them properly. Your disinterest on this issue does you no credit. Australia's future is as a smart country with a highly educated workforce. This is a fantastic result for the universities. It is a credit to them and a great credit to Australia and this government's investment in higher education.

Honourable senators interjecting—

The PRESIDENT: Order! I remind senators that interjections are disorderly.

Senator MARSHALL (Victoria) (14:10): Mr President, I ask a supplementary question. Can the minister advise the Senate on how the government's investment in Australia's higher education system has transformed access and participation?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:10): The ticket to a strong future is a better future in education. By opening up the doors of university education we are unlocking the potential of thousands more Australians who have been denied access in the past. One of the most pleasing things about yesterday's academic rankings is that the depth of the sector was revealed. It was not just about the elites, not just about the older universities in this country, not just about the sandstones; it
was about our newer universities and our regional universities not only lifting participation but growing excellence.

**Senator Joyce:** Give us a demonstration of how you roll over.

**Senator Conroy:** Another National supports the NBN—Richard Torbay.

**The PRESIDENT:** Senator Evans, please resume your seat. Senators Conroy and Joyce, it is completely disorderly to exchange comments across this chamber during question time. I am seeking to listen to the answer of the minister. Please continue, Minister.

**Senator CHRIS EVANS:** Mr President, one of the pleasing things is not only that we have been able to increase the number of Australians accessing university education and the numbers graduating; we are actually increasing excellence in the sector at the same time. Some commentators in recent days have tried to say that you cannot do both. Well, I think these figures absolutely prove that you can grow participation and lift excellence at the same time.

**Senator MARSHALL (Victoria) (14:12):** Mr President, I ask a further supplementary question. Can the minister advise of any policy threats to these successes?

**Senator Conroy interjecting—**

**Senator Joyce interjecting—**

**The PRESIDENT:** Order on both sides!

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:12): I think the behaviour of Senator Joyce through this question period is showing exactly what the problem is. The opposition have no interest in higher education. Their record in government was to slash—

**Senator Joyce:** You have no values.

**Senator Mason:** That's not true.

**Senator CHRIS EVANS:** Senator Mason, you are excused. You are the exception, which is why you did not gain favour under the former prime minister, because he was not interested in it either. A good university system is vital to this country's future. To grow that sector and to grow excellence you have to invest in it. The Labor Party is always committed to growing excellence and to growing the strength of that sector. The results yesterday show that we are delivering on that. Those opposite are a great threat to that because we know where they will fund their blackhole from. We know where they will start looking for the $70 billion. They will start in the university sector, where the Conservatives in Britain did and where they traditionally have. That is a real threat to our future. *(Time expired)*

**Economy**

**Senator CORMANN** (Western Australia) (14:13): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to the 2012 edition of KPMG's *Guide to International Business Location Costs*, the most thorough comparison of international business location costs ever undertaken by KPMG. Is the minister aware that that study found that, between 2010 and 2012, the cost of doing business in Australia went up by nearly six per cent while it came down in all other developed nations studied, except Japan? Is the minister also aware that the study found that the cost of doing business in Australia is now 3.7 per cent higher than that in the US, while Canada and all European nations studied were as competitive or more competitive than the US? Why is the Gillard government pressing ahead with world's biggest carbon tax when it will push up the cost of doing business in Australia even
further and when independent objective analysis is showing that Australia is already losing its competitive edge against its international competitors?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:14): I think it is interesting that Senator Cormann in his question refers to Europe as somewhere Australia should look to when it comes to competitiveness. If Senator Cormann wants to have double-digit unemployment, if Senator Cormann wants to have the risks in the financial sector, if Senator Cormann wants to see economies contracting, he can go out and explain to the Australian people that we should look to Europe. He should explain to them that, while 27 million people around the world as a consequence of the GFC lost their jobs, we have created 810,000 jobs here in Australia since Labor came to government. So if he wants to talk about a track record and the strength of the economy, I suggest he needs to do better than to look to Europe. With all due respect to our European friends, the reality is that that is not an example of an economy that is strong and certainly not by comparison in terms of investment in Australia.

The question shows yet again the sort of trash talking of the Australian economy that is clearly not in the interests of Australian workers but which those opposite are utterly addicted to. They cannot bear the fact that since we came to government that has been $919 billion invested in Australia. They cannot bear the fact that the economy is growing, they cannot bear the fact that unemployment is at 5.2 per cent. So they come in here and say it is all really bad and it is going to get worse and it is really bad because there is this carbon price. They said the sky would fall in previously and it might not have but they say it is going to. I think Australians deserve better than that.

Senator CORMANN (Western Australia) (14:16): Mr President, I have a supplementary question. I refer the minister to KPMG’s analysis of electricity costs, which showed that Australia’s power costs are already the highest of all 14 developed and developing nations studied and that the cost of electricity in Australia per kilowatt hour is more than double that in the US, Canada, Germany, Great Britain and France and higher even than that in Japan. Why is the Gillard government deliberately raising the cost of electricity by even more, contributing to a further loss of international competitiveness and eventual loss of jobs, investment and prosperity?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:17): I will do my best, but (a) I cannot see how that was a supplementary question and (b) that was a speech, not a question. It was a statement, not a question. But I am very happy to talk about electricity prices, which was the first part of that statement, because as the senator should know the average electricity bill went up by about 50 per cent in the last four years without the carbon price. Despite the fact that Mr Abbott claims that this is a fabrication, the reality is that your own state Liberal ministers and even Mr Turnbull know that is true. I will just remind the Senate what Mr Turnbull said:

There is no doubt that the bulk of the reason for the 50 per cent or thereabouts increase in electricity prices, for example, in New South Wales over the last few years has been because of investment in poles and wires.

Unfortunately, Mr Turnbull is one of the few that actually told the truth. Maybe you should listen to him, Senator.

Senator CORMANN (Western Australia) (14:18): I have yet another supplementary question. Why are the government and the minister in particular trying to blame shift
yet again when it has the direct power to bring power prices down now by getting rid of its carbon tax?

Senator Wong (South Australia—Minister for Finance and Deregulation) (14:19): Mr President, it is pretty desperate, isn't it, in the face of the facts that the vast majority of the increase we have seen in electricity prices—for which there has been no assistance—has been for reasons entirely unrelated to the introduction of a price on carbon? Senator Cormann cannot even convince members of his own front bench like Malcolm Turnbull who have the temerity to tell the truth on this issue and say, 'You know what, the facts actually do not stack up with the scare campaign that the opposition is running,' and that is explicit in Senator Cormann's question. Yes, there is an impact on electricity prices as a result of a price on carbon. It is significantly less than the impact as a result of the investment in poles and wires and the significant difference is we are providing increases to the pension, family tax benefits and other assistance. (Time expired)

Assange, Mr Julian

Senator Ludlam (Western Australia) (14:20): My question is to the Minister for Foreign Affairs, Senator Bob Carr. Minister, in response to several carloads of metropolitan police entering the building that houses the Ecuadorian embassy in the middle of the night London time, cordonning off the street and threatening to break the door down and threatening to rezone the embassy, have you or the High Commissioner in London made representations to the United Kingdom to not violate the Vienna Convention on Diplomatic Relations by entering the premises of the Ecuadorian embassy without the consent of the head of mission? I am interested to know whether we have made any representations to the British government in this regard?

Senator Bob Carr (New South Wales—Minister for Foreign Affairs) (14:20): Australia, of course, is not a party to this decision. It is a matter between Mr Assange and the governments of Ecuador and the United Kingdom. The court case that led to this affair arising in this fashion is between Mr Assange and the government of Sweden. I am advised that Mr Assange remains in the Ecuadorian embassy where he has been since mid-June. This morning the Ecuadorian Foreign Minister did announce a decision would be made on his asylum claim at 10 pm Australian Eastern Standard Time. The outcome of Mr Assange's asylum claim, of course, is a matter for the Ecuadorian and United Kingdom governments. The Australian government cannot intervene in the UK legal process. We have no standing in the British courts, but the government does not take up the case—

Senator Ludlam: Mr President, I rise on a point of order going to relevance. I appreciate the minister is reading from a prepared brief, but it is not a brief for the question that I asked. The question I asked was whether we have made representations to the British government on the occupation of the embassy building by Metropolitan Police. That is a yes or no question, Minister.

The President: There is no point of order. The minister is answering the question.

Senator Bob Carr: Mr President, the senator's question is based on the assumption the building is being occupied by Metropolitan Police. I have not been advised of that. To date there have been 62 representations made by the Australian government about the consulate contact with Mr Assange or his legal representatives since legal proceedings commenced in 2010.
According to advice I have from the department, no Australian has received more attention in a comparable space of time in terms of consulate representation than Mr Assange. This includes representations on his behalf to the government of the United Kingdom and the government of Sweden to obtain assurances of due process in current and future legal proceedings.

Senator Bernardi: Have you spoken to Henry Kissinger about it?

Senator BOB CARR: I do not think it would be of the remotest interest to Henry Kissinger. (Time expired)

Senator LU DLAM (Western Australia) (14:23): Minister, I am going to take it that your answer to my question is, 'No, representations were not made'. If you feel like you need to correct the record, then please do. My supplementary question is—

Senator Chris Evans interjecting—

Senator LU DLAM: Because the embassy is being interfered with, Senator Evans. Minister, despite the attempts to obviously threaten and intimidate made by the UK government, will the Australian government respect the decision by—

Honourable senators interjecting—

The PRESIDENT: Order! Just wait, Senator Ludlam. I will give you the call when there is a silence. You are entitled to be heard in silence.

Senator LU DLAM: Ecuadorian authorities at 10 pm tonight if they grant asylum to Australian citizen Julian Assange?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:25): Mr President, the question of whether the Ecuadorian government grants Mr Assange asylum is a matter for them. We will seek information on it, but we will not make representations to them one way or the other. It is not a matter for us; it is a matter between the asylum seeker and the government of Ecuador. We have no status in the UK court system, and we do not intervene in courts where Australian citizens outside the country are engaged in any case. But I can tell the senator that we made representations to the government of Sweden seeking assurances that, were they to succeed in their extradition of Mr Assange, he would be treated according to due process—in other words, he would be treated as any citizen of Sweden would be treated—and they gave us that assurance. In other words, if he came to be detained in that country, he would have access to his lawyers and to his family. (Time expired)

Senator LU DLAM (Western Australia) (14:26): Mr President, I thank the minister for his answer and I ask a further supplementary question. Can the minister tell the Senate what the government will do beyond providing basic consular assistance to protect Mr Assange if there is evidence that he is being subjected to political persecution by the United States government or its allies? If so, can the minister describe how this intervention would differ from basic consular assistance?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:26): Mr President, first, might I say that that is entirely hypothetical. There is no evidence of interest in him from the United States government. If extradition of Mr Assange were sought on a charge to which capital punishment would apply, we would oppose it. We would oppose it on principle; we would oppose it strongly. We have no evidence, however, that the United States are seeking to extradite him and, in any case, over the past two years they had every opportunity to seek his extradition from the United Kingdom, with which the US have a robust extradition arrangement and about which they have probably got more ease in
seeking extradition than they would have
were he in Sweden. But they have not sought
it. In two years they have not sought it, and it
would be easier for them to seek extradition
of him from the United Kingdom than it
would be from Sweden. Any application for
Mr Assange's extradition from Sweden—
(Time expired)

Carbon Pricing

Senator HUMPHRIES (Australian
Capital Territory) (14:27): Mr President, my
question is to the Minister representing the
Minister for Climate Change and Energy
Efficiency, Senator Wong. Is the minister
aware of recent analysis conducted by the
National Centre for Social and Economic
Modelling at the University of Canberra
which reveals that the carbon tax will
increase costs for ACT households by an
average of $9.71 per week, compared to
$5.79 per week in South Australia? Can the
minister explain why Canberrans should pay
almost 60 per cent more under her
government's carbon tax than people in her
own state of South Australia?

Senator WONG (South Australia—
Minister for Finance and Deregulation)
(14:28): My recollection, and this is going
back some time, is that one of the reasons for
the lesser increase in South Australia is that
South Australia has a higher proportion of
renewable energy, so therefore you see a
lower level of increase. But the figures that
were released by the various states and
territories about the increase in prices for
electricity were pretty much precisely where
the Treasury modelling assumed they would
be, so around a 10 per cent increase. As the
senator would know, unlike the
approximately 50 per cent increase that we
have seen ex carbon price over the past few
years in electricity prices, of course this price
increase is associated with the provision of
increases to family tax benefit pension as
well as tax cuts, all of which the coalition are
asserting they will in fact roll back and
remove—if they are to be believed on that.

I would make the point to the senator that
if he is concerned about the pricing of electricity I would assume he would be
primarily concerned by the largest
component increase in the price of
electricity, which is not carbon—which is in
fact investment in poles and wires. If he is so
concerned about the cost of living for
Australian families, I wonder why he voted
against the Schoolkids Bonus—why he voted
against putting money into the pockets of
Australian families to help them with the
cost of schooling their children. The reality
is that those opposite talk about worrying
about cost of living but they come in here
and vote against working families when the
chips are down.

Senator HUMPHRIES (Australian
Capital Territory) (14:30): Mr President, I
ask a supplementary question. I thank the
minister, but she says that the
largest component of the price rise has not been the
carbon tax. Is she then aware that the ACT's
independent Competition and Regulatory
Commission has found:
The increase in the cost of wholesale
electricity is almost entirely attributable to the
introduction of a price on carbon by the
Australian government.

Can the minister explain to Canberra
residents why the carbon tax component of
their price hike, some 75 per cent of the rise,
should be so much higher than that of other
Australians?

Senator WONG (South Australia—
Minister for Finance and Deregulation)
(14:31): Again I would refer to my previous
answer, which is that the vast majority over
the numbers of years of the increases in
electricity prices has been as a result of
investment in poles and wires. I would refer
the senator to his colleague Mr Turnbull in
the other place who has recognised that fact.

Senator Abetz: Answer the question!

Senator WONG: I am answering the
question, Senator Abetz; the problem is you
do not like the answer, because the truth is
not something you wish to discuss when it
comes to electricity prices, nor does the
senator wish to discuss the fact that the
Australian government, through its Clean
Energy Future package, is providing
assistance to Australian households, as I
said, through pensions, family tax benefit
and tax cuts, all of which the coalition say
they oppose.

Senator HUMPHRIES (Australian
Capital Territory) (14:32): Mr President, I
ask a further supplementary question. Again,
the minister says that the government is
providing assistance. Is she aware that the
ACT Labor government has analysed this
situation and found that 60 per cent of
Canberra households are either
uncompensated or undercompensated for the
Gillard government's carbon tax price hike
and that 22 per cent of Canberrans received
no compensation whatsoever?

Senator WONG (South Australia—
Minister for Finance and Deregulation)
(14:32): We made our decision to focus the
assistance to Australian families on those
who need it most, and that is people on the
pension; people on family tax benefit; and
people earning under $80,000 per year, who
will receive a tax cut. That is nothing to do
with state or territory boundaries; that is the
position the Labor government took, and we
stand by that. We stand by a Labor decision
to ensure that those in Australia who need it
most get the most assistance under the
carbon assistance package.

The senator tries to suggest that somehow
we have got it in for the ACT. I tell you
what: the senator can go out and tell
Canberrans why he supports the sorts of job
cuts in Canberra that we see Campbell
Newman imposing on Queensland. He can
go out and tell them why it is that Joe
Hockey always beats his chest about his
taking a meat axe to the Canberra Public
Service. That is what he should go and tell
his constituents. (Time expired)

Centrelink

Senator FURNER (Queensland) (14:33):
My question is to the Minister for Human
Services, Senator Kim Carr. How does the
minister account for the rising wait times
across Centrelink call times?

Senator KIM CARR (Victoria—Minister
for Human Services) (14:34): I thank
Senator Furner for his question. This is one
that rightly every senator and every member
is entitled to ask. As we are obviously
strongly focused on the issues of people
waiting to get service it is a matter of
considerable concern to this government. At
the moment the Department of Human
Services is taking 150,000 phone calls a
day—this is Centrelink alone—and is
making some 38 million phone calls in the
space of a year.

Senator Joyce interjecting—
Senator Conroy interjecting—

Senator KIM CARR: So demand is
extremely high and it is growing and, as a
consequence, Senator Joyce, waiting times
are in fact rising.

Senator Joyce interjecting—
Senator Conroy interjecting—

The PRESIDENT: Order! Senator Carr,
resume your seat. Senator Joyce and Senator
Conroy, I remind you that interjections
across the chamber are disorderly. There
have been repeated occasions where I have
reminded you of this today. The minister is
titled to be heard in silence.
Senator KIM CARR: This is no reflection on the professional staff at call centres or those who support them in back offices; it is simply a reality of Public Service delivery today. We are dealing with the volatility of the global economy; we are dealing with some 150 changes in the social security system that have arisen from the improvements made by this government in the last budget; we are dealing with many more Australians who are on part pensions and have to report their income changes to the department; we are dealing with calls which are of a much higher level of complexity. We are also dealing with a situation where we have claims by the Liberal Party that they are going to take some 12,000 public servants out of the Commonwealth Public Service in the first two years of a Liberal government. Imagine what that is going to do to waiting times. Imagine what that is going to do to the capacity to respond to the legitimate needs of the Australian people during periods of considerable economic change. Average waiting times are about 12 minutes and we are concerned that that time is growing. But taking 12,000 people out won't improve it.

(Time expired)

Senator FURNER (Queensland) (14:36): Mr President, I have a supplementary question. Can the minister inform the Senate what action the government is taking to reduce these waiting times?

Senator KIM CARR (Victoria—Minister for Human Services) (14:36): First and foremost we are investing in our staff, which is the most important asset the Commonwealth has in terms of human services delivery. We are putting more people on the phones. Since March this year the department has recruited 720 staff to deal with the surge in demand. The government has provided some $200 million to keep on 600 of those staff until February next year.

Second, we are redeploying staff to ensure that there are in fact more people available to deal with waiting times. The new arrangements with Telstra that we are developing will also provide more flexibility and provide us with further options in ensuring that we can be more effective in our response to demands from the public.

Third, we are working with staff so that we can provide a better service to the people seeking assistance from the Commonwealth. I have established a joint working group between DHS senior management and the Community and Public Sector Union to provide advice on better ways of operating. (Time expired)

Senator FURNER (Queensland) (14:37): Mr President, I ask a further supplementary question. What role does the minister see for new technologies in responding to the demand?

Senator KIM CARR (Victoria—Minister for Human Services) (14:38): We need, of course, to ensure that new technologies provide an important part of the new service delivery models. We are providing options in terms of call-back. We are providing new apps to provide direct access for students to ensure that we can provide a better home delivery service online as well as freeing up resources to deal with more complex problems.

Honourable senators interjecting—

Senator KIM CARR: I am asked, 'What about the knuckle draggers?' Of course, the real problem here is that the knuckles are now being taken off the ground—and in science we can expect some evolution!—to an attack directly into the heads of public servants: 12,000 public servants. How will that help? How will that help to assist in ensuring that people can get the responses they need from the Commonwealth? A 12,000 cut to the Public Service will
undermine the capacity of this or any part of this government to ensure that services are delivered to the Australian people. (Time expired)

Carbon Pricing

Senator McKENZIE (Victoria) (14:39): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to the fact that the carbon tax has caused an almost threefold increase in the cost of refrigerant gases for farmers, small businesses and Australian households. Ausveg, who represent Australian fruit and vegetable growers, have said that the cost of the most common refrigerant, R134A, will increase from $65.72 per kilo to $181.82 per kilo. The R404A refrigerant used by vegetable growers will increase from $92.80 per kilo to $377.71 per kilo. Given that Australian farmers are already facing difficult circumstances—rising costs, the high Australian dollar and skill shortages—why is the Australian government insistent on making a bad situation worse and forcing up the cost of producing Australia's fruit and vegetables by imposing the world's biggest carbon tax?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:40): It might have been useful if the tactics committee had let the good senator know that this issue has been raised previously in the house on a number of—

Senator Cormann: You don't like answering questions, do you?

Senator WONG: I am actually trying to be of assistance. In fact, it has been quite demonstrably shown that a number of the assertions made, I think by Ms Mirabella, were not correct. In fact, this has led, for example, to the Australian Consumer and Competition—

Opposition senators interjecting—

The PRESIDENT: Order!

Senator WONG: Thank you, Mr President. In late July, for example, an enforceable undertaking was accepted by the ACCC from a refrigeration contractor, Equipserve, to correct incorrect claims regarding price increases being wholly due to the carbon price. So I would urge the senator to reflect on the wisdom of picking up assertions, a number of which have been in the public arena for some time and which are not correct.

It is the case that some wholesalers did issue price lists with significantly increased prices. These price increases cannot be attributed to the carbon price alone. The minister has written to wholesalers to ask them to justify their price increases, and I also note, as I previously indicated, that an enforceable undertaking has been accepted by the ACCC in relation to one particular company in South Australia.

The senator referred to two gases, R404A and another one. I can come back to those in the supplementary.

Senator McKENZIE (Victoria) (14:42): Mr President, I ask a supplementary question. What does the government say to those fruit and vegetable growers and their consumers who voted for the Labor Party in 2010 based on the Prime Minister's commitment, given precisely two years ago, that there would be no carbon tax under the government she led? How can Australia's fruit and vegetable growers, as small business owners, and their consumers, who are wanting fresh, safe Australian produce, trust the Labor Party again?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:43): What I would say to them is: do not believe the dishonest scare campaign that is being conducted—

Opposition senators interjecting—
The PRESIDENT: Senator Wong, just resume your seat. Order!

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence on both sides, we will proceed.

Senator WONG: I would say to them: do not believe the dishonest scare campaign which is being run by those opposite. Do not believe a man who suggests that whole towns will be wiped off the face of the earth. Do not believe a man who says whole industries will be shut down and who has been shown to be wrong—who has been shown to be nothing other than a shameless scaremonger.

I will give the senator some examples. The typical cost per year to fill a leak from a domestic refrigerator as a result of the increased carbon price is about 8c. The typical cost per year to fill a leak from a passenger vehicle is about $2.70. The price increases are nothing like what is being asserted by those opposite. It is another example of a shameless, dishonest, scare campaign. (Time expired)

Senator McKenzie (Victoria) (14:45): Mr President, I have a further supplementary question. I refer to the fact that Coles and Woolworths have refused to allow Australia's fruit and vegetable growers to pass on any of their costs associated with the carbon tax. The government has empowered the ACCC to prevent those with market power from increasing their prices in a misleading and deceptive way. What steps has the government taken to ensure that companies with market buying power do not prevent Australian farmers and small businesses from passing on legitimate cost increases?

Senator Wong (South Australia—Minister for Finance and Deregulation) (14:45): With respect, that is a completely different question. It is a question about ACCC powers. I refer the senator to the answer I gave yesterday to Senator Xenophon in which I outlined in quite an amount of detail the government's position on the issue she raises. It has nothing to do with the primary question, nor the supplementary. I also would make this point—

Senator Brandis: Mr President, on a point of order—

Senator Wong: Her Majesty is on his feet! I'm afraid you're no James Bond, George.

The PRESIDENT: Order, Senator Wong, resume your seat!

Senator McKenzie: Mr President—

The PRESIDENT: Senator Brandis was on his feet before you, Senator McKenzie. Senator Brandis.

Senator Brandis: Mr President, the minister cannot refuse to answer a question as she has just done. She could take a point of order but she has not done so. Having chosen not to take a point of order, it is not an acceptable answer for the minister to refuse to answer the question.

The PRESIDENT: Senator Brandis, there is no point of order there. Senator McKenzie.

Senator McKenzie: Mr President, for the minister's—

The PRESIDENT: Are you seeking a point of order or what are you doing?

Senator McKenzie: I am seeking to take a point of order. My question relates to the impact of the carbon tax—

The PRESIDENT: Is it a point of order that you are seeking?

Senator McKenzie: A point of clarification, yes.

The PRESIDENT: No, it has to be a point of order.
Senator McKenzie: A point of order.

The President: If it is a point of order you may proceed.

Senator McKenzie: My second supplementary refers to the previous supplementary and the original question in the fact that it is the carbon tax's impact on fruit and vegetable growers of Australia.

The President: There is no point of order. The minister is answering the question. The minister has 35 seconds.

Senator Wong: The expectation is for refrigerated goods like milk, fruit and vegetables to increase by about 0.4 per cent under the carbon price. This includes the impact of increased refrigeration and electricity costs, and this part of the total increase has been factored into the Treasury assumptions which have led to the household assistance of $10.10 per week. The Treasury assumption is that we are looking at about a dollar per week for an average household in food prices. We are providing around, on average, $10.10 per week in assistance.

Manufacturing

Senator Madigan (Victoria) (14:48): My question is to the Minister representing the Prime Minister, Senator Evans. Minister, my question relates to the effectiveness of Australia's economic and industry policies to support our manufacturing industries. In light of reports in this week's Financial Review that the Australian manufacturing industry has shed 125,000 jobs over the last four years, the de-industrialisation of Australia we were previously warned about by US economist and strategist Edward Luttwak on ABC's Lateline on 7 September 2010 appears to be coming to pass. Can the minister advise of the specific manufacturing, trade and economic policies the federal government has adopted to protect ourselves from de-industrialisation, in line with Mr Luttwak's advice that we disenthrall ourselves of 19th century free trade theory that does not work?

Senator Chris Evans (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:49): I thank Senator Madigan for his question and acknowledge he is deeply interested in the manufacturing issues in this country. While he is right to point to the very serious loss of jobs across the manufacturing sector, it is important to remember, though, that the sector still employs one million Australians. It is still a very important part of our economy and is very important to many families in this country. While some jobs are being lost, there are also areas of growth, but it is the case that manufacturing is facing some very difficult times. That is why the Labor government is investing in the industry to support jobs, to retain skills and to maintain a strong economy.

We are conscious that manufacturers are doing it tough, with the high Australian dollar and competition from imports. But, in the end, innovation and productivity are the keys for our manufacturers to remain sustainable and internationally competitive and make the move to a low-carbon economy. We have a range of policies to drive innovation and productivity, many in my own sector of education and skills, to help the manufacturing sector and to support the jobs it creates. I think it is very important—and this is a focus for this government—to ensure that Australian manufacturers have access to major projects and the global supply chain opportunities. I know that a big issue for people has been about how they get access to those global supply chain opportunities.

I would point out that the Clean Energy Future package is one of the most important industry and innovation policies this nation
has ever seen. Over $15 billion will be invested in creating the jobs of tomorrow—many, notably, in manufacturing. In addition, there are a range of government programs that look to support innovation and growth in our manufacturing sector. (Time expired)

Senator MADIGAN (Victoria) (14:51): Mr President, I have a supplementary question. Can the minister advise of the strategies being employed by the federal government to support Australian manufacturers in light of the industry subsidisation and currency devaluation China uses to support its domestic manufacturers and China's rapid industrialisation?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:53): I think that it is also the case, Senator, that there were tens of thousands of people employed as typists and blacksmiths in the old days and those positions are no longer in our workforce. The reality is that the economy changes. Jobs grow in some sectors and are made redundant in others by technology or other factors. But it is a serious concern because manufacturing is so central to economic wellbeing. That is why the Prime Minister created the Manufacturing Task Force, to see in a bipartisan way with unions and employers how we could protect and grow the sector. They handed down their report this morning and I refer the senator to that report. It is a report that attempts to look at the future of manufacturing and how we can set out our plans for supporting it, and I think it will be an important basis for future government policy as we respond to this very important report.

National Disability Insurance Scheme

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (14:54): My question is to the Minister representing the Minister for Disability Reform, Senator Evans. As the minister would be aware, there is strong cross-party support for a National Disability Insurance Scheme.
Senator Wong: Have you talked to Joe Hockey? When you do, he says something different.

The President: Order! Order on my right! Senator Fifield is entitled to be heard in silence.

Senator Fifield: In that context and on behalf of Australians with disability, my question is: why, given the Productivity Commission recommended $3.9 billion of Commonwealth expenditure to support the first phase of the NDIS, has the government only allocated $1 billion over the forward estimates? Given this discrepancy, how can the first phase of the NDIS be completed?

Senator Wong: You have contributed not one cent!

Senator Chris Evans (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:55): I thank the senator for his question. I think that Senator McEwen made the pertinent point that it is all very well to wear the T-shirt and say you support the NDIS; there is a question about whether you actually show that support and whether you actually commit funds to it. The reality now in Australian politics is that there is only one party in this country that is actually putting money up. I have listened to the opposition's Treasury spokesman, Joe Hockey, on the subject and he made it very clear that there is no commitment from the Liberal and National parties to fund this. So I will not be lectured by the senator about commitment to this scheme. What this government has done is commit $1 million to the trial phase—real money on the table—and as a result of that financial commitment, we have got support from the state governments, many of them coalition governments, for the first stage to go ahead. So we are not just mouthing the rhetoric, we are getting on making this work. We commissioned the report, we have responded to it and we have allocated $1 million to make sure that the first stage works. We have now reached agreement with New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory for launch sites. We have insisted, and they have responded, by putting real money on the table.

Honourable senators interjecting—

Senator Fifield: Mr President, on a point of order. My question was: how does the minister account for the discrepancy between the $3.9 billion the Productivity Commission said was necessary to deliver the first phase of the NDIS, and the $1 billion that the government has allocated? You cannot complete the first phase with almost $3 billion less than the Productivity Commission said was necessary.

The President: Order! There is no point of order. I believe the minister is answering the question. He has 30 seconds remaining.

Senator Chris Evans: Mr President, the senator would have more credibility if he said that the Liberal coalition were supporting the expenditure of $3.9 billion, but they are not. We responded to the Productivity Commission report by planning a first stage and funding that first stage. That is happening. That is being rolled out on the ground now and we have got even coalition states to come to the party and help fund this. I think that the senator ought to focus on supporting rather than trying to nitpick. (Time expired)

Senator Fifield (Victoria—Manager of Opposition Business in the Senate) (14:58): Mr President, I have a supplementary question. I have been asked by many Australians with disability to inquire of the government whether they are...
indeed committed to both fully funding a national rollout of the NDIS and achieving the Productivity Commission's target date of completion of 2018-19. Has the government committed to 2018-19? Has the government committed to fund the full national rollout?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (14:59): We have started to build the national scheme and from 2018 under this government we will have a NDIS. So I am interested to know that when the senator is asked, 'Will you ask the government whether they are fully committed to funding it,' whether they also ask you, 'Is the Liberal-National coalition committed?' and I wonder, Senator, whether you are honest with them. Do you tell them you have committed nothing? Do you tell them that the shadow spokesman for the Treasury has made it clear that you cannot add to the $70 billion black hole anymore—that you have committed to paying back the super tax to the big mining companies, and that that will drive every expenditure cut you have to make and prevent you implementing new programs like the NDIS? That is the reality.

This government is committed to the NDIS, we are funding it and we are rolling it out. That is in sharp contrast to the Liberals' commitment—(Time expired)

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (15:00): Mr President, I ask a further supplementary question. I ask the minister—and to take it on notice if he needs to—whether the government will reconsider its rejection of Mr Abbott's proposal to establish a joint parliamentary committee, chaired by both sides of politics, to oversee the implementation of the NDIS—a proposal that would see the NDIS owned by the parliament as a whole.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (15:00): I think that the senator may have missed the key point: we are actually getting on with it. We are doing it. We are actually doing it! And interestingly, we are doing it with the cooperation of many state premiers. I think that the Liberal opposition in this chamber wants to show that this is possible and that they can support it: let us see you commit to funding it. Let us see you be honest and say, 'I am not just going to wear the T-shirt, I am not just going to say yes to everybody when they ask me the question: I am going to be honest with them and say, "This is how much I will put on the table. This is how much the Liberal Party will put on the table."'

Senator Fifield: Mr President, I rise on a point of order, on relevance. My question to the minister was whether the government is prepared to accept the hand of bipartisanship and whether the minister is prepared to convey to the Prime Minister again the request that there be a joint committee established to oversee the implementation; not a talkfest, but to oversee the implementation.

The PRESIDENT: Order! There is no point of order; I believe that the minister is answering the question. The minister has 26 seconds left if he has anything further.

Senator CHRIS EVANS: I think it should be clear to people that we are dealing with the people who have some relevance: the state governments have some relevance because they are making a financial commitment, not just mouthing platitudes. We will continue to work with those who show real commitment to the scheme, and I
suggest that the senator spend his time talking to the Premier of Queensland, Mr Newman, about whether he is prepared to support the scheme. That would be a useful use of his time. *(Time expired)*

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

**QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

**Carbon Pricing**

**Senator BACK** (Western Australia—Deputy Opposition Whip in the Senate) (15:03): I move:

That the Senate take note of answers given by the Minister for Tertiary Education, Skills, Science and Research (Senator Evans) and the Minister for Finance and Deregulation (Senator Wong) to questions without notice asked by Opposition senators today relating to the carbon tax.

We just saw the most lamentable circumstance in this chamber this afternoon when the leader of the Labor Party in this place, Senator Evans, in response to a question from Senator Abetz, made the statement that the coalition has no interest in the big policies of the day. Is it the case then that when there are lies from a Prime Minister they are of no interest to the community—that being, 'there will be no carbon tax under a government that I lead'? And when is it that a policy as profound as a carbon dioxide tax is of no interest to the Australian community?

Is this government so far removed from the mood of the Australian people that in fact when their own members and their own candidates started doorknocking, even in their own areas of interest, they found they had to stop doorknocking simply because so many in the electorate are so angry with them about what Senator Evans dismisses as being events of no policy interest? Is it little wonder that none of the members are using either the Labor brand or the Labor colours? I refer to the advertisement recently by Ms Melissa Parke in Fremantle, one seat which once would have been seen as a safe seat in Western Australia, when she did not even mention the word 'Labor' or the Labor brand in her electioneering campaigning.

It is interesting, isn't it, that Mr Paul Henderson, in the Northern Territory, and Mr Mark McGowan, in Western Australia, have no interest in this Prime Minister coming to either the Territory or to WA to support them in their forthcoming election campaigns. It is absolutely amazing, the fact that the polls show what the Labor Party know—and maybe they should start doorknocking again so that they can get some genuine feedback from the electorate. What they will learn is that the community is very, very interested in the big policies of the day, including the carbon dioxide tax. And they will also be interested in knowing that Australians are embarrassed by a Prime Minister who cannot tell the truth.

For example, we have heard from the government time and again about compensation for many in this community for the $23 per tonne carbon tax and its effect on energy. We heard from Senator Humphries here today what that impact is going to be on the community in the ACT, and clearly many of them have not been compensated. But what the Prime Minister did not say to the Australian community is what happens in the second and in subsequent years. If they got compensated this year, when the carbon tax is $23 a tonne, what is going to happen next year when it jumps to $25, and then $27 and even $40 a tonne—if, indeed, this government remained in power before a coalition government came in and disbanded this carbon tax? How many people have been told what the compensation will be next year? Already we
know from our electorates around Australia that those people who were compensated have spent those funds and have not yet faced the payment of those increased power bills.

We heard from Senator McKenzie in her question to Senator Wong, who was very, very scant in her efforts to answer it, about what is happening to those involved in the storage of any refrigerated goods—be that fruit storage, meat storage or whatever. We have heard the horrific prices now being charged to abattoir owners and meat processors as a result of the increased power charges. What about the businesses who are already being affected by this carbon dioxide tax? I note even the term ‘carbon tax’. Senator Sterle would be wise to stop and listen, because he too is well aware of the cost impost on the trucking industry—one which he used to proudly represent in this chamber. But, of course, he wants to leave so that he does not have to answer his own colleagues from the trucking industry on what the costs are.

Exporters are now facing competition overseas from suppliers who are not subject to this carbon tax. Our own import-competing businesses all of a sudden have a chain around their necks because cheap imports are not subject to this carbon dioxide tax. The vehicle-manufacturing industry, which received such generous subsidies from this government, is having an impost of some $400 per vehicle placed on it. Already 800,000 of the million cars that are bought each year are imported. Where is the logic in turning around and imposing that tax? In my final few seconds, I refer to the magnetite iron ore industry in Western Australia, decimated by this tax. (Time expired)

Senator FURNER (Queensland) (15:08):
It is no surprise that the scare campaign from those opposite is still alive and well. That is consistently what they have been doing all along on this issue concerning the carbon price. There were quite a number of relevant responses presented to the opposition today from Minister Wong in regard to a lot of the furphies, myths and untruths that those opposite are peddling to substantiate their scare campaign in order to make sure that they will try and sneak out there in the dark wherever they can touch on people, whether it be in their backyards, in wrecking yards, in bakeries or, lately, in tuckshops. Imagine going into tuckshops. How low can you go—going into tuckshops and scaring schoolchildren? Let us not forget that those opposite voted against the schoolkids bonus.

I had no problem the other weekend at an agriculture show in my electorate, at Pine Rivers, where people were coming up to me and not one of them, surprisingly enough, mentioned the carbon price. But they were very enthusiastic to sign a petition that we had on our table about why the Queensland government is not committed to an NDIS program. Those that are Queenslanders—and there are none of them there. Oh, there is Senator Boyce opposite. I am sure she is out there telling Campbell Newman: ‘Let’s do something about this NDIS. Let’s get on board. Let’s go to the COAG meeting and put some sort of commitment forward to COAG to support it, as those other coalition states like Victoria and New South Wales have done.’

But Campbell Newman came to the table with nothing—with zero. Those pages of the petition that I had filled at the show were overwhelming. But, rather than commit money to an NDIS program, Campbell Newman is prepared to spend $80 million on the racing industry, and some of that $80 million is going to a new goat track out at Barcaldine. I do not mind Barcaldine, because that is the birthplace of the Australian Labor Party. It is a place that
should be recognised and honoured. But imagine spending $80 million on the racing program or the racing industry and not being willing to commit one cent to an NDIS program. You should be ashamed of yourselves, you Queensland senators.

Going back to the other issues that were raised today in the questions surrounding the issues and questions about the carbon price, Senator Wong quite pointedly made out the relevance of what has been created since we have been in government. As a Labor government we have created 810,000 jobs. It is something that you opposite are very concerned about, because we are actually contributing to the economy and doing something about the situation in the world. I find that every ambassador that appears before the Joint Standing Committee on Foreign Affairs, Defence and Trade comes and commends us as a government on the manner in which we handled the global financial crisis. Yet once again, going back to my home state, we have a Premier that talks down the economy and wants to try to label it by comparing the economy of Queensland with that of Spain. How atrocious! What unemployment rate does Spain have? A 25 per cent unemployment rate. What do we have in Queensland? We have about 5.8 per cent, and it is getting worse, Mr Deputy Prime Minister, because—

**Opposition senators interjecting—**

**Senator FURNER:** Mr Deputy President. The Premier in Queensland, Campbell Newman, is sacking the workforce in the public service. He has a target of 20,000 jobs to go, and you can really appreciate what that is going to do to the services that people rely upon. That is why, if those opposite ever get into government, we know what they will be doing. Senator Kim Carr pointed out today that the objective of Mr Abbott would be to sack 12,000 public servants, and I am sure that it is only the start to it—12,000 and more to come. The example that has been provided in Queensland is of 20,000 jobs that are going to be terminated and taken off what they call non-front-line employment. Jobs will disappear out of this capital and this country as a result of funding the coalition’s $70 billion black hole. That is what they have to do. They will be taking money away from pensioners. They will be sacking public servants right across the countryside should we ever be in the unfortunate situation of getting a coalition government in this house. Once again, all the untruths that have been told by those opposite have been—(Time expired)

**Senator WILLIAMS** (New South Wales—Nationals Whip in the Senate) (15:13): Mr Deputy President, I will take that slip of the tongue by Senator Furner, referring to you as 'Mr Deputy Prime Minister'. I could see that—Nationals leader in the lower house in a coalition government. I think that would be a pretty good line.

**Senator McEwen:** You reckon he’s better than Barnaby?

**Senator WILLIAMS:** No, we are talking about a coalition. He would be a fine Deputy Prime Minister, as he is a fine Deputy President.

**Senator McEwen:** Is this another three-cornered contest?

**Senator Wong interjecting—**

**Senator WILLIAMS:** I will continue on when the interjections from the young ladies on the other side stop.

**Senator Wong:** Flattery, flattery, flattery—water off a duck’s back!

**Senator WILLIAMS:** You give a compliment and you get ridiculed for it—a strange place, this! Referring to the questions.
today in relation to the carbon tax, Senator Furner made some points about Premier Campbell Newman not contributing any money to the NDIS. There is a serious problem in Queensland: they have a serious government debt—currently, I think, around $70 billion. This is for just 4½ million people. It is expected to go to some $80 billion by 2015 and some $100 billion by 2017-18. Is it any wonder Queensland is tightening the belt?

But the point I make is about the carbon tax. What a time to put extra costs on their economy—a time when they are struggling and have huge government debt. We know they have the huge government debt; there was a Labor government prior to this new Liberal National Party government in Queensland. We know throughout the history of my life that every time the Labor Party has been thrown out of government, whether it be state or federal, the chequebook is empty and usually the overdraft is maxed out. Sadly, Queensland, which was debt-free for decades under coalition government, is now wallowing in serious debt. This is not a laughing matter; this is a serious problem they have in Queensland; and, unless hard decisions are made, they will not correct themselves. They will go down the gurgler.

That is why we talk about the carbon tax at this time. My colleague Senator McKenzie highlighted AUSVEG and the fruit and vegetable industries. It is quite clear that rural and regional Australia is going to be hit the hardest. We already have the highest electricity prices. We already have the highest freight charges. We already have the highest cost of doing business because of a lot of those freight components. And yet this is going to add more. They talk about 10 per cent. There is an 18 per cent increase in electricity charges as of 1 July in New South Wales. IPART, the independent body, has put the price up 18 per cent. Fifty per cent of that rise is due to the carbon tax—to achieve what? That is the point.

I want to follow on from Senator Back's comments about the transport industry. There are many crazy parts of this carbon tax, but this is the craziest. Many of them over there are colleagues of the Transport Workers Union: Senator Sterle is a truckie, and I spent a lot of times in trucks myself; Senator Conroy is a big supporter of the Transport Workers Union. And they are going to add another $515 million in fuel tax to our transport industry, to the $8 billion litres of diesel the truckies use around Australia. And this is going to change the planet. The transport industry has done such a great job with their new, modern Euro 4 motors, where the pollution is basically zero compared to the older motors, yet they are going to hit the transport industry—which, of course, will have the most devastating effect on, once again, rural Australia, where in a town like where I live we have no rail and everything comes into the town by road. Everything goes out by road—for example, the thousand head of beef that are sorted each day at Bindaree Beef abattoir, a business I am so proud is based in my home country town. They will pay the extra freight charges—that is, unless there is a change of government come the next election.

Speaking of that, there will be an additional $1.7 million in the first year to the cost of running the abattoir at Inverell. The figures came forward at a Senate inquiry. But their competitors in America and overseas, against which we compete in the markets in Korea and Japan—the beef markets—do not have those costs. We are removing the competitive edge of our economy, especially those rural economies which rely so much on the export of our agricultural produce and products and our minerals. It has been two years since Prime
Minister Gillard made that now-broken promise, and it will haunt her to her political grave.

Senator PRATT (Western Australia) (15:18): It is Groundhog Day on carbon price yet again in this place. Over and over again—every question time—we seem to go through this topic. But it is wearing very thin. Pleasingly, the opposition cannot score a point, because their scare campaign is now very tired. It is very convenient for those opposite simply to make the facts of this debate up. You do not rely on the facts; you are simply misleading the Australian public with your scare campaign, as Senator McKenzie's discredited question showed when clearly exposed by Senator Wong's answer. The political tactic that the opposition has displayed is taking a multitude of price rises across the Australian economy that are due to any number of different factors and blaming them all on the price on carbon. It happens day in and day out.

You even put it in your pamphlets to the Australian public. Here I have a letter from Mr Michael Keenan, the member for Stirling. He talks about electricity prices going up by 66 per cent. And then he goes 'plus carbon tax'. What does 'plus carbon tax' actually mean? That 66 per cent is Colin Barnett, who has driven up Western Australia's electricity prices. That is the penalty that Western Australians are paying.

Do you really want to know what price rises under the carbon price look like? You can talk about what genuine price increases actually mean. Let's talk about genuine price increases. I was very pleased last week to be talking to Mr Adam McHugh, who is a Murdoch University researcher and economist, and he has been looking at the mathematical modelling that looks at price rises. We were talking about pies before, were we? Let's take pies and, perhaps, birthday cakes. Let's take birthday cakes, which clearly are something we like to use as a political example. Our national accounts data show the prices in 1,200 commodities, so you can drill right down to the ingredients of a birthday cake, just as Mr McHugh has done, to legitimately look at what price rises actually can be attributed to the carbon price. To be honest, it is very similar to what the ACCC has to do when it looks at whether companies are legitimately passing on price increases that are related to a carbon price or they are price increases that should be attributed to other increases in costs.

What did Mr McHugh find? He looked into the inputs of a birthday cake. He did a complete life cycle assessment of a birthday cake. He went right through the supply chain of a birthday cake. What did it add up to? For a $25 birthday cake, what was the price increase? It was a massive 10c.

Senator Ludlam interjecting—

Senator PRATT: Yes, Senator Ludlam, you were there at that very briefing and know that it was just 10c. I suggest that senators in this place get a grip on what the real cost increases of carbon pricing are. When I say this is wearing thin, it is indeed wearing thin. Do you know why? Because the Australian public—after a very sustained scare campaign, which many people have been susceptible to—is actually starting to wise up. As of 1 July, you can see the reality of what price increases relating to the carbon price are starting to look like.

When it comes to the issue of carbon, I am very proud of the leadership that our Prime Minister has shown on this question. I am very proud of the policy focus that we have taken because it shows that the leadership that we have taken on carbon is indeed in the national interest. The questioning by those opposite of the Prime Minister and her
leadership has been absurd. As Minister Evans highlighted, we are about being focused on our government's agenda. *(Time expired)*

**Senator BOYCE** (Queensland) (15:23): There is certainly something wearing very thin around the nation, and it is the patience of the Australian people with this inept government. It is wearing thinner and thinner as time goes on. When I speak to my constituents, to manufacturers and to other people who create jobs, they actually talk about something else before they mention the carbon tax, and that is the desperate need for an election in this country. That is the first thing they want to talk about. Their patience is wearing very, very thin.

But let us talk about the fact that we are today—‘celebrating’ is certainly the wrong word—looking at the second anniversary of the current Prime Minister's broken promise on carbon tax: the fact that a government that she led would never, ever introduce a carbon tax. Yet, here we are with problems developing from it. I must admit that I cannot help but be completely bemused by the comments made by Senator Wong in answer to the questions put to her or by the comments made just then by Senator Pratt, which is that a birthday cake goes up by 10c so the carbon tax is all right. Refrigerant gas will lead to a 0.4 per cent cost increase for a household over a year, and that is all right. Electricity prices have gone up by 50 per cent and will rise further, and that is all right. So what we have is increment after increment, and that is desperately affecting everyone in this country.

If Senator Furner managed to get out of town a bit, he would know that it is not just fruit and vegetable growers who are very concerned about the rise in refrigerant costs. Graziers in western and northern Queensland and the fishing and prawning fleets of far northern Queensland are also terrified about what is happening with refrigerant gas price increases and all the other imposts that are building up one after the other, after the other because of this government's carbon tax. Senator Pratt appears to want to claim that every price increase is the problem of a Liberal premier and that all the good events are to be sheeted home to the Labor Prime Minister. Unfortunately, you cannot have it that way. You have to take some responsibility for the results of your actions, or lack of them in the case of this government.

Let us look at the CEO forum that has been happening in Parliament House over the last few days. The Australian heads of over 100 international companies are talking about how they feel about this government. Of the 150 chief executives who have been in Parliament House this week, 60 per cent of them say that they are dismayed by Canberra's increased policy uncertainty; 45 per cent of them say that they are less likely to invest in Australia in the future. They claim that their biggest problem of all is this policy uncertainty and what the heck is going on with this carbon tax. The biggest issue of the lot for 36 per cent of those executives is the carbon scheme. They make the point that, until they have some certainty from this government, they cannot proceed.

How can you have certainty with a government that has been cobbled together with the Greens, who want the carbon tax to be put at such unrealistic levels that it would destroy manufacturing and business in Australia? This government is led by a woman who, two years ago, promised that no government that she was involved in would ever have a carbon tax. We cannot have any faith whatsoever that this situation is not going to get worse and worse. One of the other big concerns of foreign executives is that, if this government is to proceed with the
carbon tax, why on earth won't they look at some sort of equivalent market price? (Time expired)

Question agreed to.

Assange, Mr Julian

Senator LUDLAM (Western Australia) (15:28): I move:

That the Senate take note of the answer given by the Minister for Foreign Affairs (Senator Bob Carr) to a question without notice asked by Senator Ludlam today relating to Mr Julian Assange.

The minister chose not to provide to the chamber earlier this afternoon answers to questions that I put to him about the situation unfolding in London overnight. My question was, as is the format of this place, threefold, but it effectively went to whether the minister was aware of, had taken an interest in and contacted our high commissioner or, particularly and specifically, had made representations to the representatives of the British government either in Australia or in London as to why they appear to have breached international law and threatened the integrity and potentially also the staff of Ecuador's embassy in London in their pursuit of Australian citizen Julian Assange, who has obviously been in that embassy since June.

The minister was, as he always is, on-message and completely off-topic, but he was at least on-message. I could just about have read the brief that he read into the chamber, because I have heard it so many times. I have nearly memorised it. It does not matter what question you put to him; you get the same thing back.

I asked because of the actions of the British government. There is a lot of rumour and speculation flying around at the moment as to what has actually occurred. The statement made by the government of Ecuador this morning said:

We are deeply shocked by the British government's threats against the sovereignty of the Ecuadorian Embassy and their suggestion that they may forcibly enter the embassy.

It has been surrounded by units of the metropolitan police and goodness knows who else. The British government appears to have threatened to break the door down or, potentially, even rezone the embassy so that it is no longer diplomatic territory. This kind of behaviour puts every embassy in the world at risk.

Imagine what Minister Carr's response would be, quite rightly, if the Australian government embassy was surrounded by elements of the Afghan National Police in Kabul. Just imagine that for a moment. There is the idea—and this is hundreds of years of international law, not decades—that you do not interfere with diplomatic postings and personnel overseas. That is being threatened with unpicking by the apparent actions of the British government in London in pursuit of somebody who has not been charged with any offence in any jurisdiction. He is wanted for questioning by Swedish prosecutors who failed to take the opportunity to question him during the two years when Mr Assange has been under house arrest. That is what he is wanted for: an Interpol red notice, an extradition order, for questioning in Sweden. Now the British police appear to have entered the building. I understand the embassy is on the fifth floor of a building in Knightsbridge in London and the British police have surrounded and occupied the ground floor of that building. Minister Bob Carr, after having as long as any of us have had to take stock of the situation, plus the advantage of at least being able to call our high commissioner in London to work out what exactly is going on, said, 'I haven't been advised.' You might as well walk in here with a blindfold on. Seek advice and find out
what is occurring, because many people would like to know what is going on.

In effect, it is already a massive diplomatic incident. Should the British decide to occupy the embassy or to forcibly enter the premises, article 22 of the Vienna Convention on Diplomatic Relations says:

The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

That is the kind of threat that appears to be posed to the staff of the Ecuadorian embassy in London at the moment in pursuit of an Australian citizen. This is not a matter on which the Australian government can stand back in blissful ignorance for very much longer. This is something that concerns us directly.

We are not asking for further consular assistance. Consular assistance is for people who lose their mobile phone or their passport overseas; consular assistance is for teenagers who are found with small quantities of drugs in Bali and are therefore put at risk. Consular assistance is not what is being asked for here; it is not what is being sought; it is diplomatic and political assistance. Does the United States government intend to prosecute Julian Assange for espionage, computer hacking offences or whatever it may be? This unprecedented-in-nature-and-scale investigation was launched nearly two years ago. Does the US government intend to pull the trigger and unleash that prosecution or not? That is what this is about; that is what it has always been about. I hope the next time this issue is raised in the Senate, which will probably be pretty early, depending on events that are unfolding right now, the foreign minister will not walk in here with a blindfold on and claim that he was not advised. It is not good enough.

Question agreed to.

COMMITTEES
Legal and Constitutional Affairs
Legislation Committee
Legal and Constitutional Affairs
References Committee
Public Accounts and Audit Committee
Government Response to Report

Senator WONG (South Australia—Minister for Finance and Deregulation) (15:34): I present three government’s responses to committee reports as listed at item 13 on today’s Order of Business. In accordance with the usual practice, I seek leave to have the documents incorporated in Hansard and to move a motion in relation to the document.

Leave granted.

The documents read as follows—

Government response to Senate Legal and Constitutional Affairs Committee report
Combating the Financing of People Smuggling and Other Measures Bill 2011

Introduction
On 3 March 2011 the Senate referred the Combating the Financing of People Smuggling and Other Measures Bill 2011, for inquiry and report.

The Committee held a public hearing on 16 March 2011 taking evidence from officers of the Department and AUSTRAC. The Committee tabled its report on 21 March 2011 with three recommendations.

Recommendation 1: The committee recommends that, as a matter of priority, the Australian Transaction Reports and Analysis Centre establish appropriate memoranda of understanding with the new designated agencies outlined in the Bill.

Recommendation 2: The committee recommends that the Attorney-General’s Department review relevant options with a view to introducing an appropriate oversight mechanism to monitor the handling of credit
information for the electronic verification of identity pursuant to the Bill.

**Recommendation 3**

The committee recommends that the Senate pass the Bill, noting recommendations 1 and 2.

The Bill was subsequently passed by both Houses of Parliament and received Royal Assent on 28 June 2011.

As the recommendations were not addressed during the debate of legislation, a response has not been provided to the Committee about the Government's position in relation to its recommendations. This document forms the Government's response.

**Government response to Recommendations**

**Recommendation 1**

The committee recommends that, as a matter of priority, the Australian Transaction Reports and Analysis Centre (AUSTRAC) establish appropriate memoranda of understanding for the sharing of intelligence with the new designated agencies outlined in the Bill.

The Government supports this recommendation and has taken steps to implement it.

Memoranda of understanding (MOUs) have been finalised with the Department of Foreign Affairs and Trade, the Defence Imagery and Geospatial Organisation and the Office of National Assessments, and MOUs with the Defence Signals Directorate and Defence Intelligence Organisation are close to finalisation.

**Recommendation 2**

The committee recommends that the Attorney-General's Department (AGD) review relevant options with a view to introducing an appropriate oversight mechanism to monitor the handling of credit information for the electronic verification of identity pursuant to the Bill.

AGD has reviewed relevant options for an oversight mechanism to monitor the handling of credit information pursuant to Recommendation 2.

A breach of the verification of identity provisions contained in the Bill will constitute an interference with privacy and a person affected by an alleged breach may complain to the Office of the Australian Information Commissioner (OAIC) in accordance with the Privacy Act 1988.

The Privacy Act 1988 has specific mechanisms in place to regulate the use of credit reporting data by credit reporting agencies. AGD does not consider that the Anti Money Laundering and Counter Terrorism Financing Act 2006 is the appropriate vehicle to further expand on the current obligations of credit reporting agencies.

Accordingly, AGD considers that no further action is necessary.

**Recommendation 3**

The committee recommends that the Senate pass the Bill, noting recommendations 1 and 2.

The Bill was passed by the Senate on 16 June 2011 and received Royal Assent on 28 June 2011.

**Government response to the Senate Legal and Constitutional Affairs Committee Inquiry into the National Classification Scheme**

At the time of the Senate Committee undertaking its Inquiry, and prior to its report being finalised, the Government referred the National Classification Scheme (NCS) to the Australian Law Reform Commission (ALRC) for review. Recommendation 30 of the Committee's report is that the ALRC be directed to consider the findings, proposals and recommendations of the Committee's report.

The ALRC review was considered necessary to modernise the system of classification in Australia and allow it to keep pace with developments in technology now and into the future. When the current NCS commenced in 1995, classifiable content and the way it was delivered to consumers was relatively static.

The ALRC review was designed to consider not only classification categories, but the whole classification system including the legislative framework to ensure it continues to be effective in the 21st century.

The ALRC was considered the most appropriate body to conduct the review as it had previously conducted an inquiry into laws relating to classification and censorship in 1991. The
ALRC's 1991 Report established the basis for the current NCS.

The terms of reference for the ALRC's 2011-12 review (which were subject to public consultation prior to being finalised) stated:

Having regard to:
- it being twenty years since the Australian Law Reform Commission (ALRC) was last given a reference relating to Censorship and Classification
- the rapid pace of technological change in media available to, and consumed by, the Australian community
- the needs of the community in this evolving technological environment
- the need to improve classification information available to the community and enhance public understanding of the content that is regulated
- the desirability of a strong content and distribution industry in Australia, and minimising the regulatory burden
- the impact of media on children and the increased exposure of children to a wider variety of media including television, music and advertising as well as films and computer games
- the size of the industries that generate potentially classifiable content and potential for growth
- a communications convergence review, and
- a statutory review of Schedule 7 of the Broadcasting Services Act 1992 and other sections relevant to the classification of content

I refer to the ALRC for inquiry and report pursuant to subsection 20(1) of the Australian Law Reform Commission Act 1996, matters relating to the extent to which the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act), State and Territory Enforcement legislation, Schedules 5 and 7 of the Broadcasting Services Act 1992, and the Intergovernmental Agreement on Censorship and related laws continue to provide an effective framework for the classification of media content in Australia.

Given the likelihood of concurrent Commonwealth reviews covering related matters as outlined above, the Commission will refer relevant issues to those reviews where it would be appropriate to do so. It will likewise accept referral from other reviews that fall within these terms of reference.

Such referrals will be agreed between the relevant reviewers.

1. In performing its functions in relation to this reference, the Commission will consider:
   - relevant existing Commonwealth, State and Territory laws and practices
   - classification schemes in other jurisdictions
   - the classification categories contained in the Classification Act, National Classification Code and Classification Guidelines
   - any relevant constitutional issues, and
   - any other related matter.

2. The Commission will identify and consult with relevant stakeholders, including the community and industry, through widespread public consultation. Other stakeholders include the Commonwealth Attorney-General's Department, the Department of Broadband, Communications and the Digital Economy, the Australian Communications and Media Authority, the Classification Board and Classification Review Board as well as the States and Territories.

The ALRC reported to Government on 29 February 2012 and the Government released, via tabling in the Parliament, the final report on 1 March, 2012.

The current NCS is a cooperative scheme between the Commonwealth and all state and territory governments. Under the Intergovernmental Agreement that underpins the scheme, the Commonwealth has agreed to consult states and territories about any meaningful changes to the scheme. Indeed, the current Commonwealth legislation has unanimous agreement requirements in relation to certain aspects of the scheme such as proposed changes to the classification categories and Classification Guidelines.
Consequently, the Commonwealth has sought the views of all States and Territories about the ALRC Report. Once those comments are received, the Commonwealth will be able to further develop its position on the ALRC recommendations (incorporating consideration of Senate Committee recommendations where appropriate) and, in due course, finalise the Government response to the ALRC Report.

In developing its response, the Government will also give consideration to how the ALRC recommendations interact with those of the Convergence Review. Although there are discrete components of each report, there is also substantial overlap in some key respects.

Since the tabling of the ALRC Report, the Government has been able to consider how the Senate Committee's recommendations might interact with those of the ALRC. The comments in relation to each recommendation below are made in that context.

**Recommendation 1**

The committee recommends that an express statement should be included in the National Classification Code which clarifies that the key principles to be applied to classification decisions must be given equal consideration and must be appropriately balanced against one another in all cases. Currently, these principles are:

- adults should be able to read, hear and see what they want;
- minors should be protected from material likely to harm or disturb them;
- everyone should be protected from exposure to unsolicited material that they find offensive;
- community concerns should be taken into account in relation to:
- depictions that condone or incite violence, particularly sexual violence; and
- the portrayal of persons in a demeaning manner.

**Government Response – noted**

The National Classification Code (the Code) states that classification decisions are to give effect, as far as possible, to the four guiding principles that the Committee outlines in Recommendation 1. This requires the Classification Board to give equal consideration to the principles in the Code to the extent possible in each decision-making circumstance. What principles should underpin classification legislation, and whether those considerations should be weighted, or not, will be considered in the context of the Government's response to the ALRC Review of the NCS.

**Recommendation 2**

Further to Recommendation 1, the committee recommends that the fourth key principle in the National Classification Code should be expanded to take into account community concerns about the sexualisation of society, and the objectification of women.

**Government Response – noted**

See response to Recommendation 1.

**Recommendation 3**

The committee notes that there has been no further consideration by the Senate of the Senate Environment, Communications and the Arts Committee's 2008 report, Sexualisation of children in the contemporary media. The committee recommends that the Senate should, as a matter of urgency, establish an inquiry to consider the progress made by industry bodies and others in addressing the issue of sexualisation of children in the contemporary media; and, specifically, the progress which has been made in consideration and implementation of the recommendations made in the Sexualisation of children in the contemporary media report.

**Government Response – noted**

This recommendation is directed at the Senate.

**Recommendation 4**

The committee recommends that the Guidelines for the Classification of Films and Computer Games and the Guidelines for the Classification of Publications 2005 should be revised so that the preamble to both sets of guidelines expressly states that the methodology and manner of decision-making should be based on a strict interpretation of the words in the respective guidelines.

**Government Response – not agree**
The Classification Guidelines (the Guidelines) are not 'self-standing' but are part of a package of legislation consisting of the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act), the Code and the Guidelines. In Adultshop.Com Ltd v Members of the Classification Review Board (2008) the Court discussed the relationship between the Act, the Code and the Guidelines and confirmed this view noting that the Guidelines need to be read in conjunction with the Code.

Section 9 of the Classification Act provides that publications, films and computer games are to be classified in accordance with the Code and the Guidelines. The Act contains certain matters that the Board must also take into account in making decisions on the classification of a publication, film or computer game, including those set out in s11.

The ALRC has made recommendations about future classification instruments, recommendation 9-3 in particular.

**Recommendation 5**

The committee recommends that the emphasis on context and the assessment of impact should be removed as principles underlying the use and application of the Guidelines for the Classification of Films and Computer Games.

**Government Response – not agree**

Consideration of context and impact are crucial to the making of classification decisions. In the media classification environment, context refers to the circumstances that surround a particular event or situation and impact is the influence or effect upon an audience (for the purpose of determining whether content should be classified at a lower or higher classification). A classifiable element such as nudity in the context of a documentary about the anatomy of the human body would warrant an entirely different classification rating to nudity in a film mainly concerned with sex. Similarly, a classifiable element such as drug use will have a different impact, and warrant a different classification, depending on the type of drug and whether the depiction is discreet or explicit.

See also response to Recommendation 4.

**Recommendation 6**

The committee recommends that the Australian Government introduce Standing Community Assessment Panels to assist in the determination of community standards for the purpose of classification decision-making.

**Government Response – noted**

Classification Board Members are appointed to be broadly representative of the Australian Community. They are appointed in consultation with participating Ministers in the NCS and must not hold office for a total of more than 7 years.

Historically, Community Assessment Panels (CAPs) are people from the community taking part in focus group sessions who are recruited to represent a range of characteristics, across such criteria as age, gender, family status and ethnicity. They view media content and carry out classification exercises by the same methods and using the same decision-making tools as the Classification Board. CAPs have been engaged periodically to test the degree to which the decisions of the Classification Board are in line with community standards.

As part of its review, the ALRC undertook an exercise involving members of the community viewing content and reacting to it. The report of that aspect of the review can be found at: http://www.alrc.gov.au/publications/community-attitudes-higher-level-media-content-community-and-reference-group-forums-con.

The ALRC made recommendations about research and community standards, namely Recommendation 9-4 (a) to (e). The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

**Recommendation 7**

The committee recommends that the classification of artworks should be exempt from application fees.

**Government Response – noted**

The ALRC made the following relevant recommendations:

The National Classification Scheme should be based on a new Act, the Classification of Media Content Act. The Act should provide, among other things, for:
(a) what types of media content may or must be classified;
(b) who should classify different types of media content;
(c) a single set of statutory classification categories and criteria applicable to all media content;
(d) access restrictions on adult content;
(e) the development and operation of industry classification codes; and
(f) the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws (Recommendation 5-2)

The Classification of Media Content Act should provide a definition of ‘exempt content’ that captures all media content that is exempt from the laws relating to what must be classified. The definition of exempt content should capture the traditional exemptions, such as for news and current affairs programs. The definition should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. Providers of this content should not be exempt from obligations to restrict access to adult content (Recommendation 6-3)

Beyond these, the ALRC did not specifically recommend that artworks be classified.

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

Recommendation 8

The committee recommends that the Australian Government, through the Standing Committee of Attorneys-General, pursue with relevant states the removal of the artistic merit defence for the offences of production, dissemination and possession of child pornography.

Government Response – agree

The Attorney-General’s Department understands that artistic merit is no longer a defence to child pornography in NSW. The defence was removed in NSW from s 91G of the Crimes Act 1900.

The change aligned NSW child pornography laws with the Commonwealth, but means that NSW is inconsistent with other states and territories. This could be problematic where charges are laid for offences taking place in various jurisdictions.

The Commonwealth will raise the inconsistency issue with the Standing Committee of Law and Justice.

Recommendation 9

The committee recommends that provision be made in the Classification Act 1995 for an exemption for cultural institutions, including through the National Film and Sound Archive, to allow them to exhibit unclassified films. This exemption should be subject to relevant institutions self-classifying the material they exhibit and the Classification Review Board providing oversight of any decisions in that regard.

Government Response – noted

Section 5B of the Classification Act already allows for films to be exempt from classification if they are of a community or cultural type. There is also a film festival exemption scheme that allows festivals to screen unclassified films under certain conditions, however, exemptions are generally granted under the condition that each film is to be screened a maximum of four times during the course of a film festival/event and that audiences are restricted to age 18+

The ALRC made a recommendation about exempting from classification films and computer games screened or demonstrated by certain entities including cultural institutions, namely Recommendation 6-3.

The ALRC also recommended that, under the proposed new NCS, the Classification Review Board cease to operate (Recommendation 7-9).

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

See also response to Recommendation 7.

Recommendation 10
The committee recommends that the Australian Government take a leadership role through the Standing Committee of Attorneys-General in requesting the referral of relevant powers by states and territories to the Australian Government to enable it to legislate for a truly national classification scheme.

**Government Response – noted**

The ALRC made the following relevant recommendations:

- The Classification of Media Content Act should be enacted pursuant to the legislative powers of the Parliament of Australia (Recommendation 15-1).
- The Classification of Media Content Act should express an intention that it cover the field, so that any state legislation operating in the same field ceases to operate, pursuant to s 109 of the Constitution (Recommendation 15-2).
- The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

**Recommendation 11**

In the event that a satisfactory transfer of powers by all states and territories is not able to be negotiated within the next 12 months, the committee recommends that the Australian Government prepare options for the expansion of the Australian Government's power to legislate for a new national classification scheme.

**Government Response – noted**

See response to Recommendation 10.

**Recommendation 12**

The committee recommends that, as a matter of priority, the Standing Committee of Attorneys-General should consider the development of uniform standards for the display and sale of material with a Restricted classification.

**Government Response – noted**

Consistency across jurisdiction is desirable for the consumer, industry and for compliance monitoring.

The ALRC made recommendations that are relevant to sale, display and restriction of access to content, in particular: recommendations 5-2, 8-5, 10-1 to 10-4 and 13-2. Consistency of laws and classification obligations nationally was also a key consideration for the ALRC in making recommendations 15-1 and 15-2 for a Commonwealth-only NCS.

The ALRC also recommended renaming the 'Refused Classification' category of content 'Prohibited' (Recommendation 11-1).

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

**Recommendation 13**

The committee recommends that:

- Category 1 and 2 Restricted publications, and R18+ films, where displayed and sold in general retail outlets, should only be available in a separate, secure area which cannot be accessed by children; and
- the exhibition, sale, possession and supply of X18+ films should be prohibited in all Australian jurisdictions.

**Government response – noted**

In relation to the first bullet point of this recommendation, see response to Recommendation 12.

In relation to the second bullet point of this recommendation, the ALRC made the following recommendations:

- The Classification of Media Content Act should provide that content providers should take reasonable steps to restrict access to adult content that is sold, screened, provided online or otherwise distributed to the Australian public. Adult content is:
  - (a) content that has been classified R 18+ or X 18+;
  - (b) unclassified content that, if classified, would be likely to be classified R 18+ or X 18+.

The Classification of Media Content Act should not mandate that all adult content must be classified (Recommendation 10-1).

The Classification of Media Content Act should provide the Regulator with the power to issue 'restrict access notices' to providers of adult content. For the purpose of issuing these notices,
the Regulator should be empowered to determine whether the content is adult content (Recommendation 10-2).

The Classification of Media Content Act should provide that the reasonable steps that content providers must take to restrict access to adult content may be set out in:

(a) industry codes, approved and enforced by the Regulator; and
(b) standards, issued and enforced by the Regulator.

These codes and declarations may be developed for different types of content, content providers and industries, but could include:

(a) how and where to advertise, package and display hardcopy adult content;
(b) the promotion of parental locks and user-based computer filters;
(c) how to confirm the age of persons accessing adult content online; and
(d) how to provide warnings online (Recommendation 10-3).

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

Recommendation 14

The committee recommends that, as a matter of priority, the Commonwealth and the states and territories should establish a centralised database to provide for information-sharing on classification enforcement actions.

Government Response – noted

In February 2011, the then Minister for Justice wrote to Police Ministers and the Minister for Employment and Economic Development in Queensland requesting bi-annual reports on compliance and enforcement action taken in relation to classification laws. This initiative was agreed to by the Commonwealth, States and Territories at the Classification Enforcement Contacts Forum 2010.

These reports are now being compiled by the Classification Liaison Scheme (CLS) which is administered by the Commonwealth Attorney-General's Department and is responsible for collating and sharing the information received.

The Government will consider the Committee's recommendation in developing the response to the ALRC recommendations and, in particular, in relation to the role of the states and territories under a new NCS.

Recommendation 15

The committee recommends that the Classification Liaison Scheme should substantially increase its compliance and audit-checking activities in relation to, for example, compliance with serial classification declaration requirements.

Government Response – noted

The Classification Board currently has responsibility for conducting audits of serial declarations. All serial declarations are audited during the term of the declaration.

CLS compliance checks have increased from 701 in 2007/08 to 917 in 2010/11.

The Government will consider the Committee's recommendation in developing the response to the ALRC recommendations and, in particular, in relation to the role and size of the CLS under a new NCS.

Recommendation 16

The committee recommends that the Classification Liaison Scheme should have at least one representative in each state and territory.

Government response – noted

The ALRC envisages a new approach to compliance and enforcement in relation to classification matters. In particular it makes the following recommendations:

The Classification of Media Content Act should provide for enforcement of classification laws under Commonwealth law. (Recommendation 16-1)

The Classification of Media Content Act should provide a flexible range of compliance and enforcement mechanisms allowing the Regulator, depending on the circumstances, to:

(a) issue notices to comply with provisions of the Act, industry codes or standards;
(b) accept enforceable undertakings;
(c) pursue civil penalty orders;
(d) refer matters for criminal prosecution; and
(e) issue infringement notices. (Recommendation 16-2)

The Classification of Media Content Act should provide for the imposition of criminal, civil and administrative penalties in relation to failing to comply with:
(a) notices of the Regulator;
(b) an industry code or standard;
(c) restrictions on the sale, screening, online provision and distribution of media content;
(d) statutory obligations to restrict access to media content; and
(e) statutory obligations to classify and mark media content. (Recommendation 16-3)

The Classification of Media Content Act should require the Regulator to issue enforcement guidelines outlining the factors it will take into account and the principles it will apply in exercising its enforcement powers. (Recommendation 16-4)

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

Recommendation 17

The committee recommends that the Classification Liaison Scheme should be charged with responsibility for establishing and maintaining the centralised database to provide for information-sharing on classification enforcement actions, as proposed in Recommendation 14.

Government Response – noted

See response to Recommendations 14 and 16.

Recommendation 18

The committee recommends that the Classification Liaison Scheme should provide assistance to state and territory law enforcement agencies in relation to enforcement actions for failure to respond to call-in notices issued by the Director of the Classification Board.

Government Response – agree

This recommendation is already implemented. CLS officers currently provide assistance to law enforcement agencies in relation to referrals from the Director of the Classification Board of non-compliance with a call-in notice, or any other classification matter. Currently, CLS officers request the relevant State and Territory police to enforce breaches of call-in notices. All of the evidence establishing an offence will be presented by CLS. Such CLS assistance is prioritised and can also include presentations on content, offences and evidentiary certificates, as well as provision of witness statements, on site assistance and any other help requested.

Generally, CLS Officers meet with the nominated Classification Enforcement Contact in each law enforcement agency when conducting compliance checks in their jurisdiction.

Recommendation 19

The committee recommends that more detailed information should be included in the Attorney-General's annual report about the operations of the Classification Liaison Scheme.

Government Response – agree

Currently the annual report of the Attorney-General's Department provides information about the number of compliance checks conducted by CLS Officers.

It would be possible to include more detailed information about CLS. Further information about the activities undertaken by CLS can be included such as presentations delivered, meetings held and referrals. This will be included in future annual reports.

Recommendation 20

The committee recommends that the Australian Government should increase the size of, and commensurate funding to, the Classification Liaison Scheme as a matter of priority.

Government Response – noted

See response to Recommendation 16.

Recommendation 21

The committee recommends that the Australian Government should, through the Standing Committee of Attorneys-General, signal its intention to make enforcement actions for
failing to respond to call-in notices a matter of priority.

**Government Response – agree**

Under the current Scheme, each individual jurisdiction determines its own enforcement priorities. Enforcement of failure to comply with a call-in is not a matter for the Commonwealth but is a matter for States and Territories. The Commonwealth refers any non-compliance to States and Territories as a matter of course.

The then Minister for Justice wrote to States and Territories in February 2009 seeking their cooperation in addressing the low levels of compliance with classification enforcement laws.

The Government will raise this issue through the Standing Council on Law and Justice.

See also response to Recommendation 16.

**Recommendation 22**

The committee recommends that, to the extent possible, the National Classification Scheme should apply equally to all content, regardless of the medium of delivery.

**Government Response – agree**

The ALRC and the Convergence Reviews have considered these issues as central to future regulation of media content. In particular, recommendation 5-1 and 5-2 of the ALRC Report and recommendation 1(a) of the Convergence Review which states:

1 a) Parliament should avoid enacting legislation that either favours or disadvantages any particular communications technology, business model or delivery method for content services.

The Government agrees in principle but will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

**Recommendation 23**

The committee recommends that industry codes of practice under current self-regulatory and co-regulatory schemes, including those under the Broadcasting Services Act 1992, the ARIA/AMRA Labelling Code and the advertising industry, should be required to incorporate the classification principles, categories, content, labelling, markings and warnings of the National Classification Scheme. The adoption of these measures by industry should be legally enforceable and subject to sanctions.

**Government Response - noted**

In chapter 6 of the report on the review of the NCS, the ALRC makes recommendations about the content (irrespective of its method of deliver or access) that should be classified under a new NCS as follows:

The Classification of Media Content Act should provide that feature films and television programs that are:

(a) likely to have a significant Australian audience, and

(b) made and distributed on a commercial basis,

should be classified before content providers sell, screen, provide online, or otherwise distribute them to the Australian public. The Act should provide for platform-neutral definitions of 'feature film' and 'television program' and illustrative examples. Examples of television programs may include situation comedies, documentaries, children's programs, drama and factual content. (Recommendation 6–1)

The Classification of Media Content Act should provide that computer games that are:

(a) likely to be classified MA 15+ or higher; and

(b) likely to have a significant Australian audience; and

(c) made and distributed on a commercial basis,

should be classified before content providers sell, screen, provide online, or otherwise distribute them to the Australian public.

The Act should provide for platform-neutral definitions of 'computer game' and illustrative examples. (Recommendation 6–2)

In chapter 8 of its report on the review of the NCS, the ALRC discusses advertising and concludes that advertising should not be brought within the scope of the NCS. It makes a specific recommendation for advertisements for classifiable content to be managed under the
existing self-regulatory arrangements for advertising and amendments to advertising codes.

Beyond these recommendations, the ALRC does not specifically recommend that self-regulated media content be required to adopt the classification and other related obligations of the NCS.

Instead, the ALRC made the following suggestion:

The Classification of Media Content Act should enable the Regulator to approve industry codes that provide for the voluntary classification and marking of content that is not required to be classified. The Regulator should encourage the development of such codes for:

(a) computer games likely to be classified below MA 15+;
(b) magazines likely to be classified R 18+ or X 18+; and
(c) music with a strong impact. (Recommendation 6 – 4)

Chapter 13 of the ALRC Report further deals with possible industry Codes of Practice making the following recommendations:

The Classification of Media Content Act should provide for the development of industry classification codes by sections of industry or persons involved in the production and distribution of media content; and for the Regulator to request that a body or association representing a particular section of industry develop a code. (Recommendation 13-1)

Industry classification codes may include provisions relating to:

(a) methods of restricting access to certain content;
(b) the use of classification markings;
(c) methods of classifying media content, including by authorised industry classifiers;
(d) guidance on the application of statutory classification criteria;
(e) maintaining records, reporting classification decisions and quality assurance;
(f) protecting children from certain content;
(g) providing consumer information in a timely and clear manner;
(h) providing a responsive and effective means of addressing community concerns, including complaints handling; and
(i) reporting to the Regulator on the administration of the code. (Recommendation 13-2)

The Classification of Media Content Act should enable the Regulator to approve an industry classification code if satisfied that:

(a) the code is consistent with statutory obligations to classify and restrict access to media content and statutory classification categories and criteria;
(b) the body or association developing the code represents a particular section of the media content industry; and
(c) there has been adequate public and industry consultation on the code. (Recommendation 13-3)

The Classification of Media Content Act should enable the Regulator to determine an industry standard if:

(a) there is no appropriate body or association representing a relevant section of industry; or
(b) a request to develop an industry code is not complied with. (Recommendation 13-4)

The Classification of Media Content Act should enable the Regulator to enforce compliance with a code against any participant in the relevant section of the media content industry, where an industry classification code relates to media content that must be classified or to which access must be restricted. (Recommendation 13-5)

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

Recommendation 24

The committee recommends that industry bodies wishing to exercise classification decision-making functions should be required to be accredited by the Australian Government.

Government Response – noted

In the ALRC Report, the following recommendations are relevant to the Committee's recommendation:
The Classification of Media Content Act should enable the Regulator to determine, of the content that must be classified, what content must be classified by the Classification Board. The determination should be set out in a legislative instrument. (Recommendation 7-1)

The Classification of Media Content Act should provide that, other than media content that must be classified by the Classification Board, media content may be:

(a) classified by the Classification Board;
(b) classified by an authorised industry classifier; or
(c) deemed to be classified because it has been classified under an authorised classification system. (Recommendation 7-4)

The Classification of Media Content Act should provide that industry classifiers must have completed training approved by the Regulator and be authorised by the Regulator to classify media content. (Recommendation 7-5)

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

Recommendation 25

The committee recommends that the Classification Board should be responsible for the development of a content assessor's accreditation, including formalised training courses for all industries covered under the National Classification Scheme.

Government Response – agree

The Classification Act already provides that the Director of the Classification Board may authorise a person to make assessments of the likely classification of unclassified films or computer games for advertising purposes. This is the Authorised Advertising Assessor (AAA) scheme.

In order to become an authorised assessor, a person must complete the relevant training course. Courses are devised by the Attorney-General's Department in consultation with the Classification Board and must be approved by the Director. Courses are conducted by training officers from the Attorney-General's Department experienced in assessing material and making classification recommendations to the Classification Board.

Once training has been satisfactorily completed, trainees receive a certificate signed by the Director granting them Authorised Assessor status.

The Department also runs courses for distributors of telecommunications media to become Trained Content Assessors as provided for under Schedule 7 of the Broadcasting Services Act 1992.

ALRC Recommendation 7-5 is also relevant here.

Although the Committee's recommendation is already implemented, the Government will consider the underlying policy considerations when developing the Government response to the ALRC recommendations.

Recommendation 26

The committee recommends that the accreditation of content assessors should be subject to disqualification as a result of poor performance.

Government Response – agree

Under the current authorised assessor schemes, individuals can have their authorisation revoked. For example, under s 5 of the Classification (Authorised Television Series Assessor Scheme) Determination 2008, the Director may revoke an authorisation of a person as an ATSA if that person submits an assessment that is misleading, incorrect or grossly inadequate.
The ALRC recommends that the Regulator should be enabled to, amongst other things, revoke the authorisation of industry classifiers (Recommendation 7-12).

Although the Committee's recommendation is already implemented, the Government will consider the underlying policy considerations when developing the Government response to the ALRC recommendations.

**Recommendation 27**

The committee recommends that transgressions of classification requirements within codes of practice by industry participants should, if verified by the Classification Board, be punishable by substantial monetary fines.

**Government Response – noted**

See response to Recommendation 16.

**Recommendation 28**

The committee recommends that the terms of appointment for members of the Classification Board and the Classification Review Board should be for a maximum period of five years, with no option for reappointment.

**Government Response – noted**

Appointments to the Classification Board are currently made on the basis of a broad cross-section of community representation. This must be balanced with the needs of industry by ensuring consistent standards are maintained irrespective of the makeup of the Board. The 1991 ALRC Review of the classification scheme recommended that Classification Board member terms be limited to a maximum of 7 years.

The ALRC has recommended the retention of an independent classification board but is silent about the appropriate length of term for members.

The ALRC makes a number of recommendations about the role of the Classification Board in relation to decision-making and benchmarking (for example, Recommendations 7-2 and 7-3). It also recommends that the Classification Review Board cease to operate in the new NCS (Recommendation 7-9).

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

**Recommendation 29**

The committee recommends that the Australian Government should establish a 'Classification Complaints' clearinghouse where complaints in relation to matters of classification can be directed. The clearinghouse would be responsible for:

- receiving complaints and forwarding them to the appropriate body for consideration;
- advising complainants that their complaint has been forwarded to a particular organisation for consideration; and
- giving complainants direct contact details and an outline of the processes of the organisation to which the complaint has been forwarded.

**Government Response – noted**

Recommendations 13-2, 14-1 and 14-2 of the ALRC Report are relevant to this recommendation.

The Government will consider the Committee's recommendation in developing the Government response to the ALRC recommendations.

**Recommendation 30**

The committee recommends that the Attorney-General should specifically direct the ALRC to consider, as part of its current review of the National Classification Scheme, all the findings, proposals and recommendations put forward in this report.

**Government Response – agree**

This was done by the then Minister for Justice on 12 September 2011, and the Committee was advised at this time.

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**Australian Government Response to the Joint Committee of Public Accounts and Audit Report No. 427 Inquiry into National Funding Agreements**

**August 2012**

**General Comments**

The Australian Government agrees with the broad thrust of the report. The Intergovernmental
Agreement on Federal Financial Relations (IGA FFR), which commenced in 2009 and establishes the framework for the Commonwealth's financial relations with the States and Territories (the States), represents the single most significant shift in Commonwealth-State financial arrangements in decades.

Previously, federal financial relations were characterised by the Commonwealth placing a high degree of prescription on a large number of payments to the States, which constrained flexibility and innovation in service delivery. The new federal financial relations framework (FFR framework) provides States with flexibility to deliver quality services where they are most needed. It also increases governments' accountability to the public through a focus on the achievement of outcomes, clearer specification of roles and responsibilities, and enhanced public performance reporting. The Council of Australian Governments (COAG) Reform Council's 2011 report on the progress of the COAG reform agenda found that governments have made significant progress in realising many of the institutional features of the IGA FFR.

The Commonwealth has taken a range of steps to support the realisation of the IGA FFR. In 2010 the Commonwealth led, in conjunction with the States, a major review of agreements under the IGA FFR (the 'Heads of Treasuries Review'). Following the review, the Commonwealth has led work to improve performance frameworks in the National Agreements, to ensure that progress is measured and all jurisdictions are clearly accountable to the public and COAG for their efforts. To ensure the necessary cultural change to embed the FFR framework occurs across Commonwealth agencies, Commonwealth central agencies developed comprehensive guidance material (the 'Drafters' Toolkit') to assist portfolio agencies in drafting new agreements under the IGA FFR.

Further information is provided in response to the recommendations.

**Response to the Recommendations**

**Recommendation No. 1**

The Committee recommends that the Department of Finance and Deregulation examine the interaction between the new grants framework and grant payments delivered under the Intergovernmental Agreement on Federal Financial Relations. The report should propose options to remove inconsistencies and improve governance arrangements for all grants provided to States and Territories (States).

A copy of the report should be provided to the Joint Committee of Public Accounts and Audit (JCPAA), with the Government's Response to this recommendation—and both should be made publicly available.

**Response**

The Government disagrees with the recommendation. The interaction between the Financial Management and Accountability Act 1997 (FMA Act) and the IGA FFR has already been examined as part of the Heads of Treasuries (HoTs) Review, in consultation with the Australian National Audit Office (ANAO) and the Department of Finance and Deregulation. The Treasury has used this Review to develop and disseminate new guidance to Commonwealth line agencies.

Both frameworks contain accountability requirements which reflect the nature of the funding provided. The IGA FFR framework is focussed on giving the States flexibility in the achievement of outcomes for which funding is provided by the Commonwealth. On the other hand, the range of programs that fall under the Commonwealth grants framework is diverse and their administration requires the careful exercise of judgement in applying the key principles for grants administration, as articulated in the Commonwealth Grant Guidelines (CGGs). This results in different accountability requirements depending on the nature, size and purpose of the granting activity.

The Commonwealth grants policy framework is underpinned by the CGGs, which were introduced from 1 July 2009. The CGGs contain mandatory requirements and better practice guidance designed to promote transparency and establish a robust accountability framework around grants administration in the Commonwealth. Payments made under the IGA FFR have been specifically excluded from the definition of "grant" under the Financial Management and Accountability Act 1997.
Management and Accountability Regulations 1997 and, as a result, from the CGGs, on the basis that separate accountability mechanisms exist under that framework to manage those payments effectively in the context of Commonwealth-State relations.

Where States obtain Commonwealth grant funding through programs that are not covered by the IGA FFR, for example, through competitive or targeted grant processes, it is appropriate that they are subject to the same accountability requirements as other grant recipients. While this may result in different accountability requirements for the States depending on whether funding is received through the IGA FFR process or from grant programs covered by the CGGs, this appropriately reflects the different nature of program funding and the level of autonomy and discretion involved.

The Department of Finance and Deregulation is currently undertaking the Commonwealth Financial Accountability Review (CFAR), a multi-year review of the operation of the Commonwealth's financial framework from first principles. A discussion paper was released publicly on 27 March 2012 and is available at http://cfar.finance.gov.au. The objective of the discussion paper was to facilitate consultation and broad public discussion on the Commonwealth financial framework. The discussion paper noted the interaction of the CGGs with the Federal Financial Relations Act 2009 and sought feedback from stakeholders to assist in determining what reforms might be considered when the Department of Finance and Deregulation puts forward options to the Government later in 2012.

Recommendation No. 2

The Committee recommends that the Commonwealth Government makes the recommendations and a summary of the findings of the Heads of Treasuries Review public, along with the associated Government response and implementation strategies.

Response

The Government notes the recommendation.

The Government also notes that in response to the review, COAG established in February 2011 a steering group, led by Senior Officials from First Ministers' and Treasury agencies, to take forward the key and related recommendations arising from the HoTs Review, to consider improvements to the governance and performance reporting framework and to tackle deficiencies in the design of current agreements identified by the HoTs Review and reports of the COAG Reform Council (CRC), to reinforce COAG's commitment to performance and public accountability.

As part of this process, the performance frameworks of each of the six National Agreements (NASs) and select National Partnership (NP) Agreements were reviewed to ensure that progress is being measured and that all jurisdictions are clearly accountable to the public and COAG for their efforts. The reviews were conducted by working groups comprising officials from Commonwealth, State and Territory treasuries, First Ministers' departments and portfolio agencies. The reviews were conducted in consultation with Standing Council data groups, the CRC and the Secretariat to the Steering Committee for the Review of Government Service Provision.

The reviews addressed aspects of the performance reporting frameworks identified as requiring attention in the HoTs Review and in reports by the CRC and the Steering Committee for the Review of Government Service Provision. The outcomes of the reviews provided the basis of recommendations to COAG on improvements to each agreement's performance framework. All reviews have now been completed. COAG agreed on 13 April 2012 to a revised National Agreement on Skills and Workforce Development and a revised NP on Homelessness. COAG also endorsed a report on the completion of improvements to the NP on Indigenous Economic Participation. On 25 July 2012, COAG agreed a revised National Disability Agreement (NDA), National Affordable Housing Agreement (NAHA), National Education Agreement and National Healthcare Agreement. COAG also agreed the review of the performance framework of the National Indigenous Reform Agreement out-of-session. These documents are available from the COAG website: www.coag.gov.au.
Further work will be done in 2012 to develop provisional benchmarks with quantifiable targets for the NDA and NAHA.

**Recommendation No. 3**

The Committee recommends that the Department of the Prime Minister and Cabinet and central agencies investigate whether additional measures are needed to encourage and enforce the application of the Intergovernmental Agreement on Federal Financial Relations' principles and associated guidelines, and that the findings of the investigation be publicly released and provided to the Committee.

**Response**

The Government notes the recommendation. The Department of the Prime Minister and Cabinet and other central agencies continue to pursue a range of measures to promote the application of the IGA FFR principles and associated guidelines. This includes the development and promulgation of the Drafters' Toolkit which incorporates:

- an updated Federal Finances Circular on Developing National Partnership (NP) Agreements under the FFR framework, and an updated NP template;
- a new Federal Finances Circular on the Processes for drafting, negotiating and varying agreements, and related estimates and payments processes;
- a new Federal Finances Circular on Developing Implementation Plans (IPs) for NPs, and an updated IP template;
- a Conceptual Framework for performance reporting; and
- two short guides: one on the IGA FFR and another on payments that fall within the FFR framework.

This information is available on the website of the Standing Council on Federal Financial Relations: www.federalfinancialrelations.gov.au

The Drafters' Toolkit and other aspects of HoTs Review implementation were the subject of correspondence from the Secretary of the Commonwealth Treasury to relevant portfolio agency secretaries on 23 December 2011, which was later copied to relevant departmental Chief Financial Officers.

**Recommendation No. 4**

The Committee recommends that the Department of the Prime Minister and Cabinet and central agencies, in consultation with appropriate experts, develop a set of agreed definitions for assurance requirements to be used in NAs, NPs and IPs.

**Response**

The Government notes the recommendation. The IGA FFR and the Drafters' Toolkit set out the requirements for NAs, NPs and IPs.

The IGA FFR specifies that NPs must focus on outcomes and outputs rather than inputs. Consequently, it provides for a reduction in Commonwealth prescriptions on service delivery by the States, and states that agreements will not include financial or other input controls, giving the States more flexibility in how services are provided to achieve the outcomes for which they are responsible.

**Recommendation No. 5**

The Committee recommends that a structured approach be developed and implemented by the Department of the Prime Minister and Cabinet and other central agencies to ensure relevant staff receive specific training to enhance understanding of the IGA FFR and develop the skills required to meet outcomes focused performance reporting requirements.

**Response**

The Government agrees with the recommendation. In addition to the development and dissemination of the Drafters' Toolkit (see response to Recommendation 3), Commonwealth central agencies continue to pursue a range of measures to enhance understanding of the IGA FFR and develop the skills required to meet outcomes-focused performance reporting requirements.

Following COAG's agreement to the HoTs Review, Treasury held two forums to discuss the findings and recommendations of the review with officials of all relevant portfolio agencies. The Department of the Prime Minister and Cabinet
holds regular meetings with other Commonwealth central agencies and relevant portfolio agencies to discuss COAG and IGA FFR related issues. Commonwealth central agencies also engage with relevant portfolio agencies on a routine basis, providing advice on IGA FFR matters and draft agreements, as well as overseeing formal clearance processes for the development and agreement of NPs, IPs and Project Agreements (PAs). The Department of the Prime Minister and Cabinet is also developing a presentation on the IGA FFR and how to develop agreements under the FFR framework. The presentation will be delivered jointly with Treasury to Commonwealth portfolio agencies on a targeted basis.

The Department of Finance and Deregulation is currently reviewing its financial management education strategy including the most effective way to meet education needs across the Commonwealth. This includes working with the Australian Public Service Commission (APSC) to develop and deliver base level financial management framework training to officers new to the Senior Executive Service. Commonwealth central agencies are exploring opportunities to leverage the Department of Finance and Deregulation’s work in this area to develop and deliver education products to enhance the awareness and understanding of the requirements of the FFR framework.

Recommendation No. 6

The Committee recommends that the Department of the Prime Minister and Cabinet, in consultation with other central agencies, establish processes to ensure that there is clarity of the outcomes to be achieved and these are clearly reflected in national funding agreements. The committee asserts that to underpin the achievement of outcomes, mutual understanding of the end goal must drive the cultural change, the training and skill development, and the quality and timeliness of data collection and publication. At all times, outcomes should be the focus in the development of all NAs.

Response

The Government notes the recommendation. As outlined in the response to Recommendation 2, on 13 February 2011 COAG agreed, in response to the HoTs Review, to review the performance frameworks of each of the six NAs and select NPs to ensure that progress is being measured and that all jurisdictions are clearly accountable to the public and COAG for their efforts.

In addition to the work to implement the HoTs Review, the Department of the Prime Minister and Cabinet and the Treasury work continuously with relevant portfolio agencies to develop NPs and IPs under the IGA FFR that have a strong focus on specifying outcomes and identifying robust performance measures and data to assess progress in achieving outcomes over time.

Recommendation No. 7

The Committee recommends that the Department of the Prime Minister and Cabinet, in collaboration with agencies such as the Australian Public Service Commission, should lead a process to provide training across the broader Australian Public Service which incorporates information on the Intergovernmental Agreement on Federal Financial Relations to explain the importance of the Agreement and its principles.

Response

The Government agrees with the recommendation. As mentioned in response to Recommendation 3, guidance materials have been developed for relevant staff in affected agencies. The Department of the Prime Minister and Cabinet is developing a presentation on the IGA FFR and how to develop agreements under the FFR framework. The presentation will be delivered jointly with Treasury to Commonwealth portfolio agencies on a targeted basis. An improved COAG website has also been launched.

As mentioned in response to Recommendation 5, Commonwealth central agencies are also exploring opportunities to leverage the Department of Finance and Deregulation’s work with the APSC, to develop and deliver education products to enhance the awareness and understanding of the requirements of the FFR framework.

Recommendation No. 8

The Committee recommends that the Commonwealth works through the Council of Australian Governments to ensure that States develop and implement a similarly structured
approach to foster cultural change throughout departments and agencies and ensure all staff receive relevant training to enhance understanding of the framework and develop the skills required to meet outcomes focused performance reporting requirements.

Response
The Government notes the recommendation. The Drafters’ Toolkit (see response to Recommendation 3) was developed and agreed in consultation with State and Territory central agencies. At their meeting of 9 December 2011, HoTs agreed to disseminate and promote the Drafters’ Toolkit to its respective portfolio agency secretaries or equivalents. The Secretary of the Commonwealth Treasury wrote to relevant portfolio agency secretaries on 23 December 2011.

States have also undertaken a range of measures to foster cultural change to ensure all staff receive relevant training to understand the IGA FFR and to develop the skills required to meet outcomes-focused performance reporting requirements. More information provided by the States is available at Attachment A.

Recommendation No. 9
The Committee recommends that the Department of the Prime Minister and Cabinet and central agencies report back to the Committee within six months on work undertaken to move towards the 'single report to multiple agencies' ideal and the potential to develop a set of standard data requirements for areas of national interest.

Response
The Government agrees with the recommendation. The Government supports streamlining reporting requirements and consolidating data collections wherever possible to reduce the reporting burden. This objective will always be balanced with the need to have data that are fit-for-purpose, timely and robust.

In response to the Committee's request to report back, significant progress has already been made to move towards the 'single report to multiple agencies' ideal. In particular, agencies like the Productivity Commission and the CRC already draw almost entirely on secondary information sources rather than approaching providers and States directly for the same information. There are several areas of work underway to consolidate data collections, including:

(a) the development of National Minimum datasets to improve performance reporting against NAs and NPs;
(b) the National Centre for Vocational Education Research (NCVER) data collations;
(c) Australian Curriculum, Assessment and Reporting Authority (ACARA) and National Assessment Program – Literacy and Numeracy (NAPLAN) data collections; and
(d) the Australian Bureau of Statistics 'Measuring Wellbeing' framework.

Additionally, METeOR, the Australian Institute for Health and Welfare's (AIHW's) Metadata Online Registry, is a repository for national metadata standards for health, housing and community services statistics and information. The catalogue of holdings of AIHW data is an online searchable catalogue of a selection of data held by the Institute for statistical purposes.

Recommendation No. 10
The Committee recommends that the Prime Minister through the Council of Australian Governments, take steps to respond to the reports and recommendations of the Council of Australian Governments' Reform Council within three months.

Response
The Government agrees with the recommendation. COAG has already undertaken to respond to CRC reports and recommendations within three months.

Recommendation No. 11
The Committee recommends that the Prime Minister table COAG Reform Council reports in the Commonwealth Parliament one month after submission to COAG, and that relevant Productivity Commission reports are tabled as soon as practical. Once tabled, these reports should be automatically referred to an appropriate Joint Standing Committee for review.

Response
The Government notes the recommendation. The CRC releases publicly its NA performance and NP assessment reports, and Productivity Commission reports are already tabled in Parliament within 25 sitting days of being received by the Treasurer. However, in some instances neither the CRC nor COAG release certain reports. This occurs, for example, when the contents are commercial-in-confidence. Consequently, COAG reserves the right to withhold certain reports if there is a compelling reason to do so.

**Recommendation No. 12**

The Committee recommends that signed National Partnerships are tabled in Parliament, along with a complementary Ministerial Statement.

**Response**

The Government disagrees with the recommendation. All agreements under the IGA FFR are available publicly on the website of the Standing Council on Federal Financial Relations.

**Recommendation No. 13**

The Committee recommends that the Prime Minister deliver an annual Statement to the House:

- outlining the Commonwealth Government’s perspective on the contribution of national funding agreements to the improvement of the well-being of Australians; and

- summarising the number of current, new, upcoming and expired NAs and NPs.

**Response**

The Government notes the recommendation, but considers that the recommendation’s objective is delivered through other existing avenues. COAG’s contribution to the improved well-being of Australians is already canvassed by a range of agencies through a number of different reports by the CRC, the Productivity Commission and indirectly through the measures of Australia’s wellbeing reported by the Australian Bureau of Statistics.

For example, the CRC produces an annual report, *COAG Reform Agenda: Report on Progress*, and a number of reports on progress under the NAs and certain NPs. Similarly, the Productivity Commission reports on the 'Impacts and Benefits of COAG reforms' and provides COAG with information on progress through its Report on Government Services. Finally, COAG itself reports on its progress through the communiqué published after each meeting and published on its website.

All NAs, NPs, IPs and PAs are available publicly on the SCFFR website which is updated regularly. Information on upcoming and expired agreements is published in Budget Paper 3 and Part 3, Attachment D of the Mid-Year Economic and Fiscal Outlook, which are public documents tabled in Parliament.

**Recommendation No. 14**

The Committee recommends that the Department of the Prime Minister and Cabinet and central agencies investigate steps so that Portfolio Budget Statements and annual reporting requirements provide a more comprehensive picture of the performance and outcomes of programs under National Partnerships across government.

**Response**

The Government notes the recommendation. The CRC already reports on progress against those NPs that support the objectives of an NA, much of which is summarised in its annual *COAG Reform Agenda: Report on Progress* and in its annual NA performance reports. The CRC also reports on whether performance benchmarks have been achieved in NPs with reward payments. For other NPs, Commonwealth agencies may publish progress or final program reports on their websites.

The Department of Finance and Deregulation is already taking steps to improve the guidance it provides to agencies on performance reporting in the Portfolio Budget Statements as part of its response to a recent ANAO Performance Audit Report (No.5) 2011-12: *Development and Implementation of Key Performance Indicators to Support the Outcomes and Programs Framework*. The Department is also considering the inclusion of further guidance on how to reference performance reporting for programs delivered through NAs.
States and Territories are responsible for delivering the majority of outcomes and outputs under NPs. The primary purpose of Commonwealth agency annual reports, on the other hand, is to report on the performance of the Commonwealth agency in relation to services provided.

**Recommendation No. 15**

The Committee recommends that, in light of the range of review activity currently underway, the Commonwealth Government take this opportunity to institute and deliver on the Intergovernmental Agreement on Federal Financial Relations' full potential. With these changes Australia will be well positioned to continue on the reform pathway in the coming decade.

**Response**

The Government agrees with the recommendation.

### STATE AND TERRITORY ACTIVITIES TO FOSTER CULTURE CHANGE WITH RESPECT TO THE INTERGOVERNMENTAL AGREEMENT ON FEDERAL FINANCIAL RELATIONS

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Activity</th>
<th>Departments and agencies targeted</th>
<th>Aims of activity</th>
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<tbody>
<tr>
<td>NSW</td>
<td>Development and dissemination of explanatory documentation such as Premier's Memorandum M2011-19 and the related NSW Protocol for the Intergovernmental Agreement on Federal Financial Relations.</td>
<td>All agencies</td>
<td>To promote understanding of the IGAFFR's principles and aspirations including a focus on outcomes with flexibility for States to determine their own priorities and tailor programs to their own contexts.</td>
</tr>
<tr>
<td></td>
<td>Regular contact between DPC policy officers, Treasury and line agency officers.</td>
<td>All agencies</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<td></td>
<td>Dissemination of information relevant to COAG and national reform to intergovernmental contact officers in line agencies.</td>
<td>All agencies</td>
<td>To promote understanding of the IGAFFR and issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<td></td>
<td>Using the templates and guidance material developed by the HoTs Review Implementation Working Group, NSW DPC will consider a further strategy for the implementation of the IGAFFR.</td>
<td>All agencies</td>
<td>To improve NSW agencies' understanding of the IGAFFR and their roles in its implementation.</td>
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<tr>
<td>Victoria</td>
<td>Following the 2008-2009 reform implementation period, in 2010 DPC and DTF developed a strategic communications plan (based on external expert advice) that incorporates both: mechanisms for ongoing leadership and engagement from the Victorian</td>
<td>All departments</td>
<td>To promote high-level VPS awareness and ongoing implementation of the federal financial relations (FFR) framework, including an appreciation of how underlying reform principles are consistent with both good</td>
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<td>Aims of activity</td>
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<td>Government and senior public servants, through regular items on the agendas of relevant decision-making and coordination/oversight fora (including the State Coordination and Management Council of heads of departments, a dedicated intergovernmental relations network for senior executives and a FFR manager-level group); and a proactive capability-building program for relevant departmental managers and officers (including &quot;principles and processes&quot; guidance material, &quot;basic training&quot; and &quot;FFR expert&quot; workshops, and a dedicated VPS intranet resources page).</td>
<td>All departments</td>
<td>Strategic policy disciplines and the Government's own innovation and accountability agenda.</td>
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<td></td>
<td>Ongoing inter-departmental forum on performance reporting issues.</td>
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<td>Implementation of this plan is ongoing.</td>
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<td></td>
<td>Central agency co-ordination of Victoria's engagement with CRC reporting processes.</td>
<td>Portfolio departments with associated performance reporting responsibilities.</td>
<td>To assist Victorian portfolio departments in providing high-quality and robust information to the public through the CRC reporting process; this outward-looking work reinforces the importance of underlying reform principles such as enhanced outcomes-based public accountability, clearer roles and responsibilities and reduced administration and compliance overheads.</td>
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<tr>
<td>Queensland</td>
<td>Information sessions on the IGAFFR, its intent and implementation, conducted in 2010.</td>
<td>Agencies most affected by national reform agenda</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<tr>
<td>Queensland</td>
<td>Monthly meetings between DPC, Treasury and line agencies.</td>
<td>Key agencies e.g. Health, Education,</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<td></td>
<td>Periodic cross-agency meetings to discuss COAG related matters generally and IGAFFR related matters specifically.</td>
<td>Communities, Public Works Agencies most affected by national reform agenda (e.g. health, education, transport, housing, Indigenous affairs, business regulation, disability services)</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<tr>
<td></td>
<td>Regular contact between DPC and Treasury officials and line agencies.</td>
<td>All</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<td></td>
<td>Under Treasurer advice to key stakeholders of changes to the IGAFFR.</td>
<td>All</td>
<td>To ensure that key stakeholders have a current understanding of IGAFFR issues.</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Monthly meetings between DPC, Treasury and line agencies.</td>
<td>Key agencies e.g. health, education</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<tr>
<td></td>
<td>Periodic cross-agency meetings to discuss COAG related matters generally and IGAFFR related matters specifically.</td>
<td>Agencies most affected by national reform agenda e.g. health, education, transport, child protection, housing, Indigenous affairs, commerce, disability services</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
</tr>
<tr>
<td></td>
<td>Regular daily contact between DPC and Treasury officials and line agencies.</td>
<td>All</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<tr>
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<tr>
<td></td>
<td>Information sessions on the IGAFFR, its intent and implementation, conducted in 2010.</td>
<td>Agencies most affected by national reform agenda</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<tr>
<td>South</td>
<td>Meetings with Deputy Directors General immediately prior to COAG meetings.</td>
<td>Key agencies e.g. health, education</td>
<td>To discuss issues on COAG agenda including issues relating to negotiating and/or implementing NAs, NPs and IPs.</td>
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<tr>
<td>Australia</td>
<td>Meetings of the chief-executives level COAG Implementation, Reporting and Evaluation Group (CIREG), chaired by the chief executive of the Department of the Premier and Cabinet.</td>
<td>Treasury and agencies relevant to key COAG areas: health; education; further education, employment, skills and training; and communities and social inclusion.</td>
<td>CIREG provides oversight of South Australia's implementation of its obligations under NAs and NPs. In particular, CIREG discusses issues arising from the negotiation and/or implementation of NAs, NPs and IPs; the implications for South Australia of the performance reports that are published by the CRC; and oversees an internal system of monitoring South Australia's progress with NPs.</td>
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<tr>
<td></td>
<td>Meetings of Policy Reference Groups, comprised of officers from Cabinet Office, Treasury and relevant line agencies.</td>
<td>Agencies relevant to key COAG areas</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
</tr>
<tr>
<td></td>
<td>Regular contact between Cabinet policy officers, Treasury and line agency officers.</td>
<td>All agencies</td>
<td>To promote understanding of the IGAFFR, discuss issues arising from the negotiation and/or implementation of NAs, NPs and IPs.</td>
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<tr>
<td></td>
<td>Development and dissemination of explanatory documentation such as South Australian Guidelines for Developing NPs.</td>
<td>All agencies</td>
<td>To promote understanding of the IGAFFR and issues arising from the negotiation and/or implementation of NPs.</td>
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<td>Tasmania</td>
<td>Cabinet agreed a process for line agencies to consult with Treasury and the Department of Premier and Cabinet (DPAC) early in the development of NAs, NPs, IPs and PAs. All prospective NPs must go through the Cabinet process. Information sessions on the IGAFFR, its intent, implementation and agency responsibilities conducted regularly beginning 2009. Regular contact between DPAC, Treasury and line agencies in relation to individual agreements. Joint letters from Treasury and DPAC advising/updating all agencies of relevant guidance material for developing NPs and IPs such as the HoTs Review circulars and the Toolkit for Drafters of New Agreements.</td>
<td>Cabinet/All Departments</td>
<td>To promote understanding of the IGAFFR and issues arising from the negotiation and/or implementation of NAs, NPs and IPs. To promote an understanding of the IGA FFR such that NPs and IPs align with the principles of the IGA FFR.</td>
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<tr>
<td>ACT</td>
<td>Chief Minister and Cabinet Directorate took a paper to Strategic Board, the meeting of all heads of ACT agencies, highlighting the need for close co-operation between all agencies.</td>
<td>All agencies</td>
<td>To communicate the roles of line and central agencies in development and implementation of the IGA FFR.</td>
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**CHAMBER**
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<th>Jurisdiction</th>
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<th>Aims of activity</th>
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<td></td>
<td>line agencies and central agencies in the development and implementation of NPs, and seeking senior contact points in those agencies.</td>
<td>All agencies</td>
<td>partnership agreements</td>
</tr>
<tr>
<td>In late 2011, CMCD held meetings with middle managers from all agencies to explain the IGA FFR and protocols for its implementation.</td>
<td>All agencies</td>
<td>To raise awareness with middle managers of protocols for the implementation of the IGA on FFR.</td>
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<tr>
<td>Now that templates and guidance material for the IGA on FFR have been finalised, ACT Government will now develop a further strategy for the implementation of the IGA.</td>
<td>All agencies</td>
<td>To improve ACT agencies' understanding of the IGA and their roles in its implementation.</td>
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<tr>
<td>Northern Territory</td>
<td>Issuing of a Treasurers Direction on NPs, PAs and IPs. Treasurers Directions provide Accountable Officers with the principles, practices and procedures to be observed in the administration of the financial affairs of the Territory and Agencies.</td>
<td>All Agencies</td>
<td>To provide direction to Northern Territory agencies in the development, negotiation and implementation of agreements established under the IGA, including ensuring the focus of the agreements remains on the achievement of the agreed outcomes and outputs, adequacy of funding arrangements and streamlined performance reporting.</td>
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<tr>
<td>Agency information sessions</td>
<td>All relevant Agencies</td>
<td>To provide agencies with advice as to the design and negotiation of NPs, PAs and IPs to enable consistency of agreements with IGA principles and Northern Territory Government policy and appropriate performance reporting.</td>
<td></td>
</tr>
<tr>
<td>Networking with State and Commonwealth colleagues to promulgate effective implementation of the IGA including the use of the drafters' tool kit resources and identification of key cultural change issues and solutions.</td>
<td>Central Agencies</td>
<td>To enhance compliance with IGA including the development of appropriate resource materials.</td>
<td></td>
</tr>
</tbody>
</table>
GOVERNMENT PAPERS

Travel Expenditure

The DEPUTY PRESIDENT: I table documents providing details of travelling allowance payments made by the Department of the Senate to senators and members during the period 1 July 2011 to 30 June 2012, and travel expenditure for the Department of the Senate during the same period.

COMMITTEES

Treaties Committee

Report


Leave granted.

Senator BIRMINGHAM: I move:

That the Senate take note of the reports.

I thank the Senate for the leave. In presenting these two reports I will touch briefly on some of the issues they canvass. First is report No. 127, which contains the committee's views on a series of treaties which were tabled on 20 March and 8 May 2012. One of the more important treaties covered in this report is the exchange of notes constituting the Agreement between Australia and the United States of America to Amend and Extend the Agreement on Cooperation in Defence Logistics Support. The exchange of notes will extend the Agreement on Cooperation in Defence Logistics Support for a period of 11 years and ensure that Australia's bilateral defence logistics cooperation with the United States remains on a sound footing.

The agreement's continued operation is important to the Australia-United States military relationship because it enables the reciprocal provision of logistical military support. It also provides for the establishment of maintenance programs which enhance industry capability and contribute to Australia's military preparedness and interoperability with US forces.

I hope that all members in this place recognise that Australia's defence relationship with the United States is our most important defence relationship. The ANZUS alliance, in effect for over 60 years, is the cornerstone of that relationship and subsequent agreements, such as this one, help to facilitate that defence relationship. Given the increased cooperation and activity between the US and Australian defence forces over the past decade, this exchange of notes is both logical and practical.

It will help to facilitate ongoing operations in Afghanistan as well as the deployment of the US Marines to the Northern Territory.

The Joint Standing Committee on Treaties did, however, note that this agreement is currently used infrequently and could perhaps better serve Australia's interests if some of the provisions within the logistical support agreement were more fully utilised, especially in the area of Australian access to US equipment and industry. From evidence the committee received, it appears as though the agreement's potential has perhaps not been explored as thoroughly as it could be, and we certainly urge those officials involved in Defence to look at how it could be enhanced to the benefit of Australia's defence industry.
The committee also approved an extension to the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology. The regional co-operative agreement is a useful mechanism in providing a regional framework for initiating co-operative projects and co-ordinated research between international atomic energy agreement member states in the Asia-Pacific. Its continued operation over a 40-year period provides tangible evidence of its usefulness. Although the RCA's role in the nonproliferation architecture is limited, it does perform a role in promoting nonproliferation objectives. Furthermore, as part of a broader regulatory architecture for nuclear activities, it also plays a role in implementing improved standards following events such as those that occurred, tragically, at Fukushima. The committee strongly supported the continuation of our involvement in this agreement, which ensures that the peaceful use of nuclear science and technology is advanced throughout the region. The committee noted that there could have been opportunity to upgrade the agreement rather than, as such, simply roll it over, and the report suggests that Australia could and should in future look at taking the opportunity to strengthen the safety and nonproliferation aspects of this agreement, especially in light of the Fukushima disaster. The agreement is renewed every five years, this is an item we would expect to be taken into account at that time.

In relation to report No. 128, which contains the committee's views on the Treaties Ratification Bill 2012, I inform the Senate that the committee has recommended that this bill not proceed. The bill was introduced by the member for Kennedy into the House of Representatives in February this year to address what he perceives as the undemocratic nature of treaty negotiation and implementation. The member for Kennedy was concerned that the treaties Australia is entering into are economically damaging to Australian agriculture and manufacturing, and claimed that Australia's sovereignty is being eroded. Members of the committee do not necessarily agree with the member for Kennedy's summation.

The way in which trade treaties are negotiated continues at times to be a matter of controversy but, equally, I especially and the committee overall recognise the absolutely vital importance of free trade to Australia and of the continued negotiation by the Australian government of bilateral and multilateral free trade agreements and participation in those fora. There may be a popular perception in some places that Australia is being disadvantaged by these agreements; however, open markets to foreign products, services and investment are absolutely essential to Australia's future.

Senator Wong: You'd better tell Barnaby. Barnaby's got Tony's ear!

The DEPUTY PRESIDENT: Order! Senator Wong!

Senator BIRMINGHAM: I welcome Senator Wong's enthusiastic support for the findings of the committee. I suggest that Senator Wong take a look at some of the comments of the likes of the member for Hindmarsh on these topics. She might find that they are not in accordance with some of the strong views of the Minister for Trade or others.

The Treaties Committee considered these issues during its study of the Australia-Chile Free Trade Agreement in 2008. At the time, the committee recommended that there could be more thorough cost-benefit assessment of treaties provided by the government to ensure that there is a better understanding of the benefits that stem from these types of
free trade agreements. The committee has reiterated this in this report in a broader sense, given that it covers more than just trade agreements, and recommended that, prior to commencing negotiations for any new agreements:

... the Government table in Parliament a document setting out its priorities and objectives, including the anticipated costs and benefits of the agreement.

This, we think, would provide greater transparency to the treaty-making process and allow the Treaties Committee to have the opportunity to engage with the government of the day on the treaty-making process before such treaty negotiations are finalised, which is an important point across all aspects of treaty making.

However, as I indicated, the member for Kennedy's bill is not, in the opinion of the committee, the solution to the concerns that it has indicated or to the concerns the committee may have about the lack of parliamentary involvement in the treaty-making process at its earlier stages. We see that the bill has a number of flaws and would be unworkable. The bill itself has only one substantive provision:

The Governor-General must not ratify a treaty unless both Houses of Parliament have, by resolution, approved the ratification.

The committee received a number of excellent submissions and heard evidence from well-informed witnesses at the public inquiry that was held into the bill. From this evidence, the committee concluded that it appears that the bill is likely to be constitutional. Section 61 of the Constitution places formal responsibility of treaty making with the executive rather than the parliament. The wording of the bill indicates that the parliament is not taking over the ratification function, however, but rather makes the executive's decision to ratify conditional upon the parliament's prior approval.

However, the bill would present a number of practical and political problems to both the parliament and the executive if passed as presented. The sheer number of treaties, many of them dealing with administrative matters, along with, indeed, the nature of the parliament, would at times have the potential to overwhelm the parliamentary process if all treaties were subject to this arrangement. The bill's lack of a provision for short-term emergency treaties would make the bill unworkable. For example, the Joint Standing Committee on Treaties has, on behalf of the parliament, reviewed over 600 treaty actions at an average of almost 40 treaties per year since it was established in 1996. If both houses of parliament had to, by resolution, approve the ratification of each treaty, as the bill demands, the parliament would certainly need to sit more often and would have little time, perhaps, to complete its other business.

Although other models exist overseas which may add a greater degree of parliamentary scrutiny to the treaties review process, the bill is a very brief document which allows little room for amendment without a comprehensive change of its intent.

That is why the committee has made the recommendation that I highlighted earlier; to give greater parliamentary oversight and involvement at an earlier stage of the negotiating process, which we believe would be a good step on the reforms that the Howard government instigated in establishing the Joint Standing Committee on Treaties originally.

I thank the committee secretariat for its work on both of these reports, and I commend both of the reports to the Senate.

Senator LUDLAM (Western Australia) (15:45): In rising to speak on the motion to take note of the reports of the Joint Standing Committee on Treaties, I would like to
follow up on some of Senator Birmingham's comments from the point of view of the Australian Greens. I will focus mostly on the Fifth Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology, which was signed up to by Australia on 15 April 2011.

Senator Birmingham pulled out one of the quotes, and I want to highlight it. It is extremely interesting that this was one that he chose to highlight. I have a great regard for Senator Birmingham and also for the work of the Treaties Committee and its secretariat. This is a diligent committee that performs an extraordinarily important role. Given that so much of treaty making between Australia and other countries is done by the executive and the parliament gets to find out about it after it is done, the role of the Treaties Committee in assessing and providing recommendations to the government and to the parliament before they are rubber stamped—if indeed they are—is tremendously important.

This is an opportunity missed. In recent times the Treaties Committee has done extremely important work, for example, on the proposal to sell uranium to Russia, which is presently assisting Iran in creating a domestic nuclear power capacity and potentially other things. In this report the committee noted, 'There may have been an opportunity missed to upgrade the agreement rather than simply rolling it over.' But, of course, that is precisely what the committee enables and facilitates. We give it the rubber stamp and we say, 'Yes, this should simply be rolled over for another couple of years'—and miss an enormous opportunity to assess what has just happened in the nuclear industry.

One of the things that I hope to speak about in a bit more detail some time later in this session is the visit that I was very fortunate to take over the break to Tokyo and Fukushima. I spent some days in the areas surrounding the destroyed reactor complex that was wrecked after the earthquake and then the tsunami last 11 March, which depopulated a large stretch of not only the Fukushima Prefecture but also areas a long way to the north and the west of the reactor plant—which actually caused the Prime Minister of Japan to briefed by officials on the evacuation of Tokyo, which has a population of roughly 30 million people. If Tepco had walked away from that reactor complex and they had gone into full meltdown and had lost all four of the plants plus the spent fuel ponds they would have had to evacuate the northern half of Japan, including greater Tokyo. That was from one accident at one power station.

It is remarkable then to return from that trip—which I will speak of at greater length when I have the opportunity—to see the tabling of this report that says: 'This is fine; she's right. We can just carry this on and roll it over.' Everything has changed in this particular industry. In fact, everything changed after Chernobyl. The industry simply went into a flat line in many countries, apart from China. And let us not dismiss their extremely ambitious nuclear build—and this is a country that does what it says it is going to do in this kind of area. Apart from that, all of the news is negative for the nuclear sector; all of the indicators are backwards.

Since the disaster, three countries—Germany, Belgium and Switzerland—have announced a nuclear phase-out. Only two units are currently online in Japan, and the mood in that country at the moment is strongly against the restarts. So Japan are now scrambling for alternate sources of
supply, including gas from Australia, and they are on quite an aggressive energy efficiency mechanism. People in Japan are saying: 'You sold us out and betrayed us twice. Firstly, you told us that these plants were safe and that this could never happen and, secondly, you told us that these plants were essential and that we needed them all. Neither of those things is true.' Trust on behalf of the Japanese people in a government that led them into this extraordinary disaster is gone, patience has snapped and the situation has turned. For the Australian government to then document its total ignorance of that fact is, I think, something more than an 'opportunity missed'.

It is having consequences in the industry. So maybe this reality has not yet washed through the parliament, where this strange kind of pro-nuclear delusion that everything is great and will continue to be great still prevails. In industry, the mood has changed as well. BHP Billiton appears to have put off its decision about the expansion of the Olympic Dam project for two years. Obviously that is a big copper venture as well. It would also be the world's largest uranium mine and the world's largest excavation—hole in the ground—if it goes ahead. They have parked it for the time being. The proponents of the Kintyre uranium mine in the western desert of Western Australia, Cameco and Mitsubishi—not niche players but the largest uranium miner in the world and one of the largest industrial combines in the world—have backed away from Kintyre. BHP has also backed away from the O'Leary project in Western Australia. Toro, who really are a two-bit player, who have this nasty little project in the Lake Way Basin, not too far from Wiluna in Western Australia, have not told the market yet but they are going to need to back away from that project as well because it is utterly sub-economic.

One of the reasons it is sub-economic is that the world uranium price will not be recovering because customer countries do not want what we are selling any more. Yes, it will take time to back out of some of the disastrous investment decisions that have been made, not just in Japan but in all the countries that took up this technology—and thank goodness we never took the bait here in Australia—but the market for this poisonous product that we insist on selling is disappearing fast. It would have been nice to have seen some recognition of that fact in this report.

The balance sheet of Tepco, the utility that operated the Fukushima plant, has been annihilated. It is worth much less than nothing. It is now a colossal uncapped, unknown liability on the taxpayers of Japan. It has lost 90 per cent of its share value since 2007. The French state utility—where there have not been any catastrophic accidents in the last year or two, that we know of—lost 82 per cent of its value. The share price of the French state company AREVA—which we are in the process of kicking out of Kakadu, which is superb news, and I applaud the government for that—has fallen by 88 per cent. Siemens, the big German industrial group, has announced that it will entirely withdraw from the nuclear industry because that would free up funds that Siemens can redeploy in businesses with better visibility. What better visibility could you ask for than an industrial accident that depopulates a region, destroys a fishing industry, destroys agriculture and horticulture, forces the evacuation of 150,000 people and laces an entire region with iodine and radiocesium? That is the kind of visibility that Siemens has decided it can do without.

In Fukushima—and I will speak about this at greater length—36 per cent of children screened were found to have abnormal growth—cysts or nodules—on their thyroid
glands. Radioiodine has quite a short half-life. It is an aggressive isotope and the body reads it as normal iodine and parks it in the thyroid gland. Thirty-six per cent of kids in the contaminated zone were found to be affected, post-evacuation. This is a trade that Australia can do without. They can certainly do without it in Tohoku and in the regions that were showered with radiocesium—radiocesium that originated in Kakadu and central South Australia.

The Australian Prime Minister said some time ago—it was some time ago so perhaps she would consider rethinking this—that Fukushima 'doesn't have any impact on my thinking about uranium exports.' It has had an impact on thinking in Japan, one of our biggest customer countries. It has had an impact in Germany. It has had an impact in China, where they have put some of their proposed reactors on ice and they have backed away from the really aggressive expansion plans. They are still building those plants; I will not pretend that they will not complete some of them. But I find baffling the idea that it does not have any impact on the Prime Minister's thinking about uranium exports. Prime Minister Gillard paid the Japanese Prime Minister the courtesy of visiting some of the areas shattered by the tsunami, as I was able to do 16 or 17 months on. So she has seen the destruction. She knows of the areas that have been evacuated, but I invite her to spend a couple of days in and around the contaminated area, where the farmers are now being told that their food is poisonous and the fishing industry has collapsed. There is nobody in the chamber from the National Party, but for people representing agricultural communities, farming communities, and all of us in this chamber, for a farmer to be told that the food they produce will cause cancer is shattering. But when you read the JSCOT report, there is simply no reflection; there is blissful ignorance. It is as if this has not happened.

Industry is starting to wake up. The Japanese people and the people of other countries—client countries, of this toxic, unnecessary and obsolete trade—are waking up. I call on the Australian government to take another look at this one. This is an industry that we can do without.

Question agreed to.

Electoral Matters Committee
Report


Senator RYAN (Victoria) (15:55): by leave—I move:

That the Senate take note of the report.

Apart from one particular change, the bill proposed by the government has the support of the opposition. There are a couple of issues I would like to highlight, because the committee report proposes a change to the terminology introduced by the minister in the other place. That change is to the terminology that is used to exclude people from voting. The current terminology excludes people who are of 'unsound mind'—as defined by a medical practitioner—from voting. The proposal is to change that to what one might call more modern terminology. The committee received some evidence from community groups, essentially complaining that the term has a pejorative meaning. But the committee—and this is a very important point—rejected those particular concerns, for several reasons.
Firstly, it is proposed in the bill that the wording be changed to use the definition of a 'qualified person' that is in the Freedom of Information Act. I believe that would inadvertently result in a wider exclusion of people from voting. The legal terminology around the term 'unsound mind' and a certificate being provided only by a qualified medical practitioner is about as narrow as we can get. It has an established legal meaning, there is an established process and, while there are some concerns about some doctors signing such a certificate—and there were complaints about that—changing the wording as proposed in the legislation would widen the definition and potentially exclude many more people from voting.

Secondly, it was also a concern of the opposition that the definition of a 'qualified person' as contained in the bill was too wide. I do not mean this in a pejorative way, but I would not want someone who is not qualified in medicine—someone who might be a social worker of some variety as opposed to a medical practitioner—to determine whether or not someone had the right to vote. Generally in Australia we like to expand the franchise and encourage as many people as possible to vote; in fact, we make it compulsory. We make enrolment as easy as possible. I believe that the wording proposed by the government could have inadvertently excluded more people.

The other contentious issue in this bill was the substantial increase in nomination requirements, particularly for this chamber, in terms of the number of nominators required, the number of nominators required for people who want to run on a group ticket and avail voters of above-the-line voting, and also nomination fees. There were some concerns that this would restrict the right of people to be candidates. It is important to put this in historical context. A couple of thousand dollars as a nomination fee may seem steep, but the nomination fee for the first federal election in one of our states was £25—which was a hell of a lot more money in 1900 than $2,000 is today. It still represents a substantial reduction in the nomination fee in real terms from our first federal election.

There is also a problem in access to the ballot paper. The New South Wales Senate ballot paper is now as big as can possibly be printed in the time allowed under the Electoral Act, and it is as big as can be printed on a flat-sheet printer. There is no bigger ballot paper available to be printed in the time the Electoral Act allows for ballot papers to be available for postal votes and pre-poll voting. The font size on the New South Wales Senate ballot paper is now down to 9 point. I do not mean to be too technical here but this is going to start impacting, particularly for senior Australians and those with eyesight problems, on the right to vote. We cannot make the ballot paper bigger. I believe the person who sits in front of me, Senator Fierravanti-Wells, whose name has a hyphen, has her name carried over to two lines on the ballot paper because the width cannot be fitted on the ballot paper with the sheer number of other candidates.

It is an important issue to restrict those candidates who some might say are not serious in running in order to maintain the ballot paper at a feasible size and not reach the tablecloth proportions that we did in the 1999 New South Wales Legislative Council election. We do not want to have multiple lines on the ballot paper because that could potentially impact on the fairness of the ballot. I put to the chamber and the people that a $2,000 nomination fee is not extraordinary in this modern era, especially given the historical context. Saying that, I seek leave to continue my remarks.
Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) 
(16:00): The Electoral and Referendum 
Amendment (Improving Electoral 
Procedure) Bill 2012 amends postal voting 
arrangements, increases nomination deposits 
for Senate and House of Representatives 
candidates, increases the nominators required 
for unendorsed candidates in Senate groups, 
changes the unsound mind exemption from 
enrolment to voting, and covers minor and 
technical amendments to the Commonwealth 
Electoral Act.

The committee supports the changes to 
schedules 1 and 2 of the bill. However, it has 
some concerns about schedule 3's changes to 
the unsound mind provision and has 
recommended certain amendments. Schedule 
3 proposes to change the unsound mind 
provision in subsection 93(8) of the electoral 
act. That section exempts a person from 
enrolling and voting if they are incapable of 
understanding the nature and significance of 
enrolment and voting. Thousands of people 
are using this provision every year. They 
may be facing temporary or ongoing mental 
health challenges that compromise their 
capacity to cast a vote. It is generally 
someone close to the affected person who 
will seek to have that person exempted under 
subsection 93(8). The Australian Electoral 
Commission cannot initiate a removal from 
the roll on these grounds.

The committee is sensitive to community 
concerns that the phrase 'unsound mind' is 
offensive and that the provision prevents 
people from voting. Given Australia's system 
of compulsory enrolment and voting, it is 
useful to have a mechanism to address this to 
protect the integrity of elections and to assist 
those who are unable to meet the enrolment 
and voting obligations. Based on the 
evidence received, the committee is not 
satisfied that there is any pressing need to 
remove or substitute the phrase 'unsound 
mind'. It is an established phrase with 
meaning in the law. The committee has 
recommended retaining the phrase 'unsound 
mind' in subsection 93(8). To remove it risks 
broadening the exemption and potentially 
disenfranchising electors.

The committee also supports keeping the 
current requirement for a certificate from a 
medical practitioner. With other professions 
such as psychiatrists and social workers 
making these determinations, it could fairly 
disenfranchise people if these additional 
qualified people are less stringent in judging 
a person's capacity to understand the 
significance of enrolment and voting.

I now turn to schedules 1 and 2 of the bill, 
relating to postal voting and nomination 
requirements. In referring the bill, the 
selection committee noted that the bill was 
ambiguous in relation to specific changes 
being made to processing postal vote 
applications. In its review of the bill, the 
committee found that a number of the 
changes relating to postal votes largely 
reflected existing AEC practices. These 
changes will simply ensure that the electoral 
act correctly outlines the processes that have 
evolved to help ensure efficient processing 
of postal vote applications (PVAs) and the 
distribution of postal vote packages (PVPs). 
Most PVAs are already processed centrally 
and PVPs distributed through the AEC 
central prints system—93 per cent for the 
2010 federal election. At the next election 
there will also be the option to apply online. 
These online applications will be centrally 
processed.

The divisional returning office is no 
longer the main conduit for postal voting 
activities; however, the electoral 
commissioner will continue to delegate his 
power in relation to postal votes to the 
divisional returning officers (DROs) and 
other AEC officers. This change will not
affect the way in which individuals and political parties interact with their DROs on postal voting matters. As is the current practice, political parties will still be able to distribute PVAs with campaigning material, receive completed PVAs and forward them to the relevant DRO.

In the case of issuing PVPs to a person rather than specifically to an elector, the AEC indicated that it already uses PVPs to unmatched applicants who are not found on the electoral roll. The returned ballot papers are then subject to further scrutiny and then admitted to the count only if the person is verified to be an elector. This is in keeping with the approach taken with declaration voters.

While having a variety of candidates is a feature of Australia's democracy, a large number of candidates means an expanded ballot paper and increases the complexity of the voting task for electors. Setting appropriate nomination requirements is one way to help ensure that prospective candidates appreciate the seriousness of their participation in the electoral process and that they can demonstrate some community support for their candidacy. Increasing the nomination deposit from $1,000 to $2,000 for Senate candidates and from $500 to $1,000 for House of Representatives candidates is reasonable and appropriate.

The increase from 50 to 100 nominators required for candidates not endorsed by a political party is reasonable. It is important that unendorsed candidates be able to demonstrate community support for their candidacy. Similarly, if unendorsed candidates wish to be grouped on a Senate ballot paper, it is appropriate that each member of a Senate group be able to demonstrate community support for the grouping. The bill will increase the nominators from 50 for the whole group to 100 per candidate, as the proposed new requirement is for unendorsed candidates to have 100 nominators. They should be able to draw on this support base to secure their Senate group box.

On behalf of the committee I thank the organisations and individuals who assisted the committee during the inquiry through submissions or participating at the roundtable discussion in Canberra. I also thank my colleagues on the committee for their work and contribution to this report and the secretariat for their work on this inquiry. I commend the report to the Senate and seek leave to continue my remarks.

Senator RHIANNON (New South Wales) (16:06): The Greens do not support some of the recommendations of the parliamentary committee inquiry into the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012. Those recommendations that increase nomination requirements for candidates are problematic. Schedule 1 to the bill will modernise postal voting provisions to facilitate the use of technology to improve the way in which postal vote applications are made and processed, directing all applications to either the Electoral Commissioner an assistant returning officer. We support these aspects of the recommendations. The Greens support those aspects of the bill except the Australian Electoral Commission's position that the legislation update existing laws to bring them into line with current practices. They certainly are important developments. However, we have serious concerns that the proposed increased nomination fees and the number of nominators required to nominate as a candidate are undemocratic, and will unfairly disadvantage small parties and candidates.
Doubling the nomination fee to $1,000 for a House of Representatives candidate and $2,000 for a Senate candidate, and the number of nominators for an unendorsed candidate from 50 to 100 nominators, creates an undue barrier to small parties seeking to participate in the electoral system. It actually creates an equity issue for small parties and people on low incomes. It also makes the cost of running a full ticket in the Senate close to prohibitive for small players. The Greens certainly acknowledge that with the size of the Senate ballot paper becoming very large, particularly in New South Wales, we have a problem. We need to find the balance here. So we can see why a higher threshold for nominating in the Senate has been considered. But a candidate should be able to demonstrate that they have a genuine pool of supporters.

The Greens very much believe that a foundation of democracy is to recognise the right of voters to run in elections. We see that these measures combine to create a difficult hurdle for small parties and candidates to clear, and could work to discourage participation in the electoral system. So the Greens will not be supporting this aspect of the bill and will move amendments to remove those aspects, and to restore a fairer system in terms of people who choose to run for office, when the bill comes before the Senate. I thank the Australian Electoral Commission for their advice, their evidence and their submissions that they provided when we were considering this bill, as well as all those who put in submissions and the other committee members. I always find these issues about how to improve our electoral system very interesting.

Debate adjourned.

**PETITIONS**

**FV Margiris**

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (16:10): by leave—I present to the Senate a nonconforming petition relating to the fishing trawler, FV Margiris.

Petition received.

**BILLS**

**Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012**

**Customs Tariff Amendment (2012 Measures No. 1) Bill 2012**

**Maritime Legislation Amendment Bill 2012**

**Transport Safety Investigation Amendment Bill 2012**

**First Reading**

Bills received from the House of Representatives.

Senator KIM CARR (Victoria—Minister for Human Services) (16:11):

These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move 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 KIM CARR (Victoria—Minister for Human Services) (16:12): 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—

CUSTOMS AMENDMENT (ANTI-DUMPING IMPROVEMENTS) BILL (NO. 3) 2012

Introduction

Twelve months ago, the Government announced 'Streamlining Australia's anti-dumping system'—a policy document setting out the most significant reforms to Australia's anti-dumping system in over a decade.

I am pleased today to present the Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012—the fourth and final tranche of legislation to implement the reforms in the Streamlining policy.

As I foreshadowed in March, when I introduced the third tranche of legislation, this fourth bill implements reforms across three broad areas.

First, it will better align Australia's anti-dumping and countervailing system with those of our WTO counterparts.

Second, it introduces provisions designed to address the circumvention of trade measures. These important amendments establish, for the first time, a mechanism for Australian industry to apply to the Australian Customs and Border Protection Service for an inquiry into business practices which are designed to avoid the payment of dumping or countervailing duties.

Third, it strengthens our system's ability to address parties' non-cooperation during the investigation process.

I will now step through each of these in more detail.

Aligning subsidies provisions with the World Trade Organization Agreement on Subsidies and Countervailing Measures

First, the bill amends the provisions dealing with countervailable subsidies to more accurately reflect the World Trade Organization Agreement on Subsidies and Countervailing Measures. In particular, this bill:

- amends the definition of subsidy to more accurately reflect the language of Article 1 of the WTO agreement, clarifying that a financial contribution or income or price support is a subsidy even if it only indirectly confers a benefit in relation to the goods exported to Australia;
- repeals the section of the Customs Act dealing with 'calculating whether a benefit has been conferred and the amount of the subsidy' and replaces it with a simplified section more in line with the approach of the WTO agreement;
- introduces a new provision which clarifies that the amount of the countervailable subsidy is an amount determined by the Minister in writing and that the amount of countervailable subsidy should be worked out by reference to the units of those goods;
- amends provisions relating to material injury to more effectively reflect the WTO agreement. In particular, this relates to requiring that material injury determinations be made based on facts and not allegations, conjecture or remote possibilities. It also ensures that consideration is given to the cumulative effects of those exportations in light of the competition of imported and like domestic goods; and
- amends the provision relating to the termination of an investigation where subsidisation causes negligible injury. This will clarify that a countervailing duty investigation can immediately be terminated where the authorities determine that injury is negligible without having to prove that subsidisation is received.

Anti-circumvention inquiries

Second, this bill introduces a new division in Part XVB of the Customs Act, Division 5A—Anti-circumvention inquiries. This division will allow Australian industry, or the Minister, to initiate an anti-circumvention inquiry.

Circumvention is a trade strategy used by the exporters and importers of products to avoid the full payment of dumping or countervailing duties. Circumvention activities take various forms and exploit different aspects of the anti-dumping and countervailing system. For example:
an exporter of goods subject to dumping duty may make an arrangement to export its goods through a second exporter, who is not subject to dumping duty, in order to avoid the dumping duty imposed;  

an importer of goods subject to dumping duty may import those goods in parts from the manufacturer and then assemble them in Australia in order to avoid the dumping duty imposed, because "parts" of the goods are ordinarily not subject to dumping duty; or  

an importer of goods subject to dumping duty may import those goods via a third country, which is not subject to dumping duty, in order to have them considered as imports from that third country and avoid the dumping duty imposed.

Division 5A empowers the Chief Executive Officer of the Australian Customs and Border Protection Service to inquire into those circumvention activities and provide me with a report recommending whether the original notice should be altered or remain the same. As a result of these amendments, I will be able to extend the original notice imposing the anti-dumping measures to cover the circumvention activities of exporters or importers if I am satisfied that, as a result of the prescribed circumvention activity, the duties which would have otherwise been paid on imported goods have not been paid.

Stronger provisions to address non-cooperative parties

Third, this bill strengthens the provisions that deal with non-cooperation in sampling exercises in investigations, continuation inquiries or reviews under Division 5 of Part XVB of the Customs Act.

Sampling exercises are undertaken where the number of exporters who provide information is so large as to make a determination for each individual exporter impracticable. The Australian Customs and Border Protection Service will be able to limit the examination either to a reasonable number of exporters which are a statistically valid sample, or to the exporters who are responsible for the largest percentage of the volume of the exporters from the country in question which can reasonably be investigated. Currently, an exporter of goods which are the subject of an investigation must have been either a selected exporter or a residual exporter. A residual exporter would generally receive a duty equal to the weighted average of the examined selected exporters' duty rate imposed by the measures. This would normally be more than the rate for an exporter who failed to cooperate in the investigation.

The Australian Customs and Border Protection Service's view has been that residual exporters only exist in cases where the sampling provisions were applied. In a recent Trade Measures Review Officer decision a loophole was identified which could lead to a counterproductive outcome that benefits non-cooperating exporters, that is, they may receive a more favourable rate than the rate provided under the current approach.

This amendment will prevent potential manipulation of this provision by creating three categories of exporters: cooperative, residual and uncooperative.

As a result, I will be able to determine:

- individual rates of duty for all cooperative exporters and any uncooperative exporters for whom an individual export price and normal value were calculated. These exporters will be named in the notice;
- a single rate of duty for all residual exporters. These are the cooperative exporters which were not examined; and
- a single rate of duty for all other exporters not named in the notice. This will include non-cooperative exporters which are not covered by an individual rate, and new exporters.

This approach is consistent with the approach taken in a number of other jurisdictions.

This reform will ensure that Australia's anti-dumping system effectively deals with parties that do not cooperate with investigations. This ensures that I have the power to impose tougher dumping margins for parties that refuse to provide necessary information within a reasonable period.

Conclusion

This bill completes the implementation of the legislative reforms outlined in the Government's Streamlining Australia's anti-dumping system.
The Streamlining reforms represent the most extensive improvements to the anti-dumping system in a decade and address long-standing systemic issues such as those identified in the Productivity Commission Inquiry Report No.48, Australia’s Anti-dumping and Countervailing System.

But more can be done to ensure that the system can respond to new and emerging trends.

During consultations on the implementation of these reforms, the International Trade Remedies Forum highlighted a number of areas that need further improvement. These include:

- establishing a Subsidies Working Group to examine possible improvements to Australia's countervailing provisions, and a Compliance Working Group to explore ways to ensure stronger compliance with the trade measures that are imposed;
- closer examination of the WTO rules for using experts in exceptional circumstances for exporter visits; and
- addressing sales at a loss that are aimed at avoiding the effect of our anti-dumping system.

I am looking at all of these areas and where legislative reform is required—we will bring forward further legislation for the Parliament's consideration.

There is still more to do. This bill is an important step—and I commend it to the House.

CUSTOMS TARIFF AMENDMENT (2012 MEASURES NO. 1) BILL 2012

The Customs Tariff Amendment (2012 Measures No. 1) Bill 2012 contains several amendments to the Customs Tariff Act 1995 (the Customs Tariff).

Items 1 and 2 of the Schedule to the Bill provide for the listing of Serbia as a Developing Country for the purposes of the Australian System of Tariff Preferences, with effect from 1 March 2012.

This listing accords Serbia a reduction in customs duty on a defined range of goods imported into Australia.

This action is consistent with Australia's approach to other states which were formerly part of Yugoslavia.

Item 7 of the Schedule to the Bill re-inserts subheading 5308.10.00, applicable to coir yarn, in the Customs Tariff. This subheading was incorrectly omitted from the Customs Tariff in the Customs Tariff Amendment (2012 Harmonized System Changes) Act 2011.

Those amendments were previously given effect through the tabling of Customs Tariff Proposal (No. 1) 2012 in the House of Representatives on 16 February 2012.

The remaining amendments in the Bill correct a number of technical errors that have occurred in the Customs Tariff.

These corrections maintain the quality of the text of the Customs Tariff and ensure that Australia's Customs Tariff is correctly aligned with the International Convention on the Harmonized Commodity Description and Coding System that forms the basis of the Customs Tariff.

These corrections do not affect the classification of goods or customs duty payable.

MARITIME LEGISLATION AMENDMENT BILL 2012

In the past month the Government has introduced into this Parliament a suite of bills that represents the most significant overhaul of Australia's maritime industry since its establishment in 1912.

We have introduced the National Law Bill to establish a single National Marine Safety Regulator in Australia and the Navigation Bill that modernises the 100 year old Navigation Act.

I also had the great pleasure to introduce the Government’s Stronger Shipping for a Stronger Economy legislative reforms.

These reforms became law last Thursday and from 1 July commence the vital work of revitalising Australia’s shipping industry.

This Government has also amassed a substantial body of work in the protecting Australia's precious marine environment.

In this Parliament alone, we have increased penalties for the discharge of oil or oil residues by
ships in Australian waters from $220,000 to $11 million; banned the carriage or use of heavy grade oils on ships in the Antarctic Area, legislated practices for ship to ship transfers of oil carried as cargo and implemented incremental changes to the maximum sulphur level of marine fuel oil.

This bill continues the Government's commitment to our marine environments.


As a Government, it is our duty to ensure that our laws for prevention of marine pollution are adequate, up to date and consistent with international law.

The International Maritime Organization has adopted a number of Conventions which are intended to reduce pollution by ships.

The most important of these Conventions is the International Convention for the Prevention of Pollution from Ships which is generally referred to as MARPOL.

MARPOL has six technical Annexes which deal with different aspects of marine pollution.

These are pollution by oil, noxious liquid substances in bulk, harmful substances carried by sea in packaged form, sewage, garbage and air pollution.

About 150 countries have adopted at least some of these Annexes.

Australia has adopted all six.

In July 2011 the Marine Environment Protection Committee of the International Maritime Organization adopted amendments to Annex IV, V and VI of MARPOL.

The main purpose of this bill is to implement those amendments in Australia.

The amendments to MARPOL, which will enter into force internationally on 1 January 2013, will:

- restrict the discharge of sewage from passenger ships in special areas;
- revise requirements relating to the disposal of garbage at sea; and
- make mandatory the Energy Efficiency Design Index for new ships of 400 gross tonnage and above built on or after 1 January 2013 for international trade, and
- make mandatory the Ship Energy Efficiency Management Plan from that date for all ships of 400 gross tonnage and above that are engaged in international trade.

This bill will also clarify the application of roll back provisions in Australia's territorial sea to clarify application of offences committed outside the three nautical mile limit.

In addition, the bill will repeal the Stevedoring Levy (Imposition) Act 1998 and the Stevedoring Levy (Collection) Act 1998 which relate to the former stevedoring levy.

Payment of the stevedoring levy in accordance with the two Acts ceased in May 2006 and the two Acts are no longer of any effect.

Since coming to power in 2007 this Government has significantly improved the protection of Australia's marine environment.

This bill continues that work.

TRANSPORT SAFETY INVESTIGATION AMENDMENT BILL 2012

The Gillard Government is driving historic reforms in infrastructure and transport in Australia.

From 2013, maritime safety, rail safety and heavy vehicles will, for the first time, have nationally consistent laws.

This will cut the number of transport regulators operating across Australia from 23 to 3.

This reform will improve safety, simplify the compliance task for transport operators and boost national income.

The Transport Safety Investigation Amendment Bill 2012 supports the creation of a National Rail Safety Regulator by empowering the Australian Transport Safety Bureau (ATSB) to conduct investigations in all jurisdictions; including, importantly, extending its rail investigation function to metropolitan railway lines.
This bill and the Rail Safety National Law passed by the South Australian Parliament in May this year, replaces seven separate regulatory authorities, 46 pieces of State/Territory and Commonwealth legislation including seven rail safety Acts, nine occupational health and safety Acts, and seven dangerous goods Acts.

In 2009 the Council of Australian Governments (COAG) agreed to a national approach in regulating the safety of rail.

Three years of hard work, by all jurisdictions and industry stakeholders has delivered this historic reform.

By 1 January 2013 the National Rail Safety Regulator will be in place, established through complementary State and Territory legislation, and the ATSB's existing investigation coverage will extend to match that of the regulator.

Rail reform fixes the history of inconsistent regulatory and investigation practices between the states and territories that has constrained productivity in rail transport across jurisdictional borders.

Since 2003 the ATSB has had rail safety investigation functions and powers under the Transport Safety Investigation Act 2003.

However, until now the ATSB has been confined to investigating occurrences involving interstate rail travel.

The ATSB has limited the use of its powers on an understanding reached with the States.

This bill changes that.

For the first time, the ATSB will have responsibility for investigations on the critical metropolitan passenger and freight rail networks.

There will be more investigations across a greater range of safety matters.

In carrying out its function, the ATSB's statutory independence from the regulator and industry will be preserved.

The ATSB's focus will continue to be on improving safety rather than on apportioning blame or providing the means to determine liability.

No amendments are required to the Transport Safety Investigation Act to broaden the ATSB's role.

However, the bill will clarify the Act's reliance on the territories power in the Constitution for the purpose of the ATSB conducting investigations within the territories.

The bill also contains an amendment to enable state and territory Ministers with a responsibility for rail transport to request the ATSB to conduct an investigation in their jurisdiction.

This recognises that the states and territories are significant stakeholders in rail safety.

COAG has agreed criteria for the ATSB automatically commencing an investigation, including where there has been a death or significant mainline derailment or collision.

Further, through assessing data available from all accident and incident notifications, the ATSB will determine whether other occurrences require investigation in order to address emerging hazards and risks.

With the ATSB to assume a national jurisdiction for rail safety investigations, the ATSB will be better positioned to examine other emerging safety trends of importance to the entire industry.

The final amendment in the bill clarifies that some information the ATSB obtains and generates may be disclosed in accordance with regulations made under the Act.

While this amendment will have effect with respect to the ATSB's general investigation functions and powers, it will have immediate importance for the establishment of a confidential reporting scheme.

The scheme will cover the aviation, maritime and rail industries.

For rail it will mean the industry will, for the first time, have a national confidential reporting scheme.

This will be another important component of the national rail safety system.

This bill, along with the broader reforms being undertaken by this Government and the states and territories assures the public and all parts of the
Australian rail industry, that the safety of rail operations in this country is an absolute priority.

Debate adjourned.

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

**Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012**

**Second Reading**

Debate resumed on the motion:

That this bill be now read a second time.

to which the following amendment was moved:

At the end of the motion, add:

- but the Senate:
  - (a) notes that the Government has accepted the Coalition's policy of offshore processing of asylum seekers on Nauru and Manus Island; and
  - (b) calls upon the Government to implement the full suite of the Coalition's successful policies and calls upon the Government to immediately:
    - (i) restore temporary protection visas for all offshore entry persons found to be refugees;
    - (ii) issue new instructions to Northern Command to commence to turn back boats where it is safe to do so;
    - (iii) use existing law to remove the benefit of the doubt on a person's identity where there is a reasonable belief that a person has deliberately discarded their documentation; and
    - (iv) restore the Bali Process to once again focus on deterrence and border security.

**Senator LUDLAM** (Western Australia) (16:13): Prior to question time, I had been speaking on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. In closing, I have some comments to add by way of context. We get so rapidly lost in this debate and it has been chased down into a dark corner. Once in a while it is worth pulling back to take a look at what is happening in the world that we are part of. In 2010, the number of asylum seekers arriving in Australian waters by boat was about 6½ thousand. But that very same year, the UNHCR estimates that there were 43.7 million forcibly displaced people in the world. That includes refugees but also internally displaced persons—those in camps or those on the move. I repeat: 43.7 million people are forcibly displaced in the world. So 0.014 per cent of them came to Australia by boat. After visiting Australia this February, the UN High Commissioner for Refugees, Antonio Guterres, urged Australians to appreciate the scale of the humanitarian crisis that they are trying to contend with and the very small—not inconsequential but, on a global scale, small—nature of our role in it. Against the setting of 57,000 people reaching Malta and Italy by boat in 2011 and another 100,000 asylum seekers reaching Yemen by boat, Mr Guterres said:

It is very difficult for me as High Commissioner, who has to deal with the whole world, to be convinced that 6000 is a very important problem. I understand that in the psychology of Australia, the collective psychology, this is an important problem … but you need to understand also the global perspective.

He called for moral leadership and he said the risk of a populist approach by politicians was that vastly exaggerated fears 'all too easily manifest into statements and acts of xenophobia against foreigners—be they refugees, migrants or others'. That sounds familiar, doesn't it?

It is not to say that for these 6,000 people the high commissioner referred we are not primarily responsible, once they start making their way here, to make sure that they are protected, to make sure that they are not risking their lives. And if they have set out on these voyages in unseaworthy vessels with crews who are not always competent to pilot the boats in the first place, it is a primary responsibility to make sure that they
are not abandoned, that distress calls are relayed immediately to emergency services, in this case the naval personnel, both here and in international waters and the Indonesian authorities. That is our responsibility. We have put a number of propositions forward. Senators Milne and Hanson-Young have detailed exhaustively what we believe should happen now without recourse to this parliament, without even being involved in how degraded this debate has become, because these things do not require legislative effect to happen now and we can be providing much safer pathways for people who do make these voyages.

While the government jumps on implementing the findings of the Houston report, or the very narrow interpretation of what those findings were, I want to recall that six months ago the inquiry into the immigration detention system made a number of findings that have simply been ignored and set aside. Just in March this year, that inquiry recommended that asylum seekers be detained for no longer than 90 days. And a majority of the joint committee found that asylum seekers who pass initial health, character and security checks should immediately get a bridging visa or be moved into community detention. One of the reasons for those findings is that indefinite detention is damaging to mental health. People are killing themselves in our immigration detention system; they are self-harming; they are sewing their lips together. They have nowhere to go, they have no idea when they are going to be released, and it is making them mentally ill. This is now a very well understood, if we are concerned about saving lives. I will not throw accusations across the chamber that members on this side do not care. Everybody cares. Nobody wants to see people drowning. I think one of the things we should have done a long time to ago was to turn down the temperature in here. Nobody wants people to die, but nor do I think anybody in their right mind wants people to go out of their minds in indefinite detention behind barbed wire, for no crime, for undetermined periods of time—and it could be forever—as a deterrent effect for those left behind. It is not only morally bankrupt, but the logic is not there. It is not going to work.

The question that I will rest my contribution on is: what happens in six or eight months time when we have got people behind cages in Nauru, on Manus and around the region, and the boats keep coming? What is going to happen when the bumper sticker that Mr Abbott has been trading under falls off the bumper? We will then realise that we have been having the wrong debate. We must protect people who try and make these voyages. We must remember why they make them in the first place. Most of all, we have to lose this delusion that locking people up is going to be more of a deterrent than the things that they are fleeing.

This debate will have to be reopened, it will have to be resumed, if this bill does not fix anything. We have stumbled down a very dark rabbit hole on a false premise that border security is somehow related to how we treat desperate people fleeing desperate circumstances. It is not just about upholding international legal obligations, although of course that is very important. But if it is not going to work then why are we doing it? If it is just a headline for today or tomorrow then not only are we selling out and doing an enormous disservice to the people who come here but it is doing damage to how we perceive ourselves as a country. We are better than this. I will be voting against this bill when we put it to the vote later this afternoon.

Senator IAN MACDONALD (Queensland) (16:20): I get sick and tired of
feigned emotion like that exhibited by the lead speaker for the Greens and of the illogical arguments of the Greens and, prior to today, of the Labor Party as well. While there are some Greens senators here, can I ask them a question. We take in a certain number of refugees. We can argue all day about whether it should be 13,000 or 20,000 or 27,000 or five million, but whatever it is we have an upward figure. The question is: what do you say to one of the 250,000 refugees living in a squalid refugee camp in Breidjing in Chad when they are next on the list? They are following the UNHCR rules, they have been determined to be refugees by the UNHCR and they are sitting in that squalid camp awaiting their turn, but every time some wealthy person who can pay $10,000 a head—the sort of money people in a refugee camp in Chad could not even dream of—comes out of the system and lands illegally in Australia, that person languishing in the squalid camp in Chad has to wait another year.

Senator Ludlam was talking about a fair go, that Australia is recognised for a fair go. What is fair to those living in those squalid refugee camps in Chad if every time someone comes here ignoring the system, jumping the queue—and I will say it and say it again—then someone else suffers? That is why I have always said—and I have said this many a time before—we have to discourage those who would enter Australia illegally, jumping the queue, and be fair to all of those who have been determined to be genuine refugees. These people coming by boats are not refugees; they are asylum seekers. Their determination, their status, has yet to be determined by either Australia or the UNHCR. But there are people who have been determined as being genuine refugees living in squalid camps all over the world, waiting their turn to get to the promised land of Australia or New Zealand or Canada or Britain or the United States. But every time we take someone out of the system then they have to wait longer.

I want someone from the Greens to tell me how that is fair, how that is humane. You have certain rules and everybody follows them, and I can tell you that every one of those people in the refugee camps in Chad would be barracking for us. In fact I have to say that at the Brisbane show on the weekend when I was at the LNP booth there, I actually had some of those refugees come up to me and finger-chest me and said, 'You tell Tony Abbott he is right. We had to wait our turn. Everybody should follow the rules.' So that is why I am here. Please get someone from the Greens. Get Senator Hanson-Young back and let her tell me what is fair about a system where those who have been waiting for five, six and 10 years in squalid camps should be put back because someone has decided to pay a criminal to get them to the top of the queue.

There are around 11 million refugees in Australia and the figures change each year. What do the Greens want us to do? Do they want us to look after them all, to take in 11 million? That would be great. I would love to be able to do it. But Australia cannot afford it. This government is going very close to breaking our country already just as the Labor government did in Queensland. It is going to be an even longer time before we can be more generous. I would like to see the Australia's refugee intake go up beyond the 13,000-odd that it currently is, but it does cost money. I know that under the Gillard government we have been wasting money by the bucketload in any number of ways. One of them is in preparing Christmas Island and a dozen other places around Australia as detention camps and employing all of these guards and people to look after them. The budget has already blown out and it would be better, I suggest, put into getting genuine
refugees into the system and allowing us to put up the 13,000-odd number. But they have to be paid for and Australia has to be able to afford it. Per capita, Australia does pretty well with its refugee intake.

There is a lot more I would like to say on this bill but we are keen to get at least this small step forward through the parliament, so I and others have been asked to restrict our comment and I intend to do that. But I did want to speak to associate myself with the comments made by all of my colleagues on this side. This is not the solution. It is one-third of the solution, one part of three that have been proved to work. The first is offshore processing, which this bill will do, so we support it. But the other two, the temporary protection visas and the turning the boats around where it is safe to do so, should be implemented. I do not think this is going to be as effective as it should be.

One thing I do agree with Senator Ludlam on is that we will be back debating this. The Labor Party took six years to admit they were wrong, a humiliating backdown, but at least they are going in the right direction now and that is good. But we will be back here, because it will not work without the other two legs of the three-legged approach to stopping it. I do not have time, but I do not think that it needs me to explain how those three elements actually stopped the flow of illegal immigrants to Australia all those years ago. It worked. Why Ms Gillard was persuaded by the Greens to that policy is distressing—I know why: because she needs their support. To dump that policy that was proved to work just distresses me. We are going back to the Howard years, thankfully, but we are only one-third of the way. We need to do the other two parts and I look forward to the day when we can do that so it does provide a fair go for all of the refugees who unfortunately exist on our planet.

Senator XENOPHON (South Australia) (16:28): The subject matter of the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012—people-smuggling, asylum seekers, their humane and fair treatment, the loss of life at sea—presents a complex and diabolical problem. This is not an easy decision to make. I have always preferred the idea of onshore processing. I believe that when people come to our country seeking asylum, we take on the responsibility for their welfare while they are processed. But since late 2001, at least 964 asylum seekers have perished at sea. They are the ones we know about. It is the ultimate tragedy that people who are so desperate have risked everything and lost their lives. We all do not want to see another life lost in this way. If this legislation will go some way towards achieving that aim, then I cannot in good conscience oppose it.

What is proposed is far from the ideal option, but it is the one that is before us today. It is a classic Hobson's choice. Right now we have to decide to take it or leave it. The asylum-seeker debate is one fraught with passion and angst. While many of us in this place may have drastically different opinions, I do not believe for a second that any of us do not realise the heavy responsibility that we face today with this legislation. Not one of us wants to see desperate people hurt or abused or damaged further. I will be moving a second reading amendment calling on the government to commission a further report by the expert panel on asylum seekers within 12 months of the commencement of this bill.

The ACTING DEPUTY PRESIDENT (Senator Cameron): Senator Xenophon, we already have one amendment before the chair. You can foreshadow your amendment and when Senator Abetz's amendment has
been dealt with you will have an opportunity to move your amendment.

Senator XENOPHON: Mr Acting Deputy President, I am very grateful for your procedural guidance and I will do so.

The report that is proposed in the second reading amendment will look at any human rights or other issues that have arisen from this legislation, as well as considering whether it has been successful in reducing the number of people attempting to reach Australia by boat. The government will also be required to release and publish the report within 14 days of its receipt.

My intention with this amendment is to put in place some sort of safeguard to make sure we are on the right track and that this legislation is achieving its aims. It will also ensure that there is further debate on these issues and that this legislation needs to be constantly monitored to be scrutinised properly. Many would say this is only the first step, because we need to make sure that appropriate regional cooperation is in place to make sure that this proposal operates properly.

Human rights issues are, of course, vitally important. Australia still has a moral and ethical responsibility for the people who are moved offshore under Australian legislation. We must take every step to ensure that people are treated fairly and humanely and with dignity and respect. A further review of this legislation is also necessary to make sure it is acting as an appropriate deterrent for people smugglers and those desperate enough to try and reach Australia by boat. The ultimate aim we are trying to achieve is fewer people risking their lives in this dangerous crossing, and we need to know that this legislation is working.

I also want to make it clear that we should not consider the passing of this bill as the end of the issue. The government has already agreed to increase Australia's humanitarian intake from 13,000 to 20,000 places a year, rising to 27,000 within five years. I strongly support this. We are a big country with a big heart. We have the capacity to welcome more refugees and we should exercise that capacity.

Even if we succeed in reducing the number of people undertaking the dangerous journey to Australia by sea, we cannot forget that it does not reduce the number of refugees in the world or even in our region. We have a responsibility to do all we can for these people; we must make sure that this increase does not make us complacent, and that the knowledge of 'doing good' makes us forget those waiting in offshore in camps.

Last night on the ABC's 7.30 program, UN High Commissioner for refugees, Richard Towle, pointed out the known dangers of detaining people for long periods of time in remote camps. He said:

Clearly one of the lessons from the past experience under the Pacific Solution was that protracted, prolonged displacement in far-flung islands of the Pacific very rapidly causes serious and long-term psycho-social harm to people. We do not want to go back to those experiences. But we can also only imagine the irreparable mental harm refugees suffer when they witness loved ones dying at sea.

The government has already stated that it will work with the high commissioner on the details of setting up regional processing centres, and that is a good thing. I support the government's position on this and I strongly encourage it to begin this consultation as soon as possible. I also want to note the comments of the 2010 Australian of the Year, Professor Patrick McGorry—an expert in mental health, and a person for whom I have a very high regard. Professor McGorry was not afraid to speak out against the government both during his time as Australian of the Year and more recently,
and he, too, has very serious concerns about the mental health impacts of offshore processing. These are wise voices, and we can listen to them and learn from them.

We also cannot forget the many legal issues surrounding this debate. I acknowledge that the government is seeking to resolve some of these issues, including the treatment of minors. We also need to focus on appropriate sanctions for people smugglers—not so much the crews, who are often under duress, and we have seen evidence of that more recently—but the individuals, the masterminds who are operating these networks and who profit from human misery. These aspects are vital to the functioning of this legislation.

I support the steps that the government has taken so far, and I call on them to continue to be open and transparent with the Australian people as far as these difficult legal issues are concerned. This is a debate that has affected the entire country for many years. We all feel deeply about what should or should not happen, and now that we are working towards a possible solution we must recognise the personal stake many Australians have in this argument.

I would like to take this opportunity to recognise the work done by the expert panel on asylum seekers, comprising the former head of the defence forces, Angus Houston, refugee advocate, Paris Aristotle, and Professor Michael L'estrange, the former head of foreign affairs. I think it is a strong endorsement that Paris Aristotle has supported the recommendations of the report, given his long history of supporting refugees in Australia. I understand that this was a very difficult issue for him. Given his previous strong opposition to offshore processing, some have criticised him for changing his approach. But in reality he faced the same challenge we are facing today: weighing up the risks of more deaths at sea versus the need to support and accept those seeking asylum. In an article in the *Sydney Morning Herald* yesterday Mr Aristotle summed up the dilemma:

> When you're confronted with that reality—of deaths at sea—

> … and you have the capacity to try and construct a different way that would prevent that but, at the same time, provide thousands more people with protection, and you decide not to do it for whatever reason, then I can't really live with myself on that basis.

I don't want to stay awake at night thinking about this issue and imagining how terrified a young kid or a woman would be in a violent ocean, slipping below the waterline with no one around to save them or protect them. The images of that are just too horrific.

He is right. It is just too horrific.

Mr Aristotle went on to stress the importance of a regional framework to replace the current chaos and to establish a better and more humane way of dealing with asylum seekers. I agree with him. We must not forget that this is only one stage of an incredibly complex issue and an incredibly complex process, and I hope that the current and any future governments will commit to seeing it through. But as Mr Aristotle said:

> There are risks that we're going to have to monitor carefully, and work hard to ensure that they don't result in damaging people.

> But there are greater risks with doing nothing.

I believe the intentions of this legislation are, on balance, good, and that a further report by the expert panel will give us an indication of whether the bill can live up to that intention.

I want to emphasise that this is not the end of this debate there is more, much more to be done. Offshore processing must not be a case of 'out of sight, out of mind' because this is ultimately not about plans, or intentions, or numbers, or statistics, or pictures on a screen or political debates. This is about our fellow
human beings, and it is our duty to do our best by them.

**Senator BOB CARR** (New South Wales—Minister for Foreign Affairs) (16:36): I am not closing the debate on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012. Twelve years ago I had the honour of being Premier of New South Wales, charged with the responsibility for the Sydney Olympics. Together, with the support of all of the people of Australia, we helped present to the world what came to be called the spirit of Sydney 2000. It was that spirit—the spirit of the people of Sydney and the people of Australia—that brought the games to such glorious success. We were able, with good heart, to emphasise the welcoming and generous character of the people of Australia. We told the world of our pride in our diversity.

That spirit was based on a profound reality—the great changes that had transformed this nation as a result of the bipartisanship which had prevailed on all matters relating to immigration for more than 40 years, going back to the prime ministerships of Harold Holt, John Gorton and Gough Whitlam. Here let me recall how that bipartisanship prevailed even in the bitter period after 1975 when the Fraser government had to deal with the issue of the Vietnamese boat people. To the credit of all parties and to the enduring benefit of Australia, Australian humanity and the essential decency of the Australian people, those policies won over party politics. Could there be a finer example of where bipartisanship and true national interest went hand in hand? That is the first perspective I ask the Senate to take towards the legislation arising from the Houston report. When it comes to the response of the Australian people, when they make their considered and informed judgement, I will back the spirit of Sydney 2000 over the spirit of *Tampa* 2001 any day.

My second perspective is Australia's special position as a nation of immigrants. Nobody disputes the fact that it is for Australia and its government, parliament and people to decide who comes here. But our responsibility for decisions about immigration, including refugees, is only part of the story. The overwhelming majority of us belong to families whose members as individuals made the historic decision to come here—a quarter of us within this generation. Australia is made up of millions of individual stories, and some of the most inspiring of those Australian stories are told by refugees and the Australian children of refugees. Australia should be the last country in the world whose political leaders or media should seek to demonise or dehumanise refugees from any quarter.

The third perspective is Australia's international standing and reputation and, let me emphasise, our international obligations. We have accepted these obligations for more than half a century—binding obligations under the 1951 refugees convention and the 1961 Convention on the Reduction of Statelessness. We have solemnly accepted these obligations, and they cannot be treated as something optional, to be set aside when inconvenient. We are bound equally by international covenants such as the Law of the Sea. Through our domestic implementation, these are all laws of this Commonwealth as much as any other legislation passed in this parliament. In the context of international laws and covenants by which we are bound, when you have said, 'Stop the boats,' you have said nothing. A significant maritime nation, this island continent depends more than any other country on the order and stability underwritten by the observance of international laws and covenants.
After the United States and Canada, Australia has the largest annual humanitarian intake. Last financial year our intake was nearly 13,750. Including this year's expected intake, over the past five year our intake amounts to nearly 68,000 people. In the last 65 years, Australia has resettled over three-quarters of a million people through our humanitarian intake. As the United Nations High Commissioner for Refugees, Antonio Guterres, said during his address to the Lowy Institute for International Policy this year: Australia’s continued commitment to taking in thousands of refugees each year, often from some of the most protracted situations in Africa and Asia, is to be commended. On a per-capita basis, Australia is UNHCR’s biggest resettlement country.

In 2011, Australia was the eighth largest donor to UNHCR, providing a total of $49 million, and our contribution to it has been increasing annually. Last year our core contribution was up by 11 per cent. Next year our contribution will increase by 12.5 per cent.

At present there are 43.7 million displaced people around the world, almost twice the population of Australia. Of these, more than 10 million are refugees. Four point three million people were newly displaced last year. That is a record for forced displacement around the world. Push factors are very real. The changing nature of forced displacement is testing the whole international humanitarian system. The whole situation is growing in complexity. According to Mr Guterres:

Conflict and upheaval, the traditional drivers of displacement, are increasingly compounded ... by a number of inter-related and mutually reinforcing global trends. These include population growth, urbanization, food and water scarcity, and, most dramatically, the effects of climate change.

Two point seven million people have fled Afghanistan, 1.4 million have fled Iraq and 1.1 million have left Somalia. More than a quarter of Somalia's population has been displaced by conflict, violence, drought and famine. The UNHCR estimates—this is a very current example—that one million people have already been internally displaced in Syria and 1.5 million people inside Syria are in need of assistance. A hundred and fifty thousand people have fled Syria. They are living in Jordan, Lebanon, Turkey and Iraq. Just consider this: close to a quarter of them are children. Closer to home we have seen pressures in the region. In Myanmar, for example, at the current time poverty and discrimination are leading to the movement of ethnic minorities through that country and beyond it.

Few refugees return to their country of origin. Last year, for example, out of an estimated global refugee population of 10.4 million, only around 532,000 were repatriated voluntarily. That was the third lowest number of voluntary returns of refugees in a decade. As Mr Guterres said in his speech on the 60th anniversary of the refugee convention in December last year: Resettlement opportunities also still fall far short of requirements, with spaces available for only ten per cent of the nearly 800,000 refugees needing resettlement worldwide today.

A protracted refugee situation is one where at least 25,000 refugees have been in exile for more than five years. If you use that definition, nearly two-thirds of the world's refugees—over six million people—are in protracted refugee situations. The burden of this is falling on less developed countries with less capacity than Australia to shoulder such a burden. The largest refugee-hosting countries in the world last year were Pakistan, Iran and Syria. It is estimated that Pakistan, for example, hosts 1.7 million refugees.
The government has taken steps to pave the way for this bill. The Prime Minister spoke with the President of Nauru and Prime Minister of Papua New Guinea on Tuesday. We already have an MOU in place with PNG, and PNG's prime minister, Peter O'Neill, has confirmed with the Prime Minister that his government's position on this remains unchanged. I spoke with the PNG foreign minister on Tuesday, and he reaffirmed PNG's willingness to work with Australia in developing responses to this challenging regional problem, including the establishment of a regional offshore processing centre on Manus Island. On Tuesday I instructed officials from my department to proceed immediately to PNG and Nauru to discuss next steps with government officials on implementation. Our High Commissioner to Nauru has spoken to the President of Nauru, who is supportive of Nauru's involvement in offshore processing arrangements. A reconnaissance team of officials will also visit there later this week to discuss implementation of processing centres in these locations.

But let me be clear: this is part of a larger plan. Mr Aristotle, whose work is so appreciated and observations are so valuable on this matter, articulated this plan: … we want to build a system and the centrepiece of this is not Nauru and Manus. Everybody has been focusing on those things because of the politics, but the centrepiece is all about creating a proper and fairer system in the region for people to apply to - one that would be safe and produce outcomes in a more timely way.

He said that in the Age on Wednesday. This is exactly what this government has been doing. As co-chairs of the Bali process, we are already working closely with Indonesia through the recently established Bali Process Regional Support Office to develop initiatives for cooperation under the regional cooperation framework.

The Houston report offers a course of reason, compassion and integrity. The people of Australia rightly expect us to protect the integrity of our borders. They expect us to preserve the integrity of Australia's international reputation. They expect us to observe the integrity of our humanitarian obligations. They expect us to maintain the integrity of our Defence Forces and their proper role in the protection and integrity of our shores. It goes without saying that in such a complex matter there will be—there must be—compromise, revisions, changes and flexibility. But compromise along the lines of the Houston report and this legislation does not mean any loss of integrity in pursuit of our national, regional and international interests and objectives, nor do I for one deny the legitimate contest of the political parties in this or any other matter. It is the lifeblood of a parliamentary democracy. But I do believe that we shall best serve Australia and best help save lives if we return to the spirit which informed the debate and moulded policy during the last three decades of the 20th century. In this spirit I commend the bill.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (16:48): How often have we heard it said that the road to hell is paved with good intentions. That, I think, is what has characterised this debate, which tragically has waged now for four years and which tragically has cost an unknowable number of lives. But we do know that that number is in excess of 600. It may be many more.

I do not have any doubt about the good intentions of Senator Chris Evans when, I remember, he stood up in this chamber in August 2008, almost exactly four years ago, and said how proud he was to be announcing the abandonment of what he called the inhumane policies of the Howard
government. I do not doubt his good intentions and I do not doubt his good faith.

But good intentions are not enough. If you are to govern, you have to make hard decisions; and, sadly, four years ago the government, then led by Mr Kevin Rudd, found itself incapable of making a hard decision. It made a self-indulgent decision. It decided in the name of a phony appeal to humanitarian values to abandon policies which demonstrably worked and to instate policies which I am bound to say the opposition warned at the time would imperil lives. And what is even worse and more culpable is the fact that with the passage of the years, as it has become clear beyond argument that a terrible policy error was made in August of 2008, that the warnings the opposition sounded in August 2008 had tragically turned out to be true, this government, under two successive prime ministers—Mr Rudd and Ms Gillard—adhered stubbornly to those failed policies as people were drowning and as Australia's borders came to be out of control.

Do you know, Mr Acting Deputy President, how many unlawful asylum seekers have come to Australia during the life of the Rudd and Gillard Labor governments? As of today, as best we can estimate, 22,718. And that does not include the more than 600 souls who perished at sea. The number of boats that have arrived since the election of the Labor government in the last less than five years is 389. In the six years during which the policies of the Howard government were in operation—the policies that Senator Evans was so proud, in the name of humanitarianism, to repeal—there were 16. That is fewer than three a year. Those figures are not in controversy; they are not in dispute. They are the empirical evidence of a catastrophic policy failure with unimaginable human consequences. Yet through four long years, under two prime ministers, this Labor government adhered stubbornly to that catastrophic policy failure.

I am glad that at least in respect of one of the three elements of Mr Howard's successful policies—that is, offshore processing and the reopening of the Nauru and Manus Island detention centres—the government has finally seen the light. I cannot begin to understand why the government still stubbornly refuses to adopt the other two of what has been called the three-legged stool of policies that as a suite, as a group of policies, worked—that is, temporary protection visas and turn-back of boats when it is safe to do so, as it sometimes though not commonly is. I do not understand why a government that admits that its policy has failed, admits it has to go back to the Howard government's policies, would adopt only one of the suite of three. But, nevertheless, the opposition supports this bill because it is some progress.

I do not want to rehash arguments that I made in this place when the matter was last debated before the winter recess, but I listened carefully and respectfully to Senator Bob Carr's contribution a moment ago and I could not help thinking to myself: 'Senator Carr, why didn't you say that seven weeks ago when the matter was last before the Senate? What has changed in seven weeks?' All that has happened is that the government at long last has realised that it was wrong, and yet it has lacked the grace to say so.

We as members of parliament are all fallible human beings. We all make mistakes. Governments of both political persuasions sometimes make mistakes. This was a particularly catastrophic mistake. It had unimaginably sad human consequences. But, having accepted that a mistake was made, having accepted the need to go back to at least one of the key Howard government
policies after four years defiantly hurling every insult and all manner of abuse at the opposition for advancing the very argument the government now accepts, why wouldn't you at least have the grace to acknowledge to the Australian people that you got it wrong? I do not think people would think less of the government if they did that. I actually think they would think more of the government if they did that. But, in any event, we have had the same level of intellectual dishonesty after the backflip as we had for four years before the backflip.

The opposition welcomes the government's decision to restore one of the important elements of its successful policy. We hope it works. We have no confidence in the absence of the other two elements of what was a package of policies that it will work, but we hope it does. But we cannot, I am bound to say, have a great deal of respect for a government which, having embraced policies for four years in the face of all evidence and all reason, which it roundly and utterly condemned, now embraces that very policy and yet still decides to politicise this issue by attacking the opposition.

**Senator Lundy** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (16:58): I would like to thank all honourable senators for their contributions to the second reading debate on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill. I remind senators that this bill has two very clear purposes. The first purpose is to tackle people-smuggling and reduce the tragic loss of life at sea that is too often a consequence of people making the dangerous journey to Australia by boat. Secondly, these amendments will ensure that those people who arrive by boat will receive no advantage in their processing. The background to this bill is long and, in many ways, unfortunate. This bill was first introduced in the wake of a High Court decision that turned on its head the common understanding of the executive power to transfer offshore entry persons to third countries for processing of their claims. That decision belied past practice and belied the government's legal advice.

In response, the government moved immediately to legislate to restore to the executive the power that had previously been understood to exist. I remind senators that the rationale for these amendments was to tackle people smuggling, the distressing consequences of which we have seen repeatedly in the months since. The government believed, and believes, that arrangements such as the one struck with Malaysia are the best way of going about this. These arrangements ensure proper protections in the recipient country, provide more refugees in need with effective protection, and discharge Australia's moral and legal obligations.

However, the opposition sought to quibble with the Malaysia arrangement. So, instead of passing the government's previous bill, the coalition set about a course of obstructionism under the fig leaf of an amendment that Australia should only deal with countries that have signed the refugee convention. No matter that Nauru had not signed the convention when John Howard sent asylum seekers there from 2001; no matter that convention signatory countries include our largest source countries, Afghanistan and Iran, as well as countries such as Sudan and Somalia; no matter that the opposition's own policy is to tow asylum seeker boats back to Indonesia, which is not a signatory to the convention; and no matter that most of the countries in which most asylum seekers in our region wake up in the morning are not
signatories to the convention. The government engaged in all manner of efforts to broker a compromise, in the same way that John Howard had enlisted Kim Beazley's cooperation in 2001 to permit the transfer of asylum seekers to Nauru.

I remind the Senate that, if Mr Beazley had not given the Howard government his support in 2001, there would have been no offshore processing at Nauru and no Pacific solution. The Senate needs to be reminded that, since January this year, the government, in the spirit of compromise, put offshore processing at Nauru on the table, as boats continued to arrive and lives were put at risk, and the current opposition continued to oppose in what has become a well-earned trademark of the word 'no'.

The opposition calculated that the national interest was secondary to political ambitions, to a desire to see boats arrive or not arrive for their own narrow interests. So the government sought a new approach; a fresh approach. We engaged a panel of undisputed experts to prepare a holistic report and provide recommendations on the best way forward. Former Chief of the Defence Force, Angus Houston, former secretary of the Department of Foreign Affairs and Trade and Liberal Party policy adviser, Michael L'Estrange, and a man who has made caring for refugees his life, Mr Paris Aristotle, worked intensively and single-mindedly on their report over the past six weeks. The government received their report on Monday and has given in principle support to all 22 recommendations.

As the Minister for Immigration and Citizenship summed up yesterday in the House, this key principle, which underpinned the Houston panel recommendations, means that those people who can afford to come or are inclined to come to Australia by boat are not given advantageous treatment over those who are waiting elsewhere for resettlement in Australia. I remind senators that this bill will achieve these objectives by giving effect to recommendation 7 of the Houston panel report, which recommended that:

… legislation to support the transfer of people to regional processing arrangements be introduced into the Australian Parliament as a matter of urgency.

The bill before the Senate today, passed by the House yesterday, is designed to enable the government to transfer asylum seekers arriving at excised offshore places to designated regional processing countries for the processing of their claims while ensuring their protection from refoulement.

These amendments will allow the government to lawfully work with regional partners to implement regional offshore processing. These amendments are one part of a regional solution and the government will pursue a holistic approach, as the Houston panel report makes clear, by measures such as progressing processing on PNG and Nauru, increasing the number of places under the humanitarian program and pursuing the introduction of the Malaysia agreement. With this holistic approach we will save people's lives and break the trade of people smuggling. I commend the bill, as amended by the government's amendments, to the Senate.

Senator HANSON-YOUNG (South Australia) (17:05): I seek that we put section (a) and section (b) separately.

The ACTING DEPUTY PRESIDENT (Senator Pratt): The question is that section (a) of Senator Abetz's amendment to the second reading motion be agreed to.

The Senate divided. [17:10]

(The President—Senator Hogg)

Ayes .....................40
Noes .....................26
The question is that section (b) of the second reading amendment moved by Senator Abetz be agreed to.

The Senate divided. [17:17]

(The President—Senator Hogg)

Ayes.................29

Noes.................37

Majority.............8

AYES

Abetz, E
Bernardi, C
Boyce, SK
Bushby, DC
Colbeck, R
Di Natale, R
Eggleston, A
Fierravanti-Wells, C
Hanson-Young, SC
Humphries, G
Kroger, H (teller)
Macdonald, ID
Mason, B
Milne, C
Parry, S
Ronaldson, M
Siewert, R
Smith, D
Whish-Wilson, PS
Wright, PL

AYES

Back, CJ
Boswell, RLD
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Heffernan, W
Johnston, D
Macdonald, ID
McKenzie, B
Parry, S
Ryan, SM
Smith, D

NOES

Bishop, TM
Cameron, DN
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Lundy, KA
Marshall, GM
Moore, CM
Pratt, LC
Stephens, U
Thistlethwaite, M
Urquhart, AE

NOES

Brown, CL
Carr, KJ
Crossin, P
Evans, C
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
Lundy, KA
McEwen, A
Moore, CM
Pratt, LC
Siewert, R
Stephens, U
Thistlethwaite, M
Urquhart, AE
Whish-Wilson, PS
Wright, PL

Question agreed to.

The PRESIDENT (17:17): The question is that section (b) of the second reading amendment moved by Senator Abetz be agreed to.

The Senate divided. [17:17]

(Senator XENOPHON (South Australia)

I move the second reading amendment standing in my name:

(a) after at least 9 months, but no later than 12 months, of the commencement of the provisions of this bill, commission a further report by the members of the Expert Panel of Asylum Seekers, to consider all aspects of the
offshore processing legislative framework (including any human rights and other consequences) and to determine whether this framework has been successful in reducing the number of irregular maritime arrivals; and

(b) require this Panel to complete such a report within three months; and

(c) publicly release this report within 14 days of its receipt by the Government.

Question negatived.

The PRESIDENT: The question now is that the bill be now read a second time.

The Senate divided. [17:22]

(Proposed Section 198AA—Reason for Subdivision)

Senator HANSON-YOUNG (South Australia) (17:26): I want to ask the Minister for Multicultural Affairs some general questions about the bill. My first question is: could the minister point to the particular part of the bill that ensures that this legislation is consistent with the refugee convention?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:27): I direct the senator to proposed section 198AA—Reason for Subdivision, where in paragraph (b) it states:

… offshore entry persons, including offshore entry persons in respect of whom Australia has or may have protection obligations under the Refugees Convention as amended by the Refugees Protocol, should be able to be taken to any country designated to be an offshore processing country;

… offshore entry persons, including offshore entry persons in respect of whom Australia has or may have protection obligations under the Refugees Convention as amended by the Refugees Protocol, should be able to be taken to any country designated to be an offshore processing country;

Senator HANSON-YOUNG (South Australia) (17:28): I take issue with the minister's answer, and I see that it took quite some time to get the appropriate place in the bill. The truth of the matter is that this bill is not consistent with our obligations under the convention. All we need to do is to point to the articles in the convention that say that people should not be discriminated against by signatory states based on their mode of arrival. Yet this bill deals only with the
expulsion, the transfer, of people who arrive here by boat.

There are other articles that are important under the convention that are not upheld by this legislation and that are, in fact, absolutely stripped away. As you very well know, Chair, this is the whole purpose of this particular piece of legislation. The minister spoke earlier in her summary of the debate on the second reading, saying that the whole point of this legislation was that the High Court had ruled out the transfer of refugees and asylum seekers to Malaysia under the government's people-swap deal. The reason the High Court ruled that out was that it would be in contradiction to the obligations that are currently in the Migration Act which import our obligations under the refugee convention. The whole point of this bill before us today is to circumvent the High Court's ruling, to make sure that this government can act outside of our obligations under the convention, to act outside of our obligations under international law.

I draw the minister's attention again to the comments made by the Secretary-General of the UN, Ban Ki-moon, overnight. He put a very clear proposition to the Australian government, reminding it of Australia's obligation under the convention. It is clear to everybody else that this piece of legislation is inconsistent with our obligations under international law. It is the entire reason the bill has been introduced. It is thumping its nose at the ruling of the High Court and the protections that we are meant to uphold.

The government may very well like to physically transfer people offshore—out of sight, out of mind—but there is no ability under international law to transfer our obligations to people. Yet what the government has done in this bill is to strip out of our domestic law our obligations to people. In all of the things that the Houston report refers to that need to be considered, if we are to transfer people to a third country, whether it be for processing or not, there needs to be basic access to services, adequate accommodation, legal assistance and a guarantee of protection, yet none of that is in this bill. It has been absolutely stripped out in total contradiction to the convention.

My question to the minister is: is keeping people in army tents 'appropriate accommodation' as per the request of the Houston report?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:32): I challenge the senator's assertions directly. In fact, I point the senator to proposed section 198AB and I reference directly the explanatory memorandum of the bill, in which paragraph 118 states:

New subsection 198AB(3) provides that in considering the national interest for the purposes of—

the previous subsection—

the Minister:

- must have regard to whether or not the country has given Australia any assurances to the effect that:
  - the country will not expel or return a person taken to the country under new section 198AD to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion; and
  - the country will make an assessment, or permit an assessment to be made, of whether or not a person taken to the country under that section is covered by the definition of refugee in Article 1A of the Refugees Convention as
amended by the Refugees Protocol; and

- may have regard to any other matter which, in the opinion of the Minister, relates to the national interest.

So, in this way, we are able to provide the assurances that those conventions are able to be upheld and, as I said, we disagree with the interpretation that the senator is taking of our bill.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (17:34): I thank the minister for her comments but, looking at proposed section 198AB, all the minister has to do is get an assurance or a document from the country and there is nothing legally binding, is there? What I understand here is that there is a specific reference throughout this that assurances referred to in proposed paragraph 198AB(3)(a) need not be legally binding. Is that not precisely what the High Court said as to why the government was in breach of Australia's obligations under our Migration Act which domesticates international law? Is it not true that it says specifically that this new subsection says that any assurances the minister may get from any country or any place that they deem to be a designated country, whatever assurances they get, do not have to be legally binding and therefore are only as good as the paper they are written on?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:35): I am advised that the point Senator Milne makes—that they do not have to be legally binding—is the case. The accountability measure nonetheless is that the minister needs to present those to parliament; therefore the minister is accountable to the parliament.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (17:36): So that is it. We now have absolute clarity that people can be sent away to another country on the basis of a piece of paper and an assurance from that country that the minister and that country have said, 'Look, we are not going to send those people back to where they came from, or anywhere else, and we are going to treat them however we want to treat them,' and that the assurance is not legally binding. It is just a letter and an assurance from that country and the minister's only accountability is that he or she will table in the parliament that letter of assurance, that document, that says the country said they would do it, and that is an end to it. This proves beyond anything else that this legislation is to get around the High Court of Australia's interpretation of our obligations. That is why they struck down the Malaysia solution. What it was offering was not legally binding in Malaysia, so they struck it down.

This is the Gillard government, with the support of the coalition, abandoning and getting around the High Court's interpretation of our obligations. That is precisely what this is doing and that is made perfectly clear here. Whatever the minister gets does not have to be legally binding and their only accountability is to put that letter on the table and say: 'There you go. That's the assurance I got from Nauru. That's the assurance I got from Malaysia. That's the assurance I got from PNG. That's what they said they'd do.'

What monitoring will take place as to whether that country will send any of these people somewhere else?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:38):
Regarding your comment, 'Is that all?' in terms of the levels of accountability, these considerations would be made in full consultation with the UNHCR in the context of the regional arrangement. So it is misleading to express what I have described in the way that you have and I wanted to clarify that.

Further, I would like to extrapolate the process of bringing the documents to the parliament and that accountability mechanism. The new subclause 198AC(2) provides:

The Minister must cause to be laid before each House of the Parliament:
(a) a copy of the designation; and
(b) a statement of the Minister’s reasons for thinking it is in the national interest to designate the country to be an offshore processing country, referring in particular to any assurances of a kind referred to in paragraph 198AB(3)(a) that have been given by that country; and—
that is, that relating to their obligations under the refugee convention—
(c) a copy of any written agreement between Australia and the country relating to the taking of persons to the country; and
(d) a statement about the Minister’s consultations with the Office of the United Nations High Commissioner for Refugees in relation to the designation, including the nature of those consultations; and
(e) a summary of any advice received from that Office in relation to the designation; and
(f) a statement about any arrangements that are in place, or are to be put in place, in the country for the treatment of persons taken to the country.
I think that satisfies the question that you just put to me.

Senator MILNE (Tasmania—Leader of the Australian Greens) (17:40): Far from satisfying it, for the benefit of the parliament I will read out what the national interest means. The explanatory memorandum states that it has:

… a broad meaning and refers to matters which relate to Australia’s standing, security and interests. For example, these matters may include governmental concerns related to such matters as public safety, border protection, national security, defence, Australia’s economic interests …

Measures for effective border management and migration controls are in the national interest.

In other words, in determining the national interest in relation to this designated other country, the minister is going to be overwhelmingly focused on what we have heard as the rationale for this in the first place—that is, deterrence and border security, not humanity, not compassion and nothing about the responsibilities we have to human rights. In fact, it is going to be about effective border management and migration controls. That is what the national interest is. That is going to be the overwhelming view of the minister and that is the rationale for this legislation—and we have heard that from day one.

All we have heard from you so far, Minister, is that the High Court told us that the reason Malaysia did not stand up is that there was nothing that said Malaysia’s undertakings had to be legally binding in Malaysia. Now we have a specific part of this legislation which makes it very clear that whatever the minister tables in the Australian parliament is merely an assurance from another country. There is nothing legally binding about it; therefore, no-one can assume that anything can actually be upheld under the law.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:42): I again refer to the explanatory memorandum. The purpose of the new clause 198AB is to set out what factors the minister must have regard to as part of the national interest—this very point you are making. It also makes
clear that the minister may have regard to other factors they consider to be relevant to the national interest, but that they are not bound to do so. Given the country does not need to be a signatory to the refugee convention, the explanatory memorandum states that the minister must have regard to whether it has given assurances to the effect that:

- the country will not expel or return a person taken to the country under new section 198AD to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion; and
- the country will make an assessment, or permit an assessment to be made, of whether or not a person taken to the country under that section is covered by the definition of refugee in Article 1A of the Refugees Convention as amended by the Refugees Protocol …

I think this clearly satisfies your complaint about the nature of the national interest. In fact, the minister must have regard to these issues relating to the rights of the refugee and the refugee convention.

Senator CASH (Western Australia) (17:43): In relation to the process under new clause 198AB, ‘regional processing country’, and, in particular, subclause (1)(b), can the minister confirm that it is the parliament, by affirmation of both houses, that must approve a country as an offshore processing country, and it is the parliament that is going to be the arbiter of whether the conditions in the other country are to our satisfaction?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:44): When the designation is initiated, it must start by referencing directly the agreement of both houses of parliament. That satisfies the point you are making.

Senator CASH (Western Australia) (17:44): My point is in relation to the comments made by Senator Milne that under this bill, the highest law in the land—the parliament—will determine whether a country is an offshore processing country, and that all that this bill does is say that Nauru and Manus Island satisfy all the requirements that this parliament requires them to satisfy.

That the highest law in the land—the parliament—under this bill is going to be determining

Senator MILNE (Tasmania—Leader of the Australian Greens) (17:44): I want to go back to the question I asked the minister. She said that the minister will have sought confirmation that the country to which a refugee is sent will have given an assurance that they cannot be sent back to the place where they came from or to another country.

I specifically asked what is the process for that. Are we assuming that Australia will oversee any of the transfers? How would we even know if somebody in a refugee camp in Malaysia was sent back to Afghanistan? If we did know that, what would we do about it?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:45): The process would be that the arrangements between Australia and that country would be agreed to, and that of course would be subject to scrutiny through the process of approval through the parliament. It is quite a simplistic thing to say ‘but what if’—the fact is that we are confident that when those agreements are in place those conditions will be honoured.
Senator MILNE (Tasmania—Leader of the Australian Greens) (17:46): I note again the High Court had no confidence that those agreements would be honoured, which is why the High Court struck it down—saying that, whatever assurances you got from Malaysia, they would not be worth anything in the sense that they would not be legally binding in Malaysia and therefore they would be worth only as much as the paper they were written on and the refugees' rights would not be protected. To stand there now and say assurances will enable that kind of agreement is absolutely not valid in the context of what can be proven and what can be upheld.

As to Senator Cash's reference a moment ago to what the parliament can or cannot do, the sole purpose of laying the documents referred to in subsection (2) before the parliament is to inform the parliament of the matters referred to in the documents, and nothing in the documents affects the validity of the designation. It is merely to tell the parliament that is what we agreed, here it is, and bang it on the table. The parliament cannot alter that, so let us not pretend there is parliamentary scrutiny of any of the conditions within the delegation, and let us not pretend that there is any legally binding protections for any refugees sent anywhere under this legislation. We have a very clear statement from the government, a very clear statement from the legislation, that nothing is legally binding and this legislation is specifically designed to get around the High Court and to strip out of our legislation human rights protections.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:49): The regular instrument for disallowance would allow the delegation to be active during the period you could move disallowance within. By changing it this way, it protects the integrity of the process—it must be cleared by both houses of parliament, or supported by both houses, before the instrument comes into effect.

Senator HANSON-YOUNG (South Australia) (17:49): Why was five days chosen over 15 days?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:49): To give the parliament adequate opportunity to scrutinise it without it stretching out for an extended period.
Senator HANSON-YOUNG (South Australia) (17:50): So you have reduced the length of time parliament has to scrutinise so that parliament can adequately scrutinise the designation as put on the table? What a load of poliwonk. Can the minister please answer my original question. Appropriate accommodation is outlined in the Houston report as one of the conditions that would be required for the facilities in which refugees are detained. Do army tents, in the view of the minister and the government, fit into the appropriate accommodation criteria?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:50): I take exception to Senator Hanson-Young's previous comment. Obviously the mechanism that we have provided for the delegation to be scrutinised by parliament is for the specific purpose that it does not come into effect until it has been scrutinised and passed through parliament. That is a very sensible mechanism—not extending it to a longer period means there will not be any undue delay within parliament. I take exception to the way she characterises that point, because it was designed in deference to the opportunity for parliament to make sure the mechanism does not come into effect before it is scrutinised, as is the case, as she well knows, with the normal disallowance procedure.

Army tents are used for the Army; they are obviously an accommodation option that can be provided in the short term and the government is of the opinion that they would be adequate.

Senator HANSON-YOUNG (South Australia) (17:52): I am astounded that the minister representing the Minister for Immigration and Citizenship, speaking on a bill that deals directly with people who have fled war, says that the government's view is that army tents can be defined as 'appropriate accommodation' as per the recommendations of the Houston report. I just find that astounding. Do you also believe that it is appropriate to send unaccompanied minors to Nauru for undefined periods of time? Does the minister accept that this legislation allows for the indefinite detention of unaccompanied minors?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:53): There is an exemption that the minister can use for particularly vulnerable people, but I think the primary point here is that the expansive use of exemptions would defeat the aim of the bill to stem the heinous crime of people-smuggling, as well as the overall objectives of the bill. I also want to add, with respect to your previous question about army tents, that of course we are talking about very short-term accommodation.

Senator HANSON-YOUNG (South Australia) (17:53): Well, I would like to know from the government just how long refugees are going to be detained in army tents.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:54): I respect the points that Senator Hanson-Young is trying to make here, but that question is very difficult to answer. It is obviously a very short-term proposition to use army tents, but I am not able to answer that with any specificity other than that the period would be minimal.

Senator HANSON-YOUNG (South Australia) (17:54): I would like the minister to explain how it is that the government will determine who is vulnerable and who is not.
It is clear that this bill allows for the indefinite detention of unaccompanied minors in Nauru, on Manus Island, in Malaysia or wherever the government designates.

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:55): Firstly, I will just correct the senator: obviously, the parliament has a role in that designation—just to clarify. Secondly, I have every confidence in the minister's ability to make an assessment of what constitutes an exemption for a particularly vulnerable person.

Senator Hanson Young (South Australia) (17:55): What I am asking is: what is the criterion that will be used to determine which child will be sent to Nauru and which child will not?

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:55): I am referring to clause 198AE. As the explanatory memorandum says:

This is the mechanism whereby the Minister can exempt persons from the duty to be taken to an offshore processing country where the individual assessment of their circumstances that is undertaken prior to a person being taken to an offshore processing country, indicates that taking the person to that country would not be appropriate. For example, the person may have vulnerabilities that cannot be accommodated in the offshore processing country, or have protection claims against the offshore processing country (in addition to those they claim to have against their country of origin or habitual residence).

I hope that gives you the clarification you are seeking.

Senator Hanson Young (South Australia) (17:56): Unfortunately, it does not give any clarification. I asked: what criterion will the minister use to determine what makes one child more vulnerable than another—which child will be taken offshore and which child will not? How will the minister determine which children are transferred offshore? Are there criteria that the minister will use to make these decisions?

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:57): The best way to answer that is, again, by referring to the legislation, which says:

… if the Minister thinks that it is in the public interest …

That obviously provides for a broad scope of considerations for the minister in making those assessments.

Senator Hanson Young (South Australia) (17:57): This is of great concern, because Australia has obligations not just under the refugee convention but also under the Convention on the Rights of the Child. In particular, when we are dealing with refugee children, article 22 of the Convention on the Rights of the Child specifies how we must treat those children. If the public interest test is what the minister is using, what happened to the best interests of the child test? Why is that not used as the criterion?

Senator Lundy (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:58): I am advised that the best interests of the child would be a primary consideration for the minister and that certainly fits within the definition of 'the public interest'.

Senator Milne (Tasmania—Leader of the Australian Greens) (17:58): I would like to get to a practical example. The government have made this legislation
retrospective. They said it will apply to the approximately 220 people who have been intercepted trying to come to our country in the last week. Are any of those 220 people unaccompanied minors; and, if so, (1) will they be going to Nauru or Manus Island to live in tents, (2) how long will they be there and (3) what are the kitchen, toilet, shower and other facilities that they will be subject to when they arrive there in the next couple of weeks?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (17:59): I am not able to answer that question because it is speculative. No designation has occurred. The legislation has not passed yet, because we are debating it. With respect to those people you are referring to that have come on boats in the last week, the government has said that they are at risk of being transferred to an offshore processing place. From this point forward—

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:00): Thank you. I will refer to a hypothetical. Let us assume, Minister, for the purposes of explaining how this legislation would work, that unaccompanied minors were intercepted on a boat at some point and that the parliament had designated Nauru or Manus Island or both as offshore processing centres. In that case, does this legislation allow for the minister to determine that unaccompanied minors can be sent to either of those destinations? Let us try that for a start.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:01): I think I answered that when I referred to the minister's ability to have exemptions where vulnerabilities exist. It would be determined through that process. I would like to clarify further the issue and quote the minister, Mr Bowen, from statements he made on the date on which he made his announcement. Minister Bowen articulated very clearly on 13 August:

From this point forward, anybody who comes to Australia by boat runs the risk of being transferred to an offshore processing place. From this point forward—

that is, 13 August—anybody who comes to Australia by boat should be very clear about the possibility of not being processed and resettled in Australia.

While the amendments once enacted will apply to persons who arrived on or after 13 August 2012, no action under the amendments can be taken in relation to such purpose until those amendments commence.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:02): Thank you for that clarification. Now I understand that any unaccompanied child amongst those more than 200 people who have been intercepted and not given refuge in our country should be taking on notice that they are at risk of being sent to Nauru or Manus Island should this parliament determine that.

I also note in the legislation that the effect of new clause 198AD(8) is that the only consideration for the minister in making a direction under the new clause 198AD(5) is that the minister thinks it is in the public interest to do so, and it provides that the rules of natural justice do not apply to the performance of the duty under clause 198AD(5). The purpose of that is to make clear that the minister is not required to give an offshore entry person a right to be heard, for individuals who may be taken to one or more regional processing countries, in relation to the particular regional processing country he or she is to be taken to. Natural justice would involve seeking and taking into
consideration the comments of particularly affected individuals.

Are we really saying that in Australia we specifically want to say in a piece of legislation that natural justice will not apply and the reason is that we do not want to give people the right to be spoken to for consideration of potentially affected individuals? You are saying that if natural justice were not excluded as a ground of review it would in effect mean that the minister could not designate a regional processing country or direct an officer to take a person there until the person had been talked to. I find it absolutely shocking, Minister, that we are specifying in a piece of legislation that only the minister can decide what the national interest is and the minister is exempted from natural justice.

I thought we lived in a country that respected the rule of law and gave people a fair go. We are now saying that we are going to hand over to the minister and make it his decision to determine what the national interest is. It is such a broad concept that to determine what is in the national interest he can take into account many things, including border security, national security, defence and anything the minister wants to take into account. The minister personally determines what is in the national interest, and he is then exempted from providing natural justice to a person seeking asylum. I want you to tell me why it is a good idea to give sole right of discretion on what the national interest is to the minister and why it is necessary to take natural justice away from refugees.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:06): The exemption from natural justice provides for an environment which we believe is necessary to make the legislation workable. Not to have that exemption would mean that any asylum seeker could challenge the designation of a given country, for example. That would render the processes ineffective. Our aim as a government is to have a system which is effective, and not having that exemption would make it unworkable. The other point I would like to make is about unaccompanied minors. I reinforce the point: there would be an assessment of unaccompanied minors' circumstances. Again, I reject your assertion as you expressed it.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:06): Okay. I thank the minister for making it clear that the reason we are specifically saying natural justice will not apply is so that nobody can have the right to challenge under the legislation. I ask the minister whether exempting the minister from having to provide natural justice is consistent with the refugee convention or the human rights convention.

Senator LUNDY: I answered questions earlier relating to what the minister needed to take into account in designating a country, including the fact that that is tested before both houses of parliament and the opportunity to challenge those designations and the basis upon which they have been put forward in the parliament itself.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:07): That is a deliberate evasion, Minister. I want a yes or no answer here, because that is what the public deserves. This fudging of the issue is absolutely critical. You refused to answer the question about exempting the minister from providing natural justice to refugees. I asked whether that is consistent with our obligations under the human rights convention and the refugee convention, and your answer is, 'Oh, we only have to table it
in the parliament,' and that is deemed somehow relevant to the question. It is not relevant to the question. The question I asked is whether taking away natural justice from refugees is consistent with Australia's obligations under the human rights convention—we will not even go to the rights of the child—and the refugee convention.

Senator LUNGY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:08): The government is of the view that it is consistent and our obligations, as you well know, are for non-refoulement of refugees. With respect to the reference to natural justice, it is certainly consistent in the way it is expressed in the legislation with our obligations under the refugee convention.

Senator HANSON-YOUNG (South Australia) (18:09): I would like to bring to the Senate's attention that the minister is being totally dishonest in answering my colleague's question. Article 16 of the refugee convention clearly states:

A refugee shall have free access to the courts of law on the territory of all contracting states.

We have a legal obligation under the convention to allow refugees who arrive here asking for our protection to access our courts. What this legislation is doing is removing the actual physical ability, removing any access to natural justice. It is in complete contradiction to article 16 of the convention, and I wish the minister to correct the record.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:10): In response to that point, we are talking about people seeking asylum, not yet deemed to be refugees under the convention, so again I disagree with the senator's assertion.

Senator HANSON-YOUNG (South Australia) (18:10): I cannot believe that this minister wants to play this ridiculous game with the people of Australia. It is clear that the minister's statement only a moment ago was wrong and was dishonest. This legislation is in complete contradiction to the convention, which says that people have a right to access the courts. Do the people on board the boats that we intercepted this week, who are at risk of being deported to a country other than Australia, have rights that are consistent with article 16 of the convention?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:11): Reading from article 16 in terms of access to courts:

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

I am advised that our legislation is consistent with article 16 in relation to dealing with asylum seekers. I certainly understand Senator Hanson-Young's continued assertion through this debate for many months now.

The Greens are of the view that this approach is inconsistent with the refugee convention. The government have always contended that that is not the case and we continue to do so.
that it is the High Court of Australia which has said that the government's position is in contradiction to our obligations under international law. I am simply telling you what the High Court of Australia has handed down. I would like to ask minister at what stage after people's status determination has been made will they be resettled safely either in Australia or somewhere else.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:13): Because this is speculative, what I am able to advise the Senate is that this would be done in accordance with and in time frames in accordance with the no-advantage principle expressed by the Houston panel. The principle itself is about the no-advantage test. In applying that principle it is critically important that there is no advantage to people who arrive by boat in their processing. To argue otherwise is to argue that people should receive an advantage if they arrive by boat. To argue otherwise is to suggest that somebody who can afford to come here by boat or who is inclined to come here by boat should receive advantageous treatment over those who are waiting elsewhere for resettlement in Australia.

Again, I reiterate that the principle informing this legislation is very clearly that there is no advantage. That principle is an incredibly important one as far as breaking the people smugglers' model goes and with creating the appropriate disincentive to stop that trade. In this way, we aim to put the primary humanitarian consideration of saving the lives of people otherwise tempted to travel to Australia by boat.

Senator HANSON-YOUNG (South Australia) (18:15): I would like the minister to explain how this no advantage test is consistent with the very clear principle of the convention, which says that people should not be discriminated against because of their mode of arrival. It seems the minister is unable to answer my question.

The TEMPORARY CHAIRMAN (Senator Crossin): Senator Hanson-Youn, the minister is on her feet now. I call the minister.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:16): I appreciate the committee's patience, but I am doing my best to make sure that I get accurate information. Again the principle here is designed to prevent death and tragedy at sea. We know that people arriving by boat are at enormous risk, as we have seen over the last few months with the tragedies which have occurred. Therefore, we put the humanitarian interests of saving lives at the forefront of our considerations.

Senator HANSON-YOUNG (South Australia) (18:17): Madam Chair, I am more than happy to give the minister as much time as she wants. I did rise to my feet to say that the minister seems unable to answer my question. Clearly I was right. The reason is that there was no explanation as to how the no advantage test applied to those who arrive by boat can be consistent with the very clear principles of the convention that require that there be no discrimination based on mode of arrival.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:17): I understand Senator Hanson-Youn is making a political point. I refer her to the committee that made recommendations to the government, which the government has accepted—that the key principle of a no
advantage test underpins the system we are putting forward and is central to its integrity.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:18): Just referring to a report from a group of people who say 'this is central to the plan' does not answer the question that my colleague just put. The convention says that people must not be discriminated against according to the mode of arrival to a country. You are discriminating against people who come by boat as opposed to those who come by air, for a start. That is contrary to the convention—yes or no? We are not asking whether the expert panel has said being able to discriminate is central to their plan; we are asking you whether it is completely contrary to what the convention says—that there will be no discrimination according to the way they arrive. Can you say yes or no?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:19): I think the only way I can respond to the senator's question is to say that a political point is being made. I do not think there is any other way to come at this response. It is very clear that the senator wants to make a strong political point. We have a system in place with regard to offshore processing. We are putting in place a bill which we believe will smash the people smugglers' model. The no advantage test is a key principle which the government has adopted and embodied in our approach.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:20): The point I was making was not a political point. I asked a straight out question about the refugee convention, the specific provision which says that you cannot discriminate under the convention in terms of the mode of arrival. It is not a political point; it is a yes or no answer. The answer is: you are discriminating, you are acting contrary to the convention. I want to come particularly to the point you make all the time: that this comes to the parliament, the parliament will have full knowledge of the documents and so on, they will be tabled and on that basis the parliament will be able to not disallow but disapprove. However, I point out in section 198AC you have said that all these documents are going to be laid on the table. There is going to be:

(a) a copy of the designation; and
(b) a statement of the Minister's reasons for thinking it is in the national interest to designate the country to be—
   a regional processing centre—
(c) a copy of any written agreement between Australia and the country relating to the taking of persons …
(d) a statement about the Minister's consultations with the Office of the United Nations High Commissioner for Refugees …
(e) a summary of any advice received from that Office …
(f) a statement about any arrangements that are in place, or are to be put in place …

But then you go on to say that:

(3) The Minister must comply with subsection (2) within 2 sitting days …

But then you say that:

(4) The sole purpose of laying the documents referred to in subsection (2) before the Parliament is to inform the Parliament of the matters referred to in the documents and nothing in the documents affects the validity of the designation. Similarly, the fact that some or all of those documents do not exist does not affect the validity of the designation.

You are saying to us: 'We're not going to comply with the refugee convention or the human rights convention. What we are going to do is table in the parliament documents
giving the assurances from the other designated country of what it will or won't do and what the minister has or has not said.' But then it goes on to say: 'The fact that some or all of these documents don't exist doesn't affect the validity of the designation.' So, Minister, if in the designation there is no statement of assurance, because you have not yet got it from whichever country, it is still deemed to be an appropriate level of information on which to ask the parliament to allow or disallow. Is that correct?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:22): I am advised that your assertion is not correct: the minister must take into account the assurances given by that country.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:23): The section does not say whether the minister should take it into account. It says, on what is to be tabled in the parliament, the fact that some or all of these documents do not exist does not affect the validity of the designation. It is not about what the minister took into account back in his office. You are abandoning the convention. You are abandoning natural justice. You are handing everything over to the minister and saying that the parliament is ultimately responsible, because we are abandoning the courts, we are abandoning the convention and we are abandoning natural justice. You are saying that we are going to table the designation for people in the parliament so that they can make a judgment about whether to approve it or not. You have said, 'Oh, it's the parliament that is the ultimate.' Now you say that it is not invalid if all of the required documents are not there. Even if none of them are there it would not matter. According to this, it could be raced through parliament with Liberal and Labor deciding to get together and race through a country designation, regardless of whether any of these documents actually exist or not.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:24): It is a technical point you make. I am advised that the provision is there to make sure that the process, or the designation, is not invalidated in the absence of, for example, one document where perhaps a document is pending. Obviously, all those considerations would be taken into account by the parliament at the time. It would be aware of the status of the documents, whether all of the documents were in place and the reasons they were perhaps still to come or were not present at the time. It is with open transparency that you would be able to take that into consideration.

I would also like to go back to the point that Senator Milne made earlier about modes of arrival of refugees and their treatment under this proposal, and how that fits in terms of consistency with the convention. All claims, whether people arrive onshore or offshore, are fully assessed; that is our obligation under the convention.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:25): I thank the minister for the clarification. She has confirmed what I have said: that the designation does not have to have all of these documents—some or all of the documents do not exist. That means the statement from the UNHCR or the statement of any arrangements that are in place—all or some—need not exist. We just stick it down and say: 'That's the designation. You can get those documents either before or after; it doesn't matter. You just agree; you disallow or allow.' That is essentially what that particular section is saying.
I will go back to when I asked the minister about natural justice applying to a refugee under the convention. The minister said that these people who are coming on boats have not been designated as refugees. In fact, some of them have, Minister. There are people who have been assessed in Indonesia and have been found to be refugees, who have waited and been frustrated for so long that they get on boats. I come back to the question: let us assume that some of these people who already have refugee status arrive on a boat in Australia. They will be denied natural justice, because you are saying explicitly that we are not giving them natural justice. Are you in contravention of the convention by taking away their access to the courts et cetera, which is, as my colleague read out, a key component of the convention?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:27): To go back to the second point, or maybe it was the first, in your question in relation to documents as presented in parliament. Of course the minister will have the political consideration of bringing forward a package in order to secure designation of an offshore processing country. I think the concerns about that part of the process are unreasonable, and the openness and scrutiny that will be provided through the parliamentary process would be adequate protection for the concerns that you raise.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:28): I thank the minister for suggesting that the rationale for the minister thinking that he would put those documents on the table is the political ramifications—the politics. I think this week is a classic example of how the politics are very likely to allow for a parliament to race through something with the most appalling holes in it—as was done post the Tampa and as was done this week. It could be raced through, as we are pointing out now, with absolute silence from the coalition or with both parties getting together and racing it through, regardless of the holes in it. If the only reason that this parliament can be assured that a minister might put documents on the table is the politics of not putting them on the table means it will be too difficult for them, this week is a classic case. I feel sorry for you, Minister, having to sit there and defend this, because what the government is doing, with the support of the coalition, is indefensible. It is taking away natural justice, absolutely in contravention of the convention. It is telling us that there is no legally binding protection for any refugee sent anywhere by Australia, and the whole thing is based on a piece of legislation that says that it does not matter whether or not the documents actually exist. I find it an extraordinary thing that the government would be doing that.

I want to come back to a question in relation to unaccompanied minors, and I wonder if you could tell me this, Minister. If the event that an unaccompanied minor is sent to an offshore processing facility, you have said that they will not be there a long time. I think the reference was to a 'reasonably short time'. Can you tell me specifically if there is any limitation that the government has spoken about or said anywhere that I can read? What is the time limit specifically for a person or an unaccompanied minor being in detention offshore?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:30): In response to the last question that Senator Milne put, I have already made extensive reference to the means by which the minister
would exempt a vulnerable unaccompanied minor. With respect to the time frame, the principle of no advantage applies, so it would be any time frame, and we are not able to answer that with any specificity other than to say a time frame commensurate with the time frames that would be experienced in the region.

I would like to go back to your previous point, again choosing to interpret the answers I have provided in a way that I think carries a very strong political message. It is completely untenable that a minister would attempt to bring before the parliament an incomplete or inadequate set of documents to withstand political scrutiny. I think it is absolutely the intention and the motivation that countries that we sought to designate for offshore processing would indeed fit the bill and stand the scrutiny of this parliament; otherwise it would be within the opportunity of the parliament, as we know, to move that they be not permitted to become a designated offshore processing country.

I am trying to respond systematically to each of the points Senator Milne and Senator Hanson-Young have made, and I would like to return to the issue of natural justice and the challenge by the senators as to what the circumstances are that allow it not to apply. The effective operation of the offshore processing scheme necessarily requires the ability to designate a country as an offshore processing country without it all being tied up in litigation about that process. It also requires the ability to quickly give directions that will enable transfer arrangements to be made where there are multiple offshore processing countries. The provision does not say that the minister will not accord natural justice, only that this cannot be a point of challenge for the designation. Natural justice would involve seeking and taking into consideration the comments of potentially affected individuals before any country was designated to be an offshore processing country under the new section 198AB and before the minister directed an officer to take a person to a specified country when there is more than one country designated to be an offshore processing country.

So I reiterate that if natural justice were not excluded as a ground of review it would in effect mean that the minister could not designate an offshore processing country or direct an officer to take a person to a specified country without seeking and taking into consideration comments in relation to every individual offshore entry person. This would inhibit the policy objective to arrange for persons to be taken quickly for processing offshore in order to break the people smugglers' guarantee that asylum seekers would have their refugee claims processed in Australia. I understand that the senators making their points have a very strong political point of view and they do not agree with this approach, but I am conveying the facts and interpretation, of course, of the scheme that we are putting forward, the motivation being smashing the people smugglers' business and thereby protecting the lives of people overseas.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:34): I thank the minister for her responses and I go back to her line about the documents. If indeed it is not politically tenable to imagine a situation where all of the documents would not exist, why is it in the legislation? And could it be that we will expect a designation any moment, or in the next week anyway, and that perhaps some of these statements may not exist?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:35): The senator is ignoring the fact that those
assurances need to be obtained as part of the process, so again I think that her fear is unfounded and that what would be presented before the parliament would be adequate to allow full scrutiny of the proposed designation.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:35): I did not get an answer to the question about whether we can expect a designation within the next week and whether this item is here because some of these documents will not exist because the Prime Minister will not have gotten them and the minister will not have been able to get them in the time frame.

I go back to the other issue that the minister raised in relation to natural justice, and I thank her for acknowledging that refugees will not have their legal right to natural justice and that it will be up to the discretion of the minister as to whether or not he decides to afford a person natural justice as they are not legally entitled to it. So I thank the minister for that clarification. I want to go back to the actual designation and what the documents are that the minister has to lay on the table to assure us all that people will be covered by the provisions of the refugee and human rights convention. As I read it, the only thing that the minister has to consider is that the country has given Australia assurances that the country will not expel or return a person taken to that country and that the country will assess whether or not they are refugees and may have regard to anything else which the minister relates to the national interest. What are the rights, apart from not being sent back to another country where life or freedom would be threatened? What are the rights? Why are they not specified here? You apparently only have to get an assurance that the person is not going to be sent back and that their refugee status will be assessed, and the minister can then determine at his own discretion what else is in the national interest.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:37): I did answer this question earlier, and I will read out the point again. I am referring to a dot point in section 118 of the explanatory memorandum:

- the country will not expel or return a person taken to the country under new section 198AD to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion;

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:38): Yes, that is exactly right.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:38): I can add further information about the term 'national interest', but I think that was quoted into Hansard earlier by either Senator Milne or Senator Hanson-Young. I am happy to read it out again.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:38): Thank you, but I asked what else. As far as I can see, the minister only has to get an assurance that the receiving country will not send a person back to their own country or to a place where their life might be endangered and that they have to assess them as refugees. There is nothing there about any other rights, except to say:

- may have regard to any other matter which, in the opinion of the Minister, relates to the national interest.

It goes on to talk about the national interest being border security, national security, defence, economic interests and so on. I want
to know where there is any guarantee about access to the law, access to health, access to education, access to any services. Where is any of that?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:39): I am advised that all those other matters you raise are matters to be taken into account by the minister in reaching agreement with the designated country. I also refer you to paragraph 120 of the explanatory memorandum, which also makes it clear that the minister may have regard to other factors—that is, factors other than the national interest—in his consideration of matters to be relevant to the national interest, but he is not bound to do so. That paragraph does provide for the opportunity for other matters to be taken into account.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:40): Yes, but the issues I am raising are with regard to the rights, services and support to refugees. You are referring to what the minister might be able to consider in relation to the national interest, and the national interest as it is set out in that paragraph is:

... public safety, border protection, national security, defence, Australia’s economic interests, Australia’s international obligations and its relations with other countries. Measures for effective border management and migration controls are in the national interest. Measures to develop an effective functioning regional cooperation framework and associated processing arrangements to better manage the flows of irregular migrants in our region are also in Australia’s national interest.

The national interest pertains to what the minister thinks is good for Australia. I am asking: where does it set out what the minister has to guarantee in terms of the interests of the unaccompanied child, interests of minors? It is very specific that the minister can take anything into account that he thinks is in Australia’s national interest, and it is all couched in terms of national defence, border security and economic interest, but where is there any reference to the rights of refugees?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:41): The government is absolutely confident that it can meet the obligations it has through agreement and, thereby, the designated country also meets those obligations. I mentioned before that the nature of the agreement between Australia and the designated country can take into account these matters. Once again, the minister can have regard to other issues, as it is stated in the legislation, not limited by the matters just listed by Senator Milne as far as the definition of the national interest is expressed. Again, to provide reassurance to senators that our obligations are fulfilled, we are confident that by agreement with designated countries those obligations will be fulfilled and, therefore, we believe her concern is unfounded.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:42): What obligations will be fulfilled?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:42): Our obligations under the refugee convention.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:42): We are going round in circles here, Minister, because the refugee convention makes very clear that taking away a person’s natural justice is in contravention of their right to access those services. There is no point in
going over this any further. There is no legal obligation in this anywhere for the minister to provide natural justice to a refugee, nor is there any requirement for anything under the conventions, except an assurance which is not legally binding about sending a refugee back to where they came from or to another country. So I think we have it pretty clearly here that the government thought it was important enough to define the national interest in very specific terms but did not find it necessary to define the interests of refugees in any specific terms. That is now a matter of the discretion of the minister in the context of what the minister thinks is in the national interest, and then, after he or she has exercised his or her discretion as to what is in the national interest and what is in the rights of refugees, when they table the document in the parliament, there is no requirement for any of those documents to actually be presented. They do not even have to exist. For the purposes of this legislation they do not have to exist in order for a parliament to tick off a country as a processing centre for refugees. It is only the political imperative we are now told, Minister, that would require a minister to feel as if he had to put any of those documents on the table.

Minister, there is nothing in this legislation which gives a legally binding protection to any refugee anywhere Australia would send them—unless you can tell me, in this legislation which specifically says 'exempted from natural justice, not legally binding'. Can you just confirm that there is nothing in this legislation that makes it legally binding for Australia to have to have legally binding provisions that cover human rights in another country?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:45): I think it is very clear that the process here is that by agreement with other countries we need to be satisfied that those agreements are in place and that those obligations will be honoured and the substance of those agreements then stands the scrutiny of the parliament. I am not sure what Senator Milne and other senators have with respect to confidence in the parliament, but the level of scrutiny that would need to be withstood in this place would provide the adequate assurance that they are looking for that these obligations would be met.

The other general comment I want to make is that compliance with Australia's international obligations always is broader than the content of legislation and the technical detail that we are currently discussing. It is about how Australia approaches things in toto by way of legislation but also administration and practice. Built into the approach we have taken is—as I have stated and I think has been made clear by the minister all the way through—full consultation with the UNHCR. That is a key part of how this approach will win confidence and also operate effectively in practice.

Senator HANSON-YOUNG (South Australia) (18:46): We have just established that there is absolutely no requirement for the minister to table any of the documents and assurances that the minister may have from anybody, whether that be the UNHCR or anybody else. There is no requirement for the minister to lay on the table the details of the agreement with the designated country. It is not even that there is no requirement for them to be laid on the table. They do not actually have to exist. If this government believes that they are important, why isn't that requirement in the legislation? As of yesterday, let's not forget that the government had not even picked up the phone to speak to the UNHCR. This is just
absolute utter rubbish. It is saying one thing and doing another. The whole point of this legislation is to have as little scrutiny as possible, as little regard to people's rights as possible, to write out of current legislation any legal obligation that we have under the UN convention and to put precisely in the legislation that none of these documents that the Houston report says are important and that the government and the minister here tonight continue to rabbit on about even have to exist. I apologise that the minister is in this position because I doubt that Minister Lundy even knew that this clause was in this legislation, that none of these documents even had to exist. So despite all of this fanfare about how this is going to be so different than it was under John Howard—

Senator Milne: It is worse.

Senator HANSON-YOUNG: It is worse. This is worse than the legislation under John Howard. Do you know what is going to happen, Senator Milne? That is why the coalition love it, Senator Milne? That is why the coalition love it, because they have well and truly done the government over. The government is introducing worse legislation than John Howard did. The government is ripping out the limited rights that John Howard had in his legislation. The Houston report says that, if you are going to do this, you have to at least have these assurances. This legislation lets the government of the day off the hook. They do not even have to exist. I doubt the minister even was aware because, if she was, why would you continue to reference them, because they are totally irrelevant? They are not required; they do not have to exist. They are not meaningful in any way.

I think we should start to get onto the amendments that we have circulated, because the reality is that this legislation is not worth any of the responses that the government is even giving us because none of it is in the legislation. They are hollow words from a government which is designing a piece of law to circumvent the rights of people to arrive here asking for our assistance and the very clear indications that the High Court gave this parliament of the protections that needed to be upheld. My question to the minister, referring to the substance of my amendment 7264 is: what is the definition of indefinite detention? I would like the minister to answer some questions about the amendment. I move:

(1) Schedule 1, item 25, page 10 (after line 12), after section 198AD, insert:

198ADA  12 month limit on transfer to regional processing country

(1) The Minister must ensure that a person who is transferred to a regional processing country under section 198AD is transferred to Australia no later than 12 months after the day on which the person arrived in the regional processing country.

(2) Subsection (1) does not apply in relation to a person who is not in the regional processing country 12 months after the day on which the person arrived in the country.

(3) Section 198AD does not apply in relation to a person who is transferred to Australia under subsection (1).

The TEMPORARY CHAIRMAN (Senator Crossin): Minister, do you need the question re-asked?

Senator Lundy: I am right.

Senator HANSON-YOUNG (South Australia) (18:52): If it helps, I will go to the essence of my amendment. That might help the minister in answering the question that has been put to her. The amendment circulated by the Australian Greens is in relation to putting a time limit on the length that people are able to be transferred to a processing facility offshore. The Australian Greens believe there should be a time limit, and that is why we are moving an amendment to limit the time to 12 months.
Currently there is no time limit within the legislation. I ask the minister: what is the government's definition of 'indefinite detention'.

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:53): It is the government’s intention to oppose this amendment. This amendment would undermine the expert panel's recommendation that there be an application of a no advantage principle to ensure that no benefit is gained through circumventing regular migration arrangements. To be specific, a 12-month limit would give an advantage to a person who has circumvented regular migration arrangements as they would be transferred to Australia after 12 months. The underlying principle of the recommendations from the expert panel is that people who arrive by boat should receive no advantage in their processing. To argue otherwise is to argue that people should receive an advantage if they arrive by boat. To argue otherwise is to suggest that someone who can afford to come here by boat or who is inclined to come here by boat should receive advantageous treatment over those who are waiting elsewhere for resettlement in Australia.

Just to reinforce this point, because I understand the motivation of this amendment, the expert panel has clearly said in paragraph 2.21:

… a strengthened regional approach will not be effective, or its benefits will be reduced, if those who choose to seek asylum through irregular means gain advantage from doing so over those who claim asylum through established mechanisms.

**Senator HANSON-YOUNG** (South Australia) (18:54): I refer the minister to page 19 of the Houston report, where it clearly says that one of the things that the Houston report believes is important is 'improved access to timely and fair processing of asylum seekers' claims for refugee status'. I ask the minister again: what is the government's definition of 'indefinite detention' and how does indefinite detention fit with the requirement in the Houston report for 'timely and fair processing of asylum seekers' claims'?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:55): I can go through my points again, but the overriding principle contained in the legislation and in our approach is the no disadvantage test, so there is not a definition for indefinite detention, as Senator Hanson-Young keeps asserting.

**Senator HANSON-YOUNG** (South Australia) (18:55): So the government has no definition of indefinite detention except that it is indefinite. Let us put this in context: 76 years is the current waiting list in Malaysia for a refugee to be resettled, so for somebody to not take advantage of seeking asylum in Australia we would need to dump them on Nauru or Manus Island for 76 years. The average across the region is somewhere in the vicinity of 20 years.

Can the minister answer these questions for me please. What is the advantage of a refugee who has to wait for 20 years in a camp in Indonesia? What advantage does that person have when they are amongst the world's most disadvantaged? How does that compare to the advantage of a refugee dumped on Nauru by the Australian government, contrary to the convention, with no guaranteed protections, no access to natural justice, for 20 years? What is the advantage, Minister, of being amongst the world's most disadvantaged people?
Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:57): I would like to remind the chamber that this is part of an integrated package, and part of what we are proposing is that we increase our intake of refugees to 20,000. That will have the effect of easing the waiting periods as described by Senator Hanson-Young, so again I challenge the accuracy of her presentation and how it fits into the calculation of what constitutes no advantage. It is part of a regional approach. There is consensus that working within a regional framework provides the most durable solution for managing asylum seekers, and particularly irregular maritime arrivals, and the risks associated with travelling by sea to Australia. So, to again reiterate the point, it is part of an integrated package and we should not forget that in the context of this committee stage debate.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:58): Minister, can you tell me whether people who arrived by plane and claim refugee status are going to be submitted to the advantage/disadvantage test?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (18:59): No, the legislation relates to those arriving as irregular maritime arrivals and by boat, our motivation being the saving of lives of people who would otherwise be motivated to undertake perilous journeys that we know can result in death and tragedy. That objective is a worthy one. The primary motivation on a humanitarian basis is to resolve a very difficult problem that Australia has been trying to manage, and we do not resile from that. This is about saving the lives of those who seek to undertake a dangerous journey by boat to Australia.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:59): There are many questions that need to be asked in relation to saving lives, particularly the point at which we dispatch the rescue forces to actually get people from the sea. I ask here—the minister may wish to answer this—how it is that Minister Jason Clare did not know there was a ship missing until 9 August, when the representative of the Palestinians in Australia informed the government three weeks ago that the ship was missing. I am very interested in that as a matter of detail.

But I want to come back to advantage and disadvantage. I just want to clarify: why is it that a person who flies into Australia and seeks asylum does not have this punitive system applied to them? It is only people coming by boat. Secondly, why is it that people coming by boat are not able to apply for visas? Can you clarify that? Which countries does Australia not provide visas for and therefore their people cannot fly into the country and access a safe pathway?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:01): I am advised that on arriving by plane on excised offshore places there is no entitlement to apply for a visa unless the minister lifts the bar at that point. I am further advised that they are able to have their claims under the refugee convention assessed administratively.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:02): I just find this extraordinary. As if I was talking about anyone coming to Australia seeking asylum and deliberately choosing to fly into Christmas Island! I ask you! That is the most ridiculous thing I have heard you say here.
this evening, Minister. People who are seeking asylum and come here by air fly into mainstream airports. They fly into Tullamarine; they fly into the mainstream airports. If you are seeking asylum, as if you would choose to land in a place where you are going to be put into detention immediately! That is just a ridiculous contention.

Let us get back to the facts. As to the issue of whether they would get a visa or not, they are flying in because they have got a visa. They have gone to an Australian embassy or somewhere and got a tourist visa, a student visa—some kind of visa. They come here and then seek asylum on the back of their student visa, their tourist visa or whatever. We have got hundreds if not thousands of people in Australia at the moment who flew in on a valid visa. They have outstayed their visas and they are out there in the community.

Senator Hanson-Young: There are 68,000.

Senator MILNE: There are 68,000, in fact—68,000 people have overstayed their visas in Australia, but they are not to be subjected to the advantage/disadvantage test. The question I want to ask the minister is: why is it that people from Iran, Iraq and Afghanistan cannot get visas? Can you please tell me why it is they are not able to fly in on a student visa, a tourist visa or some other visa and seek asylum at the airport? Why is it that they have no option but to come by boat?

Senator LUNDY: Just a moment, please—I will get some advice. Just to clarify, they arrive at Sydney airport and they are able to apply for a protection visa. They are not barred from that. Perhaps I can get back to you with some further detail. But I do note that we are straying from your amendment.

I think I need to take this opportunity to reiterate that the motivation of this legislation is in fact to smash the people-smuggling model. It relates to irregular maritime arrivals and our motivation is, of course, to save the lives of those otherwise motivated to travel by sea to Australia. If you would like to ask technical questions about the operation of the Migration Act more broadly, I am very happy to take those questions on notice.

Senator HANSON-YOUNG (South Australia) (19:06): The minister has just clarified—not in the most precise way, but she has confirmed—that if you fly to Australia and you land on the mainland you can apply for a protection visa. These people are not people that, under this legislation, the government is saying will be transferred offshore. Therefore, they have an advantage.

Senator Milne: Exactly.

Senator HANSON-YOUNG: Further to the question being raised by my colleague Senator Milne, as the minister well knows, yes, you can fly to Australia and apply for protection once you arrive, but we are speaking about the people who cannot fly to Australia because of carrier sanctions. There are a whole group of people who the government believes are at high risk of seeking asylum, so they will not be given temporary visas. You cannot get on the plane.

This government's policy forces people—the most disadvantaged people—onto boats. The most ridiculous notion of this
disadvantage test is that those very same people are the ones who are not allowed to fly here anyway. That is the whole point. The government wants to talk about an indefinite period of detention for people because they are amongst the world's most disadvantaged. They are not lucky enough to fly to Australia. They are forced onto boats. And now we are going to lock them up indefinitely to rot in Nauru.

This is precisely why the Greens have moved an amendment to limit the length of time that these poor people have to spend in that hideous place. Can the minister answer this question: how long will a child be detained in an offshore facility under this legislation? Is there a limit on the length of time that a child will be detained in an offshore facility?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:08): I have answered this question previously. The minister for immigration is in a position to take into account and provide exemptions for unaccompanied minors and for others, as the minister sees fit, who have particular vulnerabilities. That would be the mechanism by which the time that they could spend there is potentially affected. I have already explained that, with regard to indefinite detention, the principle that we are applying is one of no advantage, and that does not specify a period of time, as this amendment seeks to do.

**Senator HANSON-YOUNG** (South Australia) (19:09): It is fairly clear, then. Thank you for clarifying, Minister. There is no limit on how long children will be detained in an offshore facility, and there is no distinction about whether a child is subject to the no-advantage test. We already know from our previous engagement that there is no reason why the minister has to take anything into consideration as to the vulnerabilities of these children. That is precisely why we must put a limit on the length of time spent in detention by children, their families and the other poor souls who risk their lives getting here, forced onto boats because they cannot take a plane ride. We do not let them. They are not lucky enough. They are not advantaged enough. That is precisely why. We need to limit the government's abuse of these people's human rights.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (19:10): I just want to ask a question in relation to this issue of advantage and disadvantage and if the whole of the mainland is excised, does that mean that people who fly into Australia without a visa are now going to come under this, or is it still only going to be other people? So you can arrive by plane when the whole of Australia, the whole mainland, is excised, and you can land—and it is not subject to the migration laws et cetera—but, because you came by plane and not by boat, you will not be subject to this legislation? That surely goes against the convention that says there should be no discrimination based on the way you arrived. Can you just clarify whether you are going to excise the whole country, the whole mainland—leaving out Tasmania, of course? I just want to know that, Minister.

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:11): Senator Milne, I thought you liked Tasmania
being part of and treated the same as Australia! But, seriously, this is not a matter that is addressed in the amendments that we have before us. The government has said that there are other issues that have been raised in the recommendations in the Houston report that will be subject to further consideration, but these issues are not addressed in the bills, no.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (19:12): Minister, that does go to the heart of the issue of the advantage and disadvantage test if you excise the whole of the mainland. The whole point of that, as I understand it, is to make sure that, if someone arrives on a boat on the mainland as opposed to Christmas Island, they would then be subject to this legislation. But, by the same definition, I would have assumed that a person who flew in without a visa and therefore stepped onto the Australian mainland, excised under the law, would then be required to go into detention. If not, once again the advantage is to people who fly. If you want to save lives at sea, you had better start thinking about the most effective way to do that and reconsider your advantage and disadvantage test when it comes to whether people arrive by sea or by air.

But I want to go to this question. You said that the government will not say what indefinite detention is because the advantage and disadvantage test means that you have to work out the sort of average, across the region, of the length of time people have to wait before they are resettled. My colleague pointed out that for Malaysia that would be something like 76 years; for other places it may be less. I want to know from the minister: what is the process for determining that? You tell us that you cannot limit it in the way we are suggesting—that is, that the absolute maximum be one year. You are saying that it will be somehow worked out so that there is no advantage to anybody across the region. It will be an advantage to anyone across the region if it is less than 76 years, so I want to know what the process is for the government to determine before they send a single person to Nauru or Manus Island, and how we will all be informed, what the designated no-advantage period of time is?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:14): These issues will of course be determined in full consultation with the UNHCR. This process is yet to be undertaken and will be done in due course. It is obviously a key part, as it relates to what constitutes no advantage, but it is something that we need to determine in conjunction with consultation with all of the relevant parties.

I want to go back to a previous point. Senators have a habit of reflecting, as is their right, on my previous answer and then moving onto the next question, so I reserve my right to challenge the assertions being made. One of them relates to people arriving by air. I reiterate that our motivation for these amendments is to stem the people-smuggling trade and the flow of people travelling by boat to Australia. People are dying on those perilous journeys and our aim is to smash the people-smuggling trade and the means and the motivation for people getting on unsafe boats and risking their lives in the process.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (19:15): The UNHCR said yesterday that there was no way of averaging the period of time that people wait across the region. Having said that, I ask again: what is the process for determining what constitutes no advantage across the region, and will we have in the first designation that hits the table of this
parliament a clear statement of what the no advantage time period in detention is?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:16): Obviously it will be given further consideration as events unfold. The legislation as it passes through parliament will open up a series of processes, one of which is further consultation on matters such as this one. It is impossible for me to foreshadow the outcomes of those conversations that are subsequently to occur.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:17): That is clearly one of the reasons why this amendment is so important. The minister is saying that the legislation will be passed, and that will trigger a number of processes including the tabling in this parliament, no doubt within the week, of a designated place where we are going to see people being sent. Ministers are supposed to have documents and put them on the table, but now we find they do not have to exist and the ministers do not have to have them. The minister is saying the process will be triggered for determining how many years you have to be in detention in order to be advantage or disadvantage, but clearly that process is not going to be triggered until this legislation passes. Can the minister give me an assurance that, before there is a designation on this table of another place where people are going to be sent, you have in that document a statement of the length of time which constitutes the baseline for advantage or disadvantage?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:18): I am not able to give those assurances because those conversations are yet to occur. The important point to make here is that the no advantage test operates effectively and to put a constraint or a 12-month limit on it completely undermines the principle—hence our opposition to the Greens amendment. I respect the Greens senators' view that they oppose this legislation, they oppose the principle of no disadvantage. In responding to these questions I cannot provide the detail Senator Milne is seeking but I acknowledge that she will keep asking questions that seek to give character to her opposition to our approach. We are motivated by the humanitarian interests of the people whose lives would otherwise be at risk in undertaking those journeys across the sea, and we stand by that.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:19): If the minister is motivated by the humanitarian interests of the refugees who feel no hope other than to get on a boat, will the minister provide them with visas so that they can fly into Australia and have a safe pathway? If humanitarian concerns for refugees are at the heart of what the minister is saying, why would she not give them visas and fly them in, and then they do not have to get on a boat.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:19): The government is increasing our humanitarian intake to 20,000. I reiterate that this is part of a regional arrangement. This legislation is part of a process and what we believe will be a durable regional arrangement for the management of irregular migration. I challenge the premise of Senator Milne's question, because it does not acknowledge that the legislation is part of a broader solution. I know from many commentators, and from the expressions of the minister, that it is in everybody's interests, and particularly
the interests of refugees, that we have an orderly migration process. Our motivation is to prevent loss of life and tragedy in boats, and part of our motivation is always, as we have said right from the start in our advocacy of the Malaysia arrangement, to come up with a regional approach that engages fully with all of our neighbours and works with them to get a sustainable and durable solution to irregular migration in our region.

I think there is broad consensus that that is a desirable outcome. This is a very difficult debate—it is very challenging and the government has compromised very specifically in accepting that we needed to have an independent panel to determine the best way forward, and we have willingly compromised again to put in place what we believe is the most effective solution to an incredibly challenging problem. Again, I respect the Greens' opposition to this approach. Their opposition has been consistent, but I put it to you, Senator Milne—through you, Chair—that what you are suggesting is impractical with regard to achieving the objectives of having an orderly migration process and a durable regional approach to managing irregular migration.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (19:23): I appreciate the euphemism now—that a 'regular migration process' is code for 'deterrence'.

**Senator HANSON-YOUNG** (South Australia) (19:24): I would like to know from the minister whether the government received any advice, prior to drafting this legislation, as to what limits there should be on the time that unaccompanied minors and other children are detained in an offshore processing facility.

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:24): We took advice from the expert panel established for the purposes of providing advice to the government about these matters, as you well know.

**Senator HANSON-YOUNG** (South Australia) (19:25): I take the minister back to the precise point on page 19 of the expert panel's own report—'timely and fair processing'. What is timely and fair about detaining a child indefinitely?
Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:25): I think the best way to answer Senator Hanson-Young's point is to say that there is a difference between timely and fair processing time frames and resettlement time frames. I think that is the technical point. Again, I ask senators—through you, Chair—to remember that this is part of a broad set of measures and this legislation is dealing with one aspect of that, and that we aim to have in place a durable regional arrangement, one in which we work with our neighbours and other countries in our region to get improved outcomes for those seeking refuge in our region.

Senator HANSON-YOUNG (South Australia) (19:26): I appreciate the minister clarifying that this legislation allows for the indefinite detention of children, even once we have determined them to be refugees. That is precisely what the minister just said. There is no time limit on how long a child can be detained, even after their refugee status has been determined. They will continue to be detained while we wait to find somewhere else to dump them. I move the Australian Greens amendment on sheet 7264:

Schedule 1, item 25, page 10 (after line 12), after section 198AD, insert:

198ADA 12 month limit on transfer to regional processing country

(1) The Minister must ensure that a person who is transferred to a regional processing country under section 198AD is transferred to Australia no later than 12 months after the day on which the person arrived in the regional processing country.

(2) Subsection (1) does not apply in relation to a person who is not in the regional processing country 12 months after the day on which the person arrived in the country.

Senator CASH (Western Australia) (19:27): The coalition will not be supporting Greens amendment (1) on sheet 7264. The amendment does nothing more and nothing less than undermine offshore processing. It facilitates the criminal activities of people smugglers and it is inconsistent with the findings of the expert panel, in particular in relation to the no advantage principle. It is of little surprise, however, that the amendment is consistent with the Greens' policy of onshore processing.

We in the coalition believe that people smugglers undertake criminal activities and under no circumstances at all should they or their activities ever be facilitated by domestic policy. The coalition do not want to see people getting on boats and we will not facilitate such a policy, which is exactly what this amendment will do if it is carried. The Greens should stop peddling policy that facilitates the criminal activities of people smugglers and, in particular, activities that have been condemned by the expert panel in their report. The coalition as a responsible political party will not be supporting this amendment.

Senator HANSON-YOUNG (South Australia) (19:28): I have just had notice that there is at least one small child that has been transferred to Christmas Island—on the first boat intercepted on 13 August. So that small child now faces indefinite detention, whether or not they are found to be a refugee. Chair, I move that the question be put.

The TEMPORARY CHAIRMAN: The question is that the Australian Greens amendment on sheet 7264 be agreed to:

The Committee divided. [19:33]

(The Chairman—Senator Parry)
AYES

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

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

NOES

Back, CJ
Boswell, RLD
Brown, CL
Carr, KJ
Colbeck, R
Edwards, S
Feeney, D
Gallacher, AM
Hogg, JJ
Kroger, H (teller)
Marshall, GM
McKenzie, B
Nash, F
Polley, H
Singh, LM
Stephens, U
Thistlethwaite, M
Urquhart, AE
Xenophon, N

Bishop, TM
Boyce, SK
Cameron, DN
Cash, MC
Crossin, P
Evans, C
Furner, ML
Heffernan, W
Johnston, D
Madjigan, JJ
McEwen, A
Moore, CM
Parry, S
Pratt, LC
Smith, D
Sterle, G
Thorp, LE
Wong, P

Question negatived.

Senator HANSON-YOUNG (South Australia) (19:36): by leave—I move Greens amendments on sheet 7266:

Schedule 1, item 25, page 6 (lines 26 to 29), omit subsection 198AB (2), substitute:

(2) The only conditions for the exercise of the power under subsection (1) are that the Minister:

(a) thinks that it is in the national interest to designate the country to be a regional processing country; and

(b) is satisfied that the country has in place appropriate protection and welfare arrangements that are consistent with Australia’s, and the country’s, obligations under international law (including the Refugees Convention).

[protection and welfare arrangements]

Schedule 1, item 25, page 7 (after line 13), after subsection 198AB (4), insert:

(4A) For the purposes of subsection (2), the country has in place appropriate protection and welfare arrangements if:

(a) the protection and welfare arrangements in place in the country include arrangements to ensure that a person taken to the country under section 198AD:

(i) will be treated in a manner consistent with human rights standards under international law, including by not being subject to arbitrary detention; and

(ii) will have appropriate accommodation; and

(iii) will have access to appropriate physical and mental health services; and

(iv) will have access to educational and vocational training programs; and

(v) will be provided with assistance in preparing any asylum claim or visa application; and

(vi) in respect of any asylum claim or visa application made by the person, will have access to an appeal mechanism that affords natural justice to the person; and

(b) the protection and welfare arrangements in place in the country are monitored by a body consisting of representatives of Australia and the country.

These amendments relate directly to the requirements as outlined by the Houston panel that for any refugee or asylum seeker to be transferred to another country by Australia certain protections and operational guidelines must be included. Maybe it is just an oversight that these guidelines were not included in the legislation. We keep hearing from the government that they are implementing the Houston report. The Houston report says very clearly that if we are to transfer refugees to offshore facilities they must have access to a list of basic standards and protections. I will read them. All we are doing is taking the guidelines that
the Houston panel requires and that the Houston panel says have to be included and putting them in the legislation. It seems the minister has left them out. It says the country has appropriate protection and welfare arrangements if:

(a) the protection and welfare arrangements in place in the country include arrangements to ensure that a person taken to the country under section 198AD:

(i) will be treated in a manner consistent with human rights standards under international law, including by not being subject to arbitrary detention; and

(ii) will have appropriate accommodation; and

(iii) will have access to appropriate physical and mental health services; and

(iv) will have access to educational and vocational training programs; and

(v) will be provided with assistance in preparing any asylum claim or visa application; and

(vi) in respect of any asylum claim or visa application made by the person, will have access to an appeal mechanism that affords natural justice to the person; and

(b) the protection and welfare arrangements in place in the country are monitored by a body consisting of representatives of Australia and the country.

These are all requirements that the Houston panel says must be included, yet they are not in this legislation. I ask the minister why that is.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:39): The government will be opposing these amendments. The proposed amendments being put forward add greater protections than those required by the High Court in relation to existing provisions and the standards imposed by the Greens' amendments are so high and broad that they essentially render a regional processing arrangement unworkable. I reiterate that the arrangements must be agreed between Australia and the proposed designated country and therefore must be appropriate. Those agreements are negotiated in conjunction with and with the participation of the UNHCR and other stakeholders. Parts of the proposed amendment as well are very unclear. For example, it is not clear whether or not the appeal mechanism that affords natural justice as described is a judicial review mechanism or a merits review mechanism. Regardless, the earlier substantive points I made about these amendments rendering a regional processing arrangement unworkable have led us to the conclusion that it would be folly to consider supporting them. Hence we will not.

Senator HANSON-YOUNG (South Australia) (19:41): I thank the minister for her answer. These are not the Greens' requirements; these are the requirements of the Houston report, which the government say they will implement. There are 10 unaccompanied minors who have today arrived on Christmas Island who will be among the first people sent to Nauru. Why is the government so reluctant to ensure that these unaccompanied minors have access to these appropriate protection and welfare arrangements specified as essential requirements by the Houston panel?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:42): A point of clarification: the Houston report in making these recommendations does not require these matters to be legislated. I have already stated that the arrangements would have to be agreed upon. So in accepting the recommendations of the Houston report we agree as a country to put in place those assurances, but nowhere does it specify that
they ought to be legislated, hence they are not part of the legislation. I also want to make the point that, if they were accepted, each of the amendments proposed could potentially give rise to a basis for a potential legal challenge on the basis of what is an appropriate standard. The government is of the view that it is appropriate that the designation itself is subject to parliamentary scrutiny and in that way these agreements and the recommendations we have accepted would be tested fully under the scrutiny of parliament.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:43): Thank you, Minister, but, as you have also said, the designation does not require any or all of those documents to be available, so it is anybody's guess as to what will be on the table. Senator Hanson-Young spoke about the recommendation of the Houston panel and, yes, in 3.46 it says very clearly that asylum seekers who have their claims processed in Nauru would be provided with protection and welfare arrangements consistent with Australian and Nauruan responsibilities under international law, including the Refugee Convention, and those protections and welfare would include—and they are all the things in the list that my colleague read out. In fact, it is not about whether the Houston recommendations are in legislation or not. The recommendations say in 7, 8, 9 and 10 that everything has to be consistent with Australian and Nauruan responsibilities under international law, including the Refugee Convention, and those protections and welfare would include—and they are all the things in the list that my colleague read out. In fact, it is not about whether the Houston recommendations are in legislation or not. The recommendations say in 7, 8, 9 and 10 that everything has to be consistent with Australian and Nauruan responsibilities under international law. Under international law the conventions, and we have already heard from the minister that Australia is not upholding its international obligations under the treaties, because we have given several examples where Australia is not going to do that.

Specifically in relation to conditions and standards for unaccompanied minors, can the minister clarify that it is true that under this legislation the government is changing something very significant for children who come to Australia unaccompanied? Is it the case at the moment, as a result of the High Court's decision, that the minister shall be the guardian of the person and of the estate in Australia of every non-citizen child who arrives in Australia after the commencement of this act, to the exclusion of the parents and every other guardian of the child, and that the minister shall have, as guardian, the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have until the child reaches the age of 18 years or leaves Australian permanently, or until the provisions of this act cease to apply in relation to the child, whichever happens first?

Is it not true that the High Court said that, because the minister is the guardian, he has the liabilities that a natural guardian of a child would have and that, in fact, that means currently the government cannot send an unaccompanied child out of Australia while the minister has that guardianship responsibility? Is it not true that in this legislation the government is removing from the minister that guardianship of the child, therefore removing any liabilities or obligations the minister may have as a guardian of that unaccompanied child?

Is it the case that, if this legislation passes, the 10 unaccompanied children on Christmas Island will no longer have Minister Bowen as their guardian, that the minister will have no responsibility for them and no liability for them et cetera, that he will no longer have to sign on the dotted line to have them removed from the country, that they will be able to be removed without his signature? He can exercise his discretion, if he wishes, to do something about them, but the fact is the government and the coalition have come here tonight to remove the guardianship
responsible for the minister from unaccompanied children. As of tonight, if this bill goes through, those 10 unaccompanied children will no longer have a guardian under Australian law. Is that correct?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:48): I am getting some advice on the specific point you are making, but first of all I would like to reject outright the assertion you made at the beginning of your statement that Australia was not adhering to its international obligations. I have gone to great pains to explain why that is not the case. I understand that the Greens are of a different view—but we totally reject their claim that we are not adhering to our international obligations.

In relation to the impact of the High Court judgement and how that relates to unaccompanied minors, I would like to make a number of points which I think go to the issue you have raised. The majority of the High Court in the Plaintiff M106 case held that the taking of an unaccompanied minor from Australia is unlawful in the absence of the consent in writing of the Minister for Immigration and Citizenship under the Immigration (Guardianship of Children) Act 1946. The ruling means that no unaccompanied minor can be removed or taken from Australia in the exercise of any power under the Migration Act unless the minister, in his capacity as the statutory guardian, gives consent. This consent would be subject to judicial review.

The court also found that any decision the minister made regarding consent would need to be made consistent with the best interests of the child. In practice it would mean that an unaccompanied minor found not to be a refugee could claim it was not in their best interests to be returned to their country of origin and this may be accepted by the courts. The government has stated that this is not sustainable as public policy. In practice, the decision means that the minister has the power that no other parent or guardian in Australia has, which is to prevent the otherwise lawful exercise of removal powers under the Migration Act 1958.

In effect, the bill before us reasserts the primacy of the Migration Act with regard to unaccompanied minors and the amendments to the guardianship act will also put beyond doubt that the minister's guardianship ceases when a child is removed from Australia or taken from Australia without a visa or right to return.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:50): So the minister has said that the responsibility of the Minister for Immigration and Citizenship ceases the minute the child leaves the country and is sent to an offshore detention centre. The whole reason for this is to remove the rights of the child in terms of what they would have had under the existing legislation. Is it the fact that the minister has to decide, as the guardian of the child, to sign off on removal of a child and to send that child offshore—which is appealable in the courts—which will mean that the minister will no longer be their guardian? For the 10 unaccompanied minors on Christmas Island, as of tonight we are getting rid of the guardianship responsibilities of the minister in relation to those 10 children.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:52): I refer the senator to paragraph 271 of the explanatory memorandum:
The High Court’s decision does not align with the Government’s policy intention which is that the Minister’s consent under section 6A of the IGOCAct is not required for a noncitizen child to be removed, taken or deported from Australia under the Migration Act. This intention is given effect by item 8 of Schedule 2. As such, this amendment is a consequential amendment as a result of item 8. Subsection 6A(4) is effectively replaced by the amendments to section 8 made by item 8 of Schedule 2.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:52): That is exactly what I was saying. The High Court's decision to uphold the rights of the child and the guardianship responsibilities of the minister in relation to unaccompanied minors, as the minister has just said, does not align with the government's policy intention. That is why we are here: to remove that guardianship from the minister because the High Court's upholding of the legislation was not in line with what the government had in mind. What the government had in mind, as it says in paragraph 271, is to be able to remove noncitizen children—to take them and deport them from Australia under the Migration Act—without the minister having to sign off on it, because he is no longer their guardian. For the third time, I ask about the 10 children—the unaccompanied minors who have arrived on Christmas Island—who are going to be subject to the outcome of this legislation: is it true that when this bill passes tonight the minister ceases to be their guardian and therefore those children will have no guardian? Is it true that the minister will have given up his liability as a natural guardian of a child—in other words, to look out for the best interests of the child—under the rights of the child convention and so on? I just want a straight answer. Is that the effect of what the parliament is doing tonight to 10 children on Christmas Island?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:54): We are not removing the minister's guardianship while the children are in Australia. The purpose of this amendment is to restore the law to the position as it was understood to be prior to the High Court's decision in the court case we are referring to.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:54): If the nonsense of this were ever obvious, it is now. The children are on Christmas Island, which is part of Australia except for the purposes of determining whether or not the minister is the guardian, when they are not in Australia—Australia no longer exists in that context.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:55): Sorry for interrupting. No, while they are still in Australia guardianship still exists. That relationship of the minister as guardian exists while they are still in Australia—

Senator Hanson-Young: Christmas Island is not, for migration purposes.

Senator LUNDY: Including on Christmas Island.

Senator MILNE (Tasmania—Leader of the Australian Greens) (19:55): So even though Christmas Island has been excised from Australia for the purposes of the Migration Act, those 10 children have the minister as their guardian until the time this bill passes tonight. The minute that it passes tonight, those children can be sent to any country that the minister deems an appropriate place. If the parliament has said, 'This place is an appropriate detention centre,' those children can be sent there and the minister will no longer be their guardian; they will have no guardian once this legislation passes.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:54): We are not removing the minister's guardianship while the children are in Australia. The purpose of this amendment is to restore the law to the position as it was understood to be prior to the High Court's decision in the court case we are referring to.
Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:56): No, that is incorrect. Once this legislation passes the minister remains the guardian of these children. If a designated country were to be identified and that stood the scrutiny of parliament, then the situation would be that if those children went to that designated country it would be at that point that the minister would cease to be their guardian.

Senator HANSON-YOUNG (South Australia) (19:56): The 10 unaccompanied children who are currently on Christmas Island, who the minister has already said risk being deported to Nauru, are about to be given up on, left desolate and left on their own with no legal guardian. That is what this legislation will do. The High Court's finding that Australia's obligations under the Convention on the Rights of the Child and the refugee convention was inconvenient to the government, so it has decided: 'Oh, well, we'll just will change the law and strip those children's rights away.' This legislation is going to dump unaccompanied minors in a foreign country and no-one has to take responsibility for it. They will be on their own. We have just heard from the minister that this government has no intention of putting the requirements of international legal welfare protections—basic rights that the Houston report says must be adhered to—in an offshore processing facility. Not only are we dumping these children with no-one to look after them, no-one to be responsible, no guardian—wiping our hands of them—we are dumping them in a place where we do not even have a guarantee that they are going to be housed properly. Let us remember that the minister said only an hour or so ago that she believed that dumping them in army tents was totally appropriate, that it was an appropriate way of housing refugees as required under the Houston report. The weasel words that are used in this legislation to get out of anything that has anything to do with the best interests of the child are just unbelievable.

I want to go to a particular point that the minister raised when answering a question from my colleague Senator Milne, that it was inconvenient that the High Court decided that actually Australia did have obligations to children who are unaccompanied minors, those poor orphaned children who have arrived here without any family. So not only was it inconvenient for the court to rule that they had rights as that somehow did not fit with the government's policies, we have just heard the minister say that protections that are in the best interests of the child are 'not sustainable' and so it is 'not sustainable' to act in the best interests of the child. That is what this legislation is doing and that is what the minister has just said here tonight. Let the Hansard record stand: the minister has said it is 'not sustainable' for the government to act in the best interests of the child. Why didn't the immigration minister say that in his press conference on Monday? Because the government is determined to rush through this piece of legislation to trash anything that is in any way a protection or a safety net for unaccompanied minors, to not let anybody know about it and to absolutely trash any obligation as to these children and any legal recourse that any of these children have—and the whole reason is that it is 'not sustainable' for the government to act in the best interests of the child! Australians would be horrified to know that this government is putting forward legislation in such a callous, cruel and utterly illegal way because it is 'not sustainable' for our government to act in the best interests of the child. This is absolutely shameful.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry
and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:02): There is a fundamental difference of opinion between the government and the Greens on this matter. The discouraging of people risking their lives on boats coming to Australia sits at the heart of our motivation and to suggest that a way forward would be to create some systematic motivation for unaccompanied minors to be the ones to be put on boats is the height of irresponsibility. I understand the Greens do not agree with our approach but to assert, within the context of this current debate, an amendment that would single out a protection for unaccompanied minors in the way that you describe, Senator Hanson-Young, would singularly create the opportunity for people smugglers to exploit that and put unaccompanied minors on the boat. Is that your intention? I suspect it is not. I understand you disagree with the framework we are proposing and I accept that, but I will not stand here and allow you to exhort principles that have no validity in the context of this current debate.

I would also like to challenge the fundamental point that we started discussing, that Christmas Island is not part of Australia for the purposes of the operation of the Immigration (Guardianship of Children) Act. That is patently false and to assert as much is misleading in the first degree. It is part of the migration zone and therefore whilst ever the children are in Australia unaccompanied minors are subject to the guardianship of the minister.

Finally, you have made some very emotive points through the course of this debate, Senator Hanson-Young, as is your right—through you, Mr Temporary Chainman—but I remind you that the minister has within his power the right to determine exemptions for unaccompanied minors and, in fact, for anyone who is deemed to be particularly vulnerable to move to a designated country once that designated country has passed the test of parliament. All of these protections and processes are in this bill for a reason. They adopt both the spirit and the letter of the Houston report's recommendations and they are designed to fit within a broader scheme that takes into account the prospect—and I think the very hopeful prospect—of a durable regional arrangement to manage the flow of migration in our region but also to break, as I have said again and again, the business of the people smugglers as to the lives that are put at risk across the sea. It concerns me that your assertions, whilst I am sure they are well intentioned and aligned with the Greens' view on these matters, would, in fact, create an absurdly dangerous situation whereby people smugglers would be motivated to seek out unaccompanied minors and place them on boats to sustain their business. That is untenable. It is at the opposite end of what we are trying to achieve and I suggest you reconsider your position.

I would like to work through some of the points you made. First of all, I challenge your assertion that there are no guarantees on their welfare. Several times through the course of this committee stages debate I have referred to the process by which an agreement is struck between Australia and the designated country. We have been through—and, in fact, several senators from the Greens party have read through—the provisions and measures which must be taken into account through the course of establishing those agreements. I challenge the point that there is no accountability for the government because, in fact, these agreements will need to withstand the scrutiny of parliament and, if tonight is anything to go by, that will not be short in coming.
Senator MILNE (Tasmania—Leader of the Australian Greens) (20:06): In the minister's second reading speech there is this clear statement:

Under the interpretation of the law set out by the High Court last month, the removal from Australia of an unaccompanied minor is practically extremely difficult, if not impossible.

That is what this is trying to get around, the fact that it is practically impossible for the minister to be able to currently remove an unaccompanied child from Australia because the minister has to sign to do so and that is challengeable in the courts. That is why the minister now wants to be exempted from those responsibilities under the Convention on the Rights of the Child, under the guardianship legislation. As the minister has said herself, this is about making it easier for the government to be able to send unaccompanied children out of Australia, and the minute they leave Australia they will have no guardian. So we, Australia, send those children somewhere else, and the minister who has sent them somewhere else does not have to sign on the dotted line to do so, is not challenged in the courts to do so and has no guardianship responsibilities once the child is sent somewhere else, like to Nauru, PNG or anywhere else.

Minister, article 3 of the Convention on the Rights of the Child requires Australia to ensure that 'the best interests of the child are a primary consideration in any action involving the child'. How does sending an unaccompanied minor, a child, from Christmas Island to Nauru and keeping them there in indefinite detention, as the minister has said is what will happen, demonstrate that the best interests of the child are a primary consideration in any action involving the child? How is that in the best interests of the child?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:08): Those protections and the reason that we continue to assert that we are in alliance with and not in contravention of our international obligations is that those matters would be dealt with in the agreement that Australia negotiates with the designated country. Those agreements will be subject to the scrutiny of parliament.

Senator MILNE (Tasmania—Leader of the Australian Greens) (20:08): The agreement will be subject to the scrutiny of parliament if that document is one of the ones that happen to be put on the table, otherwise it could be one of the ones that do not exist. It is in the legislation and you know full well, as I read out before:

Similarly, the fact that some or all of those documents do not exist … does not affect the validity of the designation.

There is no guarantee that any such thing will exist, so we cannot have a statement that says that children's rights will be protected, that children will be looked after because that will be part of the agreement and parliament can scrutinise it. There is no guarantee that that document will actually be part of it. It does not even have to exist for the purposes of designating a place. So we have already established that the minister is giving up the liabilities of guardianship of the child and those children can now be sent away without a guardian for an indefinite length of time.

I want to come to the specifics of the amendment that my colleague has moved in relation to what will be provided for asylum seekers. What we have done is put in as an amendment what the Houston panel has recommended—it is in their recommendations—and that includes appropriate accommodation, appropriate physical and mental health services, access to educational and vocational training.
programs, everything through to the appeal mechanisms, care and protection arrangements, case management assistance and so on in Nauru. Will the minister guarantee that all of these things will be in place before any refugee is sent to Nauru?

**Senator Lundy** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:10): I think I responded to this question in substance when I first spoke to this amendment. We believe firmly that the agreement can contain the sorts of measures as outlined and that it will be subject to the scrutiny of parliament. The other point I made to Senator Milne, through you Mr Temporary Chairman, is that to create openings that would allow for High Court challenges to the legislation to occur would render it unworkable, and we believe that in fact the appropriate test is withstanding the scrutiny of parliament. We have been through in detail what that process is.

**Senator Milne** (Tasmania—Leader of the Australian Greens) (20:11): The scrutiny of parliament is not going to provide anyone any guarantee of anything, as we are hearing tonight. I want to go specifically to appropriate physical and mental health services. Patrick McGorry said recently that anyone held in detention for six to 12 months is likely to have serious mental health issues. The government has refused already, voted down, our amendment which says 'no longer than 12 months'. So you are actually putting children and all refugees into a zone of physical and/or mental difficulties and problems. How can I be confident that there will be physical and mental health services? Why would the government knowingly put people in detention longer than the mental health experts say is the point beyond which they will suffer mental illness? Why would you do that?

**Senator Lundy** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:12): I think it is important at this juncture to remind the Senate that the desirable effect, and the effect that we are all hoping for, is that this legislation will work as an effective disincentive to people getting on boats. I want to premise my answer to your question with that point because I think that, in discussing many of these amendments, listening to the debate, one could be forgiven for thinking that we have lost sight of the main point. In discussing the detail it is worth reminding people listening to this debate or perhaps reading it later that we are constructing a genuine disincentive for people to step on a boat and put their lives at risk.

The issue of welfare in detention under these arrangements is something that will be subject to the agreement. Those issues have been specified in the Houston report and I have answered the question a number of times now on what checks and balances will be on those assurances that welfare issues will be addressed through the agreement with the designated country. That will need to withstand the scrutiny of the parliament.

**Senator Milne** (Tasmania—Leader of the Australian Greens) (20:14): There is an absolutely fundamental flaw in the minister's logic, and that is that the government is now moving to set up a big detention centre in Nauru and a detention centre in PNG on the basis that people will come on boats and, therefore, be moved into those detention centres. If you thought this regime was such a deterrent, why are you preparing for many more places than the 220 that are on Christmas Island at the moment? If this was going to be such an effective deterrent, then the boats would stop and you would have
these empty detention centres. That is not the case.

You are preparing for maximum size detention centres in PNG and Nauru because you know as well as I do that no deterrent that you provide is going to stop people getting on boats for all the reasons we have been through before and the fact that there are no other safe pathways. They cannot get visas. There is a flow of refugees and whatever deterrent you put in place can never be as bad as the persecution people suffer in so many countries. Let's get real about this. You are expecting the boats to continue. By punishing people, all you are going to do is make life worse for them. For those children you are making an example of, their lives will be worse. For the refugees you are making an example of, their lives will be worse. But it will not stop the boats. If you really believe it is going to stop the boats, why are you expanding the detention centres?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:16): I would respectfully suggest that Senator Milne review her logic, because to put in place the recommendations of the Houston report without having the capacity to detain people on Nauru and PNG would render the disincentive null and void. We are serious about stopping the boats. We are serious about smashing the people-smuggling model and we will put in place the recommendations of the Houston review because we believe that it offers, in all of its commensurate parts, the best opportunity we have to save lives and to stop the boats coming across the sea and people putting their lives at risk.

Senator MILNE (Tasmania—Leader of the Australian Greens) (20:17): If you are interested in putting into place the Houston committee's recommendations on what needs to be provided, the Greens have an amendment on the table which is word for word what the Houston committee recommended. In the absence of anything that is legally binding—and I go back to the fact that government has made sure that nothing here is legally binding when it comes to other countries—I want to be confident that there is appropriate accommodation in place, that there are health services in place. I cannot have any confidence about that unless this parliament actually says that is what we expect. The government has said you are going to put the Houston recommendations into place, so why not vote for them now?

Senator CASH (Western Australia) (20:18): The coalition will not be supporting the Greens amendment No. 7266. In relation to the amendment, I make the following point: the bill as drafted now includes a provision put forward by the coalition and agreed to by the government which ensures that the parliament will now be the arbiter of protections, whereas previously the government had stripped out protections for offshore processing from the Migration Act and replaced them with nothing at all. The bill that we have before us now ensures that case by case countries to which offshore arrivals are sent will be approved by this parliament. This, of course, means that a very heavy burden of responsibility now falls upon the parliamentarians in this place and the diligent implementation of the law.

History records that previously under a coalition government there were section 198A protections in the Migration Act. These were introduced by Mr Philip Ruddock, the member for Berowra, when he was the minister for immigration to ensure that people processed offshore had legally binding protections. In relation to the bill
that we are debating tonight, as I have stated, the parliament by affirmation of both chambers must approve a country for offshore processing. So in going forward, a heavy duty falls on this parliament to ensure that there are protections in place and that the protections are examined and properly scrutinised before the offshore processing country is agreed to. I reiterate the words of the shadow minister who said in the other place:

… and the government should stand warned that the coalition will scrutinise the protections very carefully if they seek to bring countries forward to be designated in this way.

The coalition will not be supporting the Greens amendment.

Senator HANSON-YOUNG (South Australia) (20:20): The only reason for these protections—these conditions which the Houston report has said must be in place—not to be included in this legislation is so that the government does not have to do it. There is no other reason. Let's not beat around the bush. The whole purpose is so that the government does not have to do it. There is no legal reason to do it, there is no reason politically to do it. There is no reason to do it which might open them up to scrutiny, to legal challenge, and there is this furphy that they will be included when the minister designates a country to dump people in. We know that they do not even have to exist. The only reason that these conditions are not being included in this legislation is because the government does not want to have to do them. That is the reason. Just like removing the minister's guardianship of children is because, as the minister said, it is 'unsustainable' for the government to act in the best interests of the child. Imagine if a parent was to say, 'It is unsustainable for me to act in the best interests of my child.' That would be considered child abuse. Under this very bill the indefinite detention of children, as the Australian Medical Association has already said, is child abuse. Louise Newman, the government's own adviser on the mental health of refugees in Australian detention centres, has said that the detention of children is child abuse. There are no protections for these 10 children who are currently on Christmas Island waiting for deportation to Nauru.

The only reason the government will not agree with the Greens amendments is so that they do not have to act in the best interests of the child. I think Australians will be shocked that our government is introducing legislation to do away with our responsibilities to look after the youngest and most vulnerable children in our region. What is the advantage of being amongst the region's most disadvantaged children? There is no advantage. And yet this government's spin and posturing and lawlessness is not going to save these children's lives; it is not going to save their lives at all. It is going to subject them to torment, to trauma, to the very abuse that indefinite detention has on children. We know that because it has happened already. We know that because it happened under John Howard's Pacific solution. And under Julia Gillard's Pacific solution, which is what this legislation is, there are even less protections for children. Imagine that: even less protection for children under Julia Gillard's Pacific solution than John Howard's. That is the truth of the matter.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:25): It is very important that I challenge the assertions made by Senator Hanson-Young. I think the senator knows that her misrepresentations are designed to underline the political point of view that the Greens bring to this debate, and we reject each and every one of them.
wholeheartedly. It is not an accurate representation in any way of this government's endeavours to resolve a long-standing and very challenging problem. We do so with the utmost integrity. We have taken advice from a panel of eminent Australians in trying to come to a solution that is durable, humanitarian foremost in its intent, and implemented in such a way that still provides for the oversight not of the executive of the government, not of an external entity, not of the minister, but of both houses of parliament.

Senator HANSON-YOUNG (South Australia) (20:26): I would like to ask for clarification, Minister, that there are 10 unaccompanied children on Christmas Island who may be at risk of facing deportation to be processed offshore, as per the Minister for Home Affairs press release.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:26): I understand that there are 10, but they will be subject to the appropriate consideration by the minister for exemption if they are in a situation of particular vulnerability. I have spoken many times during the course of this debate about that ability of the minister to declare an exemption in those circumstances. Were this bill to pass and were a designated country to survive the scrutiny of parliament, then the minister would be in a position to assess their individual circumstances—as I have explained many times.

The TEMPORARY CHAIRMAN (Senator Ludlam) (20:27): The question is that amendments (1) and (2), by leave moved together by Senator Hanson-Young on sheet 7266, be agreed to.

The Committee divided. [20:31]

(The Chairman—Senator Parry)

Ayes.......................11

Noes......................38

Majority..................27

AYES

Di Natale, R
Ludlam, S
Milne, C
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Madigan, JJ
Rhiannon, L
Waters, LJ
Wright, PL

NOES

Back, CJ
Boswell, RLD
Brown, CL
Cameron, DN
Cash, MC
Crossin, P
Evans, C
Feeney, D
Gallacher, AM
Hogg, JJ
Kroger, H (teller)
McEwen, A
Moore, CM
Parry, S
Pratt, LC
Smith, D
Sterle, G
Thorp, LE
Williams, JR

Bishop, TM
Boyce, SK
Bushby, DC
Carr, KJ
Colbeck, R
Edwards, S
Faulkner, J
Furner, ML
Heffernan, W
Johnston, D
Marshall, GM
McKenzie, B
Nash, F
Polley, H
Singh, LM
Stephens, U
Thistlethwaite, M
Urquhart, AE
Wong, P

Question negatived.

Senator HANSON-YOUNG (South Australia) (20:29): I move the Greens amendment on sheet 7268 relating to statutory review:

Schedule 1, item 25, page 12 (after line 16), at the end of Subdivision B, add:

198AI  Review of regional processing

(1) The Minister must cause an independent review of regional processing under this Subdivision to be undertaken:

(a) within 12 months after the Minister first designates a country under section 198AB; and

(b) at least once every 12 months after the first review is undertaken under this section.
(2) A review under this section must include a review of the protection and welfare arrangements that each regional processing country has in place for persons taken to the country under section 198AD.

(3) The Minister must cause a copy of a report of a review under this section to be released publicly within 14 days after the Minister receives the report.

We have just spent all evening realising what flaws are in this piece of legislation. The minister has identified that, despite the fact that a designated country would require guidelines as to how people would be treated while they are in these places, basic understandings of protections, there is nothing in this legislation that actually requires that to happen. It is absolutely fundamental that we know just how this legislation is impacting on the very, very vulnerable people that it is inflicting pain on.

This amendment allows for a review into how regional processing under 198A actually works. Under this amendment the minister must cause an independent review of regional processing under this subdivision within 12 months after the minister first designates a country under section 198AB and at least every 12 months after the first review is undertaken under this section. A review under this section must include a review of the protection and welfare arrangements that we have just seen this government vote down. We have just seen the government and the opposition vote down the protection arrangements that the Houston report said had to be included. So this review is important. We have seen all of these 'trust us' statements made in this chamber tonight, that even though these protections will not be in the law, because we have just had the government and the opposition vote them down, we are being asked to trust the government that they will happen anyway.

So this review will include an analysis of whether those protections ever actually happened. There should not be any reason that the government would not support this amendment if indeed they believe all their own rhetoric. If indeed the minister is right about all of the protections, all of these agreements to treat people consistently with international law and human rights standards, including no arbitrary detention; if the processing in offshore facilities includes appropriate accommodation, appropriate physical and mental health services, access to education and vocational training programs, application assistance during the preparation of asylum claims, and an appeal mechanism for those who do not get a positive response in the first go; if the minister is right that there will be monitoring of care and protection arrangements and that there is a proper provision of case management assistance—if the government believe that all of these things will happen—then there is no reason why they will not agree with this review.

The minister, under this amendment, must cause a copy of the report of the review under this section to be released publicly within 14 days after the minister has received the report. Currently in the Australian detention network, the Commonwealth Ombudsman is required to do reviews within the Australian detention system. He is required to ensure that the case load of individual asylum seekers is being managed properly. Every six months, if somebody has been in detention for longer than 12, he needs to review their case and provide a report to the minister. For anyone who has been in detention for longer than two years, the Commonwealth Ombudsman is required to release that report publicly.

This legislation, as tabled tonight by the government, does not require any of those checks and balances, so this legally binding
review would require at least some transparency about how these offshore detention facilities are operating. As I said, if the minister is honestly trying to tell us that all of these things—even though we have just seen the government vote them down—will actually happen, there is no reason why the government should not agree to the basic transparency of a review of offshore processing facilities and how they are operating. I ask the minister: is this something that the government is prepared to accept—some basic transparency in how these facilities will operate?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:40): Again I feel the need to challenge some of the assertions made by Senator Hanson-Young that the government voted down protections, as she described. We did not do that. Those protections remain. We disagree with the Greens' proposed amendment—we do not believe it is necessary—but in no way has that removed those protections. Contrary to the assertion by Senator Hanson-Young that this proposed amendment, in putting in place a statutory review, enhances protections, in fact the strongest protection we have is that, in the agreements to be negotiated between Australia and designated countries, these negotiations take place with the involvement of stakeholders including the UNHCR and other entities. For these agreements to then be presented to both houses of parliament I believe offers the best prospect for transparency, for scrutiny and for that test that Senator Hanson-Young and the Greens seem to be looking for in how they express the need for a review.

I do not think it will surprise the Greens to know that we as a government will be opposing this amendment. There is no doubt that reviews will be undertaken in respect of regional processing arrangements. I have no doubt that the ongoing commentary provided by all concerned, motivated and interested by this vexing matter will stand as a constant review of the operation of these policies, including the normal forms of scrutiny through the Senate estimates processes. We do not believe that there is a reason that that process of ongoing scrutiny and review needs a statutory requirement, and conducting 12-month reviews will have an effect of discouraging people from engaging in the proper migration processes and the processes we are trying to establish in creating a durable arrangement for migration in our region. On these bases, we are not going to be supporting the amendment currently before us.

Senator MILNE (Tasmania—Leader of the Australian Greens) (20:43): I rise in support of my colleague's amendment in terms of a review. It is particularly important that we have a review of this legislation, because the debate tonight has shown very clearly that there is absolutely nothing in place. The government has nothing in the way of conditions. There are two things happening here. One is an assertion that there will be proper process, that all of the things that the Houston panel had asked for in terms of protections for refugees will be legislated by the government and will be put into place, and then, in the next breath, we hear on the news that the government is telling the defence forces to get the tents to Nauru, get things underway. They are sending people there straightaway, and they have put 220 people on notice that they are at risk of being sent to an offshore location. Subject to the parliament, Nauru and Manus Island, PNG, are currently on the agenda.

So the minister is telling us that there will be laid on the table of this parliament all of
the documents which will provide all of the details of the protections and the agreements with the countries—notwithstanding the fact that they are not legally binding—but we have just had the government vote down all of the protections that the Houston review said needed to be in place when Australia looked like sending anyone to one of these offshore locations. They are not in place, and the minister has not been able to tell us in any shape or form how long people are going to be stuck in these places or what is going to happen to them while they are there in terms of health, education, mental health services and all the other services that they need. Under that set of circumstances I think it is entirely reasonable that we say, given the fact that the government cannot answer the questions now and that the government has not been able to tell us in any shape or form how long people are going to be stuck in these places or what is going to happen to them while they are there in terms of health, education, mental health services and all the other services that they need. Under that set of circumstances I think it is entirely reasonable that we say, given the fact that the government cannot answer the questions now and that the government has not been able to tell us in any shape or form how long people are going to be stuck in these places or what is going to happen to them while they are there in terms of health, education, mental health services and all the other services that they need.

Under that set of circumstances I think it is entirely reasonable that we say, given the fact that the government cannot answer the questions now and that the government has not been able to tell us in any shape or form how long people are going to be stuck in these places or what is going to happen to them while they are there in terms of health, education, mental health services and all the other services that they need.

Under that set of circumstances I think it is entirely reasonable that we say, given the fact that the government cannot answer the questions now and that the government has not been able to tell us in any shape or form how long people are going to be stuck in these places or what is going to happen to them while they are there in terms of health, education, mental health services and all the other services that they need.
less access for others to see what is going on in those facilities.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (20:49): The agreements we strike with a designated country capture the intent and the body of the obligations that Australia has under our international conventions. This is transferred through the body of the agreement with the designated country and carried forth in that way. The designated countries are not Australia and therefore the application of the Commonwealth Ombudsman does not apply. But it is through the mechanism of the agreement, which must as we know withstand the scrutiny of parliament, that we are able to be confident of those conditions and parameters under which those people go to those countries.

Senator HANSON-YOUNG (South Australia) (20:50): I must note the absolute inability of the government to give any certainty on these issues. We are talking about the human rights of people—the protections that we owe to children, particularly those who arrive here on their own. There is no guarantee that any of the things that the government are talking about will happen. They have refused to put any of them in the legislation—there is no legal requirement for this parliament to see the arrangements and the conditions before we send people off to Nauru or Manus Island or Malaysia. Those documents, as this legislation says, do not even have to exist. The government are just asking us to trust them. They are not prepared to put it into law; we just have to trust them.

It is hardly a resounding endorsement of the requirements and the spirit of the Houston report, let alone our obligations under the Convention relating to the Status of Refugees and the Convention on the Rights of the Child.

The government is simply asking us to trust them, which is precisely why we should be seeing some type of review of the conditions in these places that we send people to, because we know that the last time we sent children to Nauru the conditions there were horrid. Last time we sent children to Nauru, we had children sewing their lips together. Last time we sent children to Nauru, there was one boy—the story sticks in my mind—who ate a light globe to end his own life because the conditions of indefinite detention on that island prison were so devastating that he turned to self-mutilation and attempted suicide. They are the conditions that we know existed last time, yet the government is asking us to just trust them. And there will be no review. There is no review. There is no legal reason for the government to review the conditions of detention and have to report to the parliament. This is what happens when the government of the day are desperate to rush legislation through the parliament: they override people's rights, the need for protection and the rule of law. They do not think about what will happen in 12 months time or in two years time.

That is why I have just circulated a final amendment. We have given this government chance after chance tonight. First of all, we said, 'If you're going to dump people in Nauru, at least put a time limit on it.' They voted that down. Then we said, 'Well, if you're not going to put a time limit on that, the length of time you leave people in these places, at least guarantee some safeguards and protections around the conditions in which people are going to be locked up.' They voted that down. Now we have asked for a review of the conditions in offshore detention facilities, and they are about to vote that down. This government does not
care what happens to those 10 children once they are dumped in Nauru. You do not care. Everything you are moving tonight and everything you have voted against tonight says you do not want to have legal responsibility for the children who are currently on Christmas Island waiting to be deported to Nauru.

Mr Chairman, as I said, I have just circulated a final amendment, which puts a sunset clause on this entire piece of legislation. If this amendment were supported, the bill as presented to the parliament tonight would cease to have effect on 16 August 2014. If you are not going to review the conditions in which you lock people up, around which you have set no parameters for how people are treated, and you will not even put a time limit on their detention, then I do not believe that you deserve to see this legislation last any longer than the next two years. How can you justify having no transparency, no protections and no time limits? This legislation must have an end date, which is contained in the amendment we have just circulated in the chamber. I return to the amendment that is currently before us, Greens amendment (1) on sheet 7268. Mr Chairman, I ask that the question be put.

Senator XENOPHON (South Australia): I support this amendment. It is similar in tone to and it covers the same territory as my second reading amendment, which I note that the Greens supported but which was not supported by the government or the opposition. I have to take issue with the government’s response to this. The government seems to think that this amendment will somehow undermine the intent and the efficacy of this bill. I do not see that. That does not make sense to me. Simply having a review would mean that the legislation is monitored, that the legislation is checked to see whether it is effective against a whole range of criteria, including whether or not it stops or significantly reduces unauthorised boat arrivals in Australia and what impact there is on human rights. It could also look, for instance, at the cost implications of this legislation. An independent review would do that, and I cannot see how that would in any way send a signal to people smugglers that there is some backing away from this legislation. In fact, an independent review could say, for instance, that the legislation needs to be strengthened. It could make any of a range of recommendations.

This is not a criticism of the government, but the fact is that the government has changed its position in relation to offshore processing to a large degree as a result of the Houston report. I think the expert panel has been a very useful exercise, resulting in a good and thorough report prepared by good and decent people.

So rejecting the idea of an independent review, rejecting the idea of scrutiny of this bill, rejecting the idea of ensuring that this bill is monitored for its effectiveness baffles me. I do not think that the reasons we have heard tonight from the government are adequate or logical in the context of what this amendment is attempting to do. I will be supporting this amendment.

Senator CASH (Western Australia): In relation to the Greens amendment on sheet 7268, the coalition will not be supporting this amendment. The government already has an independent review and that is the Houston report, which has effectively endorsed the coalition’s approach to border protection. In relation to the coalition’s approach to border protection, tonight the Senate will implement the first prong in that approach which is the re-establishment of offshore processing. In relation to the terms of the independent
review as set out in the Greens amendment, one of the reasons that the coalition is supporting this bill is that the bill includes a provision agreed between the coalition and the government to ensure that the parliament will now be the arbiter of protections.

The bill ensures that, case by case, countries to which offshore arrivals are sent will be approved by this parliament. As I have previously stated, the coalition has made it very, very clear that we are putting the government on notice. The government should stand warned that the coalition will be taking its role in relation to an arbiter of protections very, very seriously. We will be scrutinising the instruments that the government brings forward in relation to the designation of these countries. Unlike the Greens, we do not need an independent review to tell us what our job is. We will be doing it prior to the designation of the country.

Senator MILNE (Tasmania—Leader of the Australian Greens) (21:00): It is a very fascinating idea that prior to the designation of a country you can review the effectiveness with which the services are delivered in that country. What a fabulous idea, that before you even know which country it is you are satisfied that you have the review that needed to happen, before you even know where it is! This is absolute nonsense from the coalition. Here we have a situation where the coalition spokesperson, Senator Cash, is saying that she is satisfied before a country is nominated as a detention centre or a review has been undertaken of the services that may be provided in that unknown location. That is a complete nonsense.

As to the notion that they will be taking seriously their responsibility to scrutinise when the government put on the table the papers about where the government want us to have a detention centre, Senator Cash apparently was not listening to the fact that the government do not have to put any documents on the table. They can put on the table all or none or some. The coalition will not be able to scrutinise the process anymore than anybody else will, because the documents are not actually required to be tabled. When we were discussing this earlier, it was shown to be very clear in the bill that they do not have to put the documents on the table. All you have to do is to say yay or nay. You have no opportunity to amend it and include anything better or worse, you just have to say yes or no. It is not a disallowance, it is a disapproval and you either approve of what is on the table or you do not. But the government are not required to put on the table all the documents that pertain to what may or may not be agreed in terms of what services or protections might be provided. And so you have no capacity to review them in that circumstance.

What we have is no accountability, no monitoring arrangement, no review, no requirement to put on the table the documents about what an agreement might constitute. We have nothing. All we have is the government saying: 'We're going to choose the places for the detention centres, whether or not we have the documents—it does not really matter. We do not have to have them on the table. There is no review. There is no sunset clause. There is no international law, because nothing is legally binding. There is no natural justice. There is no guardianship for the children we send there.' In fact, as Senator Lundy rightly said, they want to avoid all of this ending up in the courts and the best way of doing that is to make sure they have no legally binding requirements at all. Senator Cash, I am fascinated, and it will be remembered when this is in place, that you have already said as far as you are concerned the review has been undertaken before the country has been chosen.
Senator XENOPHON (South Australia) (21:03): It would be remiss of me after criticising the government for being illogical if I did not criticise the opposition for being quite illogical in terms of its position. The fact is the Houston review made certain recommendations and this bill largely reflects its recommendations. But members of the coalition quite rightly pointed out that they do not know how effective this will be. I think the coalition’s position is that it should go further and if it did it would be more effective. Be that as it may, we do not know how effective this will be.

We do not know whether it will work or not work, whether it will backfire, whether human rights issues will not be monitored as recommended by the Houston review. Surely an independent review within 12 months would make some sense. I still do not understand why both the government and the opposition will not agree to a review in the terms that have been put by the Australian Greens. I think those terms are quite objective. They are not loaded terms of reference. The amendment does not seek to get an outcome one way or the other. It is objective, fair and balanced in the way that it has been set out. It just seeks an independent review, and does not direct the government which way the review should go. It gives the government a fair degree of latitude, but it still allows for an independent process to look at the effectiveness or otherwise of this bill. I think this is an opportunity lost.

The CHAIRMAN: The question is that the Greens amendment on sheet 7268 be agreed to.

The Committee divided. [21:09]
(The Chairman—Senator Parry)

Ayes.........................11
Noes.........................40
Majority......................29

AYES
Di Natale, R
Ludlam, S
Milne, C
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

NOES
Abetz, E
Bishop, TM
Boyce, SK
Bushby, DC
Carr, KJ
Colbeck, R
Crossin, P
Evans, C
Feeney, D
Hogg, JJ
Kroger, H
Marshall, GM
McKenzie, B
Nash, F
Polley, H
Singh, LM
Smith, D
Sterle, G
Thorp, LE
Williams, JR

Hanson-Young, SC
Madigan, JJ
Rhiannon, L
Waters, LJ
Wright, PL

Back, CJ
Boswell, RLD
Brown, CL
Cameron, DN
Cash, MC
Conroy, SM
Edwards, S
Faulkner, J
Furner, ML
Johnston, D
Lundy, KA
McEwen, A (teller)
Moore, CM
Parry, S
Pratt, LC
Sinodinos, A
Stephens, U
Thistlethwaite, M
Urquhart, AE
Wong, P

Question negatived.

The CHAIRMAN: Senator Hanson-Young, do you wish to move your additional amendment?

Senator HANSON-YOUNG (South Australia) (21:12): Yes, I do, Chair. I have some questions for the minister before I do that. Given that we have now no conditions in the legislation for how people are to be treated in these offshore dumping facilities, and given that there is no review of the conditions of these facilities, I would like to ask the minister what assurances we have that the physical situation on Nauru and Manus Island is any different than it was under the Howard government. I will ask one specific question: what is the minister going to do about the issue of malaria that children
were subject to when detained on Manus Island under the Howard government?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:13): Again I am compelled to refute the premise of the question that Senator Hanson-Young has put to the government. The government is confident that the protections are in place. By accepting the recommendations of the Houston report both in the spirit and as it is represented in this piece of legislation, we believe we satisfy both the spirit and the letter of those recommendations. I remind senators that this is part of a holistic approach to the challenge of orderly migration in our region and this legislation forms a part of that.

The final point I would like to make is again, contrary to assertions made by Greens senators, that in fact the rigorous nature of scrutiny afforded by the parliamentary processes already, through Senate estimates and through the chamber itself, as well as the additional scrutiny that will be levelled at the agreements with designated countries, will provide an unprecedented level of scrutiny and accountability and I think will satisfy the assurances the Greens are seeking with their proposed review, which we have not supported. It will not come as any surprise to my Senate colleagues that we will also not be supporting the attempt to have the bill cease to be effective from 16 August 2014.

I think we are at the point in the debate where the Greens, with due respect, continue to make their political point by moving this final amendment. However, in practical effect, this amendment would completely sabotage the operation of the framework we are constructing to provide an effective disincentive to the people-smuggling trade. In fact it borders on absurdity in that you can envisage, with such a clause in place, that people smugglers would spend the next two years compiling their passenger lists for when the bill ceased to be in effect. So we will not be supporting this amendment.

Senator HANSON-YOUNG (South Australia) (21:16): I will ask the minister again: what is the government going to do to tackle the issue of malaria, which children faced the last time they were detained on Manus Island?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:16): In accordance with the recommendations we have accepted from the Houston report, we will, obviously, be adhering to our obligations for the health, wellbeing and welfare of detainees from Manus Island and Nauru.

Senator HANSON-YOUNG (South Australia) (21:16): What is the practical response to one of the well-known health issues which children faced when they were detained on Manus Island? What is the government going to do to protect children from being subject to malaria?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:17): In referencing Manus Island as Nauru, as I just did, I should make the point that no designations have been made, that the conditions by which the designations will be subject to an agreement being struck and that agreement being subject to the scrutiny of the parliament. I am confident that the issues and no doubt the various degrees of detail that Senator Hanson-Young is pursuing answers for right now will be addressed through the course of those agreements. I am sure that, if she took the
time to convey her issues of concern, she should be confident these issues would be addressed. I am not in a position to provide detailed advice on what responses to these known challenges would look like at this time, so I would respectfully suggest, through you Mr Chairman, that Senator Hanson-Young's pursuit of the level of detail on which she is seeking assurances is beyond my capacity in this committee stage of the debate.

In saying that, it is not to avoid the issue. It is a course of the consequences as events unfold. Details of the arrangements would be negotiated with the appropriate stakeholder bodies, including the UNHCR, which I am sure, with this problem being well-known, as the senator claims, would have strategies to address it.

**Senator HANSON-YOUNG** (South Australia) (21:19): I would like to ask the minister whether the officers of the Defence Force who were deployed to Nauru this morning have been asked specifically to inquire into fresh water on Nauru. We know that the only water available on Nauru is that produced by the desalination plant, that there is no fresh water available on Nauru. During the Howard government's Pacific solution, fresh water was rationed to the detention centre. Have the members of the Defence Force deployed to Nauru today by the Prime Minister been asked to work out precisely how enough freshwater will be provided to look after the refugees we will be sending there?

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (21:20): The minister and the coalition spokesperson, Senator Cash, have both gone on at length about how the parliament will be the ultimate place in which this will be scrutinised. You have just voted down a review. Are we going to move, as my colleague has said, for a sunset clause?

We all know that in parliament we have people who have been exempted from appearing before Senate inquiries—people who have worked in minister's offices, for example, as Senator Sinodinos would know extremely well—as a result of a certain maritime incident. People were exempted from having to appear to be scrutinised by Senate committees because they knew what went on and did not have to appear to say so. Let us forget the notion that Senate estimates or any inquiries are going to get to the bottom of anything because we will just get, 'We will take that on notice; we will get something to you,' and we will get some document which says absolutely nothing or it will be exempted as cabinet-in-confidence or whatever else. So let us abandon the notion that you are going to get full-scale parliamentary scrutiny of what goes on in these places.

I ask the minister: will she now give an unequivocal guarantee to this parliament—since Senator Cash says she is satisfied the parliament is enough, that we do not need these reviews—that lawyers, members of parliament, human rights commissioners and the like will be able to visit the detention centres on Nauru and on Manus Island? They were not allowed to before when these detention centres operated, but now that the parliament is the scrutinising body, will you guarantee that parliamentarians, lawyers and human rights bodies will have access to the detention centres?

**Senator LUNDY** (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:22): Both senators are asking for a level of detail that is beyond the scope of arrangements that have been determined as yet. I will respond to their questions by saying that we will act in accordance with the Houston report recommendations. I am not in a position to
convey to Senator Milne, through you Chair, details about access to the facilities. These things will be determined by the nature of the agreement that Australia has with the designated country, mindful of course that it is with another country. So I am not able to provide the detail with respect to the issue of access.

I take issue with the claim that parliament is somehow an ineffective watchdog or source of accountability. I reject that completely. I can assure you as a member of the government that we take extremely seriously the capacity of this parliament to scrutinise government’s goings on. We are all here on that basis. We all carry with us a confidence in the parliamentary processes. I think that as senators and as members of the House we uphold the dignity and processes of this parliament. I think it is plain wrong to say that this is a place of ineffective scrutiny, thereby making a demand for other mechanisms. I believe the mechanisms we have put in place go well beyond those that have existed previously. It was never previously a requirement for offshore processing to strike agreements that endured the scrutiny of parliament. That is a recommendation we have accepted from the Houston review and it is one that I am very pleased to be presenting to the parliament. I am surprised at the scepticism being displayed by the Greens party about the veracity of this accountability measure.

Senator MILNE (Tasmania—Leader of the Australian Greens) (21:24): I can tell you, and everybody in this parliament knows, that it is a fact that when governments decide not to provide information they can easily do it through all sorts of processes that avoid FOI and that protect people in ministerial offices. I will be very interested in Senator Lundy's responses when we get to the bottom of how it is that the Minister for Home Affairs, Jason Clare, did not know until 9 August that there was a boat missing, in spite of the fact that the Palestinians had informed the government three weeks before that that was the case. No doubt the government will be very forthcoming. Now that we can have absolute confidence that nothing will be withheld from the parliament I look forward to that. I would like Senator Lundy to tell me, if she has such great confidence in the ability of the parliament to get to the bottom of things, how it is that we never got to the bottom of SIEVX and how it is that the parliamentary committee involved never got to the bottom of it. The ALP at the time agreed that we needed a royal commission, because people who were in ministerial offices were not required to front up and so did not have to say what really went on. There are people who do know what went on, but this parliament does not.

Let us get to the guts of what Senator Lundy was just saying about a review. It is not about asking for the detail of the review. You have said that there is no legally binding protection here, that the parliament will scrutinise the documents that are the arrangements. The you have said that there is no need for those arrangements actually to be in the documentation that comes to the parliament, although it will be the parliament that scrutinises the arrangements. On that basis, I need to know that I as a member of parliament can go to Nauru and Manus Island and that I can be confident that lawyers and other people can go there and test whether or not the government is delivering what it says it is going to deliver, since there is no legal scrutiny available and no requirement to provide natural justice or guardianship for the children.

I might say, Senator Lundy, that the ALP at its national conference voted to say that children needed to have an independent guardian—not the minister, but an
independent guardian. You have abandoned any guardian. There is no guardian at all for those unaccompanied children who might be sent offshore. I want an answer. It is not about providing the detail about how it is going to operate. I ask for an unequivocal guarantee that these detention centres will be open to the scrutiny of the parliament. Since you have removed the courts, removed natural justice and removed everything else, there is only the parliament. I want an unequivocal guarantee that parliamentarians, lawyers and human rights advocates will have access to those detention centres. Otherwise, there is no review, no accountability, whatsoever.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:28): These issues are still to be determined, Senator Milne, through you Chair. I can reiterate that the agreements that Australia will pursue with designated countries will involve stakeholders, including the UNHCR. In offering you some assurance, I point to the context in which these agreements will be negotiated.

Senator HANSON-YOUNG (South Australia) (21:28): The current restrictions on media access to Australian detention centres were drafted using media restrictions to Guantanamo Bay as a model. That is the truth of the matter. It has been revealed through FOI from the minister's office and the immigration department that they were based on the guidelines for media access to Guantanamo Bay. I would like to know from this minister: will these offshore processing facilities be under the same media access guidelines?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:29): I offer you the same answer I provided to Senator Milne: that these operational details are not known. They will be perhaps in some way subject to the agreements we strike with the designated countries, but I am not in a position to start foreshadowing such detail. I think it is well understood that these processes are yet to be undertaken. What we can commit to is reflecting both the spirit and the letter of the report prepared by the panel chaired by Angus Houston as we proceed to try to establish agreements with designated countries and, again, this will of course be subject to the scrutiny of parliament. Through you, Mr Chairman, as to this line of questioning, I understand completely the motivation but I am not going to be able to provide the detail that I think senators are now pursuing.

Senator HANSON-YOUNG (South Australia) (21:30): The reason we cannot have any detail from the minister on any of these issues is that the government have rushed this legislation through the parliament. They have stripped out all protection under the current Migration Act, they have done it deliberately to circumvent the High Court and they have refused to put the benchmarks of basic protections in the legislation. They have said that no protections that will be provided will be legally binding. They have said that children who are unaccompanied will no longer have a guardian; therefore they can be deported to wherever the government wishes without it having to think of the best interests of the child. They are refusing a review. They are refusing to give us any information as to who will have access to these offshore dumping facilities and who will not. They cannot tell us what things they have fixed of what did not work when we last locked people up in Nauru. The issue of fresh water was raised by members of the government for years. For
years members of this government raised such very practical issues and yet now we see no ability for the minister to even answer these basic questions about whether these facilities are appropriate or not. It comes back to the very first question I asked: how can the minister say that locking children in army tents on Nauru can be acceptable accommodation for those children? The amendment that has been circulated does indeed put a sunset clause in this legislation.

Senator HANSON-YOUNG: That is right.

The CHAIRMAN: You might want to move that now.

Senator HANSON-YOUNG: I move the Greens amendment on revised sheet 7269:

Page 2 (after line 2), after clause 3, insert:

4 Application of amendments
However:
(a) the amendments (including any repeals) made by this Act have effect only for a period of 24 months from the commencement of this Act; and

(b) any Act amended by this Act has effect after that period of 24 months as if the amendments had not been made.

This amendment puts a sunset clause in this inhumane, unlawful, illogical, cruel piece of legislation. I would like to know what the minister's response is.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (21:33): I refute all of those claims made by Greens senators. The bill before us is part of a comprehensive response to the challenge we face. We are acting on the recommendations of the Houston review. We do so with the utmost integrity of our intent. We do not want to see more people lose their lives in undertaking dangerous journeys by boat. We do want to work with our neighbours in establishing a durable approach to orderly migration in our region and we do so with a genuine effort to remove any incentive and any motivation for people to take their life in their hands or to put it in the hands of the people smugglers that are trying to exploit their hardship.

Senator MILNE (Tasmania—Leader of the Australian Greens) (21:34): I rise to support the amendment that there be a sunset clause in this legislation. I think, when people realise just how appalling it is and realise what a shocking destination Nauru is for dumping refugees and how much money it is going to cost Australia to go through with this appalling cruelty to people, the sunset clause will not come fast enough. Clearly, we have not been able to get out of the government any indication of what indefinite detention means. It could be many years or decades. All we have got is an assurance from the minister that somehow it will mean that for people sent there there will be a no-disadvantage clause, and we do not know what that means in terms of how many years someone is going to be dumped on Nauru for. The minister has not been able to tell us anything about whether Nauru can provide water. We do not even know if it can provide a reliable source of energy, for example, because that was one of the major problems for that detention centre previously.

I come to the issue of the minister saying this whole thing is about implementing the Houston review. Well, it is not. It is implementing bits of it—a couple of bits—and it is not implementing those properly because the Houston review made very specific requirements that were consistent
with our obligations under international law and specified a range of conditions which had to be met. Clearly, the minister has not been able to provide any assurance about those conditions being met, so they are not even implementing in full those bits of the Houston report that have been recommended, let alone all of the report. The whole justification here is saving lives at sea, so, Minister, not only will I be very interested in Minister Clare's explanation as to why he did not know about the boat after the Palestinian representatives informed the government weeks ago; I will also be really interested to know why, when Australia knew that the boat that led to this furore in the parliament was in trouble on the Tuesday afternoon, we did not send anyone into the zone to rescue that boat until Thursday afternoon, when people were already in the water. I raised this at the time. The safety of life at sea is paramount. The Greens have pursued this for many years, especially since the sinking of the SIEVX. It is very clear there is a tension between the government's preferred option of deterrence and our obligations under the International Convention for the Safety of Life at Sea. We knew on a Tuesday afternoon that a boat was in trouble but we did not send in the rescue until Thursday afternoon, by which time people were in the water and over 90 people drowned.

The government has yet to explain this, and in the estimates process we will be forensic about examining it. But my hunch now is that, contrary to Senator Lundy's claims, we will be told that it is about national security. We will be told that 'it is about intelligence and you can't possibly know that'. Senator Lundy, I will be really interested when we get to the estimates to hear at what point in the chain of command, from intelligence through to on-the-ground operations, somebody made the call to send the rescue in. They made that call too late and 90 people drowned. Let us see. We will find out about that.

That is why I went to the Prime Minister and asked her to codify Australia's responsibilities under our saving life at sea obligations. It was part of the Greens recommendations for the Houston review and it is what Houston recommended, and I will wait and see whether the government is prepared to codify saving lives at sea. Where were the Navy's ships between Tuesday afternoon and Thursday? When we knew that the Indonesians did not have the capacity to mount a rescue mission, that their boats cannot go to sea in anything above four metres, and when we knew that the Indonesians did not have the intelligence capacity to pick up the signals, why is it that we did not say earlier that we were sending in the rescue boats?

So there is a real issue here about who knew what and when and this tension between deterring people and our obligations to rescue people. We heard that ridiculous, appalling and inhumane carping from the coalition about how the Navy is not a search and rescue service, indicating quite clearly that the coalition's view is that they should be left to the last minute otherwise they will be encouraged to get on boats because they will be safely escorted.

So let's get very real about what is going on with this and let's actually look at what we have in front of us, and that is a cruel and inhumane program that is going to send people seeking asylum in our country to be punished further as an example to others and that says: 'You have already been through persecution. We now want to punish you as an example to everybody else. We don't want you in our country'—anywhere else but here. We are giving effect to a piece of legislation that allows a minister to abrogate his
responsibility of guardianship to children to enable them to be deported from Australia and sent to a detention centre indefinitely without a guardian.

I feel ashamed as a parliamentarian to think that this parliament is going to just put through this legislation on the say-so that, somehow, these people's rights will be protected, when the legislation specifically says that it does not have to be legally binding and that the rules of natural justice are specifically exempted in relation to this.

It is an appalling day for Australia and I could never have believed that we could have gone backwards so far in the last decade when it comes to seeing ourselves as an Asian nation and seeing ourselves as offering some leadership in the region on human rights. I just cannot understand how the government thinks that this is going to in any way do anything other than undermine our global reputation and hold Australia up to ridicule around the world as a country that does not uphold its obligations under the United Nations human rights convention, under the refugee convention and under the rights of the child convention. I think it is a shameful day in Australia's parliamentary history and I would urge the Senate to at least pass this amendment, which would see an end to this appalling regime in no more than two years. At least put a time frame on ending it. Do not just leave it open for even more extreme and cruel acts in the future.

**Senator CASH** (Western Australia) (21:42): In relation to the Greens amendment with the sunset clause, if Senator Milne wants to stand here tonight and talk about being inhumane, perhaps she can explain to the people of Australia who are listening in why the Greens by their very actions tonight, and the obtuse comments that they have continued to make, support policies that encourage people to get on boats and risk their lives to come to Australia. In the case of what we know, nearly a thousand people, because of policies that the Greens support, have actually lost their lives on the journey to Australia.

If Senator Milne wants to talk about being cruel and inhumane, what does Senator Milne say to the millions of refugees who have not spent one year in a camp, who have not spent five, 10 or 15 years in a camp but who, in relation to the ones that come into my office, have spent 20 long years in camps in Africa? All of their children were born in camps in Africa because they did not have the means or the opportunity because of policies like yours to get on a boat, pay a people smuggler and jump the queue and come to Australia. To those people who come to my office in Perth who spent 20 years in camps in Africa doing the right thing, Senator Milne says: 'Too bad, so sad. We don't care about you because our policies will only support those people who have the means and the opportunity to come to Australia through unlawful means.'

Without a doubt, Mr Chairman, the Greens with their final amendment tonight have shown that they are not interested in stopping the people smugglers. In fact, people say to me, and I can understand why, that the Greens without a doubt are the best friends people smugglers will ever have. The Greens are not interested in offshore processing.

**Senator Milne:** Mr Chairman, on a point of order: Senator Cash shows absolute ignorance in her remarks and I utterly reject and find extremely offensive her suggestion that anyone in this parliament would be a friend of the people smugglers.

**The CHAIRMAN:** You are debating the point, Senator Milne. It is not a point of order.

**Senator CASH:** Without a doubt the Greens policies well and truly encourage the
people smugglers and the people smugglers are very happy with the policies that the Greens support. The Greens have shown that they are not interested in stopping the boats because they know that they only want onshore processing and open borders. The Greens do not take their responsibilities seriously as parliamentarians in ensuring the security of this nation. But what the Greens have shown tonight—and in particular with this final amendment by which a sunset clause on the legislation that we are discussing is proposed—is that as of 16 August 2012, never ever have the Greens been more out of touch with mainstream Australia.

As much as it is going to pain the Greens, as distressing as tonight is going to be for the Greens, I say to them: this bill does not need a sunset clause. That is the last thing that this bill needs. What the bill does need—and I also address these comments to the government—is the final two steps in the coalition's proven border protection policies. There is one party in this place that has solved the issue of border protection and that party is the party of the coalition. Our policies have been proven to work. Whilst tonight I welcome, as a member of the coalition, the government's monumental backflip that they have performed on the border protection issue and the fact that they have finally decided to agree with the coalition when it comes to the direction that this country should take and the policies this government should take when it comes to border protection, the government are only implementing but one of our steps and there are two more for it to implement.

In relation to the coalition's position on a sunset clause, I say this: whilst we support the legislation that is before us today, the coalition in no way steps back from our policies of reintroducing temporary protection visas and turning back the boats where it is safe to do so. We are now supported in those two policy objectives by the report of the expert panel. The report of the expert panel does not, as the Greens propose with this amendment, propose a sunset clause. Far from it; the report of the expert panel has clearly come down in favour of the coalition's policies when it comes to border protection.

The government—and it knows it needs to do this—should implement the full suite of these measures and if it does not it cannot expect the same outcome that the Howard government achieved when it was in power. The policies of the former Howard government were not policies that were cooked up overnight. They were not policies that were produced in the last six weeks. These are policies that are the result of more than 10 years of both successful implementation and continual refinement and which will be fully reinstated by a coalition government if and when we are re-elected. The coalition has been consistent when it comes to border protection, and the public trust the coalition and our policies when it comes to border protection.

So I say to Senator Milne, the last thing this bill before us tonight needs is a sunset clause. If you truly believe that it does, then you are more out of touch with mainstream Australia than even I could have thought that you were. The bill before us tonight needs to be passed and it needs to be passed in a timely fashion. Then it is for the government to consider very carefully that if it truly does want to stop the boats and to break the people smuggler model—as the minister has outlined on a number of occasions tonight in response to questions from the Greens—it has to acknowledge the passing of the bill tonight is a step forward but it is only that and there are another two steps that the government needs to take. The coalition does not support the Greens amendment.
**Senator MILNE** (Tasmania—Leader of the Australian Greens) (21:50): I imagine if I was sitting in the government tonight I would be appalled to think that I was associated with that in any shape or form. Firstly, Senator Cash obviously has not been around this issue for a very long time. She said that the coalition had refined their policy. Yes, that is right. When they excised the territories at Christmas Island the boat count dropped because they no longer were coming to Australia. It was a smart alec technical way of recounting the boats. So excise Australian territories and the boats are not coming to Australia any more. There is a drop in the boat numbers. What a brilliant tactic that was.

Secondly, Senator Cash says that the coalition's policies saved lives. Well, Senator Sinodinos is sitting there and he knows as well as I do that, when the Howard government introduced the temporary protection visas that said that people could not apply for family reunion, the SIEVX set out and 353 people drowned, the overwhelming majority of whom were women and children. I have spent many hours with a few people who survived. They tell a very sad story of what it was like and to this day this parliament still has not had the royal commission we should have had into the SIEVX. So trying to bring back temporary protection visas, telling people they cannot bring family reunion into the question, means you will force women and children onto boats—there is nothing surer—so it is exactly the same strategy.

Senator Cash, as to your lament about people in African camps not being able to come because of boat people, do you know why that is? It is because under the Howard government, for every single one who came on a boat and became a refugee, they took one off the category of people who could come from the permanent camps. So that is down to you, Senator Cash.

We have moved to disassociate, to decouple those things. It was in our submission to the Houston panel, and we will be very happy to make sure that you have the opportunity to vote for that, to decouple those two things so that you do not have the cruel situation that Prime Minister Howard brought in—that is, 'We will punish you by saying to all of you people in camps everywhere else, that every time a person comes on a boat and is found to be a refugee, we will take one off the number of people we would take from those camps.' Nobody is more responsible for that situation than the Howard government and your associates, Senator Cash. So before you stand up and make a whole lot of wild claims, go back to the history of the Howard years; go back and recognise just how appalled Australians were. Tragically, many of those cruelties are still there in the way that we treat refugees in this country.

As I have said many times in this debate, and I will say it again, we are very pleased
that there is going to be an increase in the humanitarian intake. That is the best way of saving lives, to get people out of those camps and give them safe pathways here so that they are not forced into that situation where they have no hope. But do not stand up in here and try to suggest for a moment that the Howard government had any compassion when it came to refugees, that its policies worked in favour of refugees. The overwhelming majority of people who were cruelly treated on Nauru were found to be refugees and ended up here in Australia and are making their lives in Australia—as will be the case, absolutely no doubt, with a policy that is currently being pursued.

What is more, many, many people have been emotionally damaged. Who will forget people sewing their lips shut? Who will forget that? Who will forget the then Prime Minister taking away the funding from an art gallery in Wagga Wagga because it dared to have an art exhibition which showed up the policies of the Howard government with sewing lips together? No-one will forget that. There are many, many things on the record about the cruelty of the Howard years when it came to refugees, and the tragedy for Australia is that the Gillard government is now following suit and embracing a lot of those policies.

I reiterate: we should put a sunset clause on this. We should end this as quickly as possible because it is going to be shown to be incredibly cruel to refugees, to people seeking a better life in our country. When we are treating people so cruelly in this way, we should recognise at the same time that we are saying to other people, 'If you've got $2 million to $5 million, your visa will be fast-tracked.' What does that say about this country?

**Senator HANSON-YOUNG** (South Australia) (21:56): Many people will be extremely horrified to hear the vitriol of Senator Cash, and that this is justifying the Gillard government's backing of Tony Abbott's Pacific solution mark II. The coalition have never been interested in saving people's lives. Let us not forget the leaked WikiLeaks cables that showed very clearly how happy the opposition are every time a boat arrives in this country. Even the opposition leader's own senior advisers have been known to utter such statements. The coalition love people coming on boats. That is how Tony Abbott plans to win the election. That is how John Howard won the election in 2001, because he played to the basic level of fear that still lurks in some corners of this country.

Rather than appealing to people's better sense of humanity, the coalition, now followed by the Labor Party, prey on people's fear. The coalition want us to believe that we have something to fear from poor refugees who are arriving in our waters in wooden, leaky boats. Asylum seekers are not a national security issue. In fact, when the refugee convention was drafted, the drafters knew that countries would make this exact argument unless it was very clear in the convention that a national security issue could not be used as a get-out clause for helping vulnerable refugees. It is why it is in the convention that refugees are not a basis for national security.

Sure, let's find out who people are, make sure we know, do the health and security checks. But pretending to the Australian people that we should be fearful of the most disadvantaged people in our region, who are not lucky enough to come by plane, they have to come by boat—how deluded is the senator from a coalition to think that we are threatened by refugees who are here to seek our protection? Refugees are not breaching our borders; they are seeking the protection of our borders. That is the whole point.
Malcolm Fraser made an interesting point this week that if we were having boatloads of white farmers from Zimbabwe arriving on our shores, would the coalition and the government be ramming through this legislation tonight? I think that is a question the Australian people already know the answer to.

This disgusting, dishonest, disingenuous debate and the vitriol of hatred and fear that comes from the mouths of those opposite does nothing to save the lives of the vulnerable people who are seeking our protection. The experts who gave their submissions to the Houston panel have said for years and years and years that the best way of saving the lives of vulnerable refugees is to give them a safer option, to give them a safer pathway. Do not force them onto boats in the first place. If the coalition do not want people losing their lives at sea, do not force them onto boats.

Deterrence does not work when people are fleeing for their lives. It has been proven over history, time and time again. We were told 20 years ago that we needed mandatory detention to deter people from coming to Australia by boat, and as conditions got worse in our region for refugees it did not deter people. We were told by John Howard that we needed not just mandatory detention but we needed temporary protection visas to deter people seeking protection coming here by boat. Under those temporary protection visas we stripped away their family reunion rights, their rights to access medical services, their rights to work, their rights to even volunteer. They were the restrictions under the coalition's temporary protection visas. Did that deter people from coming here by the only means possible that they had, and that was by boat? No, it did not. In fact, as my colleague Senator Milne has pointed out, it forced more women and children onto boats. That policy is responsible for the loss of life at sea.

We then heard from John Howard that it wasn't just good enough to have temporary protection visas and mandatory detention; we had to have the excision of our own territories, stripping of legal protections and the dumping of children and their families in indefinite detention on Nauru and Manus Island. We were told we needed to do that because Australia was under threat by some very poor, vulnerable refugees who were arriving in our waters on leaky wooden boats. How delusional are the coalition if they think that that is an attack on our sovereignty?

Of course, locking children and their families up on Nauru did not save people's lives either. The SIEVX sank after Nauru was opened and 353 people lost their lives. John Howard's government is responsible for that loss of life of those 353 people. Make no mistake about it. Shunting people off out of sight out of mind, dumping them on prison islands, has never saved anybody's life. But I tell you what, it has cost a lot of people's sanity, humanity, self-respect. It has broken people's spirit, it has broken families, it has broken their courage, it has ruined their mental health. It has sent people to the point of self-mutilation and destruction. It did not save anybody's life, but it sure cost many, many lives—not to mention the hundreds of millions of dollars of taxpayers' money that has been wasted and paid in compensation ever since because we did the wrong thing.

So for the coalition to come on here tonight and preach about saving people's lives and standing up for humanity is just utterly disgraceful. Not one member of the coalition has ever stood in this place in this debate tonight and actually spelt out anything that will save people's lives. They have voted down consistently
amendments that will protect people and safeguard children from years of child abuse in these rotten detention centres.

The saddest, saddest tragedy of all is the members of the government who sit here and let that rhetoric go in their name. This is your legislation, and it is worse than John Howard's. I have no idea how any of you will be able to sleep straight at night when you know that the history of how these detention centres operate ruins people's lives, abuses the rights of children and sends brave, courageous, intelligent people insane and to the point of self-destruction.

Mr Chairman, I cannot commend this amendment to end this horrible process to the Senate any more strongly than I have tonight.

Senator MILNE (Tasmania—Leader of the Australian Greens) (22:07): I have one specific question. Senator Lundy, did the government's Malaysia bill have a sunset clause? Was that a sensible and a good thing to do? If so, why, when the government's previous legislation had an accepted sunset clause, would this sunset clause be useless and dangerous, when your own sunset clause was not?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (22:08): This government has made no secret of the fact that it is in a situation where compromise is the right course of action. In establishing our expert panel and subsequently accepting and adopting its advice, we acknowledge that a solution has to be found urgently. We do not make any apology for that; it is what has to be done. Any differences with our Malaysia arrangement or variations to our approach now in accepting those recommendations have been necessary to progress this solution to stop the tragedies occurring on the seas.

The Malaysia arrangement could have passed this place with the support of the Greens, and I note with concern that we once again find ourselves in a debate where the Greens, through opposing the government's legislation, find themselves in a situation where further compromise is being made and are levelling a complaint to the government for that.

Senator MILNE (Tasmania—Leader of the Australian Greens) (22:09): I draw Senator Lundy's attention to the paragraphs in the Houston review which talk about Malaysia, which talk about how they were not confident that the arrangements that were in place could deliver any of the safeguards which the government had claimed were there. It is all here in the Houston report, making it very clear:

... the operational aspects underpinning the current provisions in the Arrangement need to be specified in greater detail as part of a broader revision to enhance the protections for transferees that it aims to provide.

So let us not pretend that there was anything there.

But the point I was making was in relation to a sunset clause, because that is specifically the amendment we have here before the committee tonight. The government thought in principle and in reality that it was reasonable to put in a sunset clause on Malaysia. What I am asking you is, if it was reasonable and sensible to put in a sunset clause on that bill, why you would not put a sunset clause on this one. It is the principle of whether or not you think that the bill should end that I am asking about. On one occasion you did; on this one you did not. I just want an explanation as to why it was good enough before and it is not good enough now. It is not about the compromises that you have made; it is about the issue of why a sunset clause was reasonable before and why it is not reasonable now.
Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (22:11): I think in my general responses we have answered that question. We are of course picking up the recommendations of the Houston report in a holistic way. This bill addresses part of that response, but there is obviously work still to do on other aspects of the proposal put forward.

Again, I cannot help but point out that you appear to be concerned about facets of legislation of the government, asking why we are not pursuing it, when in fact the Greens had the opportunity to support the government, in the face of opposition from the coalition, by supporting the Malaysia arrangement. You chose not to do it. I just point out that it is somewhat ironic that now you are questioning the government about the approach we take in adopting the Houston report recommendations holistically, as we have chosen to do out of necessity in trying to find an urgent resolution to the problem that we face.

Senator HANSON-YOUNG (South Australia) (22:12): The minister of course knows that that is a totally disingenuous comment, because my colleague Senator Milne made her question very clear. The question was: why did you believe that a sunset clause on a deterrence policy was okay six weeks ago but you do not believe it is okay now? It is totally illogical for you to have that opinion, unless of course your opinion has changed.

I ask, Chair, for the amendment to be put.

The CHAIRMAN: The question now is that the bill stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (22:20): I move:

The Committee divided. [22:17]

(The Chairman—Senator Parry)
That this bill be now read a third time.

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

The Senate divided. [22:21]

(The President—Senator John Hogg)

Ayes....................44
Noes....................9
Majority..............35

AYES
Abetz, E
Bishop, TM
Boyce, SK
Cameron, DN
Cash, MC
Conroy, SM
Edwards, S
Evans, C
Feeney, D
Furner, ML
Hogg, JJ
Kroger, H (teller)
Madigan, JJ
McEwen, A
Moore, CM
Parry, S
Pratt, LC
Sinodinos, A
Stephens, U
Thistlethwaite, M
Urquhart, AE
Wong, P

Back, CJ
Boswell, RLD
Brandis, GH
Carr, KJ
Colbeck, R
Crossin, P
Eggleston, A
Faulkner, J
Fifield, MP
Gallacher, AM
Johnston, D
Lundy, KA
Marshall, GM
McKenzie, B
Nash, F
Polley, H
Singh, LM
Smith, D
Sterle, G
Thorp, LE
Williams, JR
Xenophon, N

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

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

Question agreed to.

Bill read a third time.

ADJOURNMENT

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (22:24): I move:

That the Senate do now adjourn.

Asbestos

Senator SINGH (Tasmania) (22:24): I am talking tonight about the terrible impact of asbestos on the health of India's huge number of former asbestos mine workers. I was fortunate enough last month to attend a meeting in New Delhi of 23 anti-asbestos activists and trade union leaders to discuss their campaign for justice for workers employed in asbestos mines in India until the 1980s. The meeting took place in the shadow of the decision by the Quebec government in Canada to help a company reopen an asbestos mine that could sell thousands of tonnes of asbestos to countries such as India. Every person at the meeting in New Delhi was alarmed by the news that Quebec had provided the Jeffrey mine in the province with a $58 million loan guarantee to revive the asbestos industry. The point was not lost on my Indian friends that asbestos was virtually banned in Canada but Canada was now prepared to allow the export of the deadly material to developing countries.

India has a potentially massive public health problem on its hands in responding to the needs of the three million workers employed in asbestos mines in Rajasthan until the 1980s. The full extent of asbestos related illness amongst workers across Rajasthan is still unknown because of a lack of data; accurate records were never kept. I was amazed to hear from the Mine Labour Protection Campaign Trust CEO, Rana Sengupta, that no medical records had been kept and that there was no data on asbestos sufferers in India. This is an incredible situation given that the World Health Organization, the International Labour Organization and other international
organisations have all said asbestos is a carcinogen.

My meeting with the Mine Labour Protection Campaign Trust was highly enlightening. Part of MLPC's work has involved setting up a camp to diagnose the medical conditions of workers and collect that data. The initial diagnosis of 88 former asbestos mine workers by India's National Institute of Occupational Health strongly suspects the deadly disease asbestosis among more than 80 per cent of the mine workers. These people had worked in the hazardous asbestos mines for a pittance. Many young men and women had been engaged as child labour. The MLPC is still trying to trace many of the women who as children worked in the asbestos mines and today are married and living in villages. The MLPC told me that within a month of the diagnosis camp the National Institute of Occupational Health had agreed to hand over individual examination reports along with confirmed diagnoses. The Indian anti-asbestos activists will then begin the arduous journey of seeking justice for the victims of asbestos disease. This handover of examination reports and confirmed diagnoses is highly significant in the history of asbestos disease in India. For the first time in this tragic saga a government authority in India would have diagnosed and confirmed the disease.

The MLPC, while fighting for justice to asbestos victims, has not turned a blind eye to the needs of former workers for employment to support their families. These Indians are overwhelmingly poor and uneducated, with few, if any, job, job prospects. The MLPC is looking at using a well-known government scheme to have asbestos mines that have closed filled in. This action would not only provide workers with employment but also close the open asbestos pits which the MLPC believes some mine owners may try to reopen at the first opportunity. I am told that there is a renewed campaign in the corridors of government in India to reopen some of these asbestos mines, which would be absolutely tragic.

The recent decision by the Quebec government in Canada to approve a $58 million guarantee for the Jeffrey asbestos mine has widely been condemned in the medical and public health community across the world. I am aware of suggestions in Canada that the project, when it goes ahead, will create up to 500 direct full-time jobs and 1,000 indirect jobs in the region. I am also aware that comments by the mine's backers that the form of asbestos produced at the Jeffrey mine—it is known as chrysotile asbestos—is safe. These comments about safety are completely contrary to the declaration by the World Health Organization that chrysotile asbestos is a carcinogen and that the most efficient way to eliminate asbestos related diseases is to stop the use of all types of asbestos.

The wave of condemnation of Quebec's decision is not restricted to medical and health organisations outside of Canada. There has been considerable criticism of the decision by the Canadians themselves. Paul Lapierre of the Canadian Cancer Society said in a statement on 29 June that the society was deeply disappointed and frustrated that Quebec had approved the loan guarantee for the mine. He said the decision was in direct conflict with global cancer control, because all forms of asbestos cause cancer. The society urged the Quebec government to reconsider the decision, cancel the loan guaranteed and redirect the funds to projects to help the affected communities diversify their economic base. The Canadian health society has been joined by other health organisations, including Quebec's regional health bureaus and the Canadian Medical Association, in urging the government not to support the mine.
I note also that the UK Prime Minister, Mr David Cameron, is concerned about exports of Canadian asbestos to India. In response to a question in the House of Commons on 11 July this year, Mr Cameron promised to raise the matter with the head of the World Health Organization, who was scheduled to meet him. Asbestos, of course, is banned in the UK and in the European Union. Mr Cameron replied in strong terms, saying that the UK was totally opposed to the use of asbestos anywhere in the world and would deplore its supply to developing countries.

The fears of India's anti-asbestos campaigners about possible imports of asbestos from the Canadian mine are very well founded. Although India banned asbestos mining in 1986, the importation, manufacture, use and sale of asbestos products continues to grow. The asbestos industry in India is worth some US$900 million and currently has more than 121 units operating across India, with 300,000 metric tonnes of asbestos used in India each year. Employers have their own association which represents a powerful lobby in the country.

The figures just mentioned tell a shocking story. It is indisputable that imported asbestos will continue to kill many Indian workers—men and women of this generation and those of generations to come. However, more and more people in India are starting to understand the deadly effects of asbestos, and there are encouraging signs that people are prepared to protest at the grassroots level against expansion of the industry.

While in India, I was able to tell my friends in the trade union movement about what Australia has done to ban the use of asbestos and help victims of asbestos related disease. On that, I would like to acknowledge that the Minister for Employment and Workplace Relations, Bill Shorten, today released the Asbestos Management Review report which was commissioned by this Labor government to look into how we are going to tackle asbestos in the future in this country to ensure that we deal with the ongoing legacy of asbestos since its high use starting in the 1950s. Importantly, in India I was able to tell the trade unions about some of the projects that we have done here, like one in my home state of Tasmania. There was a cement plant in Tasmania known as Goliath Cement. That has now been converted to a non-asbestos cement plant. It produces cement sheeting and continues to provide jobs to workers in Tasmania. Again, this is something that Indian asbestos cement manufacturing could look at in seeking alternatives to asbestos.

In a country as vast and populous as India, finding employment for workers displaced from the asbestos industry remains a major consideration of anti-asbestos campaigners. As my friend Mohit Gupta said recently, 'It doesn't have to be an all or nothing game.' I admire greatly the efforts of anti-asbestos campaigners in India to improve the lot of asbestos disease sufferers. They are under resourced and face a powerful asbestos lobby with the ear of many people in government. They deserve our full support to end the deadly trade, use and manufacture of asbestos from Canada to India.

**Tasmanian Greens**

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (22:34): The London Olympics have come and gone. One performance that has largely gone unnoticed is the extreme green groups' prevailing over contractors constructing the Olympic facilities not to use timber products manufactured by the Ta Ann timber processor in my home state of Tasmania. It should be noted that Ta Ann does not harvest timber in Tasmania. It uses timber harvested
by others that was previously destined for the woodchipper. Ta Ann value adds by veneering these previous woodchip logs into valuable veneer for plywood production.

The timber is sourced from regrowth and plantation forests. The oldest trees might be as old as our friend Senator Boswell—about 70 years old. Tasmanian Greens are continuing their deceptive campaign to crawl the markets of Ta Ann around the world, prejudicing Tasmanian jobs when our unemployment rate in Tasmania is well over seven per cent, and heading north.

Ta Ann's reputation is being defamed, and their markets are drying up. Recently, I saw the stockpile of Tasmanian veneer in Sibu in the Malaysian province of Sarawak. I also saw their forestry operations in one part of Sarawak. If the Greens prevail, Ta Ann Tasmania will fail, jobs will be lost and trees used for veneering will simply return to the woodchipper. And people in Sarawak will lose their jobs, all thanks to the Greens.

So let us just keep this in mind: regrowth and plantation timbers destined for the woodchipper are being denied a market as veneer by the Greens. It begs the question: what products replace that which was destined for the London Olympics? Let us be thankful that it was not steel, aluminium, plastic, concrete or glass, all of which have huge energy intensity—which, of course, will leave large carbon footprints. In fact, I can report that wood was used from an alternative supply. Now, let us guess: was it from Europe? No. And here we have another example of the stark perversity of Greens action and Greens policy, because the alternative supply of timber came from a country that deforests at a rate of three million hectares per annum—and, of course, old-growth rainforest at that.

It was because of the Greens campaign that timber from this deforestation-of-rainforest exercise actually found itself a market at the London Olympics. In case colleagues have not guessed, the timber came from Indonesia. You have to ask: why do the Greens hate Tasmanian and Australian jobs, regrowth and plantation timber and growing forest estates so much that they want to prejudice all that in favour of providing a market for Indonesian rainforests that are literally being destroyed—not harvested and replanted but simply deforested—at the rate of three million hectares per annum?

My visit to the province of Sarawak also allowed me to consult with native title holders on their interest in matters forestry. And whilst one of the Green groups tried to get a news story up in recent times about my visit, what they failed to report—as is their wont, and they must have known—was that I was very kindly assisted with interpretation services by the World Wildlife Fund when I spoke with the Penan people. But, of course, that just gets airbrushed out of the Greens' manic campaign against anything to do with forestry. And having been a former chairman of this parliament's Joint Standing Committee on Native Title, I had some understanding of the issues that these native title holders—or, if I use the correct term in Malaysia, the 'customary title' holders—were engaged in. It was very similar to what happened in Australia; rather than discussing minerals in Malaysia, they were discussing forestry assets.

Ta Ann, to its great credit, was negotiating—and was determined to get—what is referred to over there as the informed consent of the native title holders. And here
we have the green groups besmirching the reputation of Ta Ann in circumstances in which it has held the forest licence over the area that the Penan people have, through the Sarawak government, since 2007. But the company has not felled one single tree, because it is anxious to ensure that proper informed consent is obtained before engaging in harvest practices.

You would have thought that would be something the Australian Greens, and the green movements in Tasmania, would actually celebrate. But no: they seek to condemn Ta Ann by placing deceptive photographs in the local newspapers claiming that a logging truck with a log on it and a native pointing at it was part of the activity of the Ta Ann forest company. Thank goodness people were able to identify the truck as belonging to another logging company completely. But that is the sort of deception the Greens go on with, with their manic campaign against all things forestry. The truth does not get in the way. That is one thing, but when perverse environmental outcomes are the result, surely you would think that the Greens and their fellow travellers would desist. But it seems not. The Greens are very happy that they stopped Tasmanian timber being used at the London Olympics. That was very clever, very smart: what they did was give a market to the destruction of Indonesian rainforests.

I do not know why some of these green groups cannot get it into their heads what the outcome of their perverse and quite dishonest campaigns will be—in this case, a campaign against the Ta Ann timber company, which, when they sought to expand out of Sarawak in Malaysia, had a choice. They could either go—they thought—to the Russian Federation or to Tasmania to try to expand their business interests. They deliberately chose Tasmania because they thought the forestry issues had been settled through the regional forest agreements, and they believed there was transparency, accountability and integrity in the way forestry was done in Tasmania as opposed to the Russian Federation. I would have thought the Greens would have embraced that. If there is one thing we know about the Russian Federation it is that illegal logging is very prolific and that the forests are being devastated. Instead, they chose Tasmania. Instead, they chose regrowth forests. Instead, they chose plantations. But that is not good enough for the Greens.

One really wonders what gives with the Greens sometimes. Here we have another example of how their extreme, manic campaigning not only costs jobs, not only costs investment but also has such a huge and detrimental environmental impact.

**Manufacturing**

**Senator MADIGAN** (Victoria) (22:43): Today was an important day for the Australian manufacturing industry. We saw the release of the report by the government's manufacturing task force. We also had the launch of my initiative, the Australian Manufacturing and Farming Program, which encourages federal parliamentarians to place themselves into Australian manufacturing workplaces and farms for a few days or a week to reacquaint themselves with the reality of those workplaces. We see two important initiatives designed to help Australian parliamentarians arrive at better decisions about Australian manufacturers and primary producers.

I must also admit to some concern today, listening to the answers of the Leader of the Government in the Senate, Senator Evans, in response to questions asked about government policies and the plight of the Australian manufacturing industry. Listening to Senator Evans display an unfortunate lack of knowledge about the continuing role of
blacksmiths and typists in our economy, and thinking of today's two pro-manufacturing initiatives, I thought a line or two from a report commissioned in 1984 by the Metal Trades Federation of Unions might be instructive to Senator Evans in relation to the role of metal manufacturing, including blacksmiths, in our economy. The report, called Policy for Industry Development and More Jobs, makes a critically profound comment. It says:

The products of the engineering industries are the processes of the rest of the economy. The truth is at the core of Germany's manufacturing success, propelling its economy forward. The products of its engineering industries are the processes of the rest of Germany's economy and increasingly our economy as we import and install the products of German engineering industries into our factories and workplaces. China is now establishing itself as an engineering powerhouse too, manufacturing the processes of its rapidly industrialising economy, competing with Germany to sell its engineering products to Australia and elsewhere. The MTFU industry policy document makes the very strong case that, in order to be a successful exporter, a country must have a successful domestic manufacturing base from which to export. China and Germany equip their own workplaces first and then export.

The central problem that has displaced 125,000 Australian manufacturing jobs over the last four years—with another 50,000 jobs predicted to end over the next five years—is that we are being outcompeted by China and Germany on the industry policy front. Unlike Australia, they do not allow other countries to take control of their domestic markets in key areas of production; neither do other manufacturing countries. As Edward Luttwak points out in his 2010 ABC Lateline interview, do not bother trying to sell locomotives to the French unless they are made in France. Australian economist Martin Feil makes the point that you will not find too many French cars in Italy or Italian cars in France. I have not had time to read today's manufacturing taskforce report in any detail, but I hope that it takes some of the emphasis off Australian manufacturing industry being smarter, more innovative and more productive and instead places that emphasis on Australian industry policy makers and decision makers to be smarter, more innovative, more productive and more competitive.

We, in this place, must start taking responsibility for failing Australian manufacturing industry to date. We must reject the free trade policies that have got our industries into this fix. We do not have to breach trade rules if we are smart. We do not have to introduce tariffs to protect our manufacturers. However, we do have to be just as clever and competitive as legislators elsewhere in the world who use a whole range of non-tariff supports to assist their manufacturing industries and protect them from damaging external competition. The challenge for our Australian manufacturers starts right here in this place. I finish by asking: are Australian legislators up to this task?

National Disability Insurance Scheme

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (22:48): I rise tonight to speak on the National Disability Insurance Scheme, the NDIS. As a senator for Tasmania and one of the co-convenors of the Parliamentary Friends of Disability, I am delighted that Tasmania has been successful in securing a National Disability Insurance Scheme launch site. It was a historic moment for Australia and a historic moment for Tasmania.
In Tasmania we are especially pleased to have been chosen to provide services to young Tasmanians between the ages of 15 and 24 living with a disability. This support is uncapped and is expected to provide services for 1,000 young Tasmanians. This number includes those who already have access to disability services and will also extend to new clients. A launch focussing on this age group will enable support to be provided to individuals at critical transition points to enhance their independence and promote their participation in the community and in employment. Young Tasmanians living with a disability will be able to be assessed to receive individualised care and support packages and will have the power to make decisions about their care and support. This will include choosing their own service provider and getting assistance from local coordinators to help manage and deliver their support. This system will be easy to navigate and will link people with disabilities to mainstream services.

The NDIS recognises the many struggles and challenges that Australians living with a disability face to obtain what the rest of the community considers an ordinary life. For the first time, Australians with significant and permanent disability will receive care and support over their lifetime regardless of how they acquired their disability. The federal government is investing nearly $38 million to make the NDIS a reality in Tasmania. The Tasmanian government has committed to contributing up to an additional $2 million a year. This is an outstanding example of cooperation and collaboration at a state and federal level, demonstrating our national commitment to better outcomes for all Australians living with a disability.

The NDIS announcement has been received very positively right across the state. With our high prevalence of people with a disability, the NDIS, once fully rolled out, will benefit many Tasmanians. For too long the current system of care and support has let people living with a disability, their families and their carers down. Their determination and their dedication have contributed to this significant change, and I applaud their hard work. Tasmanians have been proactive in campaigning for and supporting the NDIS. In Tasmania the National Disability Services do wonderful work providing support for people with a disability and advocating on their behalf. They have organised many forums and events to hear about the NDIS and how the NDIS would be most effective.

In June of this year—together with my parliamentary colleagues the minister for community services; Julie Collins, the member for Franklin; and Senator Catryna Bilyk—we hosted an NDIS forum the keynote speaker of which was the parliamentary secretary Senator Jan McLucas. We also had available to us the state minister Cassy O'Connor. It was an excellent turnout of over 100 people at the forum, with representatives from the sector, disability workers, people living with a disability and their families and carers all present. All were advocating in support of the NDIS and the desire for Tasmania to be a launch site.

On 6 July this year the Minister for Disability Reform, Jenny Macklin, came to Tasmania to attend a forum organised by the sector where the minister answered questions particularly regarding the hope and opportunity that the NDIS will bring to people living with a disability. We did not have to wait long. On 25 July the Prime Minister, Julia Gillard, and the Tasmanian Premier, Lara Giddings, announced that Tasmania would host an NDIS launch site. On the announcement the Prime Minister said, 'The National Disability Insurance Scheme is the vision we need for this
country to overcome a fundamental unfairness. It was a day indeed applauded. The very next day I was joined on the lawns of parliament by the Tasmanian Minister for Human Services, Cassy O'Connor, and many other Tasmanians who had advocated for the NDIS. We celebrated Tasmania securing a launch site. This was a very special moment for all of us.

In the past weeks I have met with young people with disability, their families, their carers and their friends and asked them what the launch site of the NDIS will mean to them. The NDIS will change the lives of Australians living with disabilities. We will all enjoy the benefits of an Australian society that supports everyone to fully participate in our great nation. This is why the NDIS must not turn into a political issue as has occurred during the initial negotiations with states for launch site funding.

Initially it was only state Labor governments who found the capacity to contribute for launch sites. I applaud them on this commitment. Since then, Victoria and New South Wales have joined South Australia, ACT and Tasmania in providing greater opportunities and support to people living with a disability. This cross-party support is crucial. The NDIS is a huge piece of public policy reform, so we need everyone to get in and work together to ensure it is delivered. Presently there are some levels of bipartisan support from all sides of politics. I hope this continues, because there are too many Australians who stand to benefit from the implementation of such a scheme for it not to continue. I want to acknowledge the hard work of all those who have made the NDIS a reality, especially the Minister for Disability Reform, Jenny Macklin, and the Parliamentary Secretary for Disabilities and Carers, Senator Jan McLucas. Their compassion, drive and determination have inspired us all.

Recently, Treasurer Wayne Swan visited Tasmania and, together with me, Premier Lara Giddings and Minister Julie Collins, met young Tasmanians and their families and carers who will benefit from the NDIS and joined in their excitement. Sheree Hill, who incidentally looked after my own brother as a carer, is also the mother of a young man who will benefit from the NDIS. His name is Matthew. She told us, through crying eyes, of the joy she felt when she heard that Tasmania would trial the NDIS. She told Mr Swan that the scheme meant her family had freedom of choice. She said that Matthew will be able to access services that up until now they were not able to link into. Sheree Hill said that the NDIS will mean not only better outcomes for Matthew but that she will be to spend more time with her other children. The NDIS will change the lives of whole families.

I especially want to acknowledge all the people in Tasmania who made this happen. I congratulate our Premier, Lara Giddings, and the minister for disabilities for their advocacy and work to help bring the NDIS launch site to Tasmania. They are a state government with a strong commitment to disability services, with almost $175 million invested in disability services across the state in 2012-13. I would like to thank all the NDIS task force members for their commitment to the vision of the NDIS. I would also like to acknowledge Margaret Reynolds and her team at National Disability Services Tasmania, including their new CEO, David Clements.

Over the next few weeks in London we will be reminded of the outstanding feats that people living with disabilities can achieve, as the Paralympic Games begin. We will be reminded to see ability, not disability. The NDIS will also serve to maximise the ability of Australians, and we will all be stronger for it. I commend the federal and state
governments on their partnership to achieve better outcomes for people living with a disability and look forward to the launch of the NDIS in Tasmania.

**Higher Education: Accommodation**

Senator RHIANNON (New South Wales) (22:58): The higher education hopes and plans of many students have been compromised by cost-of-living pressures. A report by the National Centre for Social and Economic Modelling at the University of Canberra released in May showed that disposable incomes have been keeping well ahead of inflation over the past 30 years or so. It found that this sustained period of economic growth has delivered gains across every income bracket in Australia, with the most benefits flowing to the top income groups. However, many students are under unacceptable financial pressure, partly because of housing and travel costs. The situation is particularly harsh in Sydney. The New South Wales capital leads the nation's housing affordability crisis, with mortgage stress, rental squeeze and a shortage of social and public housing. A previous report by the National Centre for Social and Economic Modelling found that the tipping point for Sydney households experiencing mortgage stress was much lower than in the past and that 11.9 per cent of Sydney households were under extreme mortgage stress, compared to the national average of 8.4 per cent.

New South Wales received 76,700 new residents last year, most of them wanting to live in Sydney. It feels like Sydney is in the constant grip of a rental crisis and going steadily backwards. This year rental vacancies fell in the inner suburbs to just 1.5 per cent, and for properties up to 25 kilometres from the heart of Sydney the rate fell to two per cent. University students who want to live near their place of study are feeling the squeeze. They are forced to work long hours on top of their heavy study loads to pay accommodation costs. If they move out of Sydney and commute to university or TAFE colleges, their travel costs increase and they become time poor. Ultimately their studies suffer.

The impact is hardest on rural students who move to capital cities to study, students from low-income households and overseas students. Many universities estimate the cost of living for overseas students at approximately $20,000 per year. This covers costs for accommodation, food, textbooks, health cover, phone, internet and transport. It does not cover expenses such as tuition fees, buying clothing and medical costs. Domestic students face similar costs if they live away from home.

Universities are growing faster than ever, with more and more students able to access higher education. This is a welcome development, but at the same time the Labor government is not maintaining public investment in our universities. Funding shortfalls have led to students paying higher fees for an increasingly low-quality education, with overcrowding in classes which places pressure on academic staff workloads and conditions. In many cases students are accumulating higher debts as they pay more for their courses and more for rental accommodation. Students will require more disposable income to live near or to travel to their campus.

The student youth allowance is intended to support and encourage young people to apply themselves to their tertiary studies by alleviating the financial pressures of work. But the current payment levels and the personal income test mean that students cannot afford to live on the youth allowance alone and concentrate on their studies. A recent report into youth allowance payments
by Unions New South Wales summarises the situation for students living on this income:

Youth Allowance is currently paid at $402.70 a fortnight ... significantly lower than the minimum wage and the poverty line. The weekly payments is $405.05 below the minimum wage ($606.40 a week) and $269.28 a week below the Henderson poverty line ($470.63 a week). Youth allowance recipients receive $28.75 a day to live on.

The youth allowance payment threshold is too low and so is the personal income test. The result is that students are living in poverty. Rental assistance does not come close to meeting accommodation costs. Assistance with living costs for students needs an urgent overhaul. On top of the challenge of finding affordable accommodation, students need to allocate much of their income to transport costs. The Greens support a national concession card scheme that guarantees fair access to public transport for all tertiary students, whether they are local, international, part-time, undergraduate or postgraduate students. This needs to be provided. After housing costs, transport is a major expense for students.

I heard from the Minister for Tertiary Education, Mr Chris Evans, in a recent estimates hearing that this government has increased the reach of youth allowance, which the Greens commend. But I rejected his characterising it as a success story, citing the dire housing affordability issue many students face. The problem is real, and increased funding is needed to support these students if, as a nation, we are truly to prioritise excellence in higher education and be a competitive player in the global economy.

Senate adjourned at 23:04

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

Civil Aviation Act—
Civil Aviation Regulations—Instrument No. CASA 235/12—Instructions – Qantas B-767 (P-RNAV procedures) [F2012L01680].

Civil Aviation Safety Regulations—Instrument No. CASA EX126/12—Exemption – minimum runway width [F2012L01676].

Customs Act—CEO Directions No. 1 of 2012 [F2012L01684].


Environment Protection and Biodiversity Conservation Act—Amendment of list of exempt native specimens—EPBC303DC/SFS/2012/41 [F2012L01677].


Health Insurance Act—Health Insurance (Telehealth Services) Determination 2012 [F2012L01678].

National Health Act—Instruments Nos PB—60 of 2012—National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2012 (No. 7) [F2012L01683].

61 of 2012—National Health (Price and Special Patient Contribution) Amendment Determination 2012 (No. 5) [F2012L01682].

62 of 2012—Amendment – pharmaceutical benefits supplied by medical practitioners and authorised nurse practitioners [F2012L01681].
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Defence: Equipment**
(Question No. 1623)

Senator Johnston asked the Minister representing the Minister for Defence, upon notice, on 5 March 2012:

With reference to the Government commissioned report, 2008 Audit of the Defence Budget which identified that ‘a real growth rate of 3.5% in capital expenditure on SME [Specialised Military Equipment] is required] just to replace today’s equipment. To deliver the capabilities proposed in the recommended Force Structure Option requires a growth rate of 4.2%’: As at 31 December 2011, what will be the amount required to fund, in nominal dollars, the major capital equipment program each year from 2010 11 to 2029 30, so as to fund the White Paper ‘Force 2030’ initiatives.

Senator Bob Carr: The Minister for Defence has provided the following answer to the honourable senator’s question:

At the time of the 2009 Defence White paper, and at the Senate Estimates hearing on Wednesday 3 June 2009, Defence outlined that the estimated overall cost of buying the capability outlined in the White Paper would be between $245-$275 billion out to 2030.

However, this has been revised down to approximately $200-$230 billion out to 2030 due to the appreciation of the Australian Dollar against the US Dollar.

**Gallipoli**
(Question No. 1891)

Senator Ronaldson asked the Minister representing the Minister for Veterans’ Affairs upon notice on 19 June 2012.

(1) Will the Government work with Turkish and New Zealand authorities to accredit travel providers offering travel packages to Gallipoli in April 2015; if so, how?

(2) What advice does the Government currently provide to Australians wishing to travel to Gallipoli in 2015 in regard to travel planning?

(3) When does the Government expect to make an announcement about public consultation on the proposed lottery scheme for ticketing at the Anzac Centenary commemorations in Turkey in April 2015?

Senator Bob Carr: The Minister for Veterans’ Affairs has provided the following answer to the honourable Senator’s question:

(1) There is a broader issue currently under discussion between the governments of Australia, New Zealand and Turkey about the numbers of visitors wishing to attend Anzac Centenary commemorations in Turkey in April 2015. Resolution of this issue will not revolve around accreditation of tour operators, many of whom are based in the United Kingdom. Discussions about managing the demand to attend in 2015 includes the provision of advice to tour operators in Australia, New Zealand, Turkey and the United Kingdom.

The Government will assess all options in consultation with our New Zealand and Turkish counterparts and provide advice, as required, to tour operators and the public on the final outcome of these deliberations.
(2) The Department of Veterans’ Affairs (DVA) focus has been to inform tour operators, who are a major conduit of information to prospective visitors. Information is provided to tour operators on the DVA website at:


This same information is provided to people who contact DVA.

(3) The term “lottery”, as recently raised in some newspapers, implies the sale of tickets in order to win a prize. The Government has no intention of demeaning the memory of the service and sacrifice of Australians who served at Gallipoli, or diminishing the significance of the Anzac Centenary, by offering tickets for sale.

The Government is currently holding discussions with the New Zealand and Turkish Governments about managing the demand to attend Anzac Centenary commemorations in Turkey in April 2015, whilst ensuring the safety and comfort of visitors. An announcement on the outcome of those discussions, and about public consultation on a process to fairly and transparently manage attendance, will be made shortly.

Western Front
(Question No. 1892)

Senator Ronaldson asked the Minister representing the Minister for Veterans’ Affairs upon notice on 19 June 2012.

(1) Will the Government work with French and other European authorities to accredit travel providers offering travel packages to the ‘Western Front’ for significant commemorations between July 2016 and November 2018; if so, how?

(2) What advice does the Government currently provide to Australians wishing to travel to Europe between 2016 and 2018, particularly the ‘Western Front’, in regard to travel planning?

(3) What constraints on attendance have been considered in relation to significant commemoration sites across northern France in advance of World War One centenary commemorations, in particular, will the Government be required to limit attendance at significant commemoration sites such as Villers-Bretonneux (sic) or the Menin Gate?

Senator Bob Carr: The Minister for Veterans’ Affairs has provided the following answer to the honourable Senator’s question:

(1) There is a broader issue to be discussed between the governments of Australia, Belgium and France about the numbers of visitors wishing to attend Great War centenary commemorations on the Western Front between July 2016 and November 2018. Resolution of this issue will not revolve around accreditation of tour operators, many of whom are based in the United Kingdom.

The Government will assess all options in consultation with our French and Belgian counterparts and provide advice as required to tour operators and the public on the final outcome of these deliberations.

(2) The Department of Veterans’ Affairs (DVA) provides information to assist visitors with their planning and preparation to attend annual Anzac Day services at Villers-Bretonneux and Bullecourt, France. Information is provided to visitors on the DVA website at:


DVA will enlarge this advice to include details of arrangements for the period between 2016 and 2018, including the centenary of the Battle of Villers-Bretonneux on Anzac Day 2018, once decisions have been made about managing the anticipated demand to attend services.
(3) The Government conducts two services on Anzac Day in northern France – the Dawn Service at the Australian National Memorial, Villers-Bretonneux and the Anzac Day Wreath Laying Service at the Digger Memorial, Bullecourt. The Government also assists with the locally organised Anzac Day services in the villages of Villers-Bretonneux and Bullecourt. In Belgium, the Government organises a number of Australian services on Anzac Day at commemorative sites around Ypres, and participates in the locally organised evening service at the Menin Gate.

The Government is currently considering the anticipated demand to attend services at the Australian National Memorial for the Anzac Centenary in 2015 and the centenary of the Battle of Villers-Bretonneux in 2018. The 2012-13 Budget provided $14.4 million to safely and effectively manage the increased demand to attend overseas commemorative services during the Anzac Centenary.

Disability Reform
(Question No. 1896)

Senator Cash asked the Minister representing the Minister for Disability Reform, upon notice, on 25 June 2012:

(1) What action has the Government taken and what is the Government currently doing to address its commitment to the Convention on the Rights of Persons with Disabilities, especially regarding women with disabilities.

(2) Is data from the National Disability Abuse and Neglect Hotline currently disaggregated by gender; if not, why not.

(3) Will the Government consider disaggregating data by gender to enable a better understanding and analysis of the figures on violence against disabled women; if so, when will this occur; if not, why not.

(4) What progress has been made on the high-priority action of developing a national response to auditing crisis accommodation services for accessibility for women with disabilities, one of the 20 high-priority actions identified by the National Council to Reduce Violence against Women and their Children in the report Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021.


Senator Chris Evans: The Minister for Families, Community Services and Indigenous Affairs and the Minister for Disability Reform provides the following answer to the honourable Senator’s question:

(1) On 17 July 2008, Australia became one of the first western nations to ratify the United Nations Convention on the Rights of Persons with Disabilities (the Convention). The Australian Government is committed to fulfilling Australia’s obligations under the Convention including through initiatives which ensure that all people with disability, including women and girls, enjoy the same human rights enjoyed by other Australians.

The Disability Discrimination Act 1992 (Cth) makes it unlawful to discriminate on the basis of disability in a number of areas of public life including employment, education, the provision of goods, services and facilities, access to premises and the implementation of Australian Government laws and programs. There is also additional legislation in each state and territory which makes discrimination on the basis of disability unlawful.

The National Disability Strategy 2010-2020 (the Strategy) was formally endorsed by the Council of Australian Governments on 13 February 2011 and launched by the Australian Government on 18 March 2011. The Strategy outlines a 10-year national policy framework to improve the lives of people with
disability, promote participation, and create a more inclusive Australian society that enables people with disability to fulfil their potential as equal citizens. The Strategy represents an important element of the Australian Government's commitment to promoting social inclusion for all Australians, including women with disability.

The Australian Government and State and Territory Governments are working to fundamentally reform disability care and support through the implementation of a National Disability Insurance Scheme (the Scheme). The Scheme will provide eligible individuals with the care and support they need when they need it, give individuals decision making power including being able to choose their service provider, provide high quality evidence-based services which manage life-time costs of care, be simple to navigate and link to mainstream and community services, recognise the essential care and support of families and carers and support them in that role, facilitate each individual’s community participation, access to education and employment opportunities, and be managed on an insurance basis.

The Australian Government provides funds to Women with Disabilities Australia (WWDA), which is the peak non-government organisation for women with all types of disabilities in Australia. WWDA is run by women with disability, for women with disability, and represents more than two million disabled women in Australia. WWDA’s work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. Promoting the rights of women with disability to freedom from violence, exploitation and abuse and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA. The Australian Government also funds six National Women’s Alliances, which work collaboratively to provide informed and representative advice to government on policy development and implementation relevant to the diverse views and circumstances of women.

The Australian Government recognises the very important role played by carers and that over two-thirds of Australia’s primary carers are women. The Australian Government is working hard to ensure that carers have the same opportunities as other Australians to participate fully in work, family and community life. Australia’s first National Carer Strategy (NCS) was launched on 3 August 2011 and is the Australian Government’s long term commitment to carers. The NCS will ensure that carers are valued and respected by society and that they have rights, choices, opportunities and capabilities to participate in economic, social and community life. It will achieve this by responding to the diverse and changing needs of carers with services and supports that are coordinated, flexible, appropriate, affordable, inclusive and sustainable. The NCS will guide future reforms, and it builds on reforms the Australian Government is already delivering to better support carers.

(2) The data from the National Disability Abuse and Neglect Hotline is disaggregated by gender.

(3) Based on the answer to question (2) above, this question is not applicable.

(4) As part of the National Disability Strategy, the Disability (Access to Premises –Building) Standards 2010 commenced on 1 May 2011.

The Premises Standards clarify the general non-discrimination provisions of the Disability Discrimination Act 1992 in relation to the design, construction and management of buildings. The Premises Standards set performance requirements and technical specifications for non-discriminatory access, and provide a practical and ongoing means to improve building access. This is achieved by requiring that all new buildings, together with modifications of existing buildings that require a building approval, meet the Premises Standards.

(5) Improving Service Delivery for Women with Disabilities reform project has commenced, Lifeline DV-Alert training is being provided to health and allied health workers, 1800RESPECT has been implemented with accessibility to services and information, opportunities have been taken to raise community awareness, The Line has been implemented and Community Action Grants have been announced and commenced.
Defence
(Question No. 1931)

**Senator Johnston** asked the Minister representing the Minister for Defence upon notice, on 27 June 2012:

For each of the 2010-11, 2011-12 and 2012-13 (estimated) financial years, detailed separately, what was the total amount spent by the department on: (a) advertising; (b) travel; (c) consultants; and (d) fuel and lubricants.

**Senator Bob Carr:** The Minister for Defence has provided the following answer to the honourable Senator's question:

(a) Defence and DMO spent $36.6 million on advertising for financial year 2010-11. This figure is slightly higher than published on page 345, table A7.13, Total Advertising and marketing Expenditure by Group of the Defence Annual Report 2010-11 of $36.2 million. The variation reflects the fact that particulars of payments less than $10,900 (including GST) are excluded in the Defence Annual Report. Defence and DMO spent $45.0 million on advertising in financial year 2011-12.

Defence and DMO’s budget estimate is $33.7 million for advertising in financial year 2012-13.

(b) Defence spent $211.2 million on business related travel in financial year 2010-11, as published in Defence’s 2010-11 Annual Report (page 391). During financial year 2011-12, Defence spent $227.0 million on business related travel, which is based on actual spend identified in Defence’s financial management system. As at 11 July 2012, the estimated spend for Defence during financial year 2012-13 is $210.5 million, which is based on the current budget for business related travel identified in Defence’s financial management system.

(c) Defence spent $59.5 million on consultants in financial year 2010-11, as published in Defence’s 2010-11 Annual Report (page 341). During financial year 2011-12, Defence spent $61.3 million on consultants, which is based on actual spend identified in Defence’s financial management system.

Figures for financial year 2012-13 are not available at this stage. Defence does not budget specifically for consultants as they are engaged on a case by case basis as the requirement arises.

(d) Defence spent $411.5 million on fuel and lubricants in financial year 2010-11. During financial year 2011-12, the amount of money spent by Defence on fuel and lubricants was $493.2 million.

The forecast requirement is an estimated $444 million spend for Defence during financial year 2012-13.

Defence Budget
(Question No. 1932)

**Senator Johnston** asked the Minister representing the Minister for Defence, upon notice, on 27 June 2012:

For the 2012-13 and 2013-14 financial years, detailed separately, what is the estimated amount that will be paid by the department in relation to the Carbon Tax.

**Senator Bob Carr:** The Minister for Defence has provided the following answer to the honourable senator’s question:

From a financial perspective and using the Department of Treasury Modelling a Carbon Price, Defence has forecast the impact on its cost base by using the following method:

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QUESTIONS ON NOTICE
Total Defence Operating Funding of $24.8b (PBS 2012-13, Page 99, Table 60)
Less Employees of $9.8b (PBS 2013, Page 99, Table 60)
Less Budget spent overseas of $3.5b (FOREX volume in AUD used for PBS 2012-13)
Times 0.7% (As per Treasury Model)
Equals Carbon Price effect of $80.4m

Using the above methodology, the estimated effect of a carbon price on the cash budget in 2012-13 is in the order of $80.4m. This represents 0.32% of the Defence total budget.

Using the above methodology, the estimated effect of a carbon price on the forward estimate cash budget in 2013-14 is in the order of $77.7m or 0.31% of the Defence forward estimate.

Adagold Aviation Pty Ltd
(Question No. 1933)

Senator Johnston asked the Minister representing the Minister for Defence, upon notice, on 27 June 2012:

With reference to the Middle East Area of Operation aviation contract with Adagold Aviation Pty Ltd, requiring the company to provide the Commonwealth Government with a monthly report detailing the: (a) number of services provided; (b) number of personnel moved on each service; (c) weight of equipment and baggage moved on each service; and (d) total flight time for each service, can copies of this information be provided, detailed separately, for each month from November 2010 to date.

Senator Bob Carr: The Minister for Defence has provided the following answer to the honourable Senator's question:

Summary tables for the period 23 November 2010 to 22 November 2011 and year to date 23 November 2011 to 31 May 2012 are detailed below at Tables 1 and 2. As at 31 May 2012 a total of 105 services have been undertaken. Total mission flight time varies between 33 and 34 hours. Further details, by month and flight are at Attachment 1 which can be obtained from the Senate Table Office.

Table 1: MEAO Air Sustainment movement summary
23 November 2010 to 22 November 2011

<table>
<thead>
<tr>
<th>Serial</th>
<th>Date</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td>(b)</td>
</tr>
<tr>
<td>1</td>
<td>Total Number of Missions</td>
<td>68</td>
</tr>
<tr>
<td>2</td>
<td>Total Passengers Outbound</td>
<td>7,925</td>
</tr>
<tr>
<td>3</td>
<td>Total Cargo Outbound</td>
<td>1,540,740</td>
</tr>
<tr>
<td>4</td>
<td>Average Passengers Outbound</td>
<td>117</td>
</tr>
<tr>
<td>7</td>
<td>Average Cargo Outbound</td>
<td>22,658</td>
</tr>
<tr>
<td>8</td>
<td>Total Passengers Inbound</td>
<td>7,359</td>
</tr>
<tr>
<td>9</td>
<td>Total Cargo Inbound</td>
<td>1,316,693</td>
</tr>
<tr>
<td>10</td>
<td>Average Passengers Inbound</td>
<td>108</td>
</tr>
<tr>
<td>11</td>
<td>Average Cargo Inbound</td>
<td>19,363</td>
</tr>
</tbody>
</table>

Table 2: MEAO Air Sustainment movement summary year to date
23 November 2011 to 31 May 2012
Defence: Middle East Area of Operation Contract  
(Question No. 1935)

Senator Johnston asked the Minister representing the Minister for Defence, upon notice, on 27 June 2012:

With reference to the Middle East Area of Operation (MEAO) aviation contract with Adagold Aviation Pty Ltd:

(1) In comparison to the previous contract, how much has been saved, detailed per corresponding month, since November 2010.

(2) What are the total savings realised on the contract since 22 October 2010.

(3) How much has been paid to the contractor since November 2010 to conduct and operate the service, detailed per month.

(4) How much has the department spent on fuel, lubricant and other costs since November 2010 to conduct the service, detailed per month.

(5) What is the status of the Australian Federal Police investigations that were initiated in relation to this contract and the previous MEAO contract.

(6) Will the MEAO contract be advertised with a proper and transparent process when the current contract expires on 21 October 2012, and what action has been taken to date in relation to this matter.

Senator Bob Carr: The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) Contract Savings since 2010 are;

(a) For the period 23 November 2010 to 22 November 2011, estimated savings were $13,174,695 or 22% in comparison to the second preferred tender response.

(b) For the period 23 November 2011 to 30 June 2012, the estimated savings were $9,617,358 in comparison to the second preferred tender response.

(2) The total estimated savings in the 19 months since contract commencement and 30 June 2012 is $22,792,053.

(3) Amounts paid to the contractor since 2010 are listed below. These figures exclude the cost of fuel, which is billed and paid separately:

<table>
<thead>
<tr>
<th>Serial</th>
<th>Date</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Total Number of Missions</td>
<td>37</td>
</tr>
<tr>
<td>1</td>
<td>Total Passengers Outbound</td>
<td>4,058</td>
</tr>
<tr>
<td>2</td>
<td>Total Cargo Outbound</td>
<td>605,690</td>
</tr>
<tr>
<td>3</td>
<td>Average Passengers Outbound</td>
<td>110</td>
</tr>
<tr>
<td>4</td>
<td>Average Cargo Outbound</td>
<td>16,370</td>
</tr>
<tr>
<td>7</td>
<td>Total Passengers Inbound</td>
<td>4,113</td>
</tr>
<tr>
<td>8</td>
<td>Total Cargo Inbound</td>
<td>489,980</td>
</tr>
<tr>
<td>9</td>
<td>Average Passengers Inbound</td>
<td>111</td>
</tr>
<tr>
<td>10</td>
<td>Average Cargo Inbound</td>
<td>13,243</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
(a) For the period 23 November 2010 to 22 November 2011, 68 routine weekly flight missions were undertaken, with approximately $28,288,432 paid to the contractor.
(b) For the period 23 November 2011 to 30 June 2012, 46 routine weekly flight missions have been undertaken with approximately $19,371,704 paid to the contractor.

(4) The total amount paid to the contractor in the 19 months since contract commencement and 30 June 2012 is approximately $47,660,136.

Amounts paid for fuel since 2010 are listed below.
(a) For the period 23 November 2010 to 22 November 2011, the cost of fuel for the 68 routine weekly flight missions is estimated at $19,422,568.
(b) For the period 23 November 2011 to 30 June 2012, the cost of fuel for the 46 routine weekly flight missions is estimated at $13,138,796.

The total cost of fuel in the 19 months since contract commencement up to 30 June 2012 is estimated at $32,561,364.

(5) The Australian Federal Police (AFP) did not undertake an investigation in relation to the 2010 contract process.

Defence referred allegations of criminal conduct to the AFP in September 2010 in connection with the 2005 contract. In August 2011, the AFP wrote to Defence and advised that it had completed its investigation into the 2005 contract and did not identify sufficient evidence to commence a prosecution against any person. Consequently the case has been finalised.

(6) Defence recently determined to exercise the first extension option which will see a continuation of the service under the current contract until 21 November 2013. The decision making process took into account contractor performance and the considerable cost savings to Defence. There was no requirement to re-tender (advertise) the service as the existing contract makes provision for up to two extension options of one year each at the discretion of Defence.

Anzac Centenary
(Question No. 1938)

Senator Ronaldson asked the Minister representing the Minister for Veterans’ Affairs upon notice on 27 June 2012:

Has the Anzac Centenary Advisory Board been granted deductible gift recipient status; if so, on what date.

Senator Bob Carr: The Minister for Veterans’ Affairs has provided the following answer to the honourable Senator’s question:

The Government is currently considering whether to provide Deductible Gift Recipient (DGR) status to public donations made in support of the Anzac Centenary.

However, DGR status, if granted, would not be linked to the Anzac Centenary Advisory Board but to a specified Anzac Centenary fund in which the donations will be received.

Veterans’ Affairs: Mental Health Services
(Question No. 1939)

Senator Ronaldson asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 27 June 2012:

Can a list be provided detailing, per year and per program since 2006, how much the department has spent on advertising for mental health services for veterans and their families:

(a) internally, within the department and among its clients;

QUESTIONS ON NOTICE
(b) within the Department of Defence; and  
(c) external to the Department of Defence.

**Senator Bob Carr:** The Minister for Veterans’ Affairs has provided the following answer to the honourable Senator’s question:

The Department, including the Veterans and Veterans Families Counselling Service (VVCS), can report the following expenditure on advertising for mental health services paid in the respective financial years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Program</th>
<th>Amount $</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-07</td>
<td>VVCS – general promotion of VVCS programs and services</td>
<td>6,088</td>
</tr>
<tr>
<td>2007-08</td>
<td>VVCS – general promotion of VVCS programs and services</td>
<td>7,722</td>
</tr>
<tr>
<td>2008-09</td>
<td>VVCS – general promotion of VVCS programs and services</td>
<td>24,970</td>
</tr>
<tr>
<td>2009-10</td>
<td>The Right Mix alcohol management program</td>
<td>110,877</td>
</tr>
<tr>
<td></td>
<td>VVCS – general promotion of VVCS programs and services</td>
<td>49,567</td>
</tr>
<tr>
<td>2010-11</td>
<td>The Right Mix alcohol management program</td>
<td>108,817</td>
</tr>
<tr>
<td></td>
<td>Touch Base</td>
<td>1,418</td>
</tr>
<tr>
<td></td>
<td>VVCS – general promotion of VVCS programs and services</td>
<td>69,361</td>
</tr>
<tr>
<td>2011-12</td>
<td>Changes to registration and referral processes for allied mental health providers</td>
<td>61,695</td>
</tr>
<tr>
<td></td>
<td>Wellbeing Toolbox</td>
<td>29,134</td>
</tr>
<tr>
<td></td>
<td>VVCS – general promotion of VVCS programs and services</td>
<td>71,209</td>
</tr>
<tr>
<td></td>
<td>Touchbase</td>
<td>1,418</td>
</tr>
</tbody>
</table>

This expenditure includes paid media placement in metropolitan and regional media, Australian Defence Force (ADF) newspapers, and medical and allied mental health association journals. VVCS advertising is for promotion of the range of VVCS programs including counselling and group programs, Operation Life suicide awareness workshops, Stepping Out and Heart Health programs.

**Vietnam Veterans' Family Study**  
(Question No. 1940)

**Senator Ronaldson** asked the Minister representing the Minister for Veterans’ Affairs upon notice on 27 June 2012:

With reference to the letter dated 8 June 2012 from the Repatriation Commission to the Vietnam veterans who participated in the Vietnam Veterans’ Family Study:

1. How much will the study cost to complete.
2. How much has been spent on the study to date.
3. Prior to 30 June 2012, how many departmental staff have been involved in preparing the study’s findings.
4. How many staff will be working in this area after 1 July 2012.
5. What ‘resource constraints’ are in place to prevent the completion of the study by the end of 2012, as promised in December 2011.
Senator Bob Carr: The Minister for Veterans’ Affairs has provided the following answers to the honourable Senator’s question:

Suggested Response:
(1) The study is expected to cost approximately $7,608,636 to complete.
(2) To date, approximately $5,720,356 has been spent on the study.
(3) Prior to 30 June 2012, the number of departmental staff varied in line with the different phases of the study:
- Set up and establishment – approximately six staff;
- Main registration of study participants and contracting of commissioned research components – approximately eight staff; and
- Contract management of the commissioned research – three staff.
(4) After 1 July 2012, one departmental staff member will be coordinating the research for the Family Study Program.
(5) The suite of final reports of the Vietnam Veterans’ Family Study was planned to be delivered to Government in the second half of 2012, three years ahead of the originally scheduled release of 2015-16. Due to the implementation of a ‘whole of government’ efficiency dividend strategy in the financial year 2012-13, the Department of Veterans’ Affairs has been asked to reduce its total operating budget by approximately $12 million.

In a measure to realise the efficiency dividend request, the official publication of the suite of Vietnam Veterans’ Family Study reports has been re-phased for release in the 2013-14 financial year. Despite this delay, the study is still on track to be delivered two years ahead of its original schedule.

The decision to re-phase the study will not affect the research outcomes in any way. The full suite of Vietnam Veterans’ Family Study reports will still be delivered; only the timeframe for publication has changed.